Introduction

Respondent County of Cole files this brief to address only Point III of the Brief of Appellant, Treasurer of the State of Missouri. The County of Cole joins in the arguments presented in the Respondent's Brief of the Receiver, Julie Smith, in her Points I, II, IV, V, VI, VII, VIII, IX and X.

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Jurisdictional Statement

The trial court determined that the statute giving the Treasurer the power to bring an action to collect unclaimed property (§ 447.575) from the courts (§ 447.532) is an unconstitutional delegation of authority under Article IV, § 15 of the Missouri Constitution. The trial court held that such an action under the statute would exceed the limits placed on the duties of the state treasurer by the constitutional provision that states: "No duty shall be imposed on the state treasurer by law which is not related to the receipt, investment, custody and disbursement of state funds and funds received from the United States Government." Mo. Const. Art. IV, § 15. This case, then, involves the validity of the Missouri Uniform Disposition of Unclaimed Property Act and the construction of a state constitutional provision defining the state treasurer's duties. Article V, § 3 grants this Court exclusive jurisdiction to hear such matters.

Statement of Facts

In the litigation that created the fund at issue, *Southwestern Bell v. Public Service Commission*, CV189-0808CC, Southwestern Bell, on July 21, 1989, petitioned for review and for stay of a decision of the Public Service Commission that required Southwestern Bell to implement lower rates.[1] [2] (L.F. 18-21). On September 5, 1989, Judge Brown entered a stay, and ordered Southwestern Bell to pay into the registry of the court that portion of telephone charges collected that would be in excess of rates that would have been collected but for the stay. (L.F. 40-41). Judge Brown rejected the parties contention that Southwestern Bell's posting of a bond would be sufficient to insure that funds would be available and guarantee prompt payment of any refund due ratepayers upon final disposition, stating:

> In the event a refund is ordered and in the event that there are a certain number or ratepayers who cannot be readily identified, the posting of such a bond would leave in the hands of Southwestern Bell that portion of the excess rates collected which are not claimed, resulting in a windfall to Southwestern Bell. Allowing such a windfall would not be consistent with such a final determination that a refund is due. *Any unclaimed funds should eventually escheat to the State of Missouri under such circumstances* and should under no circumstances be returned to Southwestern Bell. (L.F. 38).

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[1] The County of Cole accepts with minor amendments the Statements of Facts of the Treasurer.

[2] The Office of Public Counsel filed a petition for writ of review of the same decision on the same date. L.F. 24-27. This case, No. CV189-0809CC was consolidated with Southwestern Bell's case, No. CV189-0808CC, on the date of filing. L.F. 32.

(Emphasis added).

With regard to the interest rate to be paid on any excess rate charges collected, Judge Brown decided that "the best way to insure that ratepayers refunds are protected is to secure possession of such funds in the Court and to see that such funds are invested at the maximum interest rates appropriate under the circumstances." (L.F. 39). The monies were deposited into the registry of the court pursuant to § 483.310.1, RSMo. (L.F. 45). Judge Brown's initial order appointing receiver dated September 15, 1989, specifically states that the funds were placed in interest bearing accounts, "same being required by § 483.310.1." *Id.*

Judge Brown concluded that a receiver should be appointed to perform those administrative duties which, absent the appointment of a receiver, would be performed by the clerk. (L.F. 46). His reasons for this conclusion included: 1) it would not be "fair to impose upon the Clerk of the Circuit Court, herself, the additional responsibilities that are engendered by a close monitoring of the investment in these funds as they accrue from month to month;" 2) "the responsibility for administering these funds must fall upon the undersigned judge and those of his staff who work with him the closest;" 3) the Court "intends that the investment decisions with respect to the funds be retained by the Court itself;" and 4) the Court "intends that these responsibilities be exercised by the Court with the assistance of someone in whom this Court has complete confidence and also by one who is readily available to the Court." (L.F. 46). Although the appointed receiver, Jackie Blackwell, was already a Deputy Circuit Clerk in Cole County, L.F. 47, Judge Brown ordered that she receive $500.00 per month in compensation for her duties as a receiver. *Id*. The Court "reserve[d] unto itself the final investment decisions"; ordered that interest received from such investments be paid over directly to the receiver and that from such interest the receiver "shall first pay .

