

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

WILLIAM DOUGLAS ZWEIG, et al.,) No. ED96110
)
 Plaintiffs-Respondents/)
 Cross-Appellants,)
)
v.)
)
THE METROPOLITAN ST. LOUIS) Appeal from the Circuit Court of
SEWER DISTRICT,) the County of St. Louis
)
)
 Defendant-Appellant/)
 Cross-Respondent,) Filed: March 27, 2012

The Metropolitan St. Louis Sewer District appeals the trial court’s judgment in favor of Respondent taxpayers, finding that a stormwater user charge imposed by MSD was an unconstitutional “tax.” Appellant claims the trial court erred in its analysis of the *Keller* factors. Taxpayers’ cross-appeal the trial court’s denial of their refund claim, arguing that the trial court erred in finding that taxpayers were required to conform to the provisions of Section 139.031 in order to be entitled to a refund. The Sewer District also appeals the trial court’s doubling of the lodestar amount, inclusion of time spent on the unsuccessful refund claim, and money for expenses and expert fees, in the award of taxpayers’ attorneys’ fees.

REVERSED in part. AFFIRMED in part.

DIVISION TWO HOLDS: The trial court was correct in finding that the user charge constituted a tax subject to the Hancock Amendment, and that taxpayers were required to follow the provisions of Section 139.031 to be entitled to a refund. The trial court was also correct in granting taxpayers an award of attorneys’ fees for time spent on the refund claim, and for expenses and experts fee. The trial court erred, however, in enhancing the lodestar amount.

Opinion by: Kenneth M. Romines, J.
Kathianne Knaup Crane, P.J. concurs and Lawrence E. Mooney, J. dissents.

Attorneys for Metropolitan St. Louis Sewer District: John Gianoulakis, Robert F. Murray, Kevin Anthony Sullivan, Susan M. Myers

Attorneys for Respondent William Douglas Zweig: Richard R. Hardcastle, Erwin O. Switzer, George A. Uhl, Kirsten M. Ahmad

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