

Summary of SC95255, *Missouri Real Estate Appraisers Commission v. Mark A. Funk*

Appeal from the Cole County circuit court, Judge Jon Beetem
Argued and submitted April 13, 2016; opinion issued June 28, 2016.

Attorneys: Funk was represented by Michael X. Edgett of Cason, Edgett, Mahan & Lutjen LLC in Clinton, Missouri, (660) 885-2334, and the appraisers commission was represented by Craig H. Jacobs of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The real estate appraisers commission (commission) seeks review of the administrative hearing commission's (AHC's) decision awarding an applicant attorney fees he incurred as the prevailing party in the underlying civil action arising from the commission's denial of his application for certification as a state-certified appraiser. In an opinion written by Judge Laura Denvir Stith and joined by five other judges, the Supreme Court of Missouri affirms the circuit court judgment reversing the AHC's decision. The applicant did not timely file his application for attorney fees in the proper forum, and even if he had timely filed, he is not entitled to attorney fees because the commission's position was substantially justified.

Judge Richard B. Teitelman concurs in part. He would find the applicant's failure to file his application timely in the proper forum is dispositive and, therefore, would not reach the issue of substantial justification.

Facts: The commission denied Mark Funk's application for certification as a state-certified appraiser based on its findings that the appraisal reports Funk submitted as part of his application contained numerous errors and violations of uniform appraiser standards. Representing himself, Funk appealed the denial to the AHC. The AHC reversed the commission's decision after reviewing more recent appraisal reports not available to the commission and finding that the new reports demonstrated Funk's competence to be a state-certified appraiser. The commission petitioned for judicial review in the circuit court, and Funk hired counsel. The circuit court reversed the decision. Funk appealed, and the court of appeals reversed the judgment. Less than two weeks following the court of appeals' ruling, Funk applied for attorney fees at the AHC, which dismissed the application as beyond its jurisdiction. Funk then sought fees from the court of appeals, which dismissed his application because it was filed after the time for seeking such fees had expired. He also sought review of the AHC's denial of fees in the circuit court, which sent the case back to the AHC, which then granted Funk's application on the basis that the commission was not "substantially justified in filing an appeal" of the AHC decision. The commission sought judicial review in the circuit court, which reversed. Funk appeals.

AFFIRMED.

Court en banc holds: The AHC erred in awarding attorney fees to Funk, who wrongly submitted his application for attorney fees to the AHC. The relevant statute required him to submit his application to the court of appeals within 30 days of its decision because that is the venue in which he first was successful and incurred attorney fees.

Section 536.087.3, RSMo, requires a party to submit its application for fees to the “court, agency or commission which rendered the final disposition or judgment” in which the party prevailed within 30 days of final disposition or judgment. Although Funk first prevailed before the AHC, he had no attorney at that time and so was not required to then file an application for attorney fees he had not incurred. He did incur attorney fees, however, when he prevailed at the court of appeals and, under section 536.087.3, was required to timely file his application with the court of appeals within 30 days of its ruling in his favor. Funk failed to file his request for attorney fees with the court of appeals within that 30-day period. Funk identifies no exception that would entitle him to these fees despite his failure to timely request them. In any event, he was not entitled to an award of attorney fees. Such fees are not available under subsections 1 and 3 of section 536.087 if the agency shows that its position in the agency proceeding was substantially justified, based on the record before an agency at the time of its decision. Taking the facts as found by the commission in its initial decision and in light of the statutes and rules governing the grant of certification, the commission’s denial of Funk’s application was reasonably based in law and fact and so was substantially justified.

Opinion concurring in part by Judge Teitelman: The author would find Funk’s failure to file his application timely in the proper forum is dispositive and, therefore, would not reach the issue of substantial justification.