

Summary of SC91130, Michelle Schaefer, et al. v. Christopher Koster, Attorney General of the State of Missouri

Appeal from the Cole County circuit court, Judge Paul C. Wilson

Argued and submitted March 23, 2011; opinion issued June 14, 2011

Attorneys: The drivers were represented by Jeremy D. Hollingshead and Carl M. Ward of Ward Hollingshead in Washington, Mo., (636) 390-0070, and Jeffrey S. Eastman of Keleher & Eastman in Gladstone, (816) 452-6030; and the state was represented by Deputy Solicitor General Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A woman appeals the trial court's dismissal of her constitutional challenges to the statute under which she was charged with an intoxication-related offense. In a 6-1 decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the trial court's judgment. Declaratory judgment was not appropriate here, as the woman could raise her constitutional challenges as a defense in her criminal case. A statute of limitations does not apply to criminal defendants who raise such challenges in their criminal cases.

Judge Zel M. Fischer dissents. He would reverse the trial court's judgment and would permit Brandt to maintain her declaratory judgment action, finding that she has no adequate remedy at law because the statute of limitations bars her from raising her constitutional claims in her pending criminal case. He would hold that the bill amending the statute under which the woman was charged violates the original purpose, clear title and single subject provisions of the state constitution. Though he would sever the unconstitutional portion from the remainder of the bill, he questions whether the doctrine of severance supports the constitution.

Facts: Cindy Brandt, Dale Price and Michelle Schaefer all had prior convictions for intoxication-related driving offenses. In July 2008, House Bill 1715 became effective, repealing and reenacting section 577.023, RSMo, which enhanced penalties for individuals with multiple prior convictions for intoxication-related offenses. Brandt, Price and Schaefer subsequently were arrested for and charged with new intoxication-related offenses under the revised statute. While the criminal charges were pending, they filed a consolidated petition seeking a judgment to declare unconstitutional HB 1715 and the amended section 577.023. The trial court dismissed their petition, holding each should raise the constitutional issues in the course of his or her individual criminal case. They appeal.

AFFIRMED.

Court en banc holds: (1) The trial court properly exercised its discretion in dismissing the declaratory judgment petition. Declaratory judgment is proper when the person seeking it has no adequate remedy at law. Each plaintiff here, however, had an adequate remedy at law – each could have raised the constitutional issue as a defense to the criminal charge. Section 516.500, RSMo, which limits when an “action” can be “commenced, had or maintained” to challenge

procedural irregularities in the enactment of a law, does not apply to criminal defendants who challenge the statutes under which they are charged as a defense in their criminal cases.

(2) While the appeal was pending, Price and Schaefer pleaded guilty, thereby rendering their claims moot as there is no presently existing controversy as to them. Because Brandt's case still is pending, her claim is not moot.

Dissenting opinion by Judge Fischer: (1) The author would reverse the trial court's judgment and would permit Brandt to maintain her declaratory judgment action, finding that she has no adequate remedy at law because the statute of limitations bars her from raising her constitutional claims in her pending criminal case. Challenges to the constitutional validity of a statute based on article III, sections 21 and 23 of the Missouri Constitution are procedural defects governed by section 516.500, RSMo. Brandt did not and could not have raised the procedural defects as a defense in her criminal case because the statute of limitations under section 516.500 had run before she first was scheduled to appear in court on her charge. As such, she had no opportunity to raise the procedural defects and, therefore, had no other adequate remedy at law other than filing the declaratory judgment action. It is appropriate to reach the merits of Brandt's claim – the 2008 changes to the statute are substantive as applied to Brandt because they increase her range of punishment. The prior version of the statute did not permit municipal intoxication-related traffic offenses to be used to enhance punishment for a subsequent intoxication-related offense, so Brandt would face a lesser range of punishment if HB 1715 were found unconstitutional. As such, her substantive rights are affected by her constitutional challenge.

(2) The author would hold that the 2008 version of section 577.023 is unconstitutional because it violates the original purpose provision of article III, section 21 of the Missouri Constitution as well as the clear title and single subject provisions of article III, section 23 of the Missouri Constitution. The original purpose of HB 1715, as introduced, related to "watercraft." By the time it passed, the bill included language of what constitutes a conviction for purposes of enhancing punishment for those operating motor vehicles in an impaired condition on land. No reasonable person would believe or suspect that "related to watercraft" would relate to criminal conduct occurring on land while operating a motor vehicle. As finally passed, the title of the bill was "An Act to repeal sections ... and to enact in lieu thereof ... new sections relating to watercraft, with a penalty provision and emergency clause for a certain section." The fact that the amended bill included a second subject pertaining to new penalty provisions for operating motor vehicles on land does not fairly relate to watercraft nor has a natural connection to that subject and, therefore, violates the single subject rule as discussed in *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994).

(3) Under the current state of the law, by which the Court presumes unconstitutional provisions can be severed from the remainder of the bill, the author would sever the provision of HB 1715 that became section 577.023.16 and declare unconstitutional that provision that does not relate to watercraft. The author suggests, however, that there may come a time when this Court should reconsider whether the judicial doctrine of severance has served to support and protect the state's constitution, citing several law review articles noting potential damage the doctrine causes to the legislative process and the doctrine of separation of powers.