

IN THE SUPREME COURT OF MISSOURI

MC DEVELOPMENT COMPANY, LLC,)	
)	
Plaintiff/Appellant,)	Supreme Court No. SC90022
)	
v.)	Twenty-Fourth Judicial
)	Circuit
CENTRAL R-3 SCHOOL DISTRICT)	St. Francois County
OF ST. FRANCOIS COUNTY,)	
)	
Defendant/Respondent,)	
)	
FARMINGTON R-7 SCHOOL DISTRICT)	
OF ST. FRANCOIS COUNTY,)	
)	
Defendant/Cross-claimant,)	
)	
DAMON BLACK, ASSESSOR OF)	
ST. FRANCOIS COUNTY,)	
)	
Defendant/Respondent.)	

**Appeal from the Circuit Court of St. Francois County
Honorable Scott E. Thomsen**

SUBSTITUTE BRIEF OF DEFENDANT/CROSS-CLAIMANT FARMINGTON R-7 SCHOOL DISTRICT OF ST. FRANCOIS COUNTY

**CLINTON B. ROBERTS, #20809
ROBERTS & KINSKY, L.L.C.
16 West Columbia
P.O. Box 430
Farmington, MO 63640
(573) 756-4576
(573) 756-7089
Attorney for Appellant
Farmington R-7 School District**

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cite 268 (Mo. App. 1953).

JURISDICTIONAL STATEMENT

The underlying cause of action in this case is a petition and cross-claim by Appellant MC Development Company, LLC and Farmington R-7 School District respectively for declaratory judgment that Appellant MC Development Company, LLC's land lies within the territory of Appellant Farmington R-7 School District.

On the 6th day of November, 2007, a judgment was entered in favor of Respondent Central R-3 School District by the Honorable Scott E. Thomsen, Special Judge, in the Twenty-Fourth Judicial Circuit, St. Francois County, Missouri, said circuit being under the jurisdiction of the Eastern District of Missouri Court of Appeals.

Appellant Farmington R-7 School District appeals the issuance of the judgment because the Trial Judge erroneously declared and applied the law, the Missouri Constitution, statutory law and case law, in creating a school district with non-contiguous territory.

Because this appeal does not involve the validity of a treaty or statute of the United States, or a statute or provision of the Constitution of the State of Missouri, or the construction of a revenue law, or the title to any state office, jurisdiction for this appeal is in the Missouri Court of Appeals, Eastern District. Mo. Const., Article V, Section 3.

The Supreme Court on May 5, 2009 ordered transfer from the Missouri Court of Appeals Eastern District.

STATEMENT OF FACTS

On April 7, 2005, Appellant MC Development Company, LLC (hereinafter referred to as “Appellant MC Development”) filed an action for declaratory judgment against Farmington R-7 School District of St. Francois County and Central R-3 School District of St. Francois County (hereinafter “Farmington R-7” and “Central R-3”) and the Assessor of St. Francois County asking the court to determine that certain property (“parcel 13”) owned by Appellant MC Development was within the territory of Farmington R-7 (LF 1-4). Appellant MC Development filed an amended petition on April 6, 2007 and Appellant Farmington R-7 filed its cross-claim against Respondent Central R-3 on April 27, 2007. (LF 60-64, LF 90-93). Trial was held on this matter on September 20 and 21, 2007. (LF 13). Both Appellant MC Development and Respondent Central R-3 filed requests for opinion of the court. (LF 99-103).

Respondent Central R-3 became a reorganized district in August 1966 and contained the former Esther School District, the Elvin School District and the Flat River School District; also, School District #26 became part of Central R-3. (T. 182, L.17-22; 183, L. 2-7; T. 291, L. 1-4).

The subject property is identified on the Assessor’s maps as parcel 13 and was generally identified as parcel 13 during trial. (LF 184, 186) Assistant Superintendent Desmond Mayberry of Respondent Central R-3 stated that he searched of the records of Respondent Central R-3 and found no legal description which described the entire boundaries of Respondent R-3, but found the description of the 1967 boundary change between Farmington R-7 and Central R-3. (T. 276, L. 24-T. 277, L. 5; T 282. L 12-22).

At trial Central R-3 School District did not produce any maps or plats of its district or parts of its district that would show parcel 13, although as Mayberry testified the District did have such maps or plats. (T. 283, L.1-T. 285, L.21-22; T. 287 L19-22). Assistant Superintendent Desmond Mayberry admitted on cross-examination that all of the maps or plats in the possession of Respondent Central R-3, prior to its request to have the DESE map changed, show parcel 13 is not located in the Central R-3 district. (T. 288 L.15-T. 289, L. 9). Appellant MC Development issued a subpoena for Assistant Superintendent Mayberry to produce any maps in the Respondent's possession related to the case at deposition and no maps were produced. (LF 136-137; T. 22, L. 2-6).

The maps of Respondent Assessor of St. Francois County (hereinafter referred to as "Assessor"), show parcel 13 as an island of property being taxed as part of Respondent Central R-3's territory, which is completely surrounded by property taxed as part of Appellant Farmington R-7's territory. (LF 184-188). The Assessor's office taxed parcel 13 originally to School District Number 26, which became part of Respondent Central R-3 with reorganization, from 1950 forward. (T.182, L.14-22). The Assessor's maps of this area from 2001 forward, which show the boundary lines of the Farmington R-7 School District and the Central R-3 School District, demonstrate the Assessor has changed the size of this island of property and location of the boundary lines of Central R-3, moving property next to the subject property adjoining parcel 13 from territory being taxed to Central R-3 to Farmington R-7. (Exhibits 1, 1A, 2, 2A, 3A; LF 184-188).

