
**IN THE
SUPREME COURT
FOR THE STATE OF MISSOURI**

GRINNELL MUTUAL)
REINSURANCE COMPANY,)
)
 Respondent,)
)
 v.)
)
)
JOHN BEST, et al.,)
)
 Appellants.)

Case No. SC87199

**Appeal from the Circuit Court of Daviess County, Missouri
The Honorable Gary D. Witt, Judge**

RESPONDENT CIRCUIT CLERK’S BRIEF

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Statement of Facts

Respondent Daviess County Circuit Clerk Linda Adkins accepts the Statement of Facts as to the underlying litigation as set out in Appellants Bests' Brief. Respondent Adkins notes that the facts stated in Appellants' Brief as to the interpleaded parties' actions concerning the events are accepted as facts at this time because the underlying case was settled by these parties and this appeal is of a post-settlement ruling; however, appellants omitted some essential facts in their statement. These additional essential facts are stated below.

The Grinnell Mutual Reinsurance Company filed its petition in interpleader on September 25, 2000, in Daviess County. LF15-18. On February 14, 2001, the Honorable Warren L. McElwain entered a judgment in interpleader in this matter and directed Grinnell pay the sum of \$300,000 into the Registry of the Circuit Court. LF3, 28-29.

On February 14, 2001, Linda Adkins, Circuit Clerk for Daviess County, acknowledged receipt of Grinnell's Check No. S 31235 in the amount of \$300,000 as having been paid into the Registry of the Court. LF30. The Registry of the Court is a NOW account held in a north central Missouri bank. LF58. Neither the Circuit Court nor any of the parties made application before April 30, 2001, that said \$300,000 be transferred from the Clerk's NOW Account to a savings deposit in a bank or savings and loan association or in United States treasury bills within sixty days of the payment of said funds into the Registry. LF1-14, 58. Neither the Circuit Court nor any of the parties made a late application after April 30, 2001,

that said \$300,000 be transferred from the Clerk's NOW Account to a savings deposit in a bank or savings and loan association or in United States treasury bills. LF1-14; 58-59.

The Grinnell deposit of \$300,000 into the circuit clerk's NOW Account generated \$12,327.75 in interest income and \$6,582.79 was so used to pay expenditures of the Daviess County Circuit Clerk's Office such as the purchase of office furniture, rerouting of computer cables and other related expenses in the improvements to the Clerk's Office as authorized by the Daviess County Commission. LF59. The remaining \$5,744.96 remains in the NOW Account. LF59. The \$12,327.75 in interest was not paid to the parties. LF59. On February 6, 2004, interpleader defendants John and Tammy Best filed a Motion for Contempt seeking to have Linda Adkins held in contempt for refusing to comply with this Court's earlier orders regarding distribution. LF12; 52-54. Ms. Adkins opposed said motion. LF13, 55-54.

In reliance upon § 483.310, RSMo 2000, Ms. Adkins filed her motion to set aside those portions of the "Order Distributing Interpleader Funds" and the docket entry directing the Court clerk to pay from the Registry of the Court the sum of \$12,327.75 of accrued interest. LF13, 55-64.

The Bests objected to any reconsideration on the basis that § 483.310.2, RSMo 2000, which authorized the clerk to use the interest money, was unconstitutional. LF 65-70. The Honorable Gary D. Witt¹ set aside the October 9, 2003 Order on February 17, 2005 and held

¹The Honorable Rex Gabbert of the Seventh Judicial Circuit (Clay County) entered the October 9, 2003 and October 20, 2003 Orders. LF44-47. Then Chief Justice Ronnie

that only \$300,000 was available for distribution to the interpleader defendants because appellants and the other interpleader defendants did not comply with the requirements of § 483.310, RSMo. 2000. On August 8, 2005, the circuit court entered its judgment approving the amended stipulated division of interpleaded funds which had been filed by the interpleader defendants on August 1, 2005. LF 117; 108-116. The Bests filed a notice of appeal on September 12, 2005. LF 118-119.

