

No. ED97129

FILED
OCT 21 2011
LAURA ROY
CLERK, MISSOURI COURT OF APPEALS
EASTERN DISTRICT

**IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT**

JORDAN DANIELLE KING-WILLMAN, et al.

92125

Plaintiffs/Respondents,

FILED

v.

NOV 7 2011

WEBSTER GROVES SCHOOL DISTRICT,

CLERK, SUPREME COURT

Defendant/Appellant

**Appeal from the Circuit Court of the County of St. Louis
The Honorable Barbara W. Wallace, Circuit Judge**

APPELLANT'S BRIEF

**Douglas A. Copeland
Stephen C. Hiotis
COPELAND THOMPSON FARRIS PC
231 S. Bemiston, Suite 1220
St. Louis, Missouri 63105
(314) 726-1900
(314) 726-2361 (Facsimile)**

Attorneys for Appellant

SCANNED

TABLE OF CONTENTS

SUMMARY OF CASE AND APPELLANT’S ARGUMENTS.....	2
TABLE OF AUTHORITIES	5
JURISDICTIONAL STATEMENT	8
STATEMENT OF FACTS	9
POINTS RELIED ON.....	16
ARGUMENT	19
CONCLUSION.....	52
CERTIFICATE OF SERVICE	53
CERTIFICATE OF COMPLIANCE.....	54
APPENDIX.....	55
Judgment.....	A-1
Rule 94.01	A-6
Rule 52.04.....	A-7
Art. X, Sections 16 and 21, Missouri Constitution.....	A-8
Section 167.131 RSMo.....	A-9

SUMMARY OF THE CASE AND APPELLANT'S ARGUMENT

This action was commenced as a petition for mandamus by a sixteen year old (Jordan King-Willmann) and her parents alleging they all resided in the City of St. Louis, Missouri, that the City of St. Louis School District was not an accredited public school district, and that Jordan thereby had the right to attend high school in the Webster Groves School District pursuant to §167.131 RSMo and the Missouri Supreme Court's decision in Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660 (Mo. banc 2010). In Turner, the Missouri Supreme Court, in a 4-3 per curiam opinion, indicated that §167.131 was applicable to the City of St. Louis School District (known as the transitional school district) and that the Clayton School District (as a public school district in an "adjacent county") did not have discretion to deny admission to a City of St. Louis student wishing to transfer to the Clayton School District. The Missouri Supreme Court remanded that important case back to the St. Louis County Circuit Court where it is still pending.

In this case, the trial court, the Honorable Barbara Wallace, found the Turner v. Sch. Dist. of Clayton decision controlling and entered an order of mandamus ordering Webster Groves School District to immediately enroll Jordan in its School District. Webster Groves School District respectfully submits that the trial court "put the cart before the horse" by entering its final judgment without hearing any evidence in light of Webster Groves School District's Verified Answer expressly denying the essential elements of Plaintiffs' claims (including denying the Plaintiffs all resided in the City of St. Louis, denying that Jordan had completed all necessary work to enroll in the ninth

grade, etc.) and the Webster Groves School District had also set forth additional valid defenses that could bar Plaintiffs' mandamus claims.

The School District's defenses included allegations that §167.031, on its face or as applied, violated the Hancock Amendment to the Missouri Constitution by creating an unfunded mandate requiring school districts such as Webster Groves to provide new or expanded activities to educate City transfer students without full funding for the additional expenses involved by a state appropriation made and disbursed; that the City of St. Louis School District was a necessary and indispensable party in this action; that an order mandating that all City of St. Louis students could transfer to Webster Groves or other adjacent St. Louis County school districts would contravene the prior federal court desegregation judgment and Settlement Agreement (to which Webster Groves School District was a party); that Plaintiffs were required to allege and prove that the transferring school district (the City of St. Louis District) had paid the required tuition due pursuant to §167.131; and that Plaintiffs had other alternative legal remedies, such as a declaratory judgment action, that precluded seeking the extraordinary remedy of mandamus.

Here, the trial court's judgment ordering mandamus relief was akin to entering a judgment on the pleadings in favor of the Plaintiffs, when the only record before the trial court set forth disputed facts plus the School District's defenses and affirmative defenses that could defeat Plaintiffs' claims. Webster Groves School District had the right to deny the essential elements of Plaintiffs' claim as part of its defense. Additionally, the trial court's conclusion that, for example, the School District did not meet its "burden of proof" on the Hancock Amendment defense was "premature" in that there had been no

evidentiary hearing to present evidence in support of that defense or other defenses asserted by the School District.

Mandamus is an extraordinary remedy that requires the moving party to prove that he or she has a clear, unequivocal and specific right to have some act performed as well as a corresponding present, imperative and unconditional duty on the other party to perform the actions sought. As discussed below, the allegations in Plaintiffs' Amended Petition for Mandamus relief were not somehow self-proving; the Plaintiffs had the burden to prove they were entitled to the extraordinary remedy of mandamus. Webster Groves School District requested an evidentiary hearing in its Verified Answer, as well as in its separately filed Motion to Dismiss. Pursuant to Rule 94.01 and other authorities, the trial court was either required to hold an evidentiary hearing to adjudicate any disputed facts arising from the Amended Petition and the Verified Answer as well as to adjudicate Webster Groves School District's well pled defenses and affirmative defenses; or the trial court should have dismissed Plaintiffs' Amended Petition because no clear unequivocal right or corresponding present, unconditional duty was established on the record before the trial court. Alternatively, the trial court erred in denying the Webster Groves School District's Motion to Dismiss Plaintiffs' Amended Petition for Mandamus, or the trial court should have heard evidence on the School District's defenses as requested by the School District.

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Bolt v. Giordano</i> , 310 S.W.3d 237 (Mo.App.E.D. 2010)	30
<i>Bloom v. City of Independence</i> , 591 S.W.2d 104 (Mo.App.W.D. 1979).....	49
<i>Breckenridge Material Co. v. Enloe</i> , 194 S.W.3d 915 (Mo.App.E.D. 2006)	26
<i>Carmack v. Saunders</i> , 884 S.W.2d 394 (Mo.App.W.D. 2004).....	20, 51
<i>Central Hardware Co. v. Abney’s Towing Co.</i> , 774 S.W.2d 560 (Mo.App.E.D. 1989)	26
<i>Chastain v. Kansas City Missouri City Clerk</i> , 337 S.W.3d 149 (Mo.App.W.D. 2011).....	24, 27
<i>Dolphin Capital Corp. v. Schroeder</i> , 247 S.W.3d 93 (Mo.App.W.D. 2008).....	42, 48
<i>Eaton v. Mallinkrodt, Inc.</i> , 224 S.W.3d 596 (Mo.banc 2007)	26
<i>Farnsworth v. Wee</i> , 743 S.W.2d 115 (Mo.App.W.D. 1988)	20
<i>Gateway Hotel Management, Inc. v. Bd. of Equalization of St. Louis County</i> , 100 S.W.3d 149 (Mo.App.E.D. 2003)	23
<i>George v. Quincy O. & K.C.R. Co.</i> , 167 S.W. 153 (Mo.App.W.D. 1914).....	33
<i>Goodkin v. 8182 Maryland Associates Ltd. Partnership</i> , 80 S.W.3d 484, (Mo.App.E.D. 2002)	46
<i>Jones v. Jones</i> , 285 S.W.3d 356 (Mo.App.S.D. 2006).....	47-48
<i>Midwest Grain & Barge Co. v. Peoppelmeyer</i> , 295 S.W.3d 211 (Mo.App.E.D. 2009)	26
<i>Missouri v. Jenkins</i> , 495 U.S. 33 (1990).....	32

<i>Missouri National Educational Ass'n v. Missouri State Bd. of Education</i> , 34 S.W.3d 266 (Mo.App.W.D. 2000).....	47
<i>O'Dell v. School District of Independence</i> , 521 S.W.2d 403 (Mo.banc 1975).....	38
<i>Rolla 31 Sch. Dist. v. State of Missouri</i> , 837 S.W.2d 1 (Mo.banc 1992).....	38, 40, 41
<i>State ex rel. Berry v. City of Rolla</i> , 970 S.W.2d 901 (Mo.App.W.D. 1998)	44
<i>State ex rel. Casey's General Stores, Inc. v. Kissinger</i> , 926 S.W.2d 191 (Mo.App.S.D. 1996)	19, 23, 24
<i>State ex rel. Hazelwood Yellow Ribbon Comm. v. Klos</i> , 35 S.W.3d 457 (Mo.App.E.D. 2000).....	24
<i>State ex rel. Kelley v. Mitchell</i> , 595 S.W.2d 261 (Mo.banc 1980)	51
<i>State ex rel. Lee v. City of Grain Valley</i> , 293 S.W.3d 104 (Mo.App.W.D. 2009).....	19, 28
<i>State ex rel. McDonald's Corp. v. Daly</i> , 748 S.W.2d 51 (Mo.App.E.D. 1988).....	19, 28
<i>State ex rel. Purdy Reorganized School Dist. No. II, Barry County</i> , 470 S.W.2d 805 (Mo.App.S.D. 1971)	20
<i>State ex rel. Sikeston R-VI Sch. Dist. v. Ashcroft</i> , 828 S.W.2d 372 (Mo.banc 1992).....	40
<i>State ex rel. Sprouse v. Carroll County Commission</i> , 889 S.W.2d 907 (Mo.App.W.D. 1994).....	23
<i>State ex rel. University Park Building Corp. v. Henry</i> , 376 S.W.2d 614 (Mo.App.E.D. 1964).....	23, 25
<i>State ex rel. Webster County v. Hutcherson</i> , 199 S.W.3d 866 (Mo.App.S.D. 2006)	43, 46
<i>Turner v. Sch. Dist. of Clayton</i> , 318 S.W.3d 660 (Mo.banc 2010).....	21, 38, 43

United States v. Scotland Neck City Bd. of Educ.,
407 U.S. 484 (1972) 32

Statutes, Rules and Constitutional Authorities

§67.030 RSMo 30

§162.825 RSMo 34

§162.890 RSMo 34

§167.131 RSMo 21, 25, 29, 30, 31, 32, 33, 39, 44, 45, 50

Rule 52.04 29, 35, 43, 44, 45, 47

Rule 94.01 22

Mo.Const., art. X, §16-24..... 36

Mo.Const. art. X, §16..... 38

Mo.Const., art. X §21 38

Mo.Const., art. I, §10 26

U.S.Const., amend XIV..... 26

Other Authorities

Berman, *Recent Developments in Missouri Civil Procedures –
Extraordinary Remedies*,” 49 U.M.K.C.C. Rev. 421 (1981) 23

2A Missouri Practice, §30.05 (3rd ed) (1992) 23

JURISDICTIONAL STATEMENT

Plaintiffs/Respondents commenced this action by filing their petition for preliminary and permanent mandamus in the Circuit Court of St. Louis County, Missouri. Plaintiffs alleged they resided in the City of St. Louis and sought an order in mandamus to compel defendant Webster Groves School District to enroll plaintiff Jordan Danielle King-Willmann in the Webster Groves High School because the City of St. Louis School District had become unaccredited. Missouri Supreme Court Rule 94 sets forth various provisions governing mandamus proceedings. The trial court entered a preliminary order in mandamus ordering the School District to file an Answer to the Amended Petition for Mandamus. The School District filed a timely Verified Answer. The School District also filed a separate Motion to Dismiss the Amended Petition.