. . the lawful expenses and fees regarding the administration of the funds as may from time to time be authorized to be paid or allowed by the Court." (L.F. 47).

On September 26, 1989, Judge Brown dismissed the petitions for review with prejudice pursuant to the terms of a settlement agreement reached by Southwestern Bell, the Office of Public Counsel and the Public Service Commission. (L.F. 48-49). Upon learning of the dismissal, intervenors MCI, AT & T, and Comptel moved the circuit court "to correct its Order dismissing this proceeding" to show that the dismissal did not "approve, ratify, or condone the non-unanimous Settlement Agreement . . . nor otherwise modify the Report and Order issued by the Missouri Public Service Commission." *Southwestern Bell v. The Honorable Thomas J. Brown, III*, 795 S.W.2d 385, 386 (Mo. banc 1990). On October 24, 1989, twenty-nine days after his order of dismissal, Judge Brown entered another order, clarifying that his September 26, 1989 Order merely acknowledged that the Petitions for Writ of Review had been dismissed, but did not ratify or condone the settlement agreement and, to the extent the September 26, 1989 Order suggested that the Order Granting Stay is dismissed, the "same is set aside." L.F. 54-55. Southwestern Bell sought a writ of prohibition, arguing that Judge Brown lacked jurisdiction to enter the October 24, 1989 Order. This Court determined that Judge Brown's actions were within his jurisdiction because the October 24, 1989 Order came 29 days after the entry of the order dismissing the writ with prejudice and within the time during which the trial court retains control over its judgments pursuant to Rule 75.01. 795 S.W.2d at 389.

On April 8, 1991, Judge Brown entered an order approving settlement and directing distribution of the stay fund. (L.F. 57-72). This April 8 order "fully and finally resolve[d] all remaining issues in Consolidated Case No. CV-189-0808." (L.F. 72). On April 26, 1993, Judge Brown ordered that funds

held in the previously created receivership be transferred to a successor receivership. (L.F. 85-90). According to the Order, "these funds are being held and administered so that refunds may be made therefrom to utility customers." (L.F. 85). And "valid claims submitted and approved by the Court shall be paid by the receiver." (L.F. 88).

In determining that a successor receivership was needed, the court stated that it was "apparent that it will be necessary to hold and administer these funds for a lengthy period of time." (L.F. 85). The court re-appointed Jackie Blackwell as receiver, relying on the same factors as it had for the appointment of the initial receiver. The court again reserved unto itself the investment decisions on the fund. (L.F. 88). It ordered that interest received from investments be paid directly to the receiver who "shall first pay therefrom the lawful expenses of administration of the funds as may from time to time be authorized to be paid or allowed by the court; there shall next be paid therefrom such amounts as may be lawfully requisitioned by the Circuit Clerk of Cole County in subsection 2 of Section 483.310 RSMo and the remaining balance shall be paid into the general revenue fund of Cole County as provided in subsection 2 of Section 483.310 RSMo." (L.F. 89).

Judge Brown ordered the receiver to pay interest income from the fund to Cole County throughout the years 1993 to 2001. (L.F. 91-101).

On July 16, 2001, the Attorney General notified the receiver that he was preparing, on behalf of the Treasurer, a lawsuit to recover unclaimed property, namely, the fund at issue in this case. (L.F. 117-18). On July 20, 2001, the receiver filed a "Motion and Petition for Joinder of Additional Parties and for Relief in an Ancillary Adversary Proceeding in the Nature of Interpleader and for Other Relief." L.F. 102-118. On that same date, Judge Brown 1) considered the Motion and Petition, 2) sustained the Motion and

