

SUPREME COURT OF MISSOURI

No. SC98442

THE BOARD OF COMMISSIONERS OF THE COUNTY OF FRANKLIN,
STATE OF MISSOURI, TIM BRINKER, PRESIDING COMMISSIONER,
TODD BOLAND, FIRST DISTRICT COMMISSIONER, DAVE HINSON, SECOND
DISTRICT COMMISSIONER, and TAMMY VEMMER, AUDITOR OF THE
COUNTY OF FRANKLIN, STATE OF MISSOURI,

Appellants,

v.

TWENTIETH JUDICIAL CIRCUIT OF THE STATE OF MISSOURI,
by the Honorable I.I. Lamke, Presiding Judge,

Respondent.

On Appeal from the Judicial Finance Commission

RESPONDENT'S BRIEF

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STATEMENT OF FACTS

Respondent the Twentieth Judicial Circuit (“Circuit Court”) provides its own statement of facts pursuant to Rule 84.04(f). Petitioners (“Franklin County”) filed a Petition for Review with the Judicial Finance Commission (“JFC”) to ask the JFC to “declare . . . as a matter of law” that Franklin County was obligated to pay only part of the Circuit Court’s Fiscal Year (“FY”) 2020 Budget. (LF 017). Franklin County filed the Petition for Review 48 days *after* the relevant deadline and 12 days *after* the Court of Appeals, Eastern District, had issued a permanent writ of mandamus in Case No. ED108658 ordering Franklin County to pay the Circuit Court’s FY 2020 Budget as submitted.

This statement seeks to present the factual and procedural history consistent with Rule 84.04(c)’s requirements and includes additional details from the writ record that are relevant to the issues before this Court.

Parties

The Circuit Court is a multi-circuit court covering Franklin, Gasconade, and Osage Counties. (LF 007-008). The Juvenile Court is a division of the Circuit Court. § 478.063, RSMo.

Franklin County is a first-class county without a charter form of government. (LF 313). Its fiscal year begins January 1 of each year. (*Id.*).

The Circuit Court’s writ application to the Court of Appeals to obtain payment of its FY 2020 Budget as submitted in Case No. ED108658

On January 27, 2020, the Circuit Court filed a Petition for Writ of Mandamus, suggestions in support, and a motion to shorten time in the Missouri Court of Appeals,

Eastern District, Case No. ED108658. (Appellants' Appendix ("AA") 6). The motion succinctly stated why the Circuit Court took the extraordinary step of seeking a writ: The underlying dispute involved Franklin County's failure to appropriate the Court's FY 2020 Budget as submitted, despite, in the Circuit Court's view, clear authority mandating that Franklin County adopt and appropriate the Court's budget because Franklin County had failed to pursue relief with the JFC. (Respondent's Appendix ("RA") 1-2, citing § 50.640, RSMo; *Twentieth Judicial Circuit of State of Missouri vs. Bd. of Comm'rs of County of Franklin*, 911 S.W.2d 626, 628 (Mo. banc 1995)). The motion explained that Franklin County had drastically underfunded the Juvenile Court and purported to fire two Juvenile Court employees, creating

an emergency financial crisis for the Court that is interfering with the Court's ability to carry out its constitutionally required duties, particularly as to Juvenile Court functions. Respondents' actions have resulted in several departments of the Juvenile Court being given a budget of \$0 for the current fiscal year. [Franklin County's] unlawful actions have also resulted in the loss of critical employment benefits (including health insurance) and pay for two Juvenile Court employees, who are necessary to Juvenile Court functions and have continued working since January 1, 2020, despite this situation.

(RA 2).

The Circuit Court's writ petition alleged:

In August 2019, after meeting and conferring with Franklin County, the Circuit Court submitted a budget estimate for FY 2020 in the amount of \$921,331.15. (AA 10). The Circuit Court's budget estimate for the Juvenile Court totaled \$716,346.15, divided into the following historically used departments:

Juvenile Office (Dept. 285)	\$481,848.00
Juvenile Detention (Dept. 295)	\$80,100.00
Juvenile Diversion Grants (Dept. 296)	\$41,823.34
Family Court (Dept. 283)	\$112,575.00
TOTAL	\$716,346.34

(AA 1112).