The Circuit Court for the County of St. Louis, the Honorable Barbara W. Wallace, Division 13, entered her final judgment on June 22, 2011, which denied the School District's Motion to Dismiss and granted the mandamus petition and ordered the School District to enroll Jordan in Webster Groves High School. On July 25, 2011, Webster Groves School District timely filed its Notice of Appeal of the trial court's June 22, 2011 Judgment. The subject matter of this appeal does not involve any categories reserved for the exclusive jurisdiction of the Supreme Court of Missouri. Therefore, jurisdiction is vested in the Missouri Court of Appeals, Eastern District, pursuant to Article V, §3 of the Missouri Constitution, as amended.

STATEMENT OF FACTS

This action was commenced as a “Verified Petition for Preliminary and Permanent Orders in Mandamus” on August 10, 2010 in St. Louis County Circuit Court by Jordan Danielle King-Willmann, a minor child, by her mother and next friend, Sherrill Christine King, and her parents, Mrs. King and Keith Willmann, against Webster Groves School District. [For convenience, Appellant will hereafter sometimes refer to the plaintiffs collectively as “King-Willmann”].¹ King-Willmann alleged that all of the plaintiffs resided in the City of St. Louis, and that Jordan was fourteen years old and had completed all necessary work to enroll in the ninth grade. King-Willmann further alleged that because the City of St. Louis School District where they all resided was unaccredited, Jordan had the right to attend high school in the Webster Groves School District under Missouri law. [L.F. 5-7].² On August 13, 2010, the trial court, the Honorable Barbara W.

¹ Respondents spelled Jordan’s last name as “King-Willmann” in their original Petition and most pleadings. However, they spelled the last name as “King-Willman” in their Amended Petition. Appellants believe “King-Willmann” is the correct spelling.

² The governing body of the City of St. Louis public school district may be the transitional school district. See Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660, 662, n.2 (Mo.banc 2010). For simplicity, and because King-Willmann has done so, Appellant will refer to the City’s public school district as the “City of St. Louis School District” or “City District” herein.

Wallace, entered an order denying the Petition but granted King-Willmann leave to amend. [L.F. 10].

Four months later, on December 13, 2010, King-Willmann filed an “Amended Verified Petition for Preliminary and Permanent Orders in Mandamus” against Webster Groves School District. King-Willmann once again alleged that all of the plaintiffs resided in the City of St. Louis, that the City of St. Louis School District was an unaccredited school district and that Jordan had completed all necessary school work to enroll in ninth grade. King-Willmann further alleged that Webster Groves School District, as an accredited school district in an adjacent county, was required to allow Jordan to attend the Webster Groves High School pursuant to §167.131.2 RSMo, and plaintiffs cited to the *Turner v. School District of Clayton* decision (318 S.W.3d 660 (Mo.banc 2010)). King-Willmann further alleged that Webster Groves School District had refused to enroll Jordan in any of its schools, and requested a preliminary order in mandamus and a permanent order in mandamus ordering Webster Groves School District to enroll Jordan in Webster Groves High School immediately. [L.F. 11-14, ¶1-10].

On March 10, 2011, the trial court entered its preliminary order in mandamus and ordered Webster Groves School District to file an Answer to the Petition for Mandamus by April 4, 2011. The trial court also ordered King-Willmann to file their Suggestions in Support of their Petition by March 14, 2011. [L.F. 46]. King-Willmann filed their Suggestions in Support consisting of a brief memorandum accompanied by copies of appellate court decisions and a photocopy of a purported listing of accredited and

unaccredited Missouri school districts from the Missouri Department of Elementary and Secondary Education which reflected a September, 2010 date thereon. [L.F. 47-88].

On April 4, 2011, Webster Groves School District filed its Verified Answer to King-Willmann's Amended Petition for Mandamus, which was verified by the District's Superintendent, Sara Booth Riss. [L.F. 102, 110]. Webster Groves School District denied numerous factual allegations in the Amended Petition. For example, the School District denied King-Willmann's allegations that all of the plaintiffs resided in the City of St. Louis, denied that Jordan had completed all necessary school work to enroll in the ninth grade, denied that the School District was required to enroll Jordan and denied that Jordan would be permanently injured and irreparably damaged if she was not immediately enrolled in the Webster Groves School District. The School District also admitted on information and belief that the City of St. Louis School District lost its accreditation in the past, that the City District had the right to regain its accreditation and demanded strict proof that the City School District is unaccredited at the time of any trial or adjudication in this action. [L.F. at 102-103, Verified Answer, ¶1, 2, 3, 7, 8, 12 answering the same paragraphs in the Amended Petition, L.F. at 12-13].

In its Verified Answer, Webster Groves School District also asserted various defenses to the Amended Petition, including but not limited to the following:

(a) Plaintiffs failed to join a necessary and indispensable party in this action – namely the City of St. Louis School District;³ [L.F. 104, ¶2].

(b) The statutory mandate relied upon by King-Willmann, §167.131 RSMo, was unconstitutional on its face or as applied under the “Hancock Amendment” (Art. X, §§16-24, Missouri Constitution) as creating new or expanded activities on the part of Missouri school districts to educate students transferring from an unaccredited school district without a “state appropriation ... made and disbursed” and without full funding for the costs involved. The School District expressly pled in its Verified Answer that it would “incur additional expenses to provide educational services and related activities to Jordan, including textbooks, supplies, lunch meals, etc.”; [L.F. 105-106, ¶4].

(c) Under §167.131 RSMo, a condition precedent to any student transfer was for the “sending” district (City of St. Louis School District) to pay the applicable student tuition for the student and the City District has not paid, tendered or offered to pay such tuition or the transportation expenses involved for Jordan, and the City District has asserted it is not liable to pay such costs; [L.F. 105, ¶3].

(d) King-Willmann’s claims contravene Article IX of the Missouri Constitution and the Webster Groves School District students’ right to a free and public education, and §167.131 is impossible to comply with, in part, because an influx of City transfer

³ As part of its Verified Answer, Webster Groves School District attached as an exhibit a memorandum from the City of St. Louis’ Transitional School District filed in the *Turner v. Sch. Dist. of Clayton* circuit court proceedings. [L.F. 111-121].

students could require expenditure of substantial financial resources, increase class size, require new facilities and teachers, etc. all without any full reimbursement for the costs involved; [L.F. 106-107, ¶5 and 6].

(e) Requiring the School District to accept all City School District transfer applicants violates the State of Missouri's obligations under a 1999 federal court judgment and Settlement Agreement in the Craton Liddell St. Louis school desegregation litigation and would violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; [L.F. 108, ¶9].

(f) The failure to join another necessary and indispensable party in this action – namely the Special School District of St. Louis County; [L.F. 104 ¶2].

(g) King-Willmann has adequate alternate legal remedies, such as a declaratory judgment action, and [L.F. 109, ¶11].

(h) The School District also asserted that: “Defendant is entitled to an evidentiary hearing on Plaintiffs’ Amended Petition to examine Plaintiffs’ factual allegations and to provide evidence in support of Defendant’s defenses to Plaintiffs’ action.” [L.F. 108, ¶12].

On April 4, 2011, Webster Groves School District contemporaneously filed its “Motion to Dismiss Plaintiffs’ Amended Petition” in which the School District asserted various grounds to dismiss King-Willmann’s Amended Petition, including many of the defenses set forth in the School District’s Verified Answer. [L.F. 122-130]. And on the same date, the School District filed its Suggestions in Opposition to Plaintiff’s Amended Petition for Mandamus and in Support of Defendant’s Motion to Dismiss. [L.F. 89-101].

In its Suggestions in Opposition, Webster Groves School District stated that while it believed that King-Willmann had no right to seek or obtain mandamus relief, “if the Court is going to address the merits of the Amended Petition, then Defendant is entitled to and requests and [sic] evidentiary hearing to present evidence on any factual matters or issues in support of Defendant’s defenses to Plaintiff’s Amended Petition.” [L.F. at 100]. And on April 4, 2011, the School District filed its Notice of Hearing to call up its Motion to Dismiss for hearing on April 8, 2011. [L.F. 131-132]. On April 8, 2011, the parties filed a court memo setting oral argument on Plaintiff’s Petition and Defendant’s Motion to Dismiss on April 15, 2011. [L.F. 133]. However, that hearing was cancelled by the trial court and no argument was held on April 15, 2011. [See Court Minutes, L.F. at 3].

Rather, on June 22, 2011, Judge Wallace filed her Order/Judgment (hereafter referred to as “Judgment”) denying Webster Groves School District’s Motion to Dismiss, and granting King-Willmann’s writ of mandamus and ordering the School District to enroll Jordan Danielle King-Willmann in Webster Groves High School immediately. [L.F. 134-138]. Citing §167.131 RSMo and Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660 (Mo.banc 2010), the trial court concluded that Webster Groves School District did not have the discretion to deny admission of Jordan into the Webster Groves School District school system. [Id. at 136].