Petition, 3) ordered a separate trial and proceedings with regard to "Ancillary Adversary Proceeding Questions," 4) determined that the "only issues for determination in the Ancillary Adversary Proceedings shall be the Ancillary Adversary Proceeding Questions as defined in the Receiver's Motion and Petition," 5) ordered the State Treasurer added as a party to the Ancillary Adversary Proceedings, 6) ordered the State Treasurer to file a pleading asserting any claims which she as State Treasurer had under the Uniform Disposition of Unclaimed Property Act, 7) added the Cole County Circuit Clerk and Cole County as parties, 8) ordered the Cole County Circuit Clerk and Cole County to file a pleading asserting any claims they may have to the fund or the interest income from the fund, 9) authorized and directed the receiver to participate in the Ancillary Adversary Proceedings, and 10) permitted the receiver's attorney to be compensated for his services and expenses. (L.F. 119-122).

After determining 1-10, above, Judge Brown recused himself on his own motion because of the "issues raised by the Attorney General in Osage County Circuit Court Case No. 01CV330548 [the quo warranto case previously filed by the Attorney General and pending against Judge Brown with regard to this fund and now before this Court on application for transfer in SC 84301] and to remove questions or suggestion of any question about [him] participating in the determination of the Ancillary Adversary Proceeding Questions." (L.F. 121). Judge Brown retained jurisdiction, however, "with respect to all other issues and matters in this case, including but not limited to the investment and reinvestment of the funds herein and the determination of the holding or disposition of any funds which are determined in the Ancillary Adversary Proceedings to not be required to be disbursed to the State Treasurer by reason of the Uniform Disposition of Property Act." (L.F. 121-22). Following notification of Judge Brown's recusal, this Court assigned the Honorable Ward B. Stuckey to this case. (L.F. 9).

The Treasurer was served with both the motion and order on July 23, 2001. (L.F. 123.) By special appearance only, she filed a "Motion to Vacate and Disqualify" on August 20, 2001. (L.F. 124-161). She alleged that Judge Brown did not have personal jurisdiction over her necessary to enter any order directed toward her, as she was never a party to the original action and was never served with summons or with petition seeking relief; Judge Brown had no legal authority to order her, as a non-party, to file a lawsuit against hand-picked defendants and on issues chosen by the Judge; Judge Brown did not have subject matter jurisdiction to enter the July 20, 2001 order, in that a final, unappealed judgment had long-since been entered in this case; the receiver, as a non-party, had no standing to file motions designed to continue the maintenance and expenditure of receivership funds for the benefit of any person or entity other than the owners of those funds; and Judge Brown was disqualified by Supreme Court Rule 51.07 from issuing the July 20 order because he had a substantial interest in the outcome and a close interest in or relationship with the movant. *Id*. The State Treasurer did not file an answer in the "Ancillary Adversary Proceedings." On October 5, 2001, she noticed her "Motion to Vacate and Disqualify" for hearing on October 18, 2001. (L.F. 10).

On October 12, 2001, the receiver filed a motion for judgment on the pleadings. (L.F. 185-191). On that same date, the receiver noticed her motion for hearing on October 18, 2001. (L.F. 192-194). The State Treasurer filed suggestions in opposition and objections on October 18, 2001. (L.F. 195-308).

On November 27, 2001, the trial court overruled the State Treasurer's Motion to Vacate. (L.F. 318). He determined that Judge Brown continued to have jurisdiction over Consolidated Case No. CV189-808CC and CV189-809CC and that any person who has a claim against the fund must assert it,

as well as any claims against the receiver, in Consolidated Case No. CV189-808CC and CV189-809CC, "and not in any other case in this Court, or in any administrative proceeding." (L.F. 316-317). With regard to such a claim by the Treasurer, the trial court held that the State Treasurer's duties are limited by the Missouri Constitution, Article IV, § 15, to those "related to the receipt, investment, custody and disbursement of state funds and funds received from the United States." The court determined that the funds in question were not state funds or funds received from the United States and, therefore, "the Treasurer has no standing or right to assert claims against the funds in Consolidated Case Nos. CV189-808CC and CV189-809CC or against the Receiver with respect to those funds." (L.F. 317). The court further held that the funds "are subject to disposal by the Circuit Court of Cole County," are "subject to disposition as determined by the Circuit Court of Cole County," and "are not required to be disbursed to the Treasurer pursuant to the provisions of the Uniform Disposition of Unclaimed Property Act." (L.F. 317-18). Finally, the court held that interest on the funds "may be disbursed and used as provided in Section 483.310.2 RSMo with the balance of such interest to be paid to Cole County." (L.F. 318). This timely appeal followed. (L.F. 312).

