

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

LINDA GERKEN, ET AL.

APPELLANTS,

v.

GARY SHERMAN, ET AL.

RESPONDENTS.

DOCKET NUMBER WD78221

DATE: November 17, 2015

Appeal From:

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

Appellate Judges:

Division Three: Joseph M. Ellis, Presiding Judge, Gary D. Witt, Judge and Anthony Rex Gabbert, Judge

Attorneys:

John J. Ammann and Deborah S. Greider, St. Louis, MO, for appellants.

Ronald R. Holliger, Jefferson City, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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v.

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No. WD78221

Cole County

Before Division Three: Joseph M. Ellis, Presiding Judge, Gary D. Witt, Judge and Anthony Rex Gabbert, Judge

Appellant, Linda Gerken along with a class composed of pensioners of Missouri's Blind Pension Fund (collectively "Pensioners"), appeal the trial court's judgment giving some, but not all, relief requested against the Missouri Family Support Division and the Director of the Department of Social Services (collectively "Division"). On appeal, the Pensioners raise eight points contending that the trial court erred in calculating the damages awarded, erred in calculating the attorneys' fees awarded, object to a number of rulings made by the court regarding the distribution of retroactive benefits, and contend the court erred in ruling that any surplus left after distribution should be directed back into the Blind Pension Fund ("Fund").

WE REVERSE AND REMAND

Division Three holds:

- (1) The five-year statute of limitations does not preclude the recalculation of payments before the statutory period, merely precludes actual recovery of damages for those years. Because pension payments are based, in part, on the prior year's payment amount, to properly determine the damages the court must recalculate the pension payments that should have been made going back to the first alleged underpayment in 1994. The court shall then determine the appropriate amount of damages that can be collected by using the annual amounts starting in 2001 forward. Any actual amounts paid to the Pensioners from 2001 forward will then be deducted to determine the amount of actual damages.
- (2) The trial court did not err in noting that damages are paid from the Fund and awarding post-judgment interest in the event that damages cannot be paid from the Fund within 60 days of court approval of the Motion to Pay.
- (3) Given our holding regarding recalculation of damages, on remand, the trial court is directed to recalculate the judgment for attorneys' fees.

- (4) Given our holding regarding recalculation of damages, on remand, the trial court is directed to amend the Claims Process Order to conform to the proper damages calculation.
- (5) The Court will not issue an advisory opinion as to what happens in the event the Fund has insufficient funds to pay damages and the Missouri Legislature declines to appropriate additional funds.
- (6) The trial court did not err in determining that any surplus remaining after the distribution of damages will be placed back in the Fund.

Opinion by Gary D. Witt, Judge

November 17, 2015

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