

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

LINDA GERKEN, SHEILA HOLT, NANCY LYNN, TRUDY BLOOD, GALEN BLOOD, EMMA LOU SWOPES, BRENDA GARDNER, and MISSOURI COUNCIL OF THE BLIND, APPELLANTS,

v.

GARY SHERMAN, and MISSOURI FAMILY SUPPORT DIVISION, RESPONDENTS.

DOCKET NUMBER WD69053

DATE: January 13, 2009

Appeal From:

Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division One: Harold L. Lowenstein, Presiding Judge, Paul M. Spinden and Victor C. Howard, Judges

Attorneys:

Deborah S. Greider, St. Louis, Mo, for appellant.
Mark E. Long, Attorney General Office, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

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v.

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Before Division One Judges: Harold L. Lowenstein, Presiding Judge, Paul M. Spinden and Victor C. Howard, Judges

Since 1875, the Missouri Constitution has required the General Assembly to levy and to collect an annual property tax to fund the blind pension fund. From this fund, the State is to pay pensions to “the deserving blind” as provided by statute. MO. CONST. art. III, § 38(b) (1945). The appellants are the Missouri Council of the Blind and blind persons who receive pensions from the fund. They contend that the director of the Department of Social Services and the Family Support Division (referred to collectively as “the division”) have improperly asked the General Assembly to use fund resources to pay for pension programs other than the one program for which the fund was intended and have calculated their requests for increases in the blind pensions illegally for at least the past decade. They asked the circuit court for a judgment declaring that this was the case and for an accounting of the blind pension fund. The circuit court found that division was not requesting that the General Assembly improperly use resources from the fund and was calculating its requested blind pension increases lawfully. The circuit court further found that an accounting was not necessary. The Missouri Council of the Blind and the blind pensioners appeal.

AFFIRMED, IN PART; REVERSED AND REMANDED, IN PART.

Division One holds:

(1) The division’s requesting to use funds from the blind pension fund to finance AB Conversion Program and SAB pensions was not contrary to Article III, § 38(b), of Missouri’s constitution or § 209.130, RSMo 2000. The constitution’s broad language that the fund is to be “used for the pensioning of the deserving blind as provided by law” does not limit the General Assembly to one pension program. The General Assembly has created three pension programs for the blind, and the history of § 209.130, its surrounding circumstances, and its objectives indicate that the legislature considers participants in all three programs to be the “deserving blind.”

(2) The division's basing its requested annual increases to Blind Pension upon the growth in the blind pension fund's balance, rather than upon the growth in the fund's revenue, was inconsistent with Article III, § 38(b), and § 209.130.

(3) Although the Missouri Council of the Blind and the blind pensioners appear to assert that any unspent balance in the blind pension fund at the end of each fiscal year should be divided among the Blind Pension recipients, Article III, § 38(b), and § 209.130 specifically provide that any balance remaining in the fund at the end of each biennium "shall be transferred to the distributive public school fund." The Missouri Council of the Blind and the blind pensioners do not have standing to pursue a declaratory judgment action against the division for not sweeping the fund into the distributive public school fund.

(4) The Missouri Council of the Blind's and the blind pensioners' point that the circuit court erred by not requiring the division to promulgate a rule setting forth its method for calculating its requested annual increases to Blind Pensions is moot.

(5) Even if the circuit court erred by waiting until after trial of the case before certifying the requested class and treating this case as a *bona fide* class action lawsuit, the Missouri Council of the Blind and the blind pensioners have failed to demonstrate any prejudice from the delay and, therefore, are not entitled to relief.

(6) The three-year statute of limitations in § 516.130(1), RSMo Cum. Supp. 2007, does not apply to the claims of the Missouri Council of the Blind and the blind pensioners. Section 516.130(1)'s limitations period more appropriately applies when only one official is involved and the cause of action is based on an alleged wrong that occurred as part of official conduct. In their petition, the Missouri Council of the Blind and the blind pensioners alleged that the division, not the director, committed the alleged wrongs.

(7) Because the circuit court erroneously concluded that the division had been calculating requested pension increases properly and, therefore, no accounting was necessary, we reverse and remand so the circuit court can reconsider the Missouri Council of the Blind's and the blind pensioners' request for an accounting.

(8) The Missouri Council of the Blind's and the blind pensioners' point that the circuit court erred by denying their request to admit into evidence two letters concerning how to calculate Blind Pension increases is moot.

Opinion by: Paul M. Spinden, Judge

Date: January 13, 2009

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