Point Relied On

III.

The trial court did not err when it determined that the Circuit Court had the authority to appoint a receiver under Supreme Court Rule 68.02 to administer the funds, deposited in the Court registry, in that Section 483.310, RSMo does not require that the Circuit Court appoint the Circuit Clerk as custodian of funds in the Circuit Court's registry because Section 483.310, RSMo, is not mandatory as to who may invest and administer such funds, further it is the legislative purpose of this section to permit the interest generating from the fund to be used for the public good, and the Circuit Court did not interfere with the Circuit Clerk's discretion under Section 483.310, RSMo to make purchases for the public good under Section 483.310, RSMo.

Christian Disposal, Inc. v. Village of Eolia, 895 S.W.2d 632 (Mo. App. E.D. 1995)

§ 483.310, RSMo 2000

State ex rel. Taylor v. Wade, 231 S.W.2d 179 (Mo. 1950)

Standard of Review

"The position of a party moving for judgment on the pleadings is similar to that of a movant on a motion to dismiss; i.e., assuming the facts pleaded by the opposite party to be true, these facts are, nevertheless, insufficient as a matter of law." *State ex rel. Nixon v. American Tobacco Company, Inc.*, 34 S.W.3d 122, 134 (Mo. banc 2000). A motion for judgment on the pleadings should be sustained where no issue of material fact exists. *Angelo v. City of Hazelwood*, 810 S.W.2d 706 (Mo. App. E.D. 1991). A motion for judgment on the pleadings should be sustained if, on the basis of the pleading, the moving party is entitled to judgment in his favor as a matter of law. *Id*. at 707. Therefore, the review of the question of law by this Court is de novo and no deference to the judgment of the trial court is necessary. *Id*. at 707.

Argument

III.

The trial court did not err when it determined that the Circuit Court had the authority to appoint a receiver under Supreme Court Rule 68.02 to administer the funds, deposited in the Court registry, in that Section 483.310, RSMo does not require that the Circuit Court appoint the Circuit Clerk as custodian of funds in the Circuit Court's registry because Section 483.310, RSMo, is not mandatory as to who may invest and administer such funds, further it is the legislative purpose of this section to permit the interest generating from the fund to be used for the public good, and the Circuit Court did not interfere with the Circuit Clerk's discretion under Section 483.310, RSMo to make purchases for the public good under Section 483.310, RSMo.

The State argues under Section 483.310, RSMo, that the Circuit Clerk, and the Circuit Clerk alone, is vested with the authority to make investment decisions with regard to money deposited in the Circuit Court's registry. Under the Treasurer's reasoning, Section 483.310, RSMo, limits a Circuit Court's jurisdiction and discretion in the investment and/or disposition of funds that the same Circuit Court has ordered paid into its registry. The Treasurer's argument is legally incorrect. Section 483.310, RSMo, does not limit the Circuit Court's jurisdiction, since the requirements of the section are not mandatory by its terms and the Circuit Court's order does not limit the discretion, duties or privileges given the Circuit Clerk under Section 438.310.2, RSMo

In the underlying case[3], the Circuit Court appointed a receiver, rather than the Circuit Clerk, to oversee the administrative details of maintaining and investing the money that was deposited in the Circuit Court's registry. Such appointment was based upon an unusual need determined to exist by the Court after its considered judgment. In its Order, the Circuit Court determined that a receiver was necessary in light of the large amounts of money that were to be deposited repeatedly and regularly, and because the money deposited was to be held in the registry for a possibly "lengthy" period of time. (L.F. 45.)

