

IN THE MISSOURI SUPREME COURT

MC DEVELOPMENT COMPANY, LLC,	)	
	)	
Plaintiff/Appellant,	)	Case 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/Appellant,	)	
	)	
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 APPELLANT
MC DEVELOPMENT COMPANY, LLC

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JURISDICTIONAL STATEMENT

The underlying cause of action in this case is a petition 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 appeals the issuance of the judgment on the basis of lack of substantial competent evidence to support the judgment and misapplication of the law.

This matter is properly before the Supreme Court pursuant to Missouri Court Rule 83.04 on transfer after opinion by the Eastern District Court of Appeals.

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 asking the court to determine that certain property owned by Appellant MC Development is within the territory of Appellant Farmington R-7 School District (hereinafter referred to as “Appellant Farmington”). (LF 1-4). Appellant MC Development filed an amended petition on April 6, 2007 and Appellant Farmington filed its cross-claim 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).

The property in question (hereinafter referred to as “Parcel 13”) is identified on the Assessor’s map as parcel 13. (LF 184, 186) According to the maps of the Respondent Assessor of St. Francois County (hereinafter referred to as “Respondent Assessor”), Parcel 13 is an island of property taxed as part of Respondent Central’s territory which is completely surrounded by property taxed as part of Appellant Farmington’s territory. (LF 184-188). The Respondent Assessor’s map of this area showing the lines of the Farmington R-7 School District and the Central R-3 School District shows the subject property, which is now a centralized portion of the MC Development Company, L.L.C. property, as an island, with all the other property surrounding this island taxed to Farmington R-7 School District. Id.

Dr. B. Ray Henry, retired President of Jefferson College and former superintendent of Appellant Farmington R-7, testified 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 Parcel 13. (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 created a map of its new boundaries. (T. 195, l. 21-T. 196, l. 5).

Dr. Henry further testified that a boundary change occurred between Respondent Central and Appellant Farmington in 1967. (T. 193, l. 15-T. 194, l. 5). The boundary change in 1967 was a two-part change, a portion of the boundary change occurred with Ste. Genevieve R-2 School District and the other portion with Respondent Central. Id. 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). Dr. Henry stated that as part of the boundary change election process, Appellant Farmington had a surveyor prepare a legal description of the area of the change and to take the existing school map and plot the change in

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's surveyor for presentation for voter approval. (T. 196, l. 9-T. 197, l. 21; LF 196-198). Dr. Henry testified that on the plats or maps 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).

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's territory, Appellant Farmington 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 published as part of the election and 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 did not represent the current boundaries of the two districts. (T. 199, l. 20-24; T. 210, l. 1- 13).

In addition, Dr. Henry identified Exhibit 17 as the budget for Appellant Farmington 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 School Board as the district map. (T. 202, l. 22-T. 203,

l. 19). Dr. Henry further testified that the map adopted by Appellant Farmington contained no noncontiguous pockets of another school territory within Appellant Farmington's district and further testified that a noncontiguous pocket would not have been allowed. (T. 203, l. 23-T. 204, l. 1; T. 201, l. 1-7).

Respondent Central became a reorganized district in August 1966 and contained the Esther School District, the Elvin School District and the Flat River School District. (T. 200, l. 2-7; T. 291, l. 1-4) Assistant Superintendent Desmond Mayberry for Respondent Central stated that in his search of the records of Respondent Central he found no legal description which described the boundaries of Respondent from border to border. (T. 276, l. 24-T. 277, l. 5). At trial Central R-3 School District did not produce any historical maps of its District. (T. 273-354). Assistant Superintendent Desmond Mayberry admitted on cross-examination that all of the historical maps in the possession of Respondent Central show the parcel 13 as not being located in Central R-3. (T. 289, l. 1-9). 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).

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 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 as being the boundaries of the Appellant Farmington district and Exhibit 17 as being the map adopted by Appellant Farmington 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 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 stated that if the assessor's records showed a noncontiguous pocket of one district in the middle of another district, he would still defer to the assessor's records. (T. 135, l. 3-12).

Mr. Quinn further alleged that the Board of Arbitration had the power to grant a boundary change that would create a noncontiguous pocket or island of territory. (T. 132, l. 5-10).

Mr. Quinn testified that in 1995 there was a concerted effort state wide to get 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. Id. The 1995 DESE Map does not show parcel 13 as a noncontiguous pocket. (LF 192-193, Ex. 5 and 5A).