In the June 22, 2011 Judgment, the only School District defense addressed by the court was the Hancock Amendment defense. The trial court noted that Webster Groves School District had “the burden to prove an unfunded mandate exists by offering specific evidence of new or increased duties and increased expenses; these elements cannot be

established by mere ‘common sense,’ or ‘speculation and conjecture.’” [L.F. 137]. The trial court went on to state “on these specific facts, the Court is unable to determine from the evidence before it whether Webster will incur increased costs by enrolling Plaintiff in its school.” [Id.]. (As previously noted, however, the trial court never held an evidentiary hearing on any aspect of King-Willmann’s Amended Petition. Additionally, the School District expressly pled in its Verified Answer that the School District would incur additional expenses to provide educational services and related activities to Jordan). The trial court went on to state that while the School District argues there will be other students seeking enrollment in its schools under section 167.131, the court has not been made aware of any other student that has requested entry into the Webster Groves School District. The trial court concluded by stating that the School District had not met its burden of proof that section 167.131 violates the Hancock Amendment. [Id.].

On July 25, 2011, Webster Groves School District timely filed its Notice of Appeal of the trial court’s June 22, 2011 Judgment.⁴

⁴ Webster Groves School District would note that the trial court’s Judgment was stayed pursuant to Supreme Court Rule 81.09(a). Jordan has never subsequently been enrolled in the Webster Groves School District public schools.

POINTS RELIED ON

I.

The trial court erred in granting mandamus relief and ordering Jordan King-Willmann to be enrolled in Webster Groves School District High School because the record did not establish Jordan had a clear, unequivocal right to be enrolled or that the School District had a corresponding unconditional duty to enroll her, in that the School District had disputed material factual elements of Plaintiffs' Amended Petition for Mandamus and had asserted valid defenses to Plaintiffs' claims, and all of which entitled the School District to an evidentiary hearing in accordance with Rule 94.01 and the School District's Constitutional Rights to be heard in a meaningful manner to contest Plaintiffs' claims and allegations.

State ex rel. McDonald's Corp. v. Daly, 748 S.W.2d 51 (Mo.App.E.D. 1988).

State ex rel. Casey's General Stores, Inc. v. Kissinger, 926 S.W.2d 191 (Mo.App.S.D. 1996).

Chastain v. Kansas City Missouri City Clerk, 337 S.W.3d 149 (Mo.App.W.D. 2011).

II.

The trial court erred in granting mandamus relief and ordering Jordan King-Willmann to be enrolled in Webster Groves School District because §167.131 RSMo contravenes the Missouri Constitution, art. X, §16-24, or alternatively, the School District was entitled to an evidentiary hearing to establish said Constitutional violation, in that §167.131, on its face or as applied to Jordan in this case, required the School District to incur additional costs to provide Jordan (and other potential

City transfer students) with educational services without full financing or a state appropriation made and disbursed to fund those additional costs.

Rolla 31 Sch. Dist. v State of Missouri, 837 S.W.2d 1 (Mo.banc 1992).

State ex rel. Sikeston R-VI Sch. Dist. v. Ashcroft, 828 S.W.2d 372 (Mo.banc 1992).

Missouri Constitution, Article X, §§16, 21.

III.

The trial court erred in granting mandamus relief and ordering Jordan King-Willmann to be enrolled in Webster Groves School District High School because the City of St. Louis School District (transitional school district) was a necessary party in this action under Rule 52.04, or alternatively, the School District was entitled to an evidentiary hearing to establish that the City District was a necessary party, in that the City of St. Louis School District was needed in order to accord complete relief to the current parties with respect to tuition and transportation financial responsibilities for the student; and/or the City District claims an interest in City children transferring to St. Louis County schools and (i) the disposition of this action in the City District's absence may impair or impede the City District's ability to protect that interest; and/or (ii) the City District's absence may leave Webster Groves School District subject to substantial risk of incurring double or inconsistent obligations in having to incur expenses to enroll and provide services to Jordan and have to seek tuition payment from the City District.

State ex rel. Berry v. City of Rolla, 970 S.W.2d 901 (Mo.App.W.D. 1998).

State ex rel. Webster County v. Hutcherson, 199 S.W.3d 866 (Mo.App.S.D. 2006).

Jones v. Jones, 285 S.W.3d 356 (Mo.App.S.D. 2006).

Mo. S. Ct. Rule 52.04(a).

IV.

The trial court erred in denying Webster Groves School District's Motion to Dismiss without an evidentiary hearing (and granting mandamus relief) because the defenses set forth in the Motion established that Jordan King-Willmann did not have a clear, unequivocal right to be enrolled, or that the School District had a corresponding unconditional duty to enroll Jordan, in that the School District's defenses such as a Hancock Amendment violation, failure to join necessary party(ies), failure to comply with the requirements of section 167.131 RSMo, etc. would preclude granting the extraordinary remedy of mandamus and the School District had a right to a hearing to establish those defenses.

State ex rel. Kelley v. Mitchell, 591 S.W.2d 261 (Mo.banc 1980).

Carmack v. Saunders, 884 S.W.2d 394 (Mo.App.W.D. 1984).

ARGUMENT

I.

The trial court erred in granting mandamus relief and ordering Jordan King-Willmann to be enrolled in Webster Groves School District High School because the record did not establish Jordan had a clear, unequivocal right to be enrolled or that the School District had a corresponding unconditional duty to enroll her, in that the School District had disputed material factual elements of Plaintiffs' Amended Petition for Mandamus and had asserted valid defenses to Plaintiffs' claims, and all of which entitled the School District to an evidentiary hearing in accordance with Rule 94.01 and the School District's Constitutional Rights to be heard in a meaningful manner to contest Plaintiffs' claims and allegations.

Standard of Review: As in other court-tried civil actions, the judgment in favor of King-Willmann granting mandamus relief will be sustained unless there is no substantial evidence to support the judgment, it is against the weight of the evidence, or if the judgment erroneously declares or applies the law. State ex rel Casey's General Store v. Kissinger, 926 S.W.2d 191, 193 (Mo.App.S.D. 1996).

Mandamus is an extraordinary remedy. "To be entitled to mandamus, one must show a clear, unequivocal, specific right to have the act performed as well as a corresponding present, imperative and unconditional duty on the part of the respondent to perform the actions sought." State ex rel. McDonald's Corp. v. Daly, 748 S.W.2d 51, 54 (Mo.App.E.D. 1988). Accord, State ex rel. Lee v. City of Grain Valley, 293 S.W.3d 104, 109 (Mo.App.W.D. 2009). Mandamus does not issue when the right sought to be

enforced is doubtful or debatable. Farnsworth v. Wee, 743 S.W.2d 115, 117 (Mo.App.W.D.1988); State ex rel. Purdy Reorganized School Dist. No. II, Barry County, 470 S.W.2d 805, 809 (Mo.App.S.D. 1971). Moreover, “to the extent legal or factual issues must be adjudicated, mandamus is not an appropriate mechanism.” Carmack v. Saunders, 884 S.W.2d 394, 398 (Mo.App.W.D. 1994).

Here, the School District’s Verified Answer denied several key factual allegations and elements set forth in King-Willmann’s petition. The School District’s Verified Answer also set forth several other defenses and affirmative defenses. In ruling without hearing any evidence regarding disputed facts and the School District’s defenses, the trial court contravened the procedures under Rule 94 and the School District’s due process rights to a fair hearing with a full opportunity to be heard. And because the School District denied key allegations and elements of King-Willmann’s Petition and asserted various defenses thereto, the record before the trial court clearly did not establish any “clear, unequivocal right” for Jordan to enroll in the Webster Groves School District.

Rule 94 and the proceedings in the trial court.

Rule 94 of the Missouri Rules of Civil Procedure sets forth various procedures governing mandamus proceedings. King-Willmann’s Amended Verified Petition for Preliminary and Permanent Orders in Mandamus alleged that Jordan and her parents all resided in the City of St. Louis and that the City of St. Louis School District was an unaccredited school district. King-Willmann asserted that Webster Groves School District was required to enroll Jordan in the Webster Groves High School due to the City

District's lack of accreditation pursuant to §167.131.2 RSMo. and the decision in Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660 (Mo.banc 2010). [L.F. 11-15].

Section 167.131.1 RSMo provides that a school district that does not maintain an accredited school "shall pay the tuition of ... each pupil resident therein who attends an accredited school in another district of the same or an adjoining county." Section 167.131.2 deals with the tuition rate to be paid by the sending district and states that "[s]ubject to the limitations of this section, each pupil shall be free to attend the public school of his or her choice." In Turner v. Sch. Dist. of Clayton, the Missouri Supreme Court, in a 4-3 per curiam opinion, concluded that §167.131 applied to the City of St. Louis' transitional school district and that the Clayton School District was required to admit City of St. Louis students pursuant to §167.131. Id. at 665, 668-69. The Missouri Supreme Court in Turner remanded that case back to the trial court.

Here, in response to King-Willmann's Amended Verified Petition, the trial court entered its preliminary order in mandamus on March 10, 2011, ordering Webster Groves School District to file its answer to the (amended) Petition by April 4, 2011. [L.F. 46]. See Rule 94.04 and Rule 94.05. In accordance with Rule 94.07, the School District timely filed its Verified Answer. [L.F. 102] The School District also simultaneously filed its separate Motion to Dismiss the Amended Petition, as well as "Defendant's Suggestions in Opposition to Plaintiff's Amended Petition for Mandamus and in Support of Defendant's Motion to Dismiss." [L.F. 122; 89]. In the School District's Answer [L.F. at 109, par. 12] and Suggestions in Opposition [L.F. at 100], the School District asserted it was entitled to an evidentiary hearing and/or requested an evidentiary hearing.

Without holding an evidentiary hearing, the trial court entered its Order/Judgment on June 22, 2011 denying the School District's Motion to Dismiss, granting the writ of mandamus in favor of King-Willmann and ordering the School District to enroll and place Jordan in the Webster Groves High School. [L.F. 134].

Defendant has the right to require King-Willmann to attempt to prove disputed factual allegations set forth in the Amended Petition for Mandamus

The allegations in King-Willmann's Verified Amended Petition were not somehow "self-proving" or uncontested. Rather, in its Verified Answer, Webster Groves School District denied several key allegations and elements in the Amended Petition, including allegations that all of the Plaintiffs resided in the City of St. Louis, Missouri, that Jordan has completed all required school work to be eligible to enroll in the ninth grade, that the School District is required to enroll Jordan under Missouri law, and that Jordan would be permanently injured and irreparably damaged if she was not enrolled in Webster Groves School District immediately. [L.F. 102-103, ¶1, 2, 7 and 12]. Webster Groves School District also pled numerous additional defenses in its Verified Answer. [L.F. 104-109, Defenses, ¶1-12].