Appellant MC Development purchased parcel 13 from Donald and Mary Coker (the spelling found in the transcript; the Judgment uses the spelling Kocher) as part of a

larger tract. The Coker's used their property for farming including parcel 13 and also had their residence on the property adjacent to Hillsboro Rd. This residence is shown on the assessor's maps as being within the territory taxed to Farmington R-7 and the Coker's four boys attended school at Farmington R-7. This area of St. Francois County was rural and farm land with no subdivision when Coker's sons went to school. The Parcel 13 was farm land. Thus, back in 1950 or before, the Assessor taxed part of the Coker farm land to school districts that became part of Central R-3 (parcel 13) and other farm land and the residence to Farmington R-7. Parcel 13 never had a residence on it. (T. 66, L. 21-T. 67, L. 20; T.213, L.1-T.214, L. 4; T. 216, L. 19-24; T. 221, L. 11-15; Exhibits 2, 3A, LF 186,188). The subject property is 1.9 miles from the closest Farmington R-7 school and 5.1 miles to the closest Central R-3 school. (T. 226, L. 16-22).

Dr. B. Ray Henry, retired President of Jefferson College and former superintendent of Appellant Farmington R-7, testified as to Farmington R-7 and Central R-3 reorganization and as to the events surrounding 1967 boundary change between Appellant Farmington R-7 and Respondent Central R-3. (T. 192, L. 16-T. 211, L. 14). The 1967 boundary change affected the properties adjacent to the northern and eastern boundaries of the subject property. (LF 180). Dr. Henry testified that he was superintendent of Appellant Farmington R-7 from 1965 through 1970. (T. 192, L. 25-T. 5). Dr. Henry was also a graduate of Flat River High School which became part of Respondent Central R-3's territory upon reorganization. (T. 193, L. 11-13). Dr. Henry stated that Appellant Farmington R-7 became a reorganized district in 1966 when Farmington School District #37 merged with the Doe Run District. (T. 194, L. 11-T. 195,

L. 5). Dr. Henry stated that at the time of reorganization, Appellant Farmington R-7 created a map or plat of its new boundaries, which became part of its records. (T. 195, L.21-T. 196, L. 5).

Dr. Henry further testified that a boundary change occurred between Respondent Central R-3 and Appellant Farmington R-7. (T. 193, L. 15-T. 194, L. 5). The boundary change in 1967 was a two-part change, property from Ste. Genevieve R-2 School District and Central R-3 was transferred to Farmington R-7. All property transferred adjoined and adjoined Farmington R-7. As required by statute the question of changing the boundaries of the district was placed before the voters of the districts. (T. 197, L. 25-T. 198, L. 2, L.F.196-198). Dr. Henry stated that as part of the boundary change election process, Farmington R-7 had a surveyor prepare a legal description of the area of the change and to take the existing school map and plot the change of boundary requested. (T. 195, L. 25-T. 196, L. 8). Dr. Henry identified Exhibit 7 as the legal description and map prepared by Appellant Farmington R-7's surveyor for presentation for voter approval. (T. 196, L. 9-T. 197, L. 21; LF 196-198). Dr. Henry testified that on the plat or map in Exhibit 7, the dark shaded area is what was brought into the district and the dark line is the boundary of Farmington R-7 School District. (T. 196, L. 9-T. 197, L. 20). This plat or map shows the parcel 13 property within the boundaries of Farmington and not within Central R-3. This plat was published as part of the required notice to the voters of the forthcoming election to change the district's boundaries.

Dr. Henry testified that the boundary change passed in Farmington R-7 School District and the Ste. Genevieve R-2 District, but did not pass in Central R-3 School

District and, therefore, as to Respondent Central R-3's territory, based upon a petition from the residents of the affected area, Appellant Farmington R-7 filed an appeal before the Board of Arbitration. (T. 198, L. 5-13). The boundary line change maps or plats previously identified on Exhibit 7 were presented to the Board of Arbitration. At the Board of Arbitration the Superintendent of Central R-3 School District, Gerald Crabtree, appeared with their attorney Robert McElrath as well as the Board President T.J. Fulton. (T. 199, L. 12-19; T. 209, L. 15-24) No objection was made by Central R-3 School District representatives that the plat or map prepared by Appellant Farmington R-7, Exhibit 7, did not represent the current boundaries of the two districts. (T. 199, L. 20-24; T. 210, L. 1- 13).

Dr. Henry stated that the residents in the area of Central R-3 that sought the boundary change did so because the Farmington schools were much closer and the children would spend less time on a bus. (T. 200, L. 8-21)..

In addition, Dr. Henry identified Exhibit 17 as the budget for Appellant Farmington R-7 for the school year 1969-1970. (T. 202, L. 12-19). The last page of that document contains a map of the Farmington R-7 School District adopted by the Appellant Farmington R-7 School Board as the district map. (T. 202, L. 22-T. 203, L. 19). This map shows the subject property to be part of Farmington R-7. Dr. Henry further testified that the map adopted by Appellant Farmington R-7 contained no non-contiguous pockets of another school territory within Appellant Farmington R-7's district and further testified that a non-contiguous pocket would not have been allowed. (T. 203, L. 23-T. 204, L. 1; T. 201, L. 1-7, L.F. 250).

Assistant Superintendent Desmond Mayberry admitted that the Assessor could not locate property or change property from one district to the next regardless of how long it had been taxed within the wrong district. (T. 280, L. 14-T. 282, L. 5).

Assistant Superintendent Desmond Mayberry stated that to his knowledge the last change between the districts' boundaries occurred with the 1967 boundary change. (T. 291, L. 10-21). Assistant Superintendent Mayberry testified that he found no map of 1966-67 which was the first year of the reorganized district nor any map adopted by Respondent Central R-3 after its reorganization. (T. 291, L. 5-T. 292, L. 2). Dr. Henry, on the other hand, identified the maps in Exhibits 7 and 17, which were prepared and maintained by Farmington R-7 as being the boundaries of the Appellant Farmington R-7 district and Exhibit 17 as being the map adopted by Appellant Farmington R-7 after the 1967 boundary change. (T. 202, L. 12-T. 203, L. 16).