Franklin County approved and adopted its FY 2020 budget on December 31, 2019. (AA 12). That budget appropriated only \$538,500.00 total for the Circuit Court. (*Id.*). The approved budget appropriated only \$333,523.00 for the total Juvenile Court Budget Estimate, in the following historically used departments:

Juvenile Office (Dept. 285)	\$0.00
Juvenile Detention (Dept. 295)	\$0.00
Juvenile Diversion Grants (Dept. 296)	\$0.00
Family Court (Dept. 283)	\$333,523.00

(*Id.*). Although the Juvenile Court Budget Estimate for the Family Court department totaled \$112,575.00, the County Commission appropriated \$333,523.00 for the Family Court department for a single item titled “Maintenance of Effort.” (AA 13.).

Franklin County, without the Circuit Court’s consent, purported to terminate the employment and benefits of two Juvenile Court employees, as of December 31, 2019. (AA 14). After January 1, 2020, Franklin County refused to pay regular expenses for the Juvenile Court for items included within the Juvenile Court Budget Estimate and for which

Franklin County had historically paid, such as the cost to serve summonses and travel expenses for Juvenile Court employees. (AA 14-15). The Circuit Court first learned about the situation on January 6, 2020, when Franklin County refused to pay the cost of serving a summons. (*Id.*). The Presiding Judge attempted to resolve the situation through discussion with the Presiding Commissioner, but as of January 22, 2020, Franklin County had paid only \$63 out of approximately \$18,000 in submitted Juvenile Court expenses. (AA 15).

Franklin County's filings in response to the writ application

Franklin County did not file any opposition to the Circuit Court's motion to shorten time. (AA 6). In its Suggestions in Opposition to the Circuit Court's writ application, Franklin County disputed that the matter was governed by § 50.640, and instead maintained that the parties' dispute "is unquestionably governed by Section 211.393." (AA 23). Franklin County asserted that "the actual issues are that [the County is] under no legal obligation to fund more than the amount required in Section 211.393.6 as to the juvenile court portion of the circuit court's budget, and, furthermore, are not required to pay for the employment of juvenile court employees, who are to be state employees as a matter of law." (*Id.*). Franklin County also argued that the Circuit Court (not Franklin County) had the duty to raise the issue with the JFC. (AA 24). Franklin County argued that it was not required to pay anything more than the Maintenance of Effort ("MOE"), basing that argument on its reading of the JFC's decision in *In Re: Cooper County Budget of the 18th Judicial Circuit of the State of Missouri*. (AA 34-37).

The Court of Appeals' writ in Case No. ED108658 mandating that Franklin County pay the Circuit Court's FY 2020 Budget as submitted

By order dated February 6, 2020, the Court of Appeals, Eastern District, issued its Permanent Writ of Mandamus, directing Franklin County to

- a. Immediately appropriate the total FY 2020 Court's Budget Estimate as submitted by the Court in the amount of \$921,331.15, including the amount budgeted for the Juvenile Court departments in the amount of \$716,346.15; and
- b. Disburse the FY 2020 Court Budget as appropriated in the amounts and according to the directions of the Court including, but not limited to, immediately paying salaries and providing employee benefits to Juvenile Court personnel . . . and paying other expenses of the Juvenile Court as they arise; and
- c. Such shall be made retroactive to January 1, 2020.

(AA 5).

Franklin County moved to stay execution of the writ on February 10, 2020. (*Id.*) On February 11, 2020, the Court of Appeals denied the motion and issued an opinion stating the reasons for its permanent writ pursuant to Rule 84.24(k). (LF 312-320; AA 5). In that opinion, the Court of Appeals concluded that:

- the case was substantially similar to, and controlled by, *Twentieth Judicial Circuit of State of Missouri v. Board of Commissioners of County of Franklin*, 911 S.W.2d 626 (Mo. banc 1995) (LF 315);
- Franklin County “failed to comply with Section 50.640, RSMo” when it “did not obtain the Circuit Court’s consent before changing the amounts in the Circuit Court’s FY 2020 [budget estimate]” (LF 317);
- Franklin County “failed to pursue relief with the Judicial Finance Commission” (LF 317);