Mr. Quinn further testified that Respondent Central in 2005 via Assistant Superintendent Desmond Mayberry called Mr. Quinn and asked for him to direct the boundary line of Respondent Central and Appellant 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 noncontiguous island of the Central R-3 School District surrounded by Appellant Farmington. (T. 128, l. 18-23; T. 151, l. 13-16). There was no notification by Mr. Quinn to the Appellant Farmington of this ordered change. (T. 129, l. 11-13).

Donald Truska, licensed surveyor since 1986, testified regarding the school district location of Parcel 13 according to the records of the Appellant Farmington, 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 Parcel 13. Id. Mr. Truska coded Appellant Farmington's territory in green, Respondent Central'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 and

Respondent Central 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 Parcel 13 as a part of the Farmington R-7 School District. (LF 189-193; T. 51, l. 14-19). Mr. Truska demonstrated to the 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 and attached to Appellant Farmington in the 1967 boundary change. (T. 52, l. 18-T. 53, l. 13). Mr. Truska testified that Exhibit 8 was the legal description of the area to be changed from Respondent Central territory to Appellant Farmington. (T. 54, l. 8-14). Mr. Truska stated that 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 Ex. 7 provided a surrounding boundary line of the school districts. (T. 56, l. 1-15). Mr. Truska testified that

according to the map accompanying the notice in Ex. 7 Parcel 13 was part of Appellant Farmington although the 2006 Assessor's map shows it as part of Respondent Central. (T. 57, l. 15-19).

Mr. Truska identified Ex. 9 as a map created by himself 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 Parcel 13. (T. 57, l. 23-T. 17). Mr. Truska stated Ex. 11 were the screen shots of the DESE website to get to the coordinates of the boundary line near Parcel 13. (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 Parcel 13 is within the territory of Appellant Farmington. (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. (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 Ex. 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 Ex. 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 noncontiguous pocket. (T. 341, l. 4-6). Mr. Hutchison further agreed that the legal description in Ex. 8 could only give the school district of the property described within the described area, but not the district of any property outside the description. Parcel 13 lays outside the boundary of the described area in Ex. 8 (T. 344, l. 21-T. 345, l. 1). As to Ex. 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." (T. 352, l. 17-20).

The court entered judgment in favor of Respondent Central on November 6, 2007. (LF 138-148). Appellant MC Development filed its Notice of Appeal on December 13, 2007 and Appellant Farmington filed its Notice of Appeal on December 17, 2007. (L.F 14, 149-182).

POINTS RELIED ON

- I. THE TRIAL COURT ERRED IN DECLARING PARCEL 13 AS PART OF THE CENTRAL R-3 SCHOOL DISTRICT IN THAT SAID JUDGMENT MISAPPLIED THE LAW BECAUSE SCHOOL DISTRICTS ARE STATUTORILY AND CONSTITUTIONALLY REQUIRED TO BE COMPOSED OF CONTIGUOUS TERRITORY AND THE AUTHORITY TO DETERMINE SCHOOL BOUNDARIES LAYS WITH THE SCHOOL DISTRICTS AND VOTERS.**

Reorganized School District R-I of Crawford County v. Reorganized School

District R-III of Washington County, 360 S.W.2d 376 (Mo. App. E.D. 1962)

State ex rel. King City, Mo. R-1 School District v. Ueligger,

430 S.W.2d 433 (Mo. App. W.D. 1968)

State ex rel. Schwerdt v. Reorganized School Dist. R-3,

Warren County, 257 S.W.2d 262 (Mo. App. E.D. 1953)

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

Missouri Revised Statutes Section 162.171 (1963)

Missouri Revised Statutes Section 162.301 (1963)

Missouri Revised Statutes Section 162.431 (1963)

Missouri Revised Statutes Section 162.841 (1963 and 2000)

**II. THE TRIAL COURT ERRED IN DECLARING PARCEL 13 AS
PART OF THE CENTRAL R-3 SCHOOL DISTRICT IN THAT
SAID DECISION IS AGAINST THE WEIGHT OF THE
EVIDENCE BECAUSE SAID DECISION IGNORED THE
TESTIMONY OF DR. B. RAY HENRY AND THE RECORDS OF
APPELLANT FARMINGTON.**

State ex rel. Schwerdt v. Reorganized School Dist. R-3,

Warren County, 257 S.W.2d 262 (Mo. App. E.D. 1953)

Missouri Revised Statutes Section 162.161 (1963)

Missouri Revised Statutes Section 162.171 (1963)

Missouri Revised Statutes Section 162.181 (1963)

Missouri Revised Statutes Section 162.191 (1963)

ARGUMENT

- I. THE TRIAL COURT ERRED IN DECLARING PARCEL 13 AS PART OF THE CENTRAL R-3 SCHOOL DISTRICT IN THAT SAID JUDGMENT MISAPPLIED THE LAW BECAUSE SCHOOL DISTRICTS ARE STATUTORILY AND CONSTITUTIONALLY REQUIRED TO BE COMPOSED OF CONTIGUOUS TERRITORY AND THE AUTHORITY TO DETERMINE SCHOOL BOUNDARIES LAYS WITH THE SCHOOL DISTRICTS AND VOTERS.