Tom Quinn, the Director of School Governance for the Department of Elementary and Secondary Education (DESE), enumerated six ways in which boundary lines of school districts could be changed. (T. 144, L. 16-T. 145, L. 7) Mr. Quinn agreed that the assessor could not change the boundary of a school district. (T. 148, L. 19-23). Mr. Quinn, however, testified when he received a boundary question, he deferred to the Assessor's records of the county of the school district no matter what the historical records of the school district showed. (T. 134, L. 7-T. 135, L. 12). Mr. Quinn testified that no statutory provision for DESE's deference to the assessor's records existed and that there was no written policy or regulation of DESE to allow for deference. (T. 124, L. 14-17). Mr. Quinn stated that deference to the assessor's records was his standard

response when he was a superintendent and it has continued to be his standard response as Director of School Governance. (T. 118, L. 16-T. 119, L. 10). Mr. Quinn stated that he defers to the assessor records because he assumes that the assessor keeps accurate records. (T. 140, L. 25-T. 141, L. 5).

Mr. Quinn testified that in 1995 there was a concerted effort state-wide to get the 524 school districts in Missouri's boundaries properly identified on the map maintained by DESE. (T. 149, L. 10-21) Mr. Quinn agreed that this effort is reflected in the 1995 DESE map, Exhibit 5. (T. 149, L. 22-T. 150, L. 3). The 1995 DESE map indicated in its legend that it was funded, underwritten and produced by the Missouri County Assessors, DESE, Missouri State Tax Commission, Missouri State Census Data Center and Geographic Resources Center. (LF 191). The legend further states that it had been updated by the St. Francois County Assessor on February 5, 1995. Id. This 1995 DESE map shows parcel 13 in Farmington R-7, not in Central R-3.

Mr. Quinn further testified that in 2005 Respondent Central R-3's Assistant Superintendent Desmond Mayberry called Mr. Quinn and asked for him to direct the boundary line of Respondent Central R-3 and Appellant Farmington R-7 be changed on the DESE map on the basis of the tax assessor's records. (T. 150, L. 14-T. 151, L. 5). Mr. Quinn stated he received a letter from Assistant Superintendent Desmond Mayberry, Exhibit 18, with the tax assessor's records. (LF 254-255; T. 125, L. 25-T. 126, L. 19). Mr. Quinn stated he mailed a letter, Exhibit 19, to the University of Missouri, which maintains the DESE maps, and therein requested the change and acknowledged that he knew it would create an island but to make the change regardless. (LF 256; T. 127, L. 8-

128. L. 20). Mr. Quinn acknowledged that this change would create a non-contiguous island of the Central R-3 School District surrounded by Appellant Farmington R-7. (T. 128, L. 18-23; T. 151, L. 13-16). There was no notification by Mr. Quinn or anyone else to the Appellant Farmington R-7 of this change. (T. 129, L. 11-13).

Donald Truska, licensed surveyor since 1986, testified regarding the school district location of the subject property according to the records of the Appellant Farmington R-7, Respondent Assessor, and DESE. (T. 32, L. 11-T. 79, L. 6; T. 87, L. 9-T. 101, L. 25). Mr. Truska created overlays of each map in order to allow the court to compare the differences of boundary lines in each map as compared to the location of the subject property. Mr. Truska coded Appellant Farmington R-7's territory in green, Respondent Central R-3's territory in red and Appellant MC Development's entire property in black cross-hatch. (T. 42, L. 2-5; T. 48, L. 3-7). Mr. Truska identified Exhibit 28 as being a 2006 St. Francois County Assessor's map, Exhibit 1 as being a 2001 St. Francois County Assessor's map, and Exhibit 2 as being a 2003 St. Francois County Assessor's map. (T. 37, L. 16-T. 39, L. 3). Mr. Truska identified via the overlays the change in boundaries of Appellant Farmington R-7 and Respondent Central R-3 according to Respondent Assessor's maps. (T. 43, L. 7-20; T. 44, L. 23).

Mr. Truska testified that in order to put the DESE maps to the same scale as the assessor maps, he found the government corners, the location of Hillsboro Road and the railroad tracks on each to use as reference for the resizing of the DESE maps to the same scale as the assessor maps. (T. 48, L. 10-T. 49, L. 17). Mr. Truska identified Exhibit 5 as the 1995 DESE map and Exhibit 5A as the overlay he created to show the district

boundaries. (T. 45, L. 24-T. 46, L. 7; T. 47, L. 20-24). Mr. Truska verified via overlay 5A that the DESE 1995 map shows the subject property as a part of the Farmington R-7 School District. (LF 189-193; T. 51, L. 14-19). Mr. Truska demonstrated to the Trial Court the difference between the 1995 DESE map and the 2006 Assessor's map. (T. 52, L. 1-15).

Mr. Truska identified Exhibit 7A as the overlay of the plat that was attached to the notification of the property to be detached from Respondent Central R-3 and attached to Appellant Farmington R-7 in the 1967 boundary change. (T. 52, L. 18-T. 53, L. 13). Exhibit 8 was the legal description of the area to be changed from Respondent Central R-3 territory to Appellant Farmington R-7. (T. 54, L. 8-14). The description in Ex. 8 only indicated what the boundary line would be as to that particular property described and he was not able to determine what the boundary was beyond that description. (T. 54, L. 15-T. 55, L. 4). Mr. Truska stated that Exhibit 7 provided a surrounding boundary line of the school districts. (T. 56, L. 1-15). Mr. Truska testified that according to the plat accompanying the notice in Ex. 7, the subject property was part of Appellant Farmington R-7, although the 2006 Assessor's map shows it as part of Respondent Central R-3. (T. 57, L. 15-19).