White subsequently replaced Judge Gabbert with the Honorable Gary D. Witt of the Sixth Judicial Circuit (Platte County). Judge Witt set aside Judge Gabbert's October 9, 2003 and October 20, 2003 Orders. LF 101-102.

Argument

Standard of Review

Because the constitutional validity of a statute is a question of law, this Court reviews decisions passing on or relating to such questions de novo. *See, e.g., State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516-17 (Mo. 1991). As the party challenging the constitutionality of the statute, the Bests bear the burden of proving the statute unconstitutional. *Linton v. Missouri Veterinary Medical Bd.*, 988 S.W.2d 513, 515 (Mo. banc 1999). They must overcome the presumption of constitutionality by showing that the **statute** “clearly and undoubtedly” violates some **constitutional** provision and “palpably affronts fundamental law embodied in the constitution.” *Id.* Only if a statute conflicts with a constitutional provision or provisions, must this Court hold the statute invalid. *Upchurch*, 810 S.W.2d at 516.

Respondent’s Response to Appellants’ Point Relied On

The Bests’ challenge centers on their contention that § 483.310.2, RSMo 2000, is unconstitutional because it violates the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 26 of the Missouri Constitution. They argue that the circuit clerk’s public use of \$12,327.75 in accrued interest was a taking of private property for public use without just compensation. The Bests have not only not borne their burden of proving the statute unconstitutional, but this is not a case where the state has involuntarily transferred private property from one private party to another.

The key question is whether any party to the original proceeding suffered any appropriation of private property by the Daviess County Circuit Clerk because of their voluntary noncompliance with § 483.310, RSMo 2000. They did not. The placement of the interpleaded funds into the Registry of the Court was a voluntary act by the parties, not “state action” that would implicate due process rights of any sort. Grinnell voluntarily filed the interpleader action and deposited the \$300,000 with the Court. Pursuant to statute, those funds were then voluntarily placed in the Registry. The defending parties then voluntarily left those funds in the Registry despite ample opportunity to seek reinvestment in an account to which they could earn and eventually claim interest. The state did not compel them to leave the funds in the Registry. The state, via § 483.310, merely said, “Parties, if you choose to place money with us, here are our terms: The funds will be kept in a federally insured account until we are directed to pay them out, but under these terms you will not earn interest. If you want interest paid on those funds, you only need to ask that we reinvest the funds for you.”

The Bests seek such a dramatic expansion of the Takings Clause that it would undermine well-settled exercises of the police power affecting the use or disposition of personal property deposited with this state’s courts. The U.S. Supreme Court recently addressed the role of the courts and the constitution regulating police power in *Kelo v. City of New London, Connecticut*, ___ U.S. ___, 125 S.Ct. 2655 (2005). The court held that the judicial branch should decline to second-guess a public body’s considered judgments about the efficacy of its exercise of police power—there, its determinations as to what lands it needs

to acquire in order to effectuate the project: “It is not the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch.” *Kelo*, 125 S.Ct. at 2668 *citing Berman v. Parker*, 348 U.S. 26, 35-36, 75 S.Ct. 98 (1954). The Bests’ proposed per se rule of interest always following the property generating it, divorced as it is from an assessment of economic impact and a property owner’s reasonable expectations, is a broad invitation to judicial second-guessing of the reasonable choices made by the state legislature in enacting § 483.310.2. Just where should the state draw the line? If the funds are invested in an interest bearing account which is then reinvested at yet a higher rate, should all income generated in the investment stream flow back to the original depositor? This is the rule sought by the Bests. This Court should reject the Bests’ effort to reshape so fundamentally the Takings Clause when the parties to the interpleader action had within their power the means to effect the result they now seek.

Further, this Court has not shown sympathy to a party claiming interest in property subject to a public taking where the party did not protect their claimed interest. *See Thompson v. Chicago, G. F. & C. R. Co.*, 110 Mo. 147, 19 S.W. 77 (Mo. 1892). In *Thompson*, a mortgagee was personally notified of the pendency of the condemnation proceeding and was personally notified of the payment of the award into court, yet he made no claim to the award, or any part thereof, and took no steps to protect his interest therein.