Rule 94.01 clearly provides that an evidentiary hearing must be held to adjudicate any disputed factual matters in a mandamus proceeding filed in circuit court – just as in any other civil action. As stated in Rule 94.01, except for any "particulars" set forth in Rule 94, for mandamus actions filed in circuit court, all "proceedings in mandamus shall be governed by and conform to the rules of civil procedure and the existing rules and

rules of general law upon the subject” One commentator summarized the procedures under Rule 94 as follows:

The petition in mandamus should contain a statement of facts, the relief sought and a statement of the reasons why the writ should issue. If the court finds that the petition has merit, it will issue a preliminary order in mandamus. The preliminary order in mandamus orders the respondent to file an answer to the petition in mandamus. The answer may include or be accompanied by motions. **The rule contemplates that a trial or hearing then follows to decide any factual issues and the propriety of the relief sought.** 2A Missouri Practice, §30.05 (3rd ed.) (1992). (emphasis added).

Similarly, another commentator has noted that after the defendant/respondent files an answer, then “[a] **trial or hearing to determine the factual issues involved and the propriety of the relief sought will follow as in any ordinary civil action.**” Berman, “*Recent Developments in Missouri Civil Procedures – Extraordinary Remedies,*” 49 U.M.K.C.L.Rev. 421, 426 (1981). (emphasis added).

Evidentiary hearings in mandamus proceedings in circuit court are nothing new under Missouri law. There are numerous appellate decisions reviewing mandamus judgments after an evidentiary hearing in the trial court proceedings below. Gateway Hotel Management, Inc. v. Bd. of Equalization of St. Louis County, 100 S.W.3d 149, 150 (Mo.App. E.D. 2003); State ex rel. Casey’s General Stores v. Kissinger, 926 S.W.2d 191, 193 (Mo.App. S.D. 1996); State ex rel. Sprouse v. Carroll County Commission, 889 S.W.2d 907, 909 (Mo.App.W.D. 1994); State ex rel. University Park Building Corp. v.

Henry, 376 S.W.2d 614, 615 (Mo.App.E.D. 1964); Chastain v. Kansas City Missouri City Clerk, 337 S.W.3d 149, 153 (Mo.App.W.D. 2011).

Our legal system is an adversary system, and that system applies in mandamus proceedings just as it does in any other civil action. Webster Groves School District had the right to deny various factual allegations made by King-Willmann and require King-Willmann to prove her case. For example in State ex rel. Casey's General Stores, Inc. v. Kissinger, 926 S.W.2d 191 (Mo.App.S.D. 1996), the plaintiffs filed a petition for mandamus to compel various City officials to grant a liquor license on the grounds that their proposed store was more than 300 feet from any school, church or place of worship. The trial court held an evidentiary hearing and concluded the proposed store was 284.3 feet from a church and dismissed the petition for mandamus. As in a typical civil proceeding, the defendant was not required to merely accept or admit the plaintiffs' allegations, but was permitted to put on evidence to contest the facts asserted in support of the mandamus petition.

Similarly, in State ex rel. Hazelwood Yellow Ribbon Comm. v. Klos, 35 S.W.3d 457, 466 (Mo.App.E.D. 2000), several taxpayers and others petitioned for a writ of mandamus to place two voter initiatives on the ballot. One issue in Klos was whether the group seeking to add initiatives to the ballot had a sufficient number of registered voter signatures to require the initiative. The Appellate Court noted that the dispute in the number of registered voter signatures obtained, "might well require reversal and remand for an evidentiary hearing to determine the number and sufficiency of valid signatures." Id. While the Appellate Court went on to deny the petitioners' mandamus on an

alternative ground, the Court clearly recognized that an evidentiary hearing was available in the trial court to determine disputed factual issues raised in the mandamus pleadings.

Here, Webster Groves School District has been denied its right to put on a full defense to King-Willmann's claims – including the right to require King-Willmann to prove the factual elements to establish any purported “clear, unequivocal, specific right” to attend the Webster Groves School District under §167.131 RSMo. Under that statute, King-Willmann had to assert and prove she was a “pupil resident” of a “district in this state that does not maintain an accredited school” King-Willmann's Amended Petition asserted she and her parents resided in the City of St. Louis, Missouri, she had completed all school work necessary to enroll in the ninth grade and that the School District where all plaintiffs allegedly resided (the School District of St. Louis City, Missouri) was unaccredited. In response, Webster Groves School District denied those allegations; and with respect to the City School District's status, demanded strict proof as to whether that District was unaccredited at the time of any trial or adjudication of the case. [Amended Petition (L.F.11-13, ¶1, 2, 3, 7 and 12) and Defendant's Verified Answer to said paragraphs (L.F. 102-103)].

Under Missouri law, the party seeking mandamus relief has the burden of proof to show he or she has a clear and unequivocal right to the remedy sought. State ex rel. University Park Building Corp. v. Henry, 376 S.W.2d 614, 617 (Mo.App.E.D. 1964). As discussed above, Rule 94.01, various commentators and numerous appellate court decisions recognize that a defendant/respondent in a petition for mandamus proceeding has a right to contest the plaintiffs' allegations and obtain an evidentiary hearing as part

of that process. Moreover, as a matter of due process, Webster Groves School District was entitled to an opportunity to be heard at a meaningful time and in a meaningful manner to dispute and defend against King-Willmann's claims. Midwest Grain & Barge Co. v. Peoppelmeyer, 295 S.W.3d 211, 213 (Mo.App.E.D. 2009). Breckenridge Material Co. v. Enloe, 194 S.W.3d 915, 921 (Mo.App.E.D. 2006); U.S. Const., amend. XIV; Missouri Constitution art. I, §10.

The trial court erred in granting King-Willmann mandamus relief without an evidentiary hearing after Webster Groves School District denied key factual allegations in the Amended Petition and raised several other defenses thereto. The trial court's June 22, 2011 Judgment was akin to granting a judgment on the pleadings, but it is error to grant such a motion when material facts are in dispute. Eaton v. Mallinkrodt, Inc., 224 S.W.3d 596, 600 (Mo.banc. 2007). Thus, in Central Hardware Co. v. Abney's Towing Co., 774 S.W.2d 560, 562 (Mo.App.E.D. 1989), the Court held that the Defendant's answer denying certain matters established a material issue of fact that precluded granting a judgment on the pleadings. Here, because the disputed factual record before the trial court did not establish a clear and unequivocal right for Jordan to attend public school in Webster Groves School District, the trial court's judgment should be reversed.

Webster Groves School District also had the right to attempt to establish its other defenses at an evidentiary hearing

In its Verified Answer, Webster Groves School District also pled numerous defenses to challenge King-Willmann's claim to the extraordinary remedy of mandamus in this case. [L.F. 104-109, Defenses, 1-12]. The trial court's Judgment addressed only

one of the School District's defenses – whether §167.131 RSMo as applied or on its face created an unfunded mandate in violation of the Missouri Constitution, including Article X, Sections 16 and 21 (the “Hancock Amendment”). For the same reasons discussed above, Webster Groves School District had the right to an evidentiary hearing to attempt to establish any of its asserted defenses or otherwise show that King-Willmann was not entitled to mandamus relief.

For example, in Chastain v. Kansas City Missouri City Clerk, 337 S.W.3d 149 (Mo.App.W.D. 2011), a mayoral candidate filed a petition for mandamus to require election authorities to include a space on the ballot for mayoral write-in candidates. In its Answer, the City Clerk asserted two affirmative defenses: (1) that mandamus was not an appropriate remedy because the plaintiff alleged the City Charter was ambiguous and (2) that the plaintiff lacked standing because he was not a qualified write-in candidate for failure to meet residency requirements. A hearing was held in the circuit court on the petition and testimony presented. The trial court denied the petition on the grounds that mandamus was not an appropriate remedy and there was no right to the relief sought, but the trial court never ruled on whether the plaintiff satisfied residency requirements. The Appellate Court in Chastain affirmed the trial court's judgment and noted further that even if Mr. Chastain was right on the legal issues or remedy sought, “before a writ of mandamus could issue the circuit court or this Court would be required to address the City's affirmative defense concerning Chastain's compliance with the residency requirements.” Id. at 158, f.n. 10 (emphasis added).

Here, Webster Groves School District maintains that several of its defenses are a complete bar to King-Willmann's action (see Point Relied On II below) or require reversal (Point Relied On III below). However, even if the record before the trial court did not establish those defenses (i.e. even if the trial court was correct in denying the School District's Motion to Dismiss because more evidence was needed to support those defenses), the trial court still erred in granting the mandamus relief because one, several or all of the School District's defenses (if proven) establish that King-Willmann did not have a "clear, unequivocal, specific right" to attend Webster Groves School District, nor that the School District had a "corresponding present, imperative and unconditional duty" to enroll Jordan. State ex rel. McDonald's Corp., *supra*, 748 S.W.2d at 54; State ex rel. Lee, *supra*, 293 S.W.3d at 109. Webster Groves School District had the right to an evidentiary hearing, as requested, to submit further evidence in support of several of its defenses set forth in its Verified Answer, and those defenses could preclude mandamus relief to King-Willmann. Several of those defenses are briefly summarized below.

1. Section 167.131 RSMo creates an unfunded mandate in violation of the Missouri Constitution, art. X, Sections 16 and 21.

This defense is discussed in Point II of this Brief below so the School District will not repeat the argument here. As set forth in Point II, Webster Groves School District clearly set forth a valid affirmative defense that either bars King-Willmann's claims or that must be adjudicated at an evidentiary hearing. It was clearly error for the trial court to conclude that the School District did not meet "its burden of proof" regarding the Hancock Amendment defense, when the District was never afforded the opportunity to

present evidence in support of its affirmative defense. Furthermore, Webster Groves School District expressly pled that it would incur additional expenses to provide educational services to Jordan. Thus, it was clearly “premature” for the trial court to enter a judgment for mandamus relief when the School District pled a valid affirmative defense that could bar King-Willmann’s claims.

2. King-Willmann failed to join one or more necessary parties as required by Rule 52.04.

This defense is discussed in Point III of this Brief, and again, the School District will not repeat the argument here. As set forth therein, the School District for the City of St. Louis, Missouri was a necessary party that was required to be joined in this action under Rule 52.04. Once again, even if the trial court was correct in denying the District’s motion to dismiss the amended petition on this issue because it required more of a factual showing, the trial court erred in granting mandamus relief without allowing the School District to present evidence at a hearing as to why the City School District was a necessary party to this action.