Mr. Truska identified Exhibit 9 as a map created by him and Ellen Mell using the coordinates DESE had on its public website for the boundary line of the districts represented by yellow line and the blue line being that of the subject property. (T. 57, L. 23-T. 17). Exhibit 11 were the screen shots of the DESE website to get to the coordinates of the boundary line near the subject property. (T. 59, L. 1-25). Mr. Truska testified that

the DESE website map most closely resembled the 1995 DESE map but not any of the Assessor's maps. (T. 64, L. 7-15). Mr. Truska stated that according to the DESE website the subject property is within the territory of Appellant Farmington R-7. (T. 65, L. 17). Ellen Mell testified that there was no disclaimer on the DESE website. (T. 225, L. 25-T. 226, L. 4).

Steve Hutchison, a surveyor, testified on behalf of Respondent Central R-3. (T. 293-354). Mr. Hutchison reviewed the following documents to form his opinion: 1) the information that accompanied the 1967 vote for the change in boundary; 2) the DESE maps; and 3) copies of the 1966 tax records. (T. 297, L. 9-15). Mr. Hutchison stated that he "was asked to see if [he] could find a boundary line, a definite boundary line." (T. 300, L. 5-8). Mr. Hutchison asserted that Exhibit E is the plat he prepared from his analysis of the documents provided to him. (T. 304, L. 15-21). Mr. Hutchison asserted that it was his opinion that the red line on Exhibit E was the boundary between the two districts. (T. 319, L. 3-7). Mr. Hutchison stated that he relied solely on the records of the Assessor in determining his opinion. (T. 331, L. 17-22). Further, Mr. Hutchison admitted that he could have used coordinates to determine the boundary if he had them, but he did not. (T. 309, L. 2-15) Mr. Hutchison indicated that he did not check the DESE public website, the County Clerk's office, or either of the School District offices for any records. (T. 336, L. 25-T. 337, L. 2). Mr. Hutchison agreed that parcel 13 is shown by the Assessor's maps as a non-contiguous pocket. (T. 341, L. 4-6). Mr. Hutchison further agreed that the legal description in Exhibit 8 could only give the school district the property described within the described area, but not any property outside the description.

Parcel 13 lays outside the boundary of the described area in Exhibit 8 (T. 344, L. 21-T. 345, L. 1). As to Exhibit E, Mr. Hutchison stated that “outside the yellow, I do not know where the school district lines are. Inside the gray, I am only saying that that’s what the 1966 tax records showed as Central R-3.” (T. 352, L. 17-20).

The court entered judgment in favor of Respondent Central R-3 on November 6, 2007. (LF 138-148). Appellant MC Development filed its Notice of Appeal on December 13, 2007 and Appellant Farmington R-7 filed its Notice of Appeal on December 17, 2007. (L.F 14, 149-182). The Missouri Court of Appeals Eastern District Southern Division by its opinion of January 27, 2009 reversed the Trial Court and remanded. This Court sustained Respondent’s Motion to Transfer on May 5, 2009 and ordered this matter transferred to the Missouri Supreme Court.

POINTS RELIED ON

**I. THE TRIAL COURT ERRED IN DECLARING THE SUBJECT
PROPERTY PART OF THE CENTRAL R-3 SCHOOL DISTRICT IN
VIOLATION OF ART. 9, § 1(b), MO. STATUTES AND CASE LAW,
BECAUSE THE JUDGMENT CREATED A DISTRICT WITH NON-
CONTIGUOUS TERRITORY.**

Liberty Oil Company v. Director of Revenue 813 S.W.2d 296, loc cit. 297 (Mo. banc
1991)

State, at Inf. of Taylor ex rel. Schwerdt v. Reorganized School Dist. R-3, Warren County
257 S.W. 2d 262, loc. cite 268 (Mo. App. 1953).

State ex rel. Evans v. Brown Builders Elec. Co., Inc. 254 S.W. 3d 31, 35 (Mo. banc 2008)

State, Inf. of Danforth v Merrell 530 S.W.2d 209, 213 (MO. banc 1975)

Missouri Constitution Article 9, § 1(b) (1945)

Missouri Revised Statutes Section 162.222 (1963)

Missouri Revised Statutes Section 162.223 (1969)

Missouri Revised Statutes Section 162.431 (1963)

**II. THE TRIAL COURT ERRED IN DECLARING THE SUBJECT
PROPERTY AS PART OF CENTRAL R-3 SCHOOL DISTRICT FOR THE
REASON THAT THE JUDGMENT ERRONEOUSLY DECLARED OR
APPLIED THE STATUTORY LAW AS SET FORTH IN § 162.841 RS MO.
AND CASE LAW BY RELYING ON THE ASSESSOR'S RECORDS AND
MAPS AS OPPOSED TO THE DISTRICT'S OWN RECORDS OR PLATS.**

State ex rel. King City, Mo. R-1 School District v. Ueligger, 430 S.W.2d 433, 435

(Mo.App. W.D. 1968)

Missouri Revised Statutes Section 162.841 (1963)

**III. THE TRIAL COURT ERRED IN DECLARING THE SUBJECT
PROPERTY AS PART OF CENTRAL R-III SCHOOL DISTRICT FOR
THE REASON THAT SAID DECISION IS AGAINST THE WEIGHT OF
THE EVIDENCE BECAUSE THE TRIAL COURT RELIED ON THE
ASSESSOR'S RECORDS AS OPPOSED TO THE DISTRICT'S OWN
RECORDS OF THEIR BOUNDARIES.**

Murphy v. Carron, 536 S.W.2d 30, 32 (Mo.banc 1976)

Golden Delta Enterprises, L.L.C. v. US Bank, 213 S.W. 3d 171, 172 (Mo.App.E.D. 2007)

Missouri Revised Statutes Section 162.841 (1963 and 2000)

Missouri Revised Statutes Section 162.181(1963)

Missouri Revised Statutes Section 162.191 (1963)

ARGUMENT

STANDARD OF REVIEW

Review of an appeal of a request for declaratory judgment is governed by the standard set forth in Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. Banc 1976), which requires the court to reverse the judgment of the Trial Court only if there is not substantial evidence to support it, the judgment is against the weight of the evidence, or it erroneously declares or applies the law. Golden Delta Enterprises, L.L.C. v. US Bank, 213 S.W.3d 171, 172 (Mo. App. E.D. 2007).