Thompson, 19 S.W. at 78-79. The Circuit Court of Carroll County, upon written motion of the owner of the equity of redemption, a copy of which written motion was duly served upon the mortgagee, ordered the award paid to the owner of the equity of redemption. *Id.* Commenting upon the indifferent and negligent conduct of the plaintiff mortgagee in that case, this court remarked:

The plaintiff can certainly blame no one for the loss of this money except himself. Viewing the whole record, it is seldom we meet with as much indifference to one's rights as plaintiff manifested in regard to this claim of his against the property condemned, and upon the whole we do not consider that it would be just or right to compel the railway company to vacate this property, after having paid for it once, and to stop the public commerce over its road by putting plaintiff in possession of the property.

Id. at 81-82.

As confirmed in *Thompson*, the state can impose preconditions upon a party to protect their claimed interest in that property such that their failure to meet those preconditions cannot later be used as a tool to compel the return of the property. That is precisely what happened here.

**A. The Takings Clause Requires that the Action
Complained of Be Attributable to the State.**

Placement of funds in the Registry of the court is a voluntary act, not “state action” that would implicate the “Takings Clause” of either federal or state constitutions. The Takings Clause of the Fifth Amendment prohibits the government from taking private property for public use without just compensation. *Palazzolo v. Rhode Island*, 533 U.S. 606, 617, 121 S.Ct. 2448, 2457 (2001). It is applicable to the states through the Fourteenth Amendment, which prohibits states from denying federal constitutional rights and which guarantees due process. *Id.*; *Rendell-Baker v. Kohn*, 457 U.S. 830, 837, 102 S.Ct. 2764, 2769 (1982). The Fourteenth Amendment applies to acts of the states, not to acts of private persons or entities, and is only offended by action of the state. *Rendell-Baker*, 457 U.S. at 837, 838,, n.6. Similarly, 42 U.S.C. § 1983, which was enacted pursuant to the authority of Congress to enforce the Fourteenth Amendment, prohibits interference with federal rights under color of state law. *Id.* at 838; *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50, 119 S.Ct. 977, 985 (1999). Like the “state action” requirement of the Fourteenth Amendment, the “under color of state law” element of a § 1983 action excludes merely private conduct no matter how discriminatory or wrongful. *Id.* at 50 (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002, 102 S.Ct. 2777 (1982)).

state action requires both action taken pursuant to state law and significant state involvement. *Id.* at 50, n.9. Specifically, state action requires both an alleged constitutional deprivation “caused by the exercise of some right or privilege created by the state or by a rule

of conduct imposed by the state or by a person for whom the state is responsible,” and that “the party charged with the deprivation must be a person who may fairly be said to be a state actor.” *Id.* at 50 (quoting *Lugar v. Edmondson Oil Co. Inc.*, 457 U.S. 922, 937, 102 S.Ct. 2744 (1982)). One must look beyond the mere appearance of a state actor and look into the merits of the activity claimed to be “state action.”

Here the deposit of the interpleader funds into the registry of the Court and the use of interest earned on the Registry account by the circuit clerk were authorized by § 483.310, RSMo 2000, thus satisfying the first requirement of the state action test. But the inquiry does not end there. Rather, the Bests must also satisfy the second requirement, whether the allegedly unconstitutional conduct is fairly attributable to the state. *Id.* (second requirement of state action test must be satisfied even where plaintiff attempts to characterize his claim as a “facial” or “direct” challenge to a state law). At that point, their argument falters.

Analysis of the second requirement for state action begins with identifying “the specific conduct of which the plaintiff complains.” *Id.* at 51 (quoting *Blum*, 457 U.S. at 1004). The acts of which Mr. and Mrs. Best complain of which they contend constitutes a taking of their personal property without just compensation are in effect the omissions of any parties’ attorneys in making application that said \$300,000 be transferred from the Clerk’s NOW Account to a savings deposit in a bank or savings and loan association or in United states treasury bills within sixty days of the payment of said funds into the Registry of the Court. The issue is whether these voluntary acts of private persons or entities are fairly attributable to the state.