- Because of Franklin County’s failures, “the statute leaves the county no option but to appropriate the circuit court’s budget estimate” (LF 317) (quoting *Twentieth Judicial Circuit of State of Missouri*, 911 S.W.2d at 628);
- There was no merit to Franklin County’s argument that under *Cooper County v. Circuit Court of 18th Judicial Circuit of Missouri*, 124 S.W.3d 466 (Mo. banc 2004) and provisions of Chapters 211 and 213, the County did not have to submit its dispute to the JFC and instead could unilaterally decrease the Circuit Court’s budget to the MOE funding amount (LF 317-319);
- “The MOE statute, Section 211.393.6, read ‘in pari materia’ with Section 50.640, does not eliminate the need for a petition for review with the judicial finance commission if the county wishes to dispute a circuit court’s budget” (LF 319);
- There was no merit to Franklin County’s argument that the JFC decision made when the *Cooper County* case was remanded allows it to unilaterally reduce the Court’s budget without review by the JFC (LF 319); and
- Timely “JFC review is mandated and necessary” (LF 319).

The Court of Appeals reiterated its directives that Franklin County:

- a. Immediately appropriate the total FY 2020 Court’s Budget Estimate as submitted by the Court in the amount of \$921,331.15, including the amount budgeted for the Juvenile Court departments in the amount of \$716,346.15; and
- b. Disburse the FY 2020 Court Budget as appropriated in the amounts and according to the directions of the Court including, but not limited to, immediately paying salaries and providing employee benefits to Juvenile Court personnel, including Ms. Elizabeth Carr and Ms. Cynthia D’Onofrio and paying other expenses of the Juvenile Court as they arise; and
- c. Such shall be made retroactive to January 1, 2020.

(LF 320).

***The Court of Appeals' and this Court's orders
denying transfer of the writ***

On February 13, 2020, Franklin County filed a Motion for Rehearing and/or Application for Transfer with respect to the writ decision. (AA 5). The Court of Appeals denied the motion on February 19, 2020. (AA 4).

On March 5, 2020, Franklin County filed an Application for Transfer pursuant to Rule 83.04 (Case No. SC98399). (AA 52). This Court denied transfer on April 28, 2020. (AA 54).

***Franklin County's Petition for Review
tendered 48 days late to the JFC***

On February 18, 2020—12 days after the Court of Appeals had issued its permanent writ of mandamus directing Franklin County to pay the Circuit Court's FY 2020 Budget as submitted—Franklin County filed a Petition for Review with the JFC. (LF 007-018). Franklin County's Petition for Review acknowledged that the Court of Appeals' writ

applied Section 50.640 exclusively and required Petitioners to fully fund the Juvenile Court in the amount included in the budget estimate presented by Presiding Judge Lamke and not the MOE amount, and further ordered Petitioners to rehire as County employees the two employees who worked exclusively for the Juvenile Court and to pay them retroactively to January 1, 2020.

(LF 010, ¶21). Franklin County stated that, at the time it filed the Petition for Review, it was “seeking post-opinion relief” from the permanent writ. (LF 010, ¶22). The thrust of Franklin County's argument was that it was not bound by § 50.640 as to the Juvenile Court budget and that provisions within Chapters 211 and 213 allowed it to unilaterally reduce the Juvenile Court's budget without either the Circuit Court's consent or the JFC's

determination that the budget is reasonable. (LF 007-018). Franklin County further stated: “Section 211.393 controls over Section 50.640, and if the proper MOE amount is paid the Petitioners have satisfied their obligation to fund the Juvenile Court as a matter of law.” (LF 016, ¶42). Franklin County’s prayer for relief requested that the JFC

accept review of this matter, declare the MOE amount allocated by Petitioners in the [FY 2020] budget for Juvenile Court funding was the extent of its obligations as a matter of law, declare that Petitioners owe no obligation to employ or otherwise pay for Juvenile Court employees effective January 1, 2020, and for any other relief the Commission deems proper under the circumstances.

(LF 017).

Franklin County asserted that it had good cause to file out of time with the JFC because (1) it was not required to file with the JFC pursuant to § 211.393, (2) “[t]he issue did not arise” until the Circuit Court filed its writ petition, and (3) the JFC (with the right of appeal to the Supreme Court) had “original jurisdiction” to determine the legal argument of whether Franklin County satisfied its obligations to fund the Juvenile Court by tendering § 211.393’s MOE amount. (LF 017, ¶¶46-49).