I. THE TRIAL COURT ERRED IN DECLARING THE SUBJECT PROPERTY PART OF THE CENTRAL R-3 SCHOOL DISTRICT IN VIOLATION OF ART. 9, § 1(b), MO. STATUTES AND CASE LAW, BECAUSE THE JUDGMENT CREATED A DISTRICT WITH NON-CONTIGUOUS TERRITORY.

The Trial Court erroneously applied or ignored the law when it declared Parcel 13 to be part of the territory of Respondent Central R-3 because the subject property is non-contiguous to the remainder of the territory of Respondent Central R-3. (LF 138-148).

The Missouri Constitution, Article 9 § 1(b) states: “Specific schools for any contiguous territory may be established by law.” As opposed to the United States Constitution, which is a grant of powers, the Missouri Constitution is a limitation on the state legislature’s powers; thus, the General Assembly cannot enact any law in

contradiction to the Missouri Constitution. State, Inf. of Danforth v Merrell 530 S.W.2d 209, 213 (MO. banc 1975).

This law, both statutory and case, is clear that the territory of a school district must be contiguous. According to Dr. B. Ray Henry, retired President of Jefferson College and former superintendent from 1965-1970 of Farmington R-7 School District, Farmington R-7 and Central R-3 both became reorganized districts in 1966. (T.194, L. 14-T. 195, L. 1; T. 200, L. 2-7) In 1966, the county board of education had the authority to divide an unreorganized district and place the district's territory into different reorganization plans; however, the territory for a proposed reorganization was required to be contiguous. §162.171 RSMo (1963). §162.222, dealing with consolidation of districts, states in pertinent part: "Notwithstanding the provisions of any section in chapter 162, in proceedings limited to the consolidation of two or more adjoining districts. . ." (Emphasis Supplied). Section 162.222 RSMo (1963). §162.223 was enacted in 1969 and also deals with consolidation. The pertinent language therein states: "When the voters in any two or more adjacent districts. . . desire to consolidate and form a new district. . ." Both the *Merriam Webster Dictionary* and *Dictionary.com* note that adjacent and adjoining are synonyms. Thus, we have a history of the General Assembly requiring contiguous districts as required by the Missouri Constitution.

No statute exists allowing for a school district to have non-contiguous territory. Although §162.431, which allows for boundary changes, is silent on the issue, this statute must be given the meaning intended by the legislature. "In determining the intent and meaning of statutory language, 'the words must be considered in context and sections of

the statutes in *pari materia*, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words.’ [State ex rel. Wright v. Carter](#), 319 S.W.2d 596, 600 (Mo. banc 1959). ‘The provisions of a legislative act are not read in isolation but construed together, and if reasonably possible, the provisions will be harmonized with each other.’ [Bachtel v. Miller County Nursing Home Dist.](#), 110 S.W.3d 799, 801 (Mo. banc 2003).” [State ex rel. Evans v. Brown Builders Elec. Co., Inc.](#) 254 S.W. 3d 31, loc cite 35 (Mo. banc 2008).

If §162.431 is read to allow non-contiguous pockets such as parcel 13, it would violate the Missouri Constitution, as noted above. Thus, this Court faces two choices: declare § 162.431 in violation of the Missouri Constitution and thus nullify the statute or interpret that statute by considering the legislative intent as shown above so that the statute will conform to the limitations placed on it by the Missouri Constitution.

“Deference due the General Assembly requires that doubt be resolved against nullifying its action if it is possible to do so by any reasonable construction of that action...”

[Liberty Oil Company v. Director of Revenue](#) 813 S.W.2d 296, loc cit. 297 (Mo. banc 1991).

As noted, §162.431 is silent concerning this issue. However, to construe §162.431 to allow non-contiguous pockets like parcel 13 leads to an illogical result. Parcel 13 is 1.9 miles from the closest Farmington school and 5.1 miles to the closest Central school. The parcel is even an island within the development being created by MC Development. Thus, children within that development, perhaps right across the street, will be going to Farmington while the neighboring children will be going to Central. Children living to

the north of this parcel along Hillsboro Road, in the direction towards Central's district, have long been served by Farmington and are within the Farmington district. Other scenarios can be imagined. It is well known that some districts have superior reputations. Would it be logical to allow a subdivision in south St. Louis County to petition for a boundary change to the Ladue School District?

Our courts have previously decided that non-contiguous areas lead to an irreconcilable situation and an illogical result: “. . . irreconcilable situation would have resulted, for in that event the district would have been divided into two separate and non-contiguous areas. In proceedings to release parts of school districts for annexation to other districts, the law does not contemplate that two portions of a district should be left entirely segregated from each other.” State, at Inf. of Taylor ex rel. Schwerdt v. Reorganized School Dist. R-3, Warren County 257 S.W. 2d 262, loc. cite 268 (Mo. App. 1953).

The Judgment clearly violates the Missouri Constitution, Art. 9, § 1(b) as well the Missouri statutory and case law. It must be reversed with directions to the Trial Judge to enter judgment placing parcel 13 into Farmington R-7.