Just because the legislature enacted § 483.310 creating the application process, an interpleader’s deposit of disputed funds into the Registry of the Court and the subsequent transfer of the interest to the Clerk does not make said action attributable to the state. “[A] state is responsible for the . . . act of a private party when the state, by its law, has compelled the act.” *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 164, 98 S.Ct. 1729 (1978). (quoting *Adickes v. S. Kress & Co.*, 398 U.S. 144, 170, 90 S.Ct. 1598, 1615 (1970)). That the state has “authorized” or “encouraged” the conduct by enacting a statute is insufficient to conclude that the conduct is attributable to the state. *Sullivan*, 526 U.S. at 52-53; *Flagg Bros.*, 436 U.S. at 164-65. Similarly, action taken by a private entity with the mere approval or acquiescence of the state is not state action. *Sullivan*, 526 U.S. at 52.

Unlike a procedure which mandates participation, Missouri’s procedure to forego interest on interpleader funds is voluntary. The statute provides:

483.310. Investment of funds in registry—income, how used—clerk defined—collection of moneys, procedure.

2. In the absence of such an application by one of the parties within sixty days from the payment of such funds into the registry of the court, the clerk of the court may invest funds placed in the registry of the court in savings deposits in banks, credit unions or savings and loan associations carrying federal deposit insurance to the extent of the insurance or in United states treasury bills and invest funds only in investments permitted the state treasurer in article IV, section 15 of the

Missouri Constitution and the income derived therefrom may be used by the clerk for a paying the premiums on bonds of employees of the clerk, rent on safety deposit boxes, subscriptions or publications available pursuant to section 477.235, RSMo, books and publications of the Missouri Bar and books and other publications and materials published by the state of Missouri printing of pamphlets or booklets of the rules adopted by the court or clerk and forms used in the court which comply with the statutes of the state of Missouri and the rules of the supreme court, copies of which shall be distributed to litigants and members of the bar practicing in the court, and other expenditures of the circuit clerk's office, and the balance, if any, shall be paid into the general revenue fund of the county, except that when provision is made in a county charter for the appointment of a court administrator to perform the duties of a circuit clerk or for the appointment of a circuit clerk by the court, such income may also be used for any expenditures of the court other than expenditures for travel or entertainment. If any application for the investment of such funds is filed by one of the parties after sixty days, an order may be entered providing for investment of funds as provided in subsection 1 of this section, and the clerk shall thereupon reinvest such funds within a reasonable time thereafter in accordance with the order.

Participation is not required, compelled, or coerced by the state. Rather, participation is authorized by § 483.310, resulting in, at best, mere approval or acquiescence by the state. Because of the voluntary nature of the interpleader process, the decision to participate is in the hands of the attorney or law firm and ultimately the client who selects his attorney.

The circuit clerk's claim to interest in funds that the parties have not sought investment simply allows the state to use an opportunity to garner additional state revenues at no risk to the parties as the principal funds remain in a federally insured account. If the \$300,000 had remained in a non-interest bearing account, the Bests must concede that they would not have a claim against the circuit clerk for the lost opportunity interest because it was not state action that deprived them of the opportunity. It was the parties themselves that lost the opportunity to seek reinvestment. Therefore, the state's efficiency and prudence, via the use of an interest bearing account in managing interpleaded funds, does not render the activity state action merely because the state is involved. Thus, the acts of depositing interpleader funds into a NOW account and the subsequent use of interest earned on the account by the circuit clerk are not attributable to the state.

The Bests rely heavily upon *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 156, 101 S.Ct. 446 (1980). Although *Webb* concerned a circuit clerk retaining interest earned on interpleaded funds pursuant to a Florida statute, the instant case is clearly distinguishable from the *Webb* decision.

The statute that was the object of the constitutional challenge in *Webb* was § 28.33, enacted as 1973 Fla.Laws, ch 73-282, § 1. It directs all interest to the circuit clerk by providing:

The clerk of the circuit court in each county shall make an estimate of his projected financial needs for the county and shall invest any funds in designated depository banks in interest-bearing certificates or in any direct obligations of the United states in compliance with federal laws relating to receipt of and withdrawal of deposits. . . . Moneys deposited in the registry of the court shall be deposited in interest-bearing certificates at the discretion of the clerk, subject to the above guidelines. . . . *All interest accruing from moneys deposited shall be deemed income of the office of the clerk of the circuit court* investing such moneys and shall be deposited in the same accounts as are other fees and commissions of the clerk's office. Each clerk shall, as soon as is practicable after the end of the fiscal year, report to the county governing authority the total interest earned on all investments during the preceding year.