3. Payment of the tuition by the City School District was a mandatory prerequisite to Jordan being allowed to enroll in Webster Groves School District under §167.131 RSMo.

Section 167.131.1 provides that the board of education of an unaccredited school “shall pay the tuition of and provide transportation ... for each pupil resident therein who attends an accredited school in another district of the same or an adjoining county.” Section 167.131.2 indicates that a student’s right to attend the accredited public school of

his choice in the same or adjoining county is conditioned on the unaccredited district paying the applicable student tuition. Specifically, §167.131.2 provides in part: “Subject to the limitations in this section, each pupil shall be free to attend the public school of his or her choice.” (emphasis added).

In interpreting a statute, courts must ascertain the intent of the legislature from the language used and to consider the words used in their plain and ordinary meaning. In addition, courts should not interpret a statute so as to render some phrases mere surplusage. Bolt v. Giordano, 310 S.W.3d 237, 242 (Mo.App.E.D. 2010). Here, the plain and ordinary meaning of the words used in §167.131.2 is that the right to attend school in another district is contingent (“[s]ubject to the limitations in this section”) on payment of the student tuition from the unaccredited school district to the accredited school district.

This interpretation that the tuition payment is required before a non-accredited school district student is allowed to enroll in an accredited school district is consistent with how school district’s plan and budget for each school year. Missouri school districts are required to adopt their annual budget by July 1st of each year. §67.030 RSMo. Thus, an influx in the number of transfer students from an unaccredited district could require additional substantial expenditures, such as additional textbooks and supplies, hiring additional staff or changes to classroom facilities or equipment. If the student tuition is

not paid up front, the receiving school district will be presented with substantial financial difficulties and a budget nightmare.⁵

Here, King-Willmann has not asserted that the City of St. Louis School District has paid or is willing to pay Jordan's student tuition and provide for her transportation if she were enrolled in a Webster Groves School District school. Moreover, the City of St. Louis School District has contested the validity of §167.131 and argued it is impossible for the City District to follow or comply with §167.131. [L.F. 111-121]. While research has not disclosed any Missouri appellate decisions construing the nature or timing of the tuition payment provision, §167.131.1 and §167.131.2 plainly indicate that there must be a tuition payment before there can be enrollment in the accredited school district. Since there are no allegations that any tuition payment for Jordan has been paid or would be forthcoming from the City of St. Louis School District, the statutory requirement has not been satisfied and the trial court erred in granting mandamus to order Jordan to be enrolled in the Webster Groves School District.

Once again, alternatively, even if the trial court was correct in denying the School District's motion to dismiss because more evidence was needed on the lack of payment issue, the trial court erred in granting mandamus relief without giving the School District an evidentiary hearing to address the lack of payment issues under §167.131.

⁵ Section 167.131 does not set forth any deadline when students could seek to enroll in an accredited school district, so presumably City District students could seek enrollment at various times throughout the school year.

4. Application of §167.131 would contravene the 1999 federal court judgment and Settlement Agreement in the school desegregation litigation.

As an additional affirmative defense, Webster Groves School District asserted that requiring the School District to enroll all City of St. Louis School District students under §167.131 RSMo could violate the State of Missouri's obligations under the judgment and Settlement Agreement in the desegregation lawsuit, *Liddell v. The Board of Education of the City of St. Louis, Missouri*, case number 4:72CV100, to "continue to pursue a policy of desegregation" (including with respect to decisions and actions relating to the assignment of students to schools and classrooms) and that §167.131 is also unenforceable and unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. [L.F. 108, par. 9]. Webster Groves School District was a party to that Settlement Agreement. In its affirmative defense, the School District asserted that a large influx of white students to the St. Louis County accredited school districts could substantially impact the racial composition of the City and County school districts. [Id.].

It is well established that a state statute can not operate to hinder federal constitutional guarantees, such as the denial of the equal protection of laws in connection with public education of children. United States v. Scotland Neck City Bd. of Educ., 407 U.S. 484 (1972). See Missouri v. Jenkins, 495 U.S. 33 (1990). Accordingly, Webster Groves School District is entitled to present evidence in support of this affirmative defense, as the School District requested in its Answer (and Motion to Dismiss), and it was error for the trial court to order the mandamus relief requested until such evidence

was presented to the court because this defense could rebut King-Willmann's claim that Jordan has a clear, unequivocal right to be enrolled and that the Webster Groves School District has a corresponding present, imperative and unconditional duty to enroll Jordan.

5. Application of §167.131 would contravene Webster Groves School District's current students' right to a free education under Article IX of the Missouri Constitution and also would be impossible to comply with.

In its Verified Answer, Webster Groves School District alleged that it would be impossible to comply with the purported requirement under §167.131 RSMo for the School District to enroll every City of St. Louis student who wished to transfer to the Webster Groves' public schools. [L.F. at 106, par. 6]. "[I]f a statute is such that it is 'impossible to comply with its provisions, it will be held to be of no force and effect.'" George v. Quincy O. & K. C. R. Co., 167 S.W. 153, 156 (Mo.App.W.D. 1914) (citation omitted). Here, the School District asserted that a large influx of City School District students could, virtually overnight, require the School District to find additional classroom space, increase class size, require hiring of new teachers and other staff, and incur numerous other expenses and costs associated with increased enrollment. Moreover, these additional expenses would have to be made without an established mechanism to fund the substantial expenses involved, and could not be accurately planned or budgeted for. [L.F. at 106, par. 6].

For similar reasons, Webster Groves School District asserted that the foregoing matters that could arise from the relief sought by King-Willmann contravened the rights of the School District's current students to a free education under Article IX of the

Missouri Constitution. [L.F. at 106, par. 5]. Once again, Webster Groves School District had a right for the opportunity to be heard on these defenses to King-Willmann's Amended Petition claims.

6. The Special School District of St. Louis County is a necessary party to this action.

The Special School District of St. Louis County is another necessary and indispensable party in this action. The Special School District of St. Louis County was created under the provisions of §162.825 RSMo to provide the education and training of handicapped and severely handicapped students and for vocational education purposes for all St. Louis County children. Pursuant to §162.890 RSMo, neither the state board of education nor any school district located within the Special School District of St. Louis County is required to establish schools or classes for the education or training of handicapped children. In other words, that education and training must be furnished by the Special School District of St. Louis County.

Therefore, if Plaintiff Jordan, or any other similarly situated City students, were allowed to enroll in Webster Groves School District schools, and upon admission or thereafter required special education services for a handicapping condition, Webster Groves School District would not be in a position to provide such special educational services, even though such services would be necessary to provide an appropriate education under the provisions of Article IX of the Missouri Constitution. Arguably the provision of such services would fall to the Special School District of St. Louis County, and consequently the adjudication of King-Willmann's Amended Petition would have a

direct and significant impact on the Special School District of St. Louis County as well as its staff and finances. For example, in its Verified Answer Webster Groves School District alleged that the provision of such services to City transfer students could result in a “substantial disruption” of the services furnished by the Special School District.

The Special School District of St. Louis clearly claims an interest relating to the potential transfer of numerous City District students into St. Louis County public schools, and the disposition of this action may as a practical matter impair or impede the Special School District’s ability to protect its interests. Rule 52.04(a)(2)(i). Furthermore, in accordance with Rule 52.04(a)(1), complete relief cannot be accorded to King-Willmann or Webster Groves School District in the absence of the Special School District of St. Louis County since the parties would want a determination regarding whether or not the Special School District will furnish special education services to potential City School District students enrolling in a St. Louis County public school district such as Webster Groves.

In light of the Webster Groves School District’s well pled affirmative defenses and the disputed factual issues in the record, the School District respectfully submits that the trial court’s Judgment granting mandamus relief should be reversed, and the Amended Petition should be denied. Alternatively, the case should be remanded for further proceedings.

Point II.

The trial court erred in granting mandamus relief and ordering Jordan King-Willmann to be enrolled in Webster Groves School District because §167.131 RSMo contravenes the Missouri Constitution, art. X, §16-24, or alternatively, the School District was entitled to an evidentiary hearing to establish said Constitutional violation, in that §167.131, on its face or as applied to Jordan in this case, required the School District to incur additional costs to provide Jordan (and other potential City transfer students) with educational services without full financing or a state appropriation made and disbursed to fund those additional costs.

Standard of Review: The trial court's judgment in favor of King-Willmann will be sustained unless there is no substantial evidence to support the judgment, or if the judgment is against the weight of the evidence, or if the judgment erroneously declares or applies the law.

In its Verified Answer, Webster Groves School District set forth a detailed affirmative defense asserting that §167.131 RSMo relied upon by King-Willmann, on its face or as applied, violated the Hancock Amendment, Article X, §§16-24 of the Missouri Constitution. The School District's affirmative defense stated in pertinent part that Webster Groves School District was a political subdivision of the State, that admitting Jordan King-Willmann into the School District would require the District to incur additional expenses, and that there was no "state appropriation" that had been "made and disbursed" to fully fund the additional expenses. [L.F. at 105-106, ¶4]. Webster Groves

School District raised the Hancock Amendment issue in its Motion to Dismiss as well. [L.F. 124-126, ¶7-10].

Without hearing evidence and based solely on the pleadings filed up to that time, the trial court ordered Jordan to be enrolled. The trial court concluded that in this case, “on these specific facts, the Court is unable to determine from the evidence before it whether Webster will incur increased costs by enrolling Plaintiff in its school.” The trial court noted that Webster Groves School District “has the burden to prove an unfunded mandate exists, these elements cannot be established by mere ‘common sense,’ or conjecture.” The trial court also stated that Jordan King-Willmann was only one student, and that Webster Groves School District argues there will be other students enrolling under §167.131, but this information is not before the court and the School District “has not met its burden of proof that section 167.131 violates the Hancock Amendment” [Judgment, L.F. 134, at 137].

But the Webster Groves School District did not have to prove up its Hancock Amendment affirmative defense in its Verified Answer. As set forth below, the School District properly pled the factual basis for its affirmative defense based upon a Hancock Amendment violation that §167.131 created an unfunded mandate requiring school districts to provide new or expanded activities without a state appropriation made and disbursed to fund those new and expanded activities. The trial court erred in granting mandamus relief on King-Willmann’s Amended Petition without allowing the School District to present evidence in support of its Hancock Amendment affirmative defense.

