

Summary of SC94831, *The Metropolitan St. Louis Sewer District v. The City of Bellefontaine Neighbors, Sherrell Construction, Inc., et al.*

Appeal from the St. Louis County circuit court, Judge Mark D. Seigel

Argued and submitted September 2, 2015; opinion issued January 12, 2016

Attorneys: MSD was represented by Christopher R. LaRose and Bryan E. Francis of Armstrong Teasdale LLP in St. Louis, (314) 621-5070, and the city was represented by Kevin M. O’Keefe and Robert E. Jones of Curtis, Heinz, Garrett & O’Keefe PC in St. Louis, (314) 725-8788. Neither Sherrell Construction Inc. nor Lift Rite Inc. filed a brief or argued in this Court.

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 sewer district appeals the circuit court’s judgment dismissing its claims of inverse condemnation, trespass and negligence against a municipality for damage caused to the sewer district’s property. In a decision written by Judge Laura Denvir Stith and joined by five other judges, the Supreme Court of Missouri affirms the judgment. Because the sewer district is a public entity, it does not have an inverse condemnation claim because article I, section 26 of the Missouri Constitution protects only “private” property from being taken for public use without just compensation. Sovereign immunity applies in suits between public entities and protects the municipality from liability for trespass and negligence.

Judge Zel M. Fischer concurs in result but writes separately because he believes that, for purposes of interpretation, it is appropriate to consider the intent of the drafters of the state constitution as well as the historical context in which a provision was adopted. He further would hold that, because the sewer district is a political subdivision and not a citizen, it is not entitled to compensation for a taking under the state constitution.

Facts: Metropolitan St. Louis Sewer District (MSD) is a public entity formed to provide wastewater treatment and sewerage facilities for the St. Louis metropolitan area. Bellefontaine Neighbors, a city in St. Louis County, initiated a street improvement project. Some of the concrete-like slurry used to fill voids underneath the streets was pumped into and hardened inside MSD’s sewer lines, allegedly requiring MSD to replace the lines. MSD sued the city to recover the cost of the damage, asserting a claim for inverse condemnation (a remedy for property owners when their property is taken intentionally or accidentally without the proper condemnation proceedings). After its first suit was dismissed, MSD filed an amended petition adding counts of trespass and negligence against the city. The city filed a motion to dismiss the amended suit alleging that (1) protection from uncompensated taking of property does not apply to public property and (2) sovereign immunity applies to bar the claims for trespass and negligence. The circuit court granted the city’s motion. MSD appeals.

AFFIRMED.

Court en banc holds: (1) MSD cannot sue the city to recover damages under an inverse condemnation claim, which arises from the state constitution. A public entity does not have a

constitutional right to just compensation for the taking of its property. Article I, section 26 provides “[t]hat private property shall not be taken or damaged for public use without just compensation.” The words “private property” are unambiguous and cannot be read contrary to their common meaning to include “public” property. There is no authority for a court to read words into the constitution.

(2) Sovereign immunity protects the city from MSD’s trespass and negligence claims because there is no waiver of sovereign immunity in this case. MSD’s argument that sovereign immunity does not shield a public entity from liability for torts committed against another public entity is premised on a misperception of the sovereign immunity doctrine. The common law of sovereign immunity applies to the government and its political subdivisions unless it is waived or abrogated by statute or the sovereign consents to suit. Although the legislature has waived sovereign immunity in certain cases, no Missouri statute or case carves out an exception to sovereign immunity for suits by one public entity against another. MSD did not allege any other exception.

Concurring opinion by Judge Fischer: The author concurs in result but writes separately because he disagrees with the principal opinion’s suggestion that, for purposes of interpretation, it is not appropriate to consider the intent of the drafters of the state constitution or the historical context in which a provision was adopted. He further would hold that, because MSD is a political subdivision and not a citizen, it is not entitled to compensation for a taking under the state constitution. In adopting article I, section 26, the 1945 constitutional debates show a desire to maintain the language of the state’s 1875 constitution – that the state cannot take private property for public use without just compensation – and include references to this right reserved in the bill of rights to citizens of Missouri. Debates further show that, as a political subdivision, MSD would not qualify for invocation of this right because it is not a citizen. Additionally, this Court has held that political subdivisions do not have the same constitutional protections as citizens.