

Summary of SC95444, *State of Missouri ex rel. Attorney General Chris Koster and the Missouri Petroleum Storage Tank Insurance Fund Board of Directors v. ConocoPhillips Company and Phillips 66 Company and Cory Wagoner*

Appeal from the St. Louis circuit court, Judge Robert H. Dierker Jr.
Argued and submitted April 13, 2016; opinion issued June 28, 2016

Attorneys: Wagoner was represented by Thomas W. Millington and Kathryn A. Millington of Millington, Glass & Love in Springfield, (417) 883-6566. The fund's board of directors was represented by Solicitor General James R. Layton, Elliott J. Usher and Brian L. Allard of the attorney general's office in Jefferson City, (573) 751-3321. The companies were represented by Virginia L. Fry and Ashley L. Norgard of Husch Blackwell LLP in Springfield, (417) 268-4000; and Glenn Burhans Jr. of Stearns Weaver Miller Weissler Alhadeff & Sitterson PA in Tallahassee, Florida, (850) 329-4850.

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 man whose motion to intervene in a case between a state fund's board of directors and a petroleum company was overruled in an interlocutory order (issued before the whole case reached final determination) appeals the trial court's final judgment, which ultimately approved a settlement between the board and the company. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the judgment. The man properly appealed from the final judgment, which, by statute, was the only decision from which he had a right to appeal and which necessarily incorporated the interlocutory order. The trial court did not err in overruling the man's motion to intervene. His motion failed to address – let alone establish – the three elements required under the rule governing intervention as a matter of right.

Judge Colleen Dolan – a judge on the Missouri Court of Appeals, Eastern District – sat in this case by special designation in place of Judge Mary R. Russell.

Facts: The Missouri Petroleum Storage Tank Insurance Fund's board of directors sued ConocoPhillips Company and Phillips 66 Company (collectively, Phillips) in April 2013 to recover certain prior reimbursements the board alleged Phillips obtained improperly. Cory Wagoner, a participant in and potential claimant against the fund moved to intervene in the suit as a matter of right under Rule 52.12(a). In November 2013, the trial court entered an interlocutory order overruling Wagoner's motion. Wagoner did not seek an immediate appeal from this interlocutory order. In December 2014, the court entered its final judgment approving a settlement between the board and Phillips and dismissed the case with prejudice (so it could not be refiled). Wagoner appeals.

AFFIRMED.

Court en banc holds: (1) Wagoner properly appealed from the final judgment. The right to appeal is purely statutory – when a statute does not give a right to appeal, no right exists. There is no special statute granting a right to immediate appeal from an interlocutory order overruling a

motion to intervene, and the general statute dealing with civil appeals grants no such right. To the extent certain appellate cases rely on this Court's 1978 decision in *State ex rel. Reser v. Martin* to hold or suggest that a proposed intervenor has such a right, those cases no longer should be followed. Because Wagoner had no statutory right to an immediate appeal from the interlocutory order overruling his motion to intervene, his only opportunity for appellate review of that decision is from the trial court's December 2014 final judgment. Under Rule 74.01, a final judgment necessarily incorporates all prior orders or judgments that adjudicated some – but not all – the parties' claims, rights and liabilities. Because the final judgment incorporated the interlocutory order overruling Wagoner's motion to intervene, and Wagoner was a "party" to the order, Wagoner was a "party" who was "aggrieved" by the final judgment. Further, Wagoner complied with Rule 81.08(a) because he specified he was appealing the final judgment – the only judgment from which he had a right to appeal. To the extent certain cases suggest that Rule 81.08(a) requires an appellate to specify the trial court ruling or action being challenged rather than the judgment or order from which the appeal is taken, these cases should not be followed.

(2) The trial court did not err in denying intervention. A motion to intervene as a matter of right under Rule 52.12(a) must include three elements – an interest relating to the property or transaction that is the subject of the action; that the applicant's ability to protect the interest is impeded or impaired; and that the existing parties inadequately are representing the applicant's interest. Wagoner's motion failed to address – let alone establish – these elements. Instead, his motion simply asserted he should be allowed to intervene for purposes of moving to dismiss the suit, alleging that the attorney general lacked standing to sue Phillips for amounts improperly received from the fund and that the attorney general's suit was filed after – and, therefore, must yield to – Wagoner's previously filed lawsuit against Phillips to recover the same amounts. First, the board is the real party in interest seeking recovery from Phillips; the attorney general merely is representing the board, at the board's request, as he is authorized to do. Second, even if Wagoner was the first to file suit, his motion to intervene failed to articulate a specific, legally protectable interest in the subject matter of the board's suit against Phillips. He also failed to demonstrate that, as a potential future claimant against the fund, he has a right to sue third parties he thinks have recovered improperly from the fund or that, even if he had such a right, that this would have given him a right to intervene in the board's suit against Phillips. And finally, he failed to show the board would not protect his interest adequately in the absence of intervention.