Emphasis supplied.

Unlike Missouri, the Florida statute does not give the person depositing the counterpart funds any opportunity to acquire interest income. Instead, the Florida statute provides that all interest generated from interpleader funds would be deemed income of the circuit clerk.

The Missouri statute differs significantly in that all parties to the interpleader action may make application subsequent to the deposit of the interpleader funds into the Registry of the Court to protect and establish their claims to those earnings generated by the separate investment of interpleader funds. Only when the parties decline to make application does the clerk receive the interest earned on the funds. Despite the Bests' argument to the contrary, a finding that the interest earned on the interpleader funds deposited in the Registry of the Court and used by the Daviess County Circuit Clerk does not conflict with the general rule that "interest follows principal," because said interest would have followed principal in this case if only the parties had timely requested it.

B. The Takings Clause is a Compensatory Constitutional Provision Rather Than a Substantive Limit on Government Power.

The Fifth Amendment's Takings Clause does not ban government from taking private property for public use. Rather, the Fifth Amendment conditions the right to take private property for public use on payment of "just compensation" for the property taken. This does not mean that there are no limits on the government's right to take property because the Fifth Amendment requires that private property be taken only for a "public use." The Due Process Clauses of the Fifth and Fourteenth Amendments provide additional limitations on government's power to take and use private property. "This basic understanding of the Amendment makes clear that it is designed not to limit the government interference with property rights per se, but rather to secure compensation in the event of otherwise proper

interference amounting to a taking.” *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 315, 107 S.Ct. 2378 (1987) (emphasis in original).

The compensatory nature of the Takings Clause was emphasized by the Supreme Court in *City of Monterey v. Del Monte Dunes, Ltd.*, 526 U.S. 687, 119 S.Ct. 1624 (1999). There, the Court recognized that so long as a compensatory remedy exists, the Fifth Amendment is not violated.

The constitutional injury alleged, therefore, is not that property was taken but that it was taken without just compensation. Had the city paid for the property or had an adequate post-deprivation remedy been available, *Del Monte Dunes* would have suffered no constitutional injury from the taking alone. *Id.* at 709. The Supreme Court observed this same principle in *Williamson Co. Regional Planning Commn. v. Hamilton Bank*, 473 U.S. 172, 105 S.Ct. 3108 (1985), in considering the ripeness of a takings claim for adjudication: “Because the Fifth Amendment proscribes takings without just compensation, no constitutional violation occurs until just compensation has been denied.” *Id.* at 194.

Nevertheless, the Bests sought a type of injunctive relief post-settlement rather than seeking compensation when available, thereby revealing their real problem if this was a state taking: how to use the Takings Clause to overcome the availability of an adequate pre- and post-deprivation remedies when they fail to make a timely application for the investment of interpleader funds. Section 483.310 provides for the payment of interest of funds deposited in the Registry subject to a timely request that requires the circuit clerk to specially invest the funds and track any interest earned. As pointed out by Justice Kennedy, however, the

judiciary should invoke the Takings Clause only to ensure that property owners are compensated for the taking of their property, not to review the validity of governmental policy with which they may disagree. Here that governmental policy is for the prudent collection of interest on federally insured funds in which the parties did not seek reinvestment.