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). In the case at hand, the trial court erroneously applied the law when it declared Parcel 13 to be part of the territory of Respondent Central without addressing the issue of Parcel 13 being noncontiguous to the remainder of the territory of Respondent Central. (LF 138-148).

At the trial on this matter both Appellant MC Development Company, LLC and Respondent Central R-3 School District requested an opinion of the court. (LF 99-103, SLF 1-3). Appellant specifically requested a finding from the court as to

whether, at the time of the 1967 change of boundary between Farmington R-7 School District and Central R-3 School District, Missouri law allowed for the creation of a non-contiguous pocket of school territory. (LF 2). The trial court in its judgment did not address this issue of law.

The 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. Section 162.171 RSMo (1963). At the time of the reorganization of Central R-3 and Farmington R-7 in 1966, it was not disputed that both districts were composed of contiguous land. However neither school district, nor DESE, could locate the original reorganization documents of either district. Dr. Henry, however, testified that Exhibit 7, the map used to depict the boundary change in 1967, was the reorganization map of Appellant Farmington, which had been modified to include the requested 1967 change. (T. 195, l. 18-T. 196, l. 24).

After a reorganization, any school district's boundaries can only be changed via another reorganization, a consolidation pursuant to section 162.221(which was replaced by section 162.223 in 1969) or a boundary change pursuant to section

162.431. (1963). The parties agreed that the last boundary change between Appellant Farmington and Respondent Central was the 1967 boundary change.

While section 162.431 setting forth the procedure for a statutory boundary change does not specifically state the district boundary must be contiguous, the law of Missouri does not contemplate that portions of a district be left entirely segregated from the other part of the district. State ex rel. Schwerdt v. Reorganized School Dist. R-3, Warren County, 257 S.W.2d 262, 268 (Mo. App. E.D. 1953). The very definition of “boundary” makes contiguousness a requirement. The Black’s Law Dictionary 6th Edition definition of “boundary” is “every separation, natural or artificial, which marks the confines or line of division of two contiguous properties.” Further, 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). The Missouri Constitution states that “specific schools for any contiguous territory may be established by law”. Mo. Const. Art. 9, § 1(b) (1945). Said section does not appear in the education article of the Missouri Constitution of 1875 and clearly establishes the limitation to the legislature that school boundaries are to be contiguous. Mo. Const. Art. XI, §1 (1875). Whenever possible, a court is to “employ a construction which will harmonize the statute with the constitution.” In re Link, 713 S.W.2d 487, 493 (Mo banc 1986). For section 162.431 RSMo to be in harmony with Article 9, §1(b) of

the Missouri Constitution, boundary changes must be required to result in a contiguous boundary for the districts being changed.

When a question arises as to the interpretation of a statute, the court must look to the other statutes which are *pari materia* to section 162.431 RSMo.

“Statutes which are in *pari materia* should be considered together and construed, if possible, to be in harmony and consistent, and to avoid an unreasonable result.” City of Creve Coeur v. Brame, 446 S.W.2d 173, 178 (Mo.App. E.D. 1969). Even without looking to the limitation placed on the legislature by the Missouri Constitution, the contiguous requirement of other school district statutes such as section 162.171 and section 162.211 demonstrates the intent of the legislature that a school district be composed of contiguous territory. Section 162.211 RSMo (1963) stated that a six-director district may be formed “by the voters of ...any two or more adjacent six-director school districts...or ...any two or more adjacent common school districts ...”

Historically, even prior to the change in 1945 to the Missouri Constitution providing that specific school be composed of contiguous territory, the Missouri legislature made provisions for contiguous districts. Section 10864 of the Missouri Revised Statutes (1909) provided that in the formation of town or city school district out of a common school district, if the creation of the town or city district bifurcated the remaining district the boundary of the town or city district would “include such territory outside the corporate limits” of the city, town or

village “as may, by the creation of the new district, be cut off from the district or districts to which it originally belonged.”