II. THE TRIAL COURT ERRED IN DECLARING THE SUBJECT PROPERTY AS PART OF CENTRAL R-3 SCHOOL DISTRICT FOR THE REASON THAT THE JUDGMENT ERRONEOUSLY DECLARED OR APPLIED THE STATUTORY LAW AS SET FORTH IN § 162.841 RS MO. AND CASE LAW BY RELYING ON THE ASSESSOR’S RECORDS AND MAPS AS OPPOSED TO THE DISTRICT’S OWN RECORDS OR PLATS.

The Trial Judge correctly noted in his Judgment that the county assessor is not vested with authority to establish or to determine school district boundaries, yet he finds that the Assessor’s maps and records are the best evidence to determine where the school boundaries are. (Legal File ¶s 23 and 25, Page 143). The Trial Judge also finds that the plats maintained by the respective school districts are evidence, but not determinative of the school district’s boundaries and thus, by logical conclusion, the plats maintained by each school district do not constitute the best evidence of the school district’s boundaries in this case.

The Trial Judge reaches these conclusions even though §162.841 requires the district secretary to record a correct plat of the district and to officially notify the county clerk of any changes to the plat (Emphasis supplied). This statute, therefore, places the official duty of maintaining the county boundaries by a plat on each school district. The case law denotes that the duties of the assessor are simply ministerial and that it is the duty of the assessor to tax the land to the district as contained in the school boundary plat. State ex rel. King City, Mo. R-1 School District v. Ueligger 430 S.W. 2d 433, 435 (Mo. App. W.D. 1968). The Assessor’s office did not create its taxing maps in this fashion,

however. The Assessor office first created its maps only in 1985 long after the non-contiguous pocket was created and added the school district lines to these maps. These maps were created from the Assessor's records, not from the school districts plats or maps. (T. 168, L. 3-T. 169, L. 18.).

The Trial Judge, therefore, erred by misinterpreting or ignoring the statutory and case law cited in deciding that the assessor's records are the best evidence of the boundary between the two school districts.

The Trial Court makes his determination amazingly when the evidence demonstrates, in fact, that the assessor's records are in error and unreliable. First, however, it is obvious as to why parcel 13 and other property next to parcel 13 was not corrected by the assessor (transferred to Farmington R-7 from Central R-3) until rather recently. The error began in 1950 or before. (T. 182, 183). At that time, this property was taxed to school district #26. School district #26 apparently became part of Esther School District and then with reorganization, part of Central R-3. This part of St. Francois County was at that time rural and farmland. Parcel 13 and other property adjacent to it that formed this non-contiguous island was used for farmland and no one resided on this property. (T. 66, L. 21-T. 67, L. 20; T.213, L.1-T.214, L. 4; T. 216, L. 19-24; Exhibits 2, 3A, LF 186,188). Therefore, when the tax bills came in there was no need to complain to the assessor as no children were affected. As demonstrated on Exhibits 2, 2(A) and 3, the Coker residence immediately adjacent to this island is in the Farmington R-7 School District and the Coker children went to school in Farmington as did children up and down. in that area. (T. 221, L. 11-15). As this area developed from farmland to

suburbia and subdivisions, these errors were caught by the assessor's office as demonstrated by the change in the assessor's records beginning in the year 2001. As Exhibits 1, 1(A), 2, 2(A) and 3 demonstrate, the assessor began to transfer property from this island and place it in the territory of Farmington R-7. He also changed the boundaries of Central R-3 in the southeastern part of Central R-3 near the subject property. These changes are prompted by these properties changing from simply farmland to residential, and the children now being affected by the historical error of the Assessor's office. These very changes in the assessor's records in just a few years prior to trial should have been a red flag advising the Trial Court that the assessor's records were, in fact, unreliable and in error.

The Trial Court also ignored the uncontradicted testimony of Dr. Henry. At the time of the boundary change in 1967 election, where property was removed from the territory of Central R-3 to the territory Farmington R-7, the Farmington R-7 School District had a surveyor prepare a survey of its boundaries, which survey was set forth in a plat. This plat was attached to public election notices, to the appeal between Farmington R-7 and Central R-3, at which time Central R-3's attorney, Superintendent and Board President were present and did not object that this did not show Farmington R-7 boundaries. Farmington R-7 also had a plat attached to its 1969/1970 school budget which also shows parcel 13 in Farmington R-7 School District. (T. 192, L. 16- 211, L. 14-193, L. 15- 194, L. 5; 195, L. 21-T. 196, L. 5; T 197, L. 25- 198, L. 2; 199, L. 12-19; T. 209, L. 15-24; T. 199, L. 20-24; T. 210, L. 1- 13).

Thus, the Trial Court ignored or misapplied § 162.841 and the law announced in State ex rel. King City, MO. R-1 School District v. Ueligger 430 S.W. 2d 433, 435 (Mo. App. W.D. 1968), in holding that the plat maps of Farmington R-7 did not demonstrate the established boundaries of that school district and by holding the assessor's records and maps more persuasive as to the location of the boundaries of the Districts.

The Trial Court also ignored the admissions of Assistant Superintendent Desmond Mayberry that Central R-3 did not bring the maps or plats maintained by it to trial and that all of the maps or plats in the possession of Respondent Central R-3, prior to its 2005 request to have the DESE map changed, show parcel 13 was not located in Central R-3, but in Farmington R-7. (T. 288, L.15-T. 289, L. 9).

III. THE TRIAL COURT ERRED IN DECLARING THE SUBJECT PROPERTY AS PART OF CENTRAL R-III SCHOOL DISTRICT FOR THE REASON THAT SAID DECISION IS AGAINST THE WEIGHT OF THE EVIDENCE BECAUSE THE TRIAL COURT RELIED ON THE ASSESSOR'S RECORDS AS OPPOSED TO THE DISTRICT'S OWN RECORDS OF THEIR BOUNDARIES.