The Circuit Court had the authority to appoint a receiver under Supreme Court Rule 68.01(a) under the following circumstances:

> Whenever in a pending legal or equitable proceeding it appears to the court that a receiver is necessary to keep, preserve and protect any business, business interest or property, including money or other thing deposited in court or the subject of a tender, the court, or any judge thereof in vacation, may appoint a receiver whose duty shall be to keep, preserve and protect, to the extent and in a manner that the court may direct, that which the receiver is ordered to take into receiver's charge. (Emphasis added.)

In accordance with Section 483.310, RSMo, the Court made a finding that an unusually large amount of money, would be deposited and held in the Court's registry for a "lengthy" period of time. (L.F. 45). The Court also prudently found that:

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[3] *Southwestern Bell v. Public Service Commission*, Case No. CV189-0808CC.

> The Court does not believe that it is fair to impose upon the Clerk of the Circuit Court herself, the additional responsibilities that are engendered by a close monitoring of investment of those funds, as they accrue from month to month, as such responsibilities would be over and above what would ordinarily be expected of the Clerk personally in the investment of funds;" (L.F. 46.)

The Court further found, based upon the existing and anticipated circumstances, that the Court should retain the investment decision making authority over these funds. (L.F. 46.) The Court correctly determined that under Supreme Court Rule 68.02 a receiver may administer these funds instead of the circuit clerk. (L.F. 46.) In its Order, the Circuit Court was also careful to note that even though the Circuit Clerk would not be personally administering the account, that the account would be administered in accordance with Section 483.310, RSMo. (L.F. 46.) Specifically, the receiver was directed to perform those administrative duties in relation to these funds which, absent the appointment of the receiver, would have been performed by the Circuit Clerk under the provisions of Section 483.310, RSMo.

The incorrect misinterpretation of Section 483.310, RSMo, proposed by the Treasurer contradicts the clear purpose of the legislature in enacting this statute. The Treasurer argues in its brief that the trial court erred when it found that the Circuit Court was justified in spending the interest of the funds in accordance with Section 483.310.2, RSMo because only the Circuit Clerk may make such election. This argument flies in the face of the statutory purpose of Section 483.310, RSMo. Section 483.310, RSMo was enacted to relieve the Circuit Court of some of the burden of administration of sums of money deposited into the Circuit Court's registry. Section 483.310, RSMo, provides for an alternative agent (the

Circuit Clerk) to protect, and by investment even to increase, the funds or property deposited in the Circuit Court registry.[4] This statute was not intended to reduce the Circuit Court's jurisdiction, authority or discretion in the receipt, control, maintenance or disposition of funds in the Circuit Court's registry.[5] It is obvious from the language of the statute and amendments in subsequent years that the legislature intended to increase the safe administration/investment alternatives that a circuit court, clerk or a receiver had in the protection and investment of money deposited in the Circuit Court's registry. While it is evident that the legislature did not intend that the judge, circuit clerk or receiver have unlimited discretion to invest such funds, the legislature, through this statute, has established a legislative framework that permits the continued and appropriate exercise of discretion by the Circuit Court after a finding that funds will be deposited in the registry in unusual amounts, at frequent intervals and for a lengthy period of time. See Section 483.310.1, RSMo.

It is important to note that the legislature could have required certain mandatory steps to be taken in regard to all property deposited into the Circuit Court registry. The legislature chose not to do so in Section 483.310, RSMo, by using language which is directory and not mandatory. In determining whether the requirements of a statute are mandatory (that one must do what it requires or suffer a punishment) rather

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[4] Nor does Section 483.310, RSMo limit the Circuit Court's authority to appoint a receiver under Sup. Ct. R. 68.01(a) to keep, preserve and protect the money deposited in a Circuit Court's registry.

[5] It should be noted that the legislature did not specifically change the title of the depository where the money was to be placed. The money and/or property still must be deposited into the Circuit Court registry, and not into a "Circuit Clerk" registry.

than directory, the language and context of the statute must be evaluated. See *Christian Disposal, Inc. v. Village of Eolia*, 895 S.W.2d 632 (Mo. App. E.D. 1995). As the Court in *Eolia* noted:

> To determine whether a statute is mandatory or directory, the general rule is when a statute provides what results shall follow a failure to comply with its terms, it is mandatory and must be obeyed. However, if the statute merely requires certain things to be done and, yet, does not prescribe what results will follow if those requirements are not met, such a statute is merely directory.