The Hancock Amendment issue was not addressed in the Missouri Supreme Court’s decision in Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660 (Mo.banc 2010). Under the Hancock Amendment, Art. XX §§16-24 of the Missouri Constitution, “[t]he state is prohibited from requiring any new or expanded activities by counties or other political subdivisions without full state financing...” Mo. Con., Art. X, §16. The Constitutional Amendment further requires that there be a “state appropriation... made and disbursed” to the political subdivision to fund such activities. Art. X, §21. The Missouri Supreme Court has noted that this language “means what it says; it requires that the legislature make a specific appropriation which specifies that the purpose of the appropriation is the mandated program.” Rolla 31 Sch. Dist. v. State of Missouri, 837 S.W.2d 1, 7 (Mo.banc 1992).

Here, Webster Groves School District properly alleged a Hancock Amendment defense to King-Willmann’s amended petition for mandamus. The School District alleged it was a political subdivision of the State of Missouri;⁶ that admitting a City School District student such as Jordan would require the Webster Groves School District to incur additional expenses (the District’s Verified Answer expressly stated that the admission of Jordan “would require Defendant Webster Groves School District to incur additional expenses to provide educational services and related activities to Jordan, including textbooks, supplies, lunch meals, etc.”); and that there was not full State

⁶ Public school districts are a political subdivision of the State of Missouri. O’Dell v. School District of Independence, 521 S.W.2d 403, 404 (Mo.banc 1975).

financing for these additional expenses nor any State appropriation made and disbursed to fund the additional expenses. [L.F. at 105-106, ¶4].

As set forth in Point 1 of this Brief, as in any civil case, Webster Groves School District was entitled to the opportunity to present evidence in support of its Hancock Amendment defense. Here, however, the trial court granted King-Willmann’s mandamus relief without an evidentiary hearing and merely upon a review of the Amended Petition and the School District’s responsive pleadings. And while the trial court’s Judgment stated that in this particular case the trial court “is unable to determine whether Webster will incur increased costs by enrolling Plaintiff in school” – as noted above, the School District expressly asserted in its Verified Answer that it would incur additional expenses in enrolling Jordan in school. The trial court’s Judgment also stated it does not know if other students will seek enrollment in Webster Groves School District and that the Court has not been made aware if that is the case. Once again, in its Verified Answer, Webster Groves School District requested an evidentiary hearing “to provide support of Defendant’s defenses in this action.” [L.F. at 109, ¶12].

Finally, the “tuition payment” mechanism set forth in §167.131 whereby the sending district (here, the City of St. Louis School District) is required to pay a per pupil tuition amount does not satisfy the Hancock Amendment requirements for a specific “state appropriation” that is “made and disbursed.”⁷ Under Missouri law, an

⁷ Webster Groves School District also asserts that the tuition payment mechanism in §167.131 would not fully cover the additional costs if Jordan or other City students

“appropriation” is a specific legislative act – “the legal authorization to expend funds from the treasury” – and requires approval of both houses of the legislature and the Governor. State ex rel. Sikeston R-VI Sch. Dist. v. Ashcroft, 828 S.W.2d 372, 375 (Mo.banc 1992). To the extent §167.131’s tuition payment is supposed to fund the admission of City of St. Louis transfer students to Webster Groves School District (by payments from the “sending district” – the City of St. Louis School District) that “mechanism” is not a valid Legislative appropriation.

In Rolla 31 Sch. Dist. v. State of Missouri, 837 S.W.2d 1 (Mo.banc 1992), for example, the State Legislature had enacted new statutes mandating that public school districts provide special educational services to handicapped preschoolers beginning at age three. Several school districts challenged the new statutes on Hancock grounds. The State, in part, argued its School Foundation Fund provided \$170 million in unrestricted monies to local schools in 1991-92, and the new special education program costs to local schools was no more than \$4 million – and the unallocated funds met the requirements of the Hancock Amendment. The Missouri Supreme Court rejected the argument and enjoined application of the statutes to the school districts, stating in part:

We hold that the mandate of the preschool special education program violates the Hancock Amendment because the Legislature failed to provide a specific appropriation to cover the full cost of the program; without a

transferred to the District. In its Verified Answer, the School District alleged that there “is no State funding for the full costs” to comply with §167.131. [L.F. at 105-106, ¶4].

categorical appropriation for this specific purpose the unrestricted school funds do not meet this requirement. Id. at 7.

Similarly, here, even though §167.331 sets forth a supposed mechanism for payment to school districts via tuition payments by the “sending district” – the Legislature has not made a categorical “appropriation” for that specific purpose. As in Rolla 31 Sch. Dist., Webster Groves School District maintains that the Legislature’s failure to make a specific appropriation for the specific purposes set forth in §167.331 is a Hancock Amendment violation that should bar any enforcement of §167.131 against the School District.

Accordingly, the trial court’s judgment ordering Jordan enrolled and denying Webster Groves School District’s Motion to Dismiss should be reversed because §167.131 contravenes the Hancock Amendment and is not enforceable against the School District.

Alternatively, because the School District properly pled a Hancock Amendment affirmative defense to King-Willmann’s Amended Petition, the trial court erred in granting mandamus relief without providing the School District with an evidentiary hearing to present evidence in support of its defense. In light of that defense, the record did not establish a clear and unequivocal right to the relief requested, nor a corresponding unconditional duty on the District to admit a non-resident student into the Webster Groves’ public schools. As a result, the trial court’s Judgment should be reversed and remanded for the trial court to hear evidence as to whether §167.131 contravenes the Hancock Amendment.

Point III.

The trial court erred in granting mandamus relief and ordering Jordan King-Willmann to be enrolled in Webster Groves School District High School because the City of St. Louis School District (transitional school district) was a necessary party in this action under Rule 52.04, or alternatively, the School District was entitled to an evidentiary hearing to establish that the City District was a necessary party, in that the City of St. Louis School District was needed in order to accord complete relief to the current parties with respect to tuition and transportation financial responsibilities for the student; and/or the City District claims an interest in City children transferring to St. Louis County schools and (i) the disposition of this action in the City District's absence may impair or impede the City District's ability to protect that interest; and/or (ii) the City District's absence may leave Webster Groves School District subject to substantial risk of incurring double or inconsistent obligations in having to incur expenses to enroll and provide services to Jordan and have to seek tuition payment from the City District.

Standard of Review: A trial court's decision under Rule 52.04 will be affirmed unless it is unsupported by substantial evidence, is against the weight of the evidence or it misinterprets or misapplies the law. Dolphin Capital Corp. v Schroeder, 247 S.W.3d 93, 97 (Mo.App.W.D. 2008).

In its Verified Answer, Webster Groves School District asserted that the City of St. Louis School District was a necessary and indispensable party to the action who must be joined pursuant to Rule 52.04. [L.F. at 104, par. 2]. It is reversible error for a case to

proceed to final judgment without a necessary party who feasibly could have been joined. State ex rel. Webster County v. Hutcherson, 199 S.W.3d 866, 872 (Mo.App.S.D. 2006).

The trial court's Judgment would have a major impact upon the City of St. Louis School District. (The City School District ("transitional school district") was a party defendant in the Turner v. Sch. Dist. of Clayton, 318 S.W.3d 660, 663 (Mo.banc 2010) case). Under §167.131.1, the City of St. Louis School District (as the "sending district") "shall pay the tuition of and provide transportation" for each City pupil who attends an accredited school district in another district of the same or an adjoining county. This statutory mandate would impose a substantial financial obligation upon the City of St. Louis School District to pay the tuition amount for Jordan King-Willmann to attend the Webster Groves School District. Equally important, the trial court's Judgment could be attempted to be used by other City students to transfer to adjacent St. Louis County public school districts which would have a major impact on the City School District's finances and its efforts to become re-accredited with the State. The City of St. Louis School District is a necessary party in this action under either or both of the components of Rule 52.04(a)(1) and (a)(2) as discussed below.

The City School District is a necessary party under Rule 52.04(a)(1).

Rule 52.04(a)(1) specifies that a person shall be joined in the action if, "in the person's absence complete relief cannot be accorded among those already parties" Here, complete relief cannot be accorded to King-Willmann or Webster Groves School District in the action below if the City of St. Louis School District is not made a party. Section 167.131.1 RSMo specifies that the sending district (here, the City of St. Louis

School District), is financially responsible to pay the attending students tuition and must provide transportation for that child to attend the adjacent school district. As set forth in Webster Groves School District's Verified Answer, the City of St. Louis School District has asserted it cannot be liable under §167.131 RSMo on various legal grounds. [L.F. at 104-105, ¶2 and Exhibit 1 thereto at L.F. 111-121]. Because the City of St. Louis School District is not a party to these proceedings, if King-Willmann eventually prevailed on her claim under §167.131, then Webster Groves School District would be required to bring a separate action against the City School District if Webster wanted to obtain the tuition payments due for King-Willmann's attendance at a Webster Groves School public school. Similarly, King-Willmann would have to bring an action to require the City School District to provide transportation and/or pay the tuition.

It is this type of potential for multiplicity of lawsuits that Rule 52.04(a) is intended to prevent by requiring all necessary parties to be joined in a single action. Moreover, it is a practical and more economical approach to have the party who ultimately is liable for the remedy sought in a legal proceeding to be a party to the action in the first place. Thus, in State ex rel. Berry v. City of Rolla, 970 S.W.2d 901 (Mo.App.W.D. 1998), a former elected municipal judge brought a petition in mandamus to compel the City of Rolla to provide her monthly retirement benefits under the Missouri Local Government Employees' Retirement System ("LAGERS"). The City had not made contributions to LAGERS for the municipal judge over the years. While the decision in City of Rolla dealt mostly with LAGERS' motion to intervene filed in the Court of Appeals after the trial court judgment, the Appellate Court expressly recognized that LAGERS was a

necessary party since it was contending it would not be bound by the proceedings between the municipal judge and the City so complete relief could not be afforded the judge if she prevailed in the action. *Id.* at 908-909. A similar practical result is present in this case – if the City of St. Louis Public School District is purportedly liable for tuition and transportation costs under §167.131, then the City School District should be made a party to afford complete relief to those already parties in one action.