The imprecision of our regulatory takings doctrine does open the door to normative considerations about the wisdom of government decisions. *See, e.g., Agins v. City of Tiburon*, 447 U.S. 255, 100 S.Ct. 2138 (1980) (zoning constitutes a taking if it does not substantially advance legitimate state interests). “This sort of analysis is in uneasy tension with our basic understanding of the Takings Clause, which has not been understood to be a substantive or absolute limit on the government’s power to act. The Clause operates as a conditional limitation, permitting the government to do what it wants so long as it pays the charge. The Clause presupposes what the government intends to do is otherwise constitutional. . . .” *Eastern Enterprises v. Apfel*, 524 U.S. 498, 545, 118 S.Ct. 2131 (1998) (Kennedy, J., concurring in the judgment and dissenting in part). Thus, the Bests’ request to have Ms. Adkins held in contempt, and order the payout of accrued interest, is entirely misplaced given that the Takings Clause is not intended to limit government’s ability to act, but is instead intended only to ensure that government pay for the impacts of certain actions. Since the Bests never made a timely request for investment of the \$300,000, they were not entitled to payment of interest under § 483.310. There was no adverse impact to which Missouri had to pay compensation to the Bests. The state of Missouri should not pay for the

loss of this statutory right because they did not take it. The Bests lost it through their own inaction such that no state compensation is necessary.

C. There is No Unconstitutional Taking Within the Meaning of the Takings Clause Unless the Property Owner is Entitled to Just Compensation.

In seeking reversal of the February 17, 2005 Order and the August 18, 2005 Judgment that injunctive relief is an appropriate remedy in this case, the Bests seek to edit the twelve-word Takings Clause to nine by excising the requirement that prohibited takings be “without just compensation.” This edit allows them to interpose injunctive relief as a “remedy” for their novel constitutional claim. But it is not enough that they assert that there has been a deprivation of a property interest; to establish a constitutional injury they must also show that the deprivation has been “without just compensation.” Where just compensation is zero, there is no Takings Clause injury, and no ground for providing injunctive relief under that clause.

This conclusion is compelled by “the guiding principle of just compensation,” which is to put the property owner “ ‘in as good a position pecuniarily as if his property had not been taken.’ ” *United states v. Virginia Electric & Power Co.*, 365 U.S. 624, 633, 81 S.Ct. 784 (1961), quoting *Olson v. United states*, 292 U.S. 246, 255, 54 S.Ct. 704 (1934). The Takings Clause thus requires a financial loss. And it is solely concerned with the owner’s loss. *See Boston Chamber of Commerce v. City of Boston*, 217 U.S. 189, 195 (1910) (“[The question is] What has the owner lost? not, What has the taker gained?”). A necessary

corollary is that there is no constitutional guarantee that the owner of property taken by the government is entitled to a remedy under the Takings Clause; the owner must show that she suffered an involuntary pecuniary loss to invoke that clause. In *Webb's Fabulous Pharmacies, Inc.*, 449 U.S. at 161, upon which defendants rely, the fact that “Webb’s creditors . . . had more than a unilateral expectation” of receiving interest—indeed over \$100,000 in interest—from an interpleader account was critical to the Court’s finding of a taking.

Although in most instances when government takes private property for public use the owner loses a property interest of some value, this is not always the case. The Supreme Court recognized the possibility of a government taking of property where no compensation is due, and thus no Takings Clause violation occurs, in *Marion & Rye Valley Ry. Co. v. United States*, 270 U.S. 280, 46 S.Ct. 253 (1926). In *Marion*, the Court considered whether a federal order authorizing government use of railroads during World War I constituted a taking of the Marion Railroad’s property. Justice Brandeis, writing for a unanimous Court, found it unnecessary to consider whether a taking had occurred because, even if the government did take the railroad’s property, no compensation was due for the taking. “Nothing was recoverable as just compensation because nothing of value was taken from the company; and it was not subjected by the Government to pecuniary loss.” *Id.* at 282. Underscoring the fact that the Takings Clause is a compensation clause, *Marion* went on to stress that there was “[n]o evidence . . . that the alleged taking had subjected the company to any pecuniary loss or had deprived it of anything of pecuniary value.” *Id.* at 286.