Id. at 634, citing *State ex rel. 401 N. Lindbergh Assoc. v. Ciarleglio*, 807 S.W.2d 100, 104 (Mo. App. E.D. 1990).

To determine whether a statute's requirements are mandatory or directory, the intent of the legislature should be determined by the context of the statute and the terms and remedies that the legislature provided. See *School District of Mexico, Mo. v. Maple Grove School District*, 359 S.W.2d 743, 746 (Mo. 1962). The failure of the legislature to include a penalty for the failure to comply with the terms of the statute is evidence that the statute is directory rather than mandatory. See *Garzee v. Sauro*, 639 S.W.2d 830, 832 (Mo. 1982). Further, the use of terms by the drafters in the statute is considered important in determining the legislative intent. If the legislature employed the term "shall" instead of "may" this may be considered some evidence that the legislature intended the statute to be mandatory. *State ex rel. Taylor v. Wade*, 231 S.W.2d 179, 181 (Mo. 1950).

In Section 483.310, RSMo, it is evident that the legislature did not intend this statute to be

mandatory, nor was it intended to reduce the equitable powers of the Circuit Court.[6] It should be noted that the statutory term directing the circuit clerk to invest money is by the adjective "may," as opposed to "shall." In fact, Section 483.310.2, RSMo, was specifically amended in 1989 to replace the word "shall" with the word "may" regarding how the Clerk may spend the money. See Historic and Statutory Notes for Section 483.310, V.A.M.S. This amendment is evidence that the legislature does not intend to impose any mandatory requirements on the clerk or on the circuit court in the exercise of their discretion. *Hagler v. Director of Revenue*, 968 S.W.2d 704, 706 (Mo. banc 1998). Further, the Court had discretion to order, or not order, the Circuit Clerk to deposit such funds in various "safe investments" under Section 483.310.1, RSMo. (... "The court may make an order directing the clerk to deposit such funds...".) There is no mandatory language in Section 483.310, RSMo that the Circuit Court must appoint the Circuit Clerk to deposit and invest the funds under Section 483.310.2, RSMo, nor is there any prohibitory language preventing appointment of a receiver. In sharp contrast to the Treasurer's view that the Circuit Clerk is indispensable under this statute, the plain language used by the legislature instead reveals that while potentially increasing the Circuit Clerk's role in handling funds in the Circuit Court's registry, Section

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[6] Another primary rule of statutory construction is that a statute should not be construed to render it unconstitutional or to require an otherwise absurd result. *Spradlin v. City of Fulton*, 982 S.W.2d 255, 258-259 (Mo. banc 1998). The legislature should not be presumed through misconstruction to be violating the constitutional prohibition against improperly reducing a Circuit Court's judicial powers in equity under the doctrine of the separation of powers. See Article II, Section 1, Missouri State Constitution; *State ex rel. York v. Locker*, 181 S.W. 1001 (Mo. 1916).

483.310, RSMo is in no way reducing the Circuit Court's jurisdiction, powers, duties and discretion in regard to that fund. There is simply no requirement that the Circuit Court must appoint the circuit clerk, and only the circuit clerk, to manage Court Registry funds; instead, that is only an available option that the Circuit Court may (and does) use in the ordinary course of business.