The court further erred by declaring that the records of the Assessor are more authoritative than the records of the school district. Children living along Hillsboro Road north of the subject property, all went to the Farmington R-7 School District. (T. 218, l. 5-T. 14). The Assessor’s map of this area showing the lines of the Farmington R-7 School District and the Central R-3 School District show the subject property, which is now a centralized portion of the MC Development Company, L.L.C. property, as an island, with all the other property surrounding this island taxed to Farmington R-7 School District. (LF 184-188). Testimony by Theresa Aubuchon of the Assessor’s office confirmed that there was no assessor’s map in existence until approximately 1985, at which time a map was drawn using the tax records books as the sole basis for its creation. (T. 168, l. 8-13). Recently, between 2001 and 2003, as demonstrated on plat overlay Exhibits 1a and 2a, the Assessor’s office has changed property contiguous with this island from being taxed to Respondent Central to being taxed to Appellant Farmington. (T. 42, l. 21-T43, l. 20; LF 185, 187). This change by the Assessor occurred without any statutory action to change the boundary.

Further no case has determined that the Assessor’s records are controlling for determining the school district boundary and courts have not found the assessment records particularly relevant when determining the school district of a particular property. See Reorganized School District R-I of Crawford County v.

Reorganized School District R-III of Washington County, 360 S.W.2d 376 (Mo. App. E.D. 1962). The duties of the assessor and county clerk in regards to recording reorganizations, consolidations and boundary changes are ministerial and the power to determine same lay with the school districts and voters of the districts. State ex rel. King City, Mo. R-1 School District v. Ueligger, 430 S.W.2d 433, 435 (Mo. App. W.D. 1968) citing State ex rel. Consolidated School District No. 1 and New Madrid Counties v. Jones, 8 S.W.2d 66 (Mo. 1928). As such it is clear that the authority over the boundaries of a district was solely with the county board of education, the school board of education and the voters of a district and not the county commission or the assessor. Nor did authority to establish boundaries lay with the County Superintendent as stated by the trial court. The powers and duties of the county superintendent were set forth in sections 179.040 and 179.050 RSMo (1963) and did not include establishing school district boundaries. The reorganized school district secretary in 1967, and the district secretary today, had the duty to record in its record books a correct **plat** of the district and to record any change of same and to provide a copy of said plat to the county clerk and county superintendent. Section 162.301 RSMo (1963) and section 162.841 RSMo (1963 and 2000). As such the court erred in its statement that the maps of the school district are not authoritative as the county superintendent was merely a second repository for the records in addition to the district itself. (LF 176).

Dr. Henry, superintendent of Farmington in 1967, testified that Defendant Farmington did maintain a plat of the district, drawn by a surveyor, and that same was maintained in its records. (TR 195, l. 18-T. 196, l. 8). Dr. Henry further testified that Exhibits 7 and 17 both contained the plats or maps that the school district had prepared of its boundaries and provided to both the county clerk and the general public. (T. 208, l. 13-T. 209, l. 14). Further Dr. Henry testified that after the boundary change in 1967 no noncontiguous island existed within the boundaries of Farmington R-7. (T. 201, l. 1-7). The overlay maps prepared and authenticated by surveyor Donald Truska as Exhibit 5A and 7A clearly show that the property identified as Parcel 13 on the assessor's maps was within the boundaries of the Farmington R-7 School District. (LF 193, 199)

As further evidence that the property identified as Parcel 13 on Exhibits 1, 2, and 3 is within the Farmington School District, 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. 204, l. 24; T. 209, l. 15-T. 210, l. 16). As under the law in 1967 a reorganized district was required to be of contiguous territory and "the law does not contemplate that two portions of a district should be left entirely segregated from each other," if the boundary change were to result in an unallowable island of Parcel 13, the officials at Central would have made that known as Central contested the boundary change appeal filed by Farmington R-7. see State ex rel. Schwerdt v. Reorganized School Dist. R-3, Warren County, 257

S.W.2d at 268. The lack of complaint from Central along with the decision of the Board of Arbitration granting the boundary change establishes that both Respondent Central and Cross-Appellant Farmington knew that Parcel 13 was part of Farmington's territory.