The JFC’s dismissal of Franklin County’s Petition for Review

The Circuit Court moved to dismiss the JFC Petition on February 21, 2020, arguing that (1) the JFC Petition was out of time and no excusable neglect had been shown for the missed deadline, and (2) the JFC lacked authority to overturn the Court of Appeals’ writ directives. (LF 301-311).

The JFC dismissed Franklin County’s Petition for Review on February 24, 2020, concluding that (1) Franklin County had not shown good cause for failure to file it by

January 1, 2020, and (2) the JFC lacked authority to act on it because of the Court of Appeals' superseding judgment and opinion. (LF 325-326).

This appeal followed.

ARGUMENT

I. The JFC properly concluded that Franklin County lacked good cause to file its Petition for Review 48 days out of time because when Franklin County tendered it to the JFC, the Court of Appeals had already issued a permanent writ of mandamus on the same subject matter and had rejected the statutory arguments that Franklin County sought to advance in the JFC. (Responds to Point I)

Franklin County is a county of the first classification. Under Supreme Court Operating Rule 12-9.05(a), its deadline to file a petition for review with the JFC was January 1, 2020, "[e]xcept for good cause shown." Supreme Court Operating R. 12-9.05. "Good cause" is not defined in Rule 12-9.05. Dictionaries define it as "[a] legally sufficient reason." Black's Law Dictionary (11th Ed. 2019); *see also State v. Davis*, 469 S.W.2d 1, 4-5 (Mo. 1971) (citing Webster's Third New International Dictionary's definition of "good cause" as "a cause or reason sufficient in law: one that is based on equity or justice or that would motivate a reasonable man under all the circumstances.").

Here, Franklin County submitted its Petition to the JFC on February 18, 2020, 48 days past the deadline. The relief Franklin County sought included a determination that Franklin County was not obligated to pay the Circuit Court's FY 2020 Budget. (LF 017). At that point in time, the Court of Appeals had already ordered Franklin County via a

permanent writ of mandamus to pay the Court's FY 2020 Budget as submitted. (AA 5). The Court of Appeals issued its permanent writ on February 6, 2020, and an opinion on February 11, 2020, pursuant to Rule 84.24(k). (*Id.*). The opinion explained that Franklin County's failure to timely file a Petition for Review with the JFC had created a non-discretionary duty for it to pay the Circuit Court's FY 2020 Budget as submitted. *Twentieth Judicial Circuit by Lamke v. Board of Commissioners of the County of Franklin*, 597 S.W.3d 761 (Mo. App. E.D. 2020).

After the Court of Appeals made these rulings, Franklin County submitted its Petition for Review to the JFC, alleging it had "good cause" to file out of time. The Petition's good-cause allegations claimed that (1) the JFC (with the right of appeal to the Supreme Court) had "original jurisdiction" to determine whether Franklin County satisfied its obligations to fund the Juvenile Court by tendering § 211.393's MOE amount, (2) Franklin County believed it had not been required to file with the JFC pursuant to § 211.393, and (3) "the issue did not arise" until the Circuit Court filed its writ petition with the Court of Appeals in January. (LF 017, ¶¶46-49).¹ These arguments did not establish good cause for Franklin County to file late.

¹ Franklin County complains that the JFC "did not allow for briefing on the issue of good cause, nor did it hear evidence on the issue of good cause." (App. Br. 9). Franklin County's stated reasons presented a legal issue because the reasons were deficient on their face. No evidentiary hearing was necessary. Moreover, contrary to Franklin County's argument (*id.*), the JFC complied with Supreme Court Operating Rule 12-21.05 by issuing an opinion stating its reasons for the ruling dismissing the Petition for Review. (LF 325-326).

- A. *In the writ proceedings, Franklin County had already made the same arguments expressing its view of its limited obligations to fund the Juvenile Court under Chapter 211; the Court of Appeals rejected them as incorrect; and the JFC lacked authority to revisit the Court of Appeals’ legal conclusions.***

In its appellate brief, Franklin County makes a complicated and tortured argument that it could not have timely filed a Petition for Review with the JFC by January 1, 2020. It contends its dispute arises under § 211.393, RSMo, and suggests that the dispute could not have been presented as a reasonableness challenge under § 50.640 because the dispute concerns whether Franklin County “was required to fund the Juvenile Court with an amount in excess of the ‘MOE,’ as calculated under the formula provided by Section 211.393.” (App. Br. 13-17).

