

Summary of SC93511, *Ronald Brehm v. Bacon Township, et al.*

Appeal from the Vernon County circuit court, Judge James R. Bickel
Argued and submitted December 4, 2013; opinion issued March 25, 2014

Attorneys: Brehm was represented by George D. Nichols, a solo practitioner from Lamar, (417) 682-6003. The government entities were represented by J.D. Baker of the Baker Law Firm in Osceola, (417) 646-8125; and the department of conservation was represented by in-house counsel David A. McAllister in Jefferson City, (573) 522-4115.

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 neighboring landowner appeals from the trial court’s entry of summary judgment in favor of defendant government entities. The trial court found that a road adjacent to the landowner’s property is a public road under a statute that says that, if the road is allocated certain funds for five years, it is a public road. The landowner challenges the statute as violative of due process and as an unconstitutional taking under the federal and Missouri constitutions. In a unanimous opinion written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the trial court’s decision. Because the landowner did not demonstrate a genuine issue of fact that he has an ownership interest in the land on which the road runs, he does not have standing (legal ability) to challenge the constitutional validity of the statute.

Facts: Section 228.190.2, RSMo, states that an identified county road that is allocated county road aid trust funds, or CART funds, for five years “shall be conclusively deemed to be a public county road.” In 2008, Ronald Brehm filed suit seeking injunctive relief and a declaratory judgment that he had an ownership interest in a gravel road that runs alongside the eastern edge of his property. The state department of conservation, Bacon Township, Schell City and Vernon County jointly moved for summary judgment. In support of their motion, they presented evidence that the road satisfied the statutory requirements and that, under a 2011 court judgment, the state conservation commission has legal title to the road. Brehm challenged the constitutional validity of the statute in his response to the summary judgment motion but did not present evidence that he owned a current interest in the road. The trial court found that the road was public pursuant to the statute and did not resolve the constitutional claims. Brehm appeals.

AFFIRMED.

Court en banc holds: The trial court did not err in granting summary judgment to the government entities. To raise his constitutional challenge to the statute properly, Brehm was required to show that he has a legally protectable interest that is adversely affected by the operation of the statute. Although he pleaded an ownership interest in the strip of land on which the road runs, he failed to support this claim in his summary judgment response. The department of conservation’s motion for summary judgment complied with the requirements of Rule 74.04 by supporting its claim that the road is public land with affidavits from public officials and with a 2011 judgment granting it title. To avoid summary judgment, Brehm was required to contest the department’s assertions with his own specific evidence, but he did not do so. His only

evidence was his own affidavit, which stated that he owned the land “adjoining” the road, did not dispute that the statutory requirements were met, and did not address the title judgment. Because Brehm did not demonstrate an ownership interest in the land on which the road runs, he has not demonstrated standing to challenge the statute’s constitutional validity and, so, the Court does not reach the constitutional issues.