A common circumstance where government takes property but owes nothing as just compensation is the taking of easements appurtenant to a dominant estate. Where the easement taken is not needed by the dominant estate, such as where the easement grants a right to ingress and egress and other methods of ingress and egress are available, the value of what is taken from the owner of the easement will be small or non-existent, even if the gain to the government in obtaining the easement is great. In these cases, the owner of the easement cannot enjoin the government project. The owner instead essentially receives nothing as just compensation. *See, e.g. Gilmore v. state*, 143 N.Y.S.2d 873 (Ct. Cl. 1955) (nominal compensation of \$1.00 for condemnation of easements and rights of way of no benefit to landowners); *Redevelopment Agency v. Tobriner*, 215 Cal.App.3d 1087 (1989) (court ordered nothing as just compensation for condemnation of valueless nonexclusive easements); Restatement (First) of Property, § 508, com. c. illus. 2 (market value of dominant estate not affected by taking of easement since public way established by condemnation is fully as serviceable as easement right of way; owner of dominant estate entitled to no award for taking of easement).

But the Bests have suffered no involuntary loss as a result of the operation of § 483.310, RSMo 2000, and thus are due no compensation. If there is any question that this is the case, however, the Bests' remedy is not to hold Ms. Adkins in contempt. Rather, the proper course of action to protect their financial interest was to file a timely application for reinvestment of said interpleader funds.

As to the availability of injunctive relief, the general rule regarding takings cases was established in *Ruckelshaus v. Monsanto, Co.*, 467 U.S. 986, 1016, 104 S.Ct. 2862 (1984): “Equitable relief is not available to enjoin an alleged taking of private property for public use, duly authorized by law, when a suit for compensation can be brought against the sovereign subsequent to the taking.”

There is only one circumstance where the U.S. Supreme Court has indicated that injunctive relief might be available to address an otherwise legitimate taking: where no mechanism exists to obtain just compensation. *See, e.g., Preseault v. ICC*, 494 U.S. 1, 13, 110 S.Ct. 914 (1990) (“All that is required is the existence of a reasonable, certain and adequate provision for obtaining just compensation at the time of the taking”); *cf. Eastern Enterprises*, 424 U.S. at 521 (plurality) (injunction permitted where “monetary relief against the government [was] not an available remedy”). Although the Bests may base their request for injunctive relief in part on the asserted lack of an adequate provision in the state statute for obtaining just compensation if in fact they were entitled to it, it is simply not true that they lacked a mechanism for determination of that just compensation. A simple application to the court would have assured them of the desired interest.

The Bests cannot show that they lacked a state court mechanism for determination of just compensation. Nor can they show that Missouri state courts will not follow the Supreme Court’s Takings Clause jurisprudence such that court intervention, restricting public use of accrued interest by a circuit clerk is warranted. Rather, it appears that the Bests’ real concern is not that they lack a mechanism for determination of just compensation, but that just

compensation in their case will be nothing because of an untimely application. That fact does not, however, allow them to bypass state statutes and invoke the U.S. Constitution to limit § 483.310, RSMo 2000. Section 483.310 adequately protects the property rights of persons such as the Bests by giving them the opportunity to require that interpleader funds be reinvested in a separate account with interest to follow the principal. As an adequate post-deprivation procedure was available, as it was here, the Bests were not entitled to have Ms. Adkins held in contempt or any other form of injunctive relief.

Upon review of the docket sheet, and confirmed by Judge Gary Witt in his October 20, 2003 docket entry, none of the parties ever made application for redeposit prior to this Court's orders of October 9, 2003 and October 20, 2003. Thus, any parties' claim for accrued interest generated by the circuit clerk's NOW account was properly disallowed by § 483.310.2, RSMo 2000.

D. Section 483.310, RSMo 2000, does not violate due process rights established by either the federal or the state constitution.

Barring the payment of interest to those whose funds are voluntarily placed in the registry of the court but who fail to meet the easy requirements of § 481.310 does not violate the due process clauses of the constitutions of Missouri or the United States.

The due process clauses do not preclude the state from imposing procedural requirements, including a timely request that particular funds be handled in a particular way, on funds voluntarily deposited with the courts.

To “determine whether an individual has received the ‘**process**’ that the Constitution finds ‘**due**,’” the United States Supreme Court set forth three factors in *Matthews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893 (1976). *City of Los Angeles v. David*, 538 U.S. 715, 716, 123 S.Ct. 1895 (2003). First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* (quoting *Matthews*, 424 U.S. at 335, 96 S.Ct. 893).