Franklin County is wrong about the interplay between § 211.393 and § 50.640. In fact, Franklin County made these same statutory arguments to the Court of Appeals in the writ proceedings that it need not file a Petition for Review with the JFC to avoid an obligation to fund the Juvenile Court to the full amount of the Circuit Court’s budget estimate. (AA 24). In its February 11, 2020 opinion, the Court of Appeals considered and rejected Franklin County’s interpretation. The Court of Appeals concluded that “the County Commission failed to comply with Section 50.640, RSMo[]” when it failed to either obtain the Circuit Court’s consent to change the budget or to seek timely review with the JFC. *Twentieth Judicial Circuit*, 597 S.W.3d at 764-65. Similarly, the Court considered—and rejected—Franklin County’s argument that the *Cooper County* JFC decision allowed Franklin County to pay only the alleged § 211.393 MOE funding level without also seeking review with the JFC. *Id.* at 765-66. The Court of Appeals concluded

that (1) “JFC review is mandated and necessary,” (2) Franklin County failed to pursue it, and (3) as a result, Franklin County had a mandatory obligation to fund the Circuit Court’s FY 2020 Budget as submitted. *Id.* at 766.

For the JFC to have found that Franklin County showed good cause to file its Petition for Review out of time, the JFC necessarily would have had to reject the Court of Appeals’ legal conclusions and be poised to relieve Franklin County from compliance with the Court of Appeals’ writ directives to fund the Court’s FY 2020 Budget as submitted. The JFC was powerless to do so.

The JFC is a statutorily created entity with limited authority as set forth in § 477.600, RSMo. It cannot alter writ directives that have been issued by an appellate court or declare the law as a court may do. The Missouri Constitution vests the judicial power of the state in the courts. Mo. Const. Art. V, § 1. It is distinctly the province of courts to “declare the law.” *Gershman Investment Corp. v. Danforth*, 517 S.W.2d 33, 35 (Mo. banc 1974). The Missouri Constitution vests the Court of Appeals with authority to issue and determine remedial writs. Mo. Const. Art. V, § 4. “Agency adjudicative power,” in contrast, “extends only to the ascertainment of facts and the application of existing law thereto to resolve issues within the given area of agency expertise.” *State Tax Com’n v. Administrative Hearing Com’n*, 641 S.W.2d 69, 75 (Mo. banc 1982). The General Assembly cannot confer uniquely judicial powers on an executive agency. *See id.* (statute granting authority for administrative hearing commission to issue declaratory judgments declaring statutes unconstitutional violates separation of power). As relevant here, the General Assembly only granted the JFC authority to:

- (1) Examine the budget request of the circuit court upon the petition by the county governing body as provided in section 50.640 or any budget or item in the budget estimated by the court including, but not limited to, compensation of deputy sheriffs and assistants, as set forth in section 57.250;
- (2) Issue a written opinion addressed to the presiding circuit judge and the presiding officer of the county. The opinion shall state the conclusions of the commission as to the reasonableness of the circuit court budget request.

§ 477.600.5(1)-(2), RSMo.

In light of its limited role as an agency, it was proper for the JFC to conclude that Franklin County failed to establish good cause to file its Petition for Review out of time based on statutory interpretation arguments that the Court of Appeals had already rejected in the writ proceedings. The JFC could not declare the law to be something different than a court exercising the judicial power of the state had declared it to be. *See State Tax Com'n*, 641 S.W.2d at 75. In addition, as discussed in more detail in Part II, a collateral attack on a writ is not permitted. *See Heather v. City of Palmyra*, 298 S.W.750, 756 (Mo. banc 1927) (results of writ determination could not be challenged by later separate lawsuit); *Gardner v. Springfield Gas & Elec. Co.*, 135 S.W. 1023, 1027 (Mo. App. 1911) (mandamus proceedings “are not subject to collateral attack.”). Franklin County’s sole avenue for review of the Court of Appeals’ writ was post-opinion motions and applications for transfer of the writ decision itself. Rule 84.24(m).

B. Franklin County's professed lack of awareness of a potential budget dispute, even if based on mistake, was not "good cause" to permit it to file its Petition for Review out of time after it had already lost on the merits in a related writ proceeding.

Portions of Franklin County's brief suggest Franklin County could not have anticipated that a budget dispute would arise with the Circuit Court. (App. Br. 18-19). Any argument by Franklin County that it could not have anticipated a disputing arising from its unilateral decision to drastically underfund the Juvenile Court and fire necessary Juvenile Court employees is highly disingenuous.