It is anticipated that the Treasurer will argue that Section 483.310.1, RSMo directs or requires that the interest be returned to the principle because of the use of the term "shall" used in the sentence that disposes of the interest earned in Section 483.310.1, RSMo. A remarkable similar situation was addressed by this Court in *Christiansen Disposal v. Village of Eolia*, 895 *supra* at 632. In *Eolia*, a contract of a waste disposal business with a city was terminated without a two year statutorily required notice. Since the business had not provided some information required under Section 260.247, RSMo, the city argued that the business was estopped from invoking the two year notice requirement. This Court disagreed, noting that the purpose of the statute was to provide a "terminated" business with sufficient notice to make necessary "business adjustments." *Id*. at 634. In response to the city's argument that the statute used the term "shall" in regards to its reporting requirement this Court noted:

> Although "shall" when used in a statute will usually be interpreted to command the doing of what is specified, the term is "frequently used indiscriminately and courts have not hesitated to hold that legislative intent will prevail over common meaning." *Id*. at 634.

The Court also noted that the statute in *Eolia* (as with Section 483.310) was not mandatory because the statute did not "prescribe" a penalty for a failure to comply with its terms. *Id*. at 634. The intent of Section 483.310, RSMo is not to limit the Circuit Court's jurisdiction, it is rather to use the interest

generated by the funds deposited in the Circuit Court's registry for public purposes.

Further, there is little or no difference between Section 483.310.1 or .2, RSMo except that a party makes an application to invest the money under Section 483.310. (L.F. 70). The Circuit Court complied with Section 483.310.1, RSMo and invested the money. (L.F. 46). The Clerk, a receiver or the Circuit Court has the discretion to invest the funds in identical investment opportunities under either Section 483.310.1 or Section 483.310.2. The Treasurer's contention that the filing of an application transforms the property deposited in the Circuit Court's registry which would turn the fund from a fund that the interest could be used to purchase items for public purposes to a fund which would sit fallow and unproductive. Such a result makes no legislative sense. In Section 483.310 the legislature recognized that the county could use the interest from the funds in the Circuit Court's registry to a fund worthy of public purposes. Whether the Circuit Court, Clerk or a receiver administers the funds, the purpose of Section 483.310, RSMo is to protect the funds and use the interested generated by the funds to achieve a public good.

The Treasurer suggests that the Circuit Court's own Order some how deprives the Circuit Clerk of the "election" to make investment decisions. However, as previously explained the Circuit Court is under no compulsion to surrender its jurisdiction to supervise the property in its own registry, and the Treasurer offers no plausible argument for why it should. The Treasurer's argument that the Clerk is deprived of some "right" to manage the Court Registry is similarly without basis. The Circuit Clerk's only real "authority" under the statute is her right to use some of the interest generated to purchase items for the use of the public. See Section 483.310.2, RSMo.

In summary, there is nothing in the Order of the Circuit Court in this case which would deprive the clerk of any discretion or authority belonging to the Circuit Clerk under Section 483.310, RSMo. The

clerk has duties, authority and discretion to deposit and invest funds in the registry only if the Circuit Court "may make an order" to that effect (Section 483.310.1, RSMo), and the Clerk's authority to access the interest on such funds to make authorized purchases is fully protected. (Section 483.310.2, RSMo). The legislature's purpose was to permit the Circuit Court, clerk or a receiver to use the interest of the funds deposited in the Circuit Court's registry for the public good. Nothing in Section 483.310, RSMo, or any other provision of law requires the Circuit Court of Cole County to appoint only the Cole County Circuit Clerk to control and invest funds in the Court's registry; nor does any provision of law otherwise limit the Circuit Court's jurisdiction and discretion to appoint an appropriate receiver to administer funds held in the Court's registry, particularly in the unusual and peculiar circumstances of this case.

Conclusion

The trial court did not err when it found the Circuit Court properly appointed a receiver and was not required to appoint the Circuit Clerk to make the investment decisions.

Respectfully submitted,

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CERTIFICATE OF ATTORNEY

I hereby certify that the foregoing Brief complies with the provisions of Special Rule No. 1(b), and that:

(A) It contains 5,811 words, as calculated by counsel's word processing program;

(B) A copy of this Brief is on the attached 3 1/2" disk; and that

(C) The disk has been scanned for viruses by counsel's anti-virus program and is free of any virus.

_____

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Respondent County of Cole's Brief and a 3 1/2" disk containing this Brief were sent U.S. Mail, postage prepaid to the following parties of record on this 21st day of May, 2002:

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