Review of an appeal of a request for declaratory judgment is governed by the standard set forth in Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. Banc 1976), which requires an appellant court to reverse the judgment of the Trial Court as to this point only if there is not substantial evidence to support it and the judgment is against the weight of the evidence,. Golden Delta Enterprises, L.L.C. v. US Bank, 213 S.W.3d 171, 172 (Mo. App. E.D. 2007). The judgment is against the weight of the evidence because the Trial Judge held the Assessor's maps and records more persuasive to his decision when the evidence demonstrates these records are in error, and by logical conclusion, he holds the Districts maps and plats not persuasive when the evidence establishes that the Farmington R-7 plat of 1967 was unchallenged in the evidence and Central R-3 attempted to prevent its maps or plats of its territory from coming into evidence because its maps or plats do not include parcel 13 in the territory of Central R-3.

First, the Trial Judge holds the maps and records of the Assessor's office more persuasive when the evidence demonstrates, in fact, that the assessor's records are in error and unreliable. It is further obvious as to why the non-contiguous property as

shown only on the Assessor's records was not corrected by the assessor until rather recently. This part of St. Francois County was rural and farmland. Parcel 13 and other property adjacent to it formed a non-contiguous island. This property was used for farmland and no one resided on this property. (T. 66, L. 21-T. 67, L. 20; T.213, L.1-T.214, L. 4; T. 216, L. 19-24; Exhibits 2, 3A, LF 186,188). Therefore, when the tax bills were received no one complained to the assessor as no children lived on this property. As demonstrated on Exhibits 2, 2(A) and 3, the Coker residence immediately adjacent to this island is in the Farmington R-7 School District and the Coker children went to school in Farmington as did children up and down Hillsboro Rd. in that area. But as the area developed from farmland to suburbia and subdivisions, these errors were caught by the assessor's office as demonstrated by the change in the assessor's records and maps beginning in the year 2001, see Exhibits 1, 1(A), 2, 2(A) and 3, which show the assessor began transferring property from this island and placing it in the territory of Farmington R-7 for tax purposes. Also, the southeast boundaries of Central R-3 are changed to Farmington R-7. These changes are prompted by these properties becoming residential and with children now being affected by the historical error of the Assessor's office. This evidence, that assessor's records and maps within the few years prior to trial were changing in the very area of St. Francois County adjacent to parcel 13, should have been a red flag advising the Trial Judge that the assessor's records were, in fact, unreliable and in error. The error began in 1950 or before. (T. 182,183). At that time, the subject property was taxed to school district #26. As noted in **Argument II** above, school district #26 became part of Central R-3 when it was created by reorganization in August

of 1966. The Assessor's office only created a map starting in 1985. No one could see that this non-contiguous existed until then.

Second, Central R-3 attempted to hide that its records, including its maps or plats, did not include parcel 13 in its territory. At trial Central R-3 School District did not produce any maps of its District although Assistant Superintendent Desmond Mayberry testified the District did have such maps. (T. 283, L.1-T. 285, L.21-22; T. 287 L19-22). Assistant Superintendent Desmond Mayberry admitted on cross-examination that all of the maps or plats in the possession of Respondent Central R-3 show the subject property is not located in Central R-3. (T. 288 L.15-T. 289, L. 9). Appellant MC Development issued a subpoena for Assistant Superintendent Mayberry to produce any maps in the Respondent's possession related to the case to deposition and no maps were produced. (LF 136-137; T. 22, L. 2-6). This evidence should have told the Trial Judge that the Assessor's records are unreliable because the assessor's records do not agree with Central R-3 and Farmington R-7 records and maps as to parcel 13. More importantly, this evidence means the records of Central R-3 and Farmington R-7 are in agreement as to parcel 13.

Third, the Trial Judge ignores the testimony of Tom Quinn, the Director of School Governance for the Department of Elementary and Secondary Education (DESE). He testified that in 1995 there was a concerted effort state wide to get the 524 school districts in Missouri's boundaries properly identified on the map maintained by DESE. (T. 149, L. 10-21) Mr. Quinn agreed that the effort is reflected in the 1995 DESE map, Exhibit 5. (T. 149, L. 22-T. 150, L. 3). The 1995 DESE map indicated in its legend that it was

funded, underwritten and produced by the Missouri County Assessors, DESE, Missouri State Tax Commission, Missouri State Census Data Center and Geographic Resources Center. (LF 191). The legend further states that it had been updated by the St. Francois County Assessor on February 5, 1995. This 1995 DESE map does not show the parcel 13 as part of the territory of Central R-3, but as within the territory of Farmington R-7. Again, the Trial Judge should have seen that this unbiased effort by DESE and the St. Francois County Assessor to get these District boundaries correct as a red flag that the Assessor's records and maps, that he says were persuasive, were in error.

Finally, Farmington R-7 did have a map of the area which was based on a survey made right after both Districts are reorganized, in 1967. This plat was attached to public election notices, the decision of the appeal between Farmington R-7 and Central R-3, at which time Central R-3's attorney, Superintendent and Board President were present and did not object to the plat, and attached it to the Farmington R-7 1967 school budget. (T. 192, L. 16- 211, L. 14-193, L. 15- 194, L. 5; 195, L. 21-T. 196, L. 5; T 197, L. 25- 198, L. 2; 199, L. 12-19; T. 209, L. 15-24; T. 199, L. 20-24; T. 210, L. 1- 13). As noted above, this plat actually agrees with the maps and plats of Central R-3 as to the subject property, yet the Trial Judge finds it not to be persuasive. Also, the Trial Judge gives no weight to the only testimony as to any records and plats as to how the records were prepared, presented and keep; that is, the testimony of Dr. B. Ray Henry.