The City School District is a necessary party under Rule 52.04(a)(2).

Rule 52.04(a)(2)(i) provides in part that a person shall be joined as a party in the action if “the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may ... as a practical matter impair or impede the person’s ability to protect that interest” As set forth in Webster Groves School District’s Verified Answer, the City of St. Louis School District has similarly challenged §167.131 in another pending court proceeding, including several defenses very similar to those raised by Webster Groves in this case. [L.F. at 104-105, ¶2 and Exhibit 1 thereto at L.F. 111-121]. As such, the City School District clearly claims an interest relating to the subject of the underlying action here, including the validity of §167.131, and the application of that statute to City public school students.

The City School District also has an interest because §167.131 purportedly requires the City School District to pay the tuition and provide transportation for King-Willmann if she prevailed in this case. As a practical matter, if the trial court eventually ruled for King-Willmann in the mandamus proceedings below, the City School District’s ability to protect those interests would be impaired because the lower court would have

already rejected the aforesaid Hancock Amendment and other defenses the City School District has raised in other proceedings; and in effect, such a ruling by the trial court would subject the City School District to potential claims from King-Willmann and/or the Webster Groves School District for the monetary amounts of tuition or transportation for the student.

For example, in State ex rel. Webster County v. Hutcherson, 199 S.W.3d 866 (Mo.App.S.D. 2006), several abstract companies sued the Webster County Recorder of Deeds to recover alleged overcharges for copies of records. The County (by its commissioners) sought to intervene in the case, noting that the copy fees became the property of the County after collection. The County argued it had an interest in the “subject” of the action and its absence from the case would impede its ability to protect that interest. The Appellate Court agreed – noting that if the trial court ruled in the plaintiff abstract companies favor, then the County’s ability to defend that issue could be adversely affected when the plaintiffs attempted to collect any overpaid amounts. Id. at 873. Similarly, here, the City of St. Louis School District’s ability to defend itself against claims it owes tuition payments will be adversely affected by the proceedings involving King-Willmann and Webster Groves School District.

The City School District should be made a party to be given the opportunity to protect its interests in the pending litigation. Goodkin v. 8182 Maryland Associates Ltd. Partnership, 80 S.W.3d 484, 490 (Mo.App.E.D. 2002) (missing party was held to be necessary and indispensable party because the missing party “may be prejudiced in future proceedings ... if it is not able in this suit to defend its actions.”). Similarly, in Jones v.

Jones, 285 S.W.3d 356 (Mo.App.S.D. 2006), the underlying lawsuit involved two individuals in a dispute as to who was the president of a not-for-profit Missouri corporation and an effort to void certain corporate transactions engaged in by the alleged unauthorized officer. The Court held the corporation was a necessary party to the litigation, in part because the litigation “will require some action by the Corporation or directly impact the Corporation.” Id. at 361. Moreover, the Court noted that the underlying proceedings could open the Corporation up to litigation from third parties. Id. at 361-62. Similarly, King-Willmann’s lawsuit here will have a direct impact on the City of St. Louis School District and require that District to take some actions, such as to either pay tuition and provide transportation, or engage in further litigation to oppose having to pay and/or provide those items under §167.131. See also, Missouri National Educational Ass’n. v. Missouri State Bd. of Education, 34 S.W.3d 266, 278 (Mo.App.W.D. 2000) (trial court erred in failing to join 13 school districts impacted by trial court’s ruling).

Finally, the City of St. Louis School District is a necessary party under Rule 52.04(a)(2)(ii) because it claims an interest in this action and the City District’s absence leaves Webster Groves School District subject to substantial risk of incurring double, multiple or inconsistent obligations. For example, if King-Willmann prevailed in her mandamus action, she would have the right to attend a Webster Groves public school with the attendant expenses to the School District for providing that free public education, but Webster Groves School District in turn would have to look to the City of St. Louis School District for the tuition payment.

For the reasons set forth herein, the City of St. Louis School District is a necessary party to this action who should be joined and the trial court's judgment should be reversed and remanded so that the City of St. Louis School District can be made a party. Alternatively, the trial court's Judgment should be reversed for an evidentiary hearing to allow Webster Groves School District to present evidence in support of its position that the City School District is a necessary party under Rule 52.04.

Point IV.

The trial court erred in denying Webster Groves School District's Motion to Dismiss without an evidentiary hearing (and granting mandamus relief) because the defenses set forth in the Motion established that Jordan King-Willmann did not have a clear, unequivocal right to be enrolled, or that the School District had a corresponding unconditional duty to enroll Jordan, in that the School District's defenses such as a Hancock Amendment violation, failure to join necessary party(ies), failure to comply with the requirements of section 167.131 RSMo, etc. would preclude granting the extraordinary remedy of mandamus and the School District had a right to a hearing to establish those defenses.

Standard of Review: The trial court's decision will be sustained unless it is unsupported by substantial evidence, is against the weight of the evidence or it misinterprets or misapplies the law. Dolphin Capital Corp. v. Schroeder, 247 S.W.3d 93, 97 (Mo.App.W.D. 2008).

Normally, the denial of a motion to dismiss is not a final judgment subject to appellate court review. See Bloom v. City of Independence, 591 S.W.2d 104, 105 (Mo.App.W.D. 1979). Here, the trial court entered judgment on King-Willmann's Amended Petition for Mandamus and also denied Webster Groves School District's Motion to Dismiss. As a precaution, the School District brings this point relied on to maintain its claim that the trial court erred in denying the Motion to Dismiss or in denying the Motion without an evidentiary hearing. Webster Groves School District will only briefly address this point because many of the defenses have already been addressed earlier in this Brief.

As set forth in the School District's Motion to Dismiss [L.F. at 124-25, ¶7-9], §167.131 RSMo, on its face or as sought to be applied by King-Willmann, creates an unfunded mandate on Webster Groves School District which contravenes the Missouri Constitution's Hancock Amendment provisions, including Art. X, §§16 and 21. The School District hereby incorporates by reference herein its argument in Point II above in support of its position that the Hancock Amendment defense bars King-Willmann's claims.

As set forth in the School District's Motion to Dismiss [L.F. at 122-24, ¶1-4], the City of St. Louis School District was a necessary party that should be joined in this action. The School District hereby incorporates its argument herein in Point III above in

support of its argument that the trial court's judgment should be reversed for failure to join a necessary party.⁸

The School District's Motion to Dismiss also asserted that payment of tuition under §167.131 was a condition precedent to Jordan enrolling in the School District and there was no allegations that such payment was made or would be forthcoming. [L.F. at 127-28, ¶14-16]. The School District hereby incorporates its arguments on this point set forth on pages 29-31 above in support of this defense. Similarly, the School District incorporates its arguments above (at pages 32 and 33) regarding its defenses that application of §167.131 as sought by King-Willmann would violate the federal desegregation judgment and Settlement Agreement, would be impossible to comply with and would infringe on the District's current students' rights to a free public education. All of these matters were also raised in the School District's Motion to Dismiss. [L.F. 126, ¶10; 128-29, ¶17-19].

Additionally, the School District's Motion should have been sustained on the grounds that King-Willmann had other legal remedies available, such as a declaratory judgment action, rather than the extraordinary remedy of mandamus. Under long-standing Missouri legal principles, mandamus may be appropriate to compel a simple and definite ministerial duty "arising under conditions admitted or proven and imposed by

⁸ The Special School District of St. Louis also is a necessary party that should be joined under Rule 52.04 as well. [L.F. at 124, ¶5-6]. The School District incorporates its arguments at pages 34 and 35 above in support of this defense.

law. It does not issue when the right is doubtful, or where there is another adequate remedy.” State ex rel. Kelley v. Mitchell, 595 S.W.2d 261, 266 (Mo.banc 1980) (quoting State ex rel. Kansas City v. Kansas City Gas Co., 163 S.W. 854, 857 (Mo.banc 1914). (emphasis added).

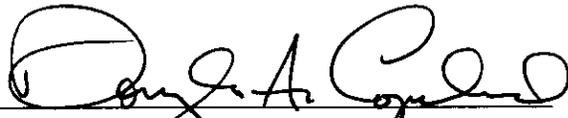
In Mitchell, the Court noted that the Plaintiff had another adequate remedy by bringing a declaratory judgment action to resolve the controversy in issue and the Court quashed the trial court’s preemptory writ of mandamus. Id. at 267, 269. The same holds true here – King-Willmann has other available legal remedies such as a declaratory judgment action to adjudicate their claims. This is particularly appropriate here, where Webster Groves School District has disputed many of King-Willmann’s key factual allegations and set forth numerous defenses that can preclude the mandamus relief sought in this case. See Carmack v. Saunders, 884 S.W.2d 394, 398 (Mo.App.W.D. 1994) (“The function of a writ of mandamus ‘is to enforce, not establish, a claim or right and its purpose is to execute, not adjudicate.’ (citation omitted) Therefore, to the extent that legal or factual issues must be adjudicated, mandamus is not an appropriate mechanism.”).

Finally, as set forth in the School District’s arguments in Point I above, which are incorporated herein, the trial court erred in granting the mandamus relief without holding an evidentiary hearing on the School District’s various defenses to the Amended Petition that were set forth in the District’s Motion to Dismiss, to the extent further evidence was needed to support those defenses.

CONCLUSION

For the reasons set forth herein, Appellant Webster Groves School District requests that the Judgment of the trial court be reversed with directions to enter judgment denying Plaintiffs' Amended Petition, or alternatively, that the trial court's Judgment be reversed and remanded for further proceedings.

Respectfully submitted,



Douglas A. Copeland #30851
Stephen C. Hiotis #30840
COPELAND THOMPSON FARRIS, PC
231 S. Bemiston, Suite 1220
St. Louis, MO 63105
(314) 726-1900
(314) 726-2361 (Facsimile)
copeland@ctfpc.com
hiotis@ctfpc.com

Attorneys for Appellant
Webster Groves School District

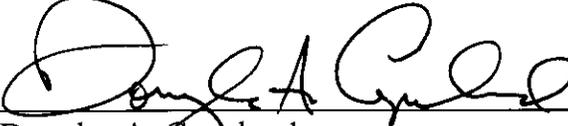
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Brief and one disk containing an electronic copy of this Brief were mailed by U.S. Mail, postage prepaid, on October 21, 2011 to each of the following:

Steven L. Leonard, Esq.
7751 Carondelet Avenue, Suite 606
Clayton, MO 63105

Brian D. Dunlop, Esq.
Dunlop & McCarter
7905 Forsyth Blvd.
Clayton, MO 63105

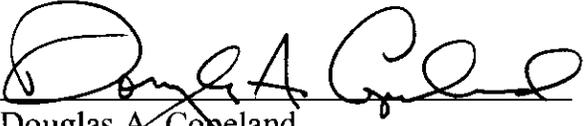
Keith Willmann
4329 Alma
St. Louis, MO 63116


Douglas A. Copeland

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Based upon the word count feature of Microsoft Word, this Brief contains 12,078 words, excluding those parts exempt under this Court's Local Rule 360.

