

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**SAXONY LUTHERAN HIGH  
SCHOOL, INC., ET AL.**

**RESPONDENTS,**

**v.**

**MISSOURI LAND RECLAMATION  
COMMISSION, ET AL.**

**APPELLANT.**

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DOCKET NUMBER WD78187

DATE: October 13, 2015

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Appeal From:

Cole County Circuit Court  
The Honorable Daniel R. Green, Judge

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Appellate Judges:

Division Four: Alok Ahuja, Chief Judge, Presiding, Gary D. Witt, Judge and S. Margene  
Burnett, Special Judge

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Attorneys:

Stephen G. Jeffery, Ellisville, MO, for respondents.

Timothy P. Duggan, Jefferson City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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**RESPONDENTS,**

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**MISSOURI LAND RECLAMATION  
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No. WD78187

Cole County

Before Division Four: Alok Ahuja, Chief Judge, Presiding, Gary D. Witt, Judge and S. Margene Burnett, Special Judge

Appellant, the Missouri Land Reclamation Commission ("Commission"), challenges the trial court's award of attorney fees and expenses following judgment in favor of Saxony Lutheran High School, Inc. ("Saxony") and Save Our Children's Health, Inc. ("SOCH" and collectively, "Respondents"). Respondents had opposed Heartland Materials, LLC's ("Heartland") request for a mining permit and requested a formal hearing on the matter. The Commission, after holding a meeting to determine whether Respondents had standing to be entitled to a formal hearing, denied the request.

The decision to deny a formal hearing to Respondents was brought before the Circuit Court of Cole County in a Petition for Judicial Review and Declaratory Judgment. Summary judgment was entered in favor of Respondents and that decision was previously appealed to this court. We affirmed the judgment of the trial court, concluding that Saxony and SOCH had provided good faith evidence of future undue impairment to establish standing for a formal hearing and instructed the Commission to grant the hearing. Before the formal hearing was conducted, a settlement was reached, which made the hearing unnecessary.

This appeal arises out of the subsequent action filed by Respondents against the Commission for an Award of Attorney's Fees and Expenses relating to all the previous proceedings before the Commission. The Circuit Court awarded attorney fees and expenses to the Respondents pursuant to Section 536.087. The State, on behalf of the Commission, argues that the award of attorney fees did not satisfy the elements of Section 536.087. Alternatively, the State argues the court erred in calculation of attorney fees.

**WE REVERSE**

**HOLDING:** Pursuant to Section 536.087, Respondents were not entitled to an award of attorney fees and expenses because the proceeding before the Commission was not an "adversary proceeding in a contested case" and the State was never a party to the agency proceeding. Because we have reversed the trial court's award, we do not reach the alleged error as to calculation of the award

Opinion by Gary D. Witt, Judge

October 13, 2015

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