This Court will remember that §162.841 requires the district secretary to record a correct plat of the district and to officially notify the county clerk of any changes to the plat.

Dr. Henry, former President of Jefferson College in Hillsboro, Missouri, was the superintendent of Appellant Farmington R-7 School District for the years 1965-1970. (T. 193, L. 3-4; T. 206, L. 8-17). Dr. Henry testified that Appellant Farmington became a reorganized district in 1966 when it joined with the Doe Run District. (T. 194, L. 11-16). Under section 162.161 RSMo (1963), the county board of education had the duty to submit to the state board of education specific written plans for reorganization which were to “include charts, **maps**, and statistical information necessary to document properly the plan for reorganized districts”. Once the state board of education approved the plan of reorganization, the plan was submitted to the vote of the residents of the proposed districts for approval by a simple majority. Sections 162.181 and 162.191 RSMo (1963). In conformance with state statute, Dr. Henry stated when it was proposed Appellant Farmington would reorganize with Doe Run that a map was prepared for the reorganization election for the newspapers. (T. 195, L. 25-T. 196, L. 5). Dr. Henry testified that Exhibit 7 was the Appellant Farmington’s reorganized boundary with the proposed change shaded in. (T. 196, L. 15-T. 197, L. 20). As such, this is the map of the 1967 annexation approved by the voters in the reorganization election.

Further, Dr. Henry by his testimony established that Respondent Central’s Board at the time of the boundary change further knew that Parcel 13 was part of Appellant Farmington’s District. Dr. Henry testified that at the appeal hearing before the Board of Arbitration the Superintendent of Central R-3 School District, Gerald Crabtree, appeared with their attorney Robert McElrath as well as the Board President T.J. Fulton. (T. 199, L. 12-19; T. 209, L. 15-24). Dr. Henry testified that officials of Central R-3 were aware

of the maps/plats presented and did not voice an objection to the pre-1967 boundary line even though Central R-3 objected to the boundary change. (T. 199, L. 5-T. 24; T. 209, L. 15-T. 210, L. 16). Again, Assistant Superintendent Desmond Mayberry for R-3 admitted his District had this 1967 map or plat, but did not produce it at trial. Additionally, in the Appeal for Boundary Change submitted to the Board of Arbitration, Item #5 under the heading “Reasons for the Change”, states, “The territory in question is almost surrounded by the Farmington [R7] district.” (LF 245). Had parcel 13 not already been a part of the Farmington R7 District at the time of this 1967 appeal, the territory being annexed in 1967 would not have been “almost surrounded”.

The Judgment, by declaring the assessor’s records and maps persuasive and , therefore, the records of both Districts unpersuasive and by giving no weight to the only witnesses as to how any records as to the subject property, the 1967 plat of the Farmington R-7 District territory, were prepared, were used in public elections and in an appeal between these two District, must be reversed and remanded with instructions that the Trial Judge must place the subject property within the territory of Farmington R-7.

CONCLUSION

The Missouri Constitution, Statutes and case law require school districts to be contiguous. A reorganized district must have contiguous territory. The Assessor's records and maps are in error which is clear from multiple lines of evidence, including that right up to the time of trial, the Assessor's office is transferring property to Farmington R-7 from Central R-3 in this area. The historical evidence from the Farmington R-7 School District, an entity which is statutorily bound to maintain a correct plat, and the testimony of Dr. B. Ray Henry established that the subject property is within Appellant Farmington R-7's boundaries. As a school district, not the assessor, is to maintain the plat of the district, more weight should be given the identified records of the district. As school districts are required to be composed of contiguous property, the judgment of the court must be reversed and Parcel 13 be declared within the territory of Appellant Farmington R-7.

ROBERTS & KINSKY, L.L.C.
Attorneys for Appellant/Plaintiff
P.O. BOX 430
16 WEST COLUMBIA
FARMINGTON, MO 63640
(573) 756-4576; FAX (573) 756-4576
cbr@swbell.net

By: _____
CLINTON B. ROBERTS, #20809

AFFIDAVIT OF SERVICE OF APPELLANT’S BRIEF

STATE OF MISSOURI)
)
COUNTY OF ST. FRANCOIS) SS.

CLINTON B. ROBERTS, being first duly sworn, does state that on the 26th day of May, 2009, two (2) copies on paper and one (1) copy on disk of the foregoing Separate Appellant’s Brief were mailed by United States mail, postage prepaid to:

Bianca L. Eden
P.O. Box 740
Court House Square
Hillsboro, MO 63050-0740

Holly Joyce
1 N. Washington, Ste. 102B
Farmington, MO 63640

Mr. Thomas A. Mickes
555 Maryville University Dr., Ste. 240
St. Louis, MO 63141

Clinton B. Roberts
ROBERTS & KINSKY, L.L.C.
P.O. Box 430
16 West Columbia
Farmington, MO 63640
(573) 756-4576
(573) 756-7089

Subscribed and sworn to before me this _____ day of May, 2009.

Notary Public

AFFIDAVIT OF COMPLIANCE

STATE OF MISSOURI)
) SS.
COUNTY OF ST. FRANCOIS)

CLINTON B. ROBERTS, being first duly sworn, does state as follows:

1. That Separate Appellant’s Brief complies with the limitations set forth in Missouri Supreme Court Rule 84.06(a) and Eastern District Rule 360;
2. That the number of words in Separate Appellant’s Brief is 8,325;
3. That the disk of the Separate Appellant has been scanned for viruses and is virus-free.

Clinton B. Roberts
ROBERTS & KINSKY, L.L.C.
P.O. Box 430
16 West Columbia
Farmington, MO 63640
(573) 756-4576
(573) 756-7089

Subscribed and sworn to before me this 26th day of May, 2009.

Notary Public

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