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". Also, even though pursuant to section 162.841 the district secretary should have a plat of the district in its records, Central did not produce any historical map pursuant to discovery request and Assistant Superintendent Mayberry admitted that none of the maps in Central's possession showed Parcel 13 as being in Central R-3's boundaries. (T. 288, l. 25-T. 289, l. 9). Further, Mayberry admitted that no map had ever, to his knowledge, been adopted into the official records of the district. Further, Central R-3's expert indicated that he relied solely on the tax assessment records for his opinion that Parcel 13 belonged in the Central R-3 School District. (T. 331, l. 17-22).

The facts of the case at hand are similar to those of Reorganized School District R-I of Crawford County v. Reorganized School District R-III of Washington County, 360 S.W.2d 376 (Mo. App. E.D. 1962). Like the Crawford case, taxes were being assessed "for some wholly unexplained reason, and

completely without authority of law.” Id. at 381. Like the Crawford case, no children resided in Parcel 13. The property itself was once a part of a larger tract on which the Kocher family resided. The evidence established that the Kocher children attended Farmington R-7. (T. 213, 15-T.214, l. 4; T. 220, l. 15-T. 221, l. 11). Also like the Crawford case, all the historical maps showed the property as being within the boundaries of Farmington R-7 yet the assessor showed the property as being Central R-3. (LF 196;T. 288, l. 25-T. 289, l. 9) Also like the Crawford case, a plan was approved without dispute and must have the same finality.

As a school district, not the assessor is to maintain the map of the district, more weight should be given the identified records of the district. The historical evidence from the Farmington R-7 School District, an entity which is statutorily bound to maintain a correct plat, shows parcel 13 in its boundaries and as a school district is required to be composed of contiguous territory, the evidence of the school establishing a contiguous boundary must carry more weight. The judgment of the trial court establishing a boundary not in conformance with the Missouri Constitution and state statute must be reversed and Parcel 13 must be declared within the territory of Appellant Farmington in conformance with the records of the districts and the law of the state of Missouri.

II. THE TRIAL COURT ERRED IN DECLARING PARCEL 13 AS
PART OF THE CENTRAL R-3 SCHOOL DISTRICT IN THAT SAID
DECISION IS AGAINST THE WEIGHT OF THE EVIDENCE
BECAUSE SAID DECISION IGNORED THE TESTIMONY OF DR.
B. RAY HENRY AND THE RECORDS OF APPELLANT
FARMINGTON.

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). The judgment is against the weight of the evidence in that no weight is given to the competent records of the Appellant Farmington as to its boundary at the time of reorganization or to the testimony of the only live witness who was involved with what is undisputed as being the last boundary change between the districts, Dr. B. Ray Henry.

Dr. Henry, former President of Jefferson College in Hillsboro, Missouri, was the superintendent of Appellant Farmington 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, the base map of the 1967 boundary change was the map 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 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).

As under the law in 1967 a reorganized district was required to be of contiguous territory and “the law does not contemplate that two portions of a district should be left entirely segregated from each other,” if the boundary change were to result in an unallowable island, the officials at Central would have made that known as Central contested the boundary change appeal filed by Farmington R-7. *see State ex rel. Schwerdt v. Reorganized School Dist. R-3, Warren County*, 257 S.W.2d at 268. 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 records of Respondent Central also established that Parcel 13 was part of Appellant Farmington’s district. Assistant Superintendent Mayberry testified that all of the historical maps in the possession of Respondent Central show the parcel 13 as not being located in Central R-3. (T. 289, l. 1-9).

The court in its decision did not give the proper weight to the testimony of Dr. B. Ray Henry and the records of both districts instead declaring that the records of the Assessor are more persuasive and as such must be reversed.

CONCLUSION

School districts are required by the Missouri Constitution and by statute to be contiguous. 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 parcel 13 is within Appellant Farmington's boundaries and not a noncontiguous pocket of Respondent Central's territory. As a school district, not the assessor is to maintain the map 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.

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AFFIDAVIT OF SERVICE OF APPELLANT'S BRIEF

STATE OF MISSOURI)
) SS.
COUNTY OF JEFFERSON)

 BIANCA L. EDEN, being first duly sworn, does state that on the 22nd day of May, 2009, one (1) copy on paper and one (1) copy on disk of the foregoing Appellant's Brief were mailed by United States mail, postage prepaid to:

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AFFIDAVIT OF COMPLIANCE

STATE OF MISSOURI)
) SS.
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BIANCA L. EDEN, being first duly sworn, does state as follows:

1. That Appellant's Brief complies with the limitations set forth in Missouri Supreme Court Rule 84.06(a);
2. That the number of words in Appellant's Brief is 7,094;
3. That the disk of the Appellant's Brief has been scanned for viruses and is virus-free.

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