But even if one assumed that Franklin County had misread the situation or otherwise been mistaken, Franklin County would not have shown good cause to file out of time. A party that has missed a deadline because they misunderstood legal requirements or facts available to them is generally not excused from the deadline. *See Ross v. Union Pac. R. Co.*, 906 S.W.2d 711, 713 (Mo. banc 1995) ("Courts do not forgive late filings . . . where the fault for missing the statutory deadline is more directly attributable to the plaintiff."); *see also New Garden Restaurant, Inc. v. Director of Revenue*, 471 S.W.3d 314, 318 (Mo. banc 2015) (untimely statutory appeal properly dismissed even though the appellant claimed it had not received correct information about deadline). Here, Franklin County waited nearly two weeks after it had lost on the merits in the writ proceedings in Case No. ED108658 to file its Petition for Review with the JFC. At that point, Franklin County had received due process in the writ proceedings and was under a legal obligation to comply with the Court of Appeals' writ directive. It lacked good cause to re-open the issues by its

out-of-time filing with the JFC, which had no authority to revisit legal determinations made by the Court of Appeals.

**II. The JFC properly dismissed Franklin County’s Petition for Review on grounds that it lacked authority to overturn the Court of Appeals’ writ directives.
(Responds to Point II)**

Franklin County argues that the JFC should have granted it the relief requested in the Petition for Review and erred in dismissing on grounds that it lacked authority to act because of the Court of Appeals’ superseding judgment and opinion. Franklin County is incorrect.

A. *The Court of Appeals’ writ directly addressed the same issues, and Franklin County could not collaterally attack the writ in the JFC.*

It would have been impossible for the JFC to grant the relief that Franklin County requested in the Petition for Review without altering or violating the Court of Appeals’ writ to the County. In its Petition for Review, Franklin County asked that the JFC:

accept review of this matter, declare the MOE amount allocated by Petitioners in the [FY 2020] budget for Juvenile Court funding was the extent of its obligations as a matter of law, declare that Petitioners owe no obligation to employ or otherwise pay for Juvenile Court employees effective January 1, 2020, and for any other relief the Commission deems proper under the circumstances.

(LF 017).

The Court of Appeals had already decided the dispositive issues by February 6, well before Franklin County requested review with the JFC on February 18, 2020. The permanent writ issued directed Franklin County to:

- a. Immediately appropriate the total FY 2020 Court's Budget Estimate as submitted by the Court in the amount of \$921, 331.15, including the amount budgeted for the Juvenile Court departments in the amount of \$716,346.15; and
- b. Disburse the FY 2020 Court Budget as appropriated in the amounts and according to the directions of the Court including, but not limited to, immediately paying salaries and providing employee benefits to Juvenile Court personnel . . . and paying other expenses of the Juvenile Court as they arise; and
- c. Such shall be made retroactive to January 1, 2020.

(AA 5).

Franklin County's late-filed Petition for Review was an effort to collaterally attack the Court of Appeals' writ decision. In civil litigation, "[a] judgment rendered by a court having jurisdiction of the parties and subject matter . . . is not open to collateral attack in respect of its validity or conclusiveness of the matters adjudicated." *Barry, Inc. v. Falk*, 217 S.W.3d 317, 320 (Mo. App. W.D. 2007) (quoting *State ex inf. Voights v. City of Pleasant Valley*, 453 S.W.2d 700, 704 (Mo. App. W.D. 1970)). This is because of the "need for certainty and finality of judgments[.]" *Reimer v. Hayes*, 365 S.W.3d 280, 283 (Mo. App. W.D. 2012).

Writ decisions are likewise not subject to collateral attack. *See Heather*, 298 S.W. at 756 (results of writ determination could not be challenged by later separate lawsuit); *Gardner*, 135 S.W. at 1027 (mandamus proceedings "are not subject to collateral attack").