The undersigned further certifies that the disk filed with this Brief and the disks served on the parties were scanned for viruses and found virus free using an anti-virus computer program.


Douglas A. Copeland

APPELLANT'S APPENDIX

Table of Contents

<u>Description</u>	<u>Page</u>
-- Order/Judgment dated June 22, 2011.	A-1
-- Missouri Supreme Court Rule 94.01.	A-6
-- Missouri Supreme Court Rule 52.04.	A-7
-- Art. X, Sections 16 and 21, Missouri Constitution.	A-8
-- Section 167.131 RSMo.	A-9

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

JORDAN DANIELLE KING-WILLMAN,)
a Minor Child,)
by her Mother and Next Friend,)
SHERRILL CHRISTINE KING,)
and)
SHERRILL CHRISTINE KING,)
Individually, and KEITH WILLMAN,)
Individually,)
Plaintiffs,)
vs.)
WEBSTER GROVES SCHOOL)
DISTRICT,)
Defendant.)

FILED

JUN 22 2011

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

Cause No. 10SL-CC03268

Division 13

ORDER/JUDGMENT

This matter is before the Court on Plaintiffs' Amended Verified Petition for Preliminary and Permanent Orders in Mandamus and Defendant's Motion to Dismiss Plaintiffs' Amended Petition. Having heard the arguments of counsel, having read the memoranda of law and case law submitted, and being now fully advised, the Court enters the following Order and Judgment.

The remedy of a writ of mandamus is only appropriate where the moving party has "a clear and unequivocal right to the relief requested" and the defendant/respondent has a corresponding duty to perform a certain act. The purpose of mandamus is to require the performance of a duty already defined by the law. Whether a petitioner's right to mandamus is clearly established and presently existing is determined by examining the

statute or ordinance under which petitioner claims the right. Therefore, in order to prevail, Plaintiffs must demonstrate that Webster had a clear duty existing under the current law to allow Jordan to enroll and attend Webster Groves High School. State ex rel. St. Joseph School Dist. v. Missouri Dept. of Elementary and Secondary Educ., 307 S.W.3d 209, 213 (Mo.App. W.D. 2010), citing State ex rel. Lee v. City of Grain Valley, 293 S.W.3d 104, 106–07 (Mo.App. W.D.2009) (citations and internal quotation marks omitted).

Section 167.131, RSMo., provides that a school district that loses accreditation with the state board of education must pay tuition for any resident pupil who attends an accredited school in another district in the same or an adjoining county and sets the amount of tuition to be paid by the sending school. Section 167.131 states:

1. The board of education of each district in this state that does not maintain an accredited school pursuant to the authority of the state board of education to classify schools as established in section 161.092, RSMo, shall pay the tuition of and provide transportation consistent with the provisions of section 167.241, RSMo, for each pupil resident therein who attends an accredited school in another district of the same or an adjoining county.

2. The rate of tuition to be charged by the district attended and paid by the sending district is the per pupil cost of maintaining the district's grade level grouping which includes the school attended. The cost of maintaining a grade level grouping shall be determined by the board of education of the district but in no case shall it exceed all amounts spent for teachers' wages, incidental purposes, debt service, maintenance and replacements...Per pupil cost of the grade level grouping shall be determined by dividing the cost of maintaining the grade level grouping by the average daily pupil attendance. If there is disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final. Subject to the limitations of this section, each pupil shall be free to attend the public school of his or her choice.

The Missouri Supreme Court has ruled section 167.131 is clear and unequivocal.

“The plain and ordinary meaning of the language in § 167.131.2 that ‘each pupil shall be free to attend the public school of his or her choice’ gives a student the choice of an

accredited school to attend, so long as that school is in another district in the same or an adjoining county, and requires the chosen school to accept the pupil.” Turner v. School Dist. of Clayton, 318 S.W.3d 660, 669 (Mo. 2010). The statute does not give an accredited school chosen by a student discretion to deny admission to that student. Id.

Webster argues section 167.131 creates an unfunded mandate in violation of the Hancock Amendment, Article X, §§ 16-24 of the Missouri Constitution, by requiring it to incur additional expenses to provide the full range of educational services and activities to Jordan and other transfer students without being provided the funds to do pursuant to a specific appropriation. Article X, section 16 of the Missouri Constitution prohibits the State “from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions.” Article X, section 21 prohibits the State from requiring unfunded new or increased activities or services and further specifies the requirement of a “state appropriation...made and disbursed” to the political subdivision to pay for any increased costs.

While the constitutionality of a statute cannot be directly attacked by way of mandamus, State ex rel. City of Crestwood v. Lohman, 895 S.W.2d 22, 29 (Mo.App. W.D. 1994), its validity can be brought into question. In this regard, there is clear authority allowing an entity against which a law is sought to be enforced, by way of mandamus, to challenge the validity of that law. State ex rel. City of St. Louis v. Mummert, 875 S.W.2d 108 (Mo.banc 1994); State ex rel. City of Blue Springs v. Rice, 853 S.W.2d 918, 920 (Mo. banc 1993). A statute is presumed to be constitutional and will not be invalidated unless it “clearly and undoubtedly” violates some constitutional

provision and “palpably affronts fundamental law embodied in the Constitution.” Linton v. Missouri Veterinary Medical Board, 988 S.W.2d 513, 515 (Mo.banc 1999).

Webster has the burden to prove an unfunded mandate exists by offering specific evidence of new or increased duties and increased expenses; these elements cannot be established by mere ‘common sense,’ or ‘speculation and conjecture.’ ” School Dist. of Kansas City v. State, 317 S.W.3d 599, 611 (Mo. 2010), citing Brooks v. State, 128 S.W.3d 844, 849 (Mo. banc 2004). See also, City of Jefferson v. Missouri Dept. of Natural Resources, 916 S.W.2d 794 (Mo. 1996) (increased costs are not presumed merely from mandate of increased activity).

In this particular case, on these specific facts, the Court is unable to determine from the evidence before it whether Webster will incur increased costs by enrolling Plaintiff in its school. Plaintiff is but a single student. Although Webster argues there will be other students seeking enrollment in its schools under section 167.131, the Court does not know this. To date, the Court has not been made aware of any other student that has requested entry into the Webster Groves School District. Thus, Webster has not met its burden of proof that section 167.131 violates the Hancock Amendment, Article X, §§ 16-24 of the Missouri Constitution by imposing an “unfunded mandate” on suburban schools. The Court is aware *Turner v. School District of Clayton*, Cause No. 07SL-CC00605, is pending in this Circuit and does not mean for this Order and Judgment to have any precedential effect on *Turner*.

Accordingly, Defendant’s Motion to Dismiss Plaintiffs’ Amended Petition is DENIED. This Court GRANTS the writ of mandamus and orders Defendant Webster

Groves School District to enroll and place Plaintiff Jordan Danielle King-Willman in Webster Groves High School immediately.

SO ORDERED:



Barbara Wallace, Judge

6/22/11

Date

cc: Steven L. Leonard ✓
Attorneys for Plaintiffs

Douglas A. Copeland ✓
Stephen C. Hiotis
Attorneys for Defendant

Brian D. Dunlop ✓
Guardian ad Litem

Keith Willmann ✓

Missouri Supreme Court Rule 94.01

→ → 94.01. Mandamus--General

Proceedings in mandamus in a circuit court shall be as prescribed in this Rule 94 and in this Court or the court of appeals shall be as prescribed in Rule 84.22 to Rule 84.26, inclusive, and this Rule 94. In all particulars not provided for by the foregoing provisions, proceedings in mandamus shall be governed by and conform to the rules of civil procedure and the existing rules of general law upon the subject and the court may, by order, direct the form of such further details of procedure as may be necessary to the orderly course of the action or to give effect to the remedy.

Missouri Supreme Court Rule 52.04

→→ 52.04. Joinder of Persons Needed for Just Adjudication

(a) Persons to Be Joined if Feasible. A person shall be joined in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in Rule 52.04(a)(1) or Rule 52.04(a)(2) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it or should be dismissed, the absent party being thus regarded as indispensable. The factors to be considered by the court include: (i) to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; (ii) the extent to which by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (iii) whether a judgment rendered in the person's absence will be adequate; and (iv) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivisions (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 52.08.

Missouri Constitution, Article X, Sections 16 and 21

**→→ § 16. Taxes and state spending to be limited—state to support certain local activities—
-emergency spending and bond payments to be authorized**

Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval as provided by this constitution. The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in sections 17 through 24, inclusive of this article.

**→→ § 21. State support to local governments not to be reduced, additional activities and services
not to be imposed without full state funding**

The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Section 167.131 RSMo.

→→ 167.131. District not accredited shall pay tuition and transportation, when--amount charged

1. The board of education of each district in this state that does not maintain an accredited school pursuant to the authority of the state board of education to classify schools as established in section 161.092, RSMo, shall pay the tuition of and provide transportation consistent with the provisions of section 167.241, RSMo, for each pupil resident therein who attends an accredited school in another district of the same or an adjoining county.

2. The rate of tuition to be charged by the district attended and paid by the sending district is the per pupil cost of maintaining the district's grade level grouping which includes the school attended. The cost of maintaining a grade level grouping shall be determined by the board of education of the district but in no case shall it exceed all amounts spent for teachers' wages, incidental purposes, debt service, maintenance and replacements. The term "debt service", as used in this section, means expenditures for the retirement of bonded indebtedness and expenditures for interest on bonded indebtedness. Per pupil cost of the grade level grouping shall be determined by dividing the cost of maintaining the grade level grouping by the average daily pupil attendance. If there is disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final. Subject to the limitations of this section, each pupil shall be free to attend the public school of his or her choice.