To paraphrase *Matthews*, there **may** be a violation of **due process** where the procedures employed by governmental agents are so unreasonably careless or indifferent to individual rights that they create the likelihood of an erroneous deprivation of the private interest of a citizen. 424 U.S. at 335, 96 S.Ct. 893. One factor mentioned in *Matthews* is whether additional procedural protections would have been likely to better protect the rights in question. In this case, in view of the Bests’ failure to comply with easy procedures for reinvestment of interpleaded funds, the Bests fail to articulate any way in which the circuit clerk could have, regardless of the extent of procedural precautions she employed, protected the Bests from their own omissions. The Bests never specify what due process they claim is needed other than there should be no time constraints on when any party may make demand for accrued interest because interest must follow the principal. But that assertion is

unreasonable and impractical. It is hard to see exactly how any more extensive procedures would have protected their interest.

Immediately following Grinnells' payment of the \$300,000 into the registry of the Daviess County Circuit Court, on February 14, 2001, any one of the parties to the interpleader action could have applied for reinvestment of the funds into a separate interest bearing account. The Bests could have simply made their application to the Court and required the removal of the \$300,000 from the Clerk's NOW account. The reinvestment would have quickly occurred without opposition. Because of these reasonable statutory procedures and the Bests' failure to object under those procedures, their appeal must fail on at least two points: (1) They voluntarily permitted the placement of the interpleaded funds in the Clerk's NOW account, thus making the funds subject to § 483.310, and (2) they failed to assert their right to have the funds reinvested in a separate account and the interest distributed to all of the parties.

Here, the procedural requirements of § 483.310 are much like a statute of limitation. The legislative branch of government has the power to enact statutes of limitations. *Laughlin v. Forgrave*, 432 S.W.2d 308, 314 (Mo. banc 1968). Statutes of limitations are favorites of the law and will not be held unconstitutional as denying due process unless the time allowed for commencement of the action and the date fixed when the statute commences to run are clearly and plainly unreasonable. *Id.* Likewise, time limitations on required actions should be allowed unless the time period is clearly and plainly unreasonable. As a general rule, the date when a limitation period begins to run and the time thereafter within which a particular

class of action shall be commenced against a particular class of persons, may be fixed by the legislature and does not amount to a denial of equal protection or constitute proscribed class legislation, provided the classifications are reasonable, are not discriminatory, and apply to and affect alike all persons and actions with those classes. *Id.*

The courts of this state have long held that where there is special statutorily created statute of limitations, the court cannot create judicial exceptions. *Frazee v. Partney*, 314 S.W.2d 915, 919 (Mo. 1958). Here, like a statute of limitations the Court should not interfere with the legislature's judgment that the interpleaded parties or the lower court on its own accord must make timely application for reinvestment of the interpleaded funds following deposit of the funds in the Court's registry or be barred from doing so, even if the Court questions the "wisdom, social desirability or economic policy underlying" the statute. *See Blaske*, 821 S.W.2d at 829. The inquiry should be confined to whether § 483.310, RSMo 2000, is clearly and plainly unreasonable. As discussed, § 483.310 is a reasonable exercise of the legislature's power and therefore, does not violate due process.

The due process clauses of the Constitutions of Missouri and the United States do not require the state to provide a method by which someone who fails to meet the statutory requirements up front can come in later and recover interest they claim is due. To hold otherwise would subject the judicial branch of this state to continual second-guessing of the legislature's exercise of police power of enacting reasonable statutory conditions concerning the deposit of personal property into the Court. Efficient, prudent, and easily understood procedures would be replaced by inefficiency, uncertainty, and a process subject to infinite

challenges. The conditions of § 483.310 prevents the assertion of stale claims for interest and promotes an efficient handling of interpleaded funds while avoiding further increases in frivolous litigation. The Daviess County Circuit Clerk did not violate due process in her compliance with § 483.310, RSMo 2000.

Conclusion

The trial court did not err in ruling against appellants in the modifications to the original judgment and orders and denying their other motions for relief. The judgment should be affirmed.

Respectfully submitted,

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Certification of Service and Compliance with Rule 84.06(b) and (c)

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