Under Rule 84.24(m), "[i]f the court disposes of a petition for a writ by the issuance of an opinion, further review of the action shall be allowed *only as provided in Rule 83 and Rule 84.17*." Mo. R. Civ. P. 84.24(m) (emphasis added). Franklin County pursued and fully

exhausted its options for further review of the writ decision under Rule 84.24(m). On February 14, 2020, Franklin County filed a Motion for Rehearing and/or Application for Transfer in which it again argued that § 211.393.6, and not § 50.640, applied to the parties' dispute and that the *Cooper County* decision, rather than the earlier *Twentieth Judicial Circuit* decision, controlled. (RA 6-17). The Court of Appeals denied the motion on February 19, 2020. (AA 4). On March 5, 2020, Franklin County filed an Application for Transfer pursuant to Rule 83.04. (AA 52). This Court denied transfer on April 28, 2020. (AA 54).

In addition, as discussed in Part I, the JFC is a statutorily created entity with limited authority as set forth in § 477.600, RSMo. It cannot alter writ directives that have been issued by an appellate court or declare the law as a court may do. The Missouri Constitution vests the judicial power of the state in the courts. Mo. Const. Art. V § 1. The General Assembly cannot confer uniquely judicial powers on an executive agency. *State Tax Com'n*, 641 S.W.2d at 75 (statute granting authority for administrative hearing commission to issue declaratory judgments declaring statutes unconstitutional violates separation of power).

The General Assembly only granted the JFC authority to:

- (1) Examine the budget request of the circuit court upon the petition by the county governing body as provided in section 50.640 or any budget or item in the budget estimated by the court including, but not limited to, compensation of deputy sheriffs and assistants, as set forth in section 57.250;
- (2) Issue a written opinion addressed to the presiding circuit judge and the presiding officer of the county. The opinion shall state the

conclusions of the commission as to the reasonableness of the circuit court budget request.

§ 477.600.5(1)-(2), RSMo.

Considering its limited statutory authority, the JFC could not declare the law to be something different than the Court of Appeals had concluded while exercising the judicial power of the state.

B. Franklin County is precluded from relitigating its obligations to fund the Court's FY 2020 Budget.

A second, and related, reason why Franklin County's Point II fails is that it is precluded from relitigating matters decided in the writ proceeding. "*Res judicata* operates as a bar to the reassertion of a cause of action that has been previously adjudicated in a proceeding between the same parties or those in privity with them." *Lauber-Clayton, LLC v. Novus Properties Co.*, 407 S.W.3d 612, 618 (Mo. App. E.D. 2013). The doctrine protects parties against the expense and vexation of multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action. *Kinsky v. 154 Land Co., LLC*, 371 S.W.3d 108, 112 (Mo. App. E.D. 2012). *Res judicata* applies to "every point properly belonging to the subject matter of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time." *King General Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter Day Saints*, 821 S.W.2d 495, 501 (Mo. banc 1991). It "includes within its ambit . . . a prohibition against collateral attack on a judgment." *State ex rel General Credit Acceptance Co., LLC v. Vincent*, 570 S.W.3d 42, 48 (Mo. banc 2019) (quoting *Wright v. Bartimus Frickleton Robertson & Gorny PC*, 364 S.W.3d 558, 564 (Mo. App. W.D. 2011)).

Res judicata applies whenever a four-part test (the “four identities”) is met. *Lauber-Clayton*, 407 S.W.3d at 618. The “four identities” are (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality of the person for or against whom the claim is made. *Commonwealth Land Title Ins. Co. v. Miceli*, 480 S.W.3d 354, 363 (Mo. App. E.D. 2015).

The first two elements, “identity of the thing sued for” and “identity of the cause of action,” are often considered together as roughly equivalent. *See Dahn v. Dahn*, 346 S.W.3d 325, 332 n.3 (Mo. App. W.D. 2011). The intent of both elements is to determine whether the “‘thing’—the claim or cause of action”—has been previously litigated. *Chesterfield Village, Inc. v. City of Chesterfield*, 64 S.W.3d 315, 318 (Mo. banc 2002). A case involving the “same ... operative facts” or arising out of the “same act, contract, or transaction” is suing for the same “thing.” *Id.* at 318-19; *see also Johnson Controls, Inc. v. Trimmer*, 466 S.W.3d 585, 594 (Mo. App. W.D. 2015) (claims arising from the same common facts are precluded). The term “transaction” has a “broad meaning” in this context; it applies when a party seeks a different remedy based on the same factual situation. *Chesterfield Village*, 64 S.W.3d at 319.

Franklin County’s petition to the JFC meets the first two elements of *res judicata* because it is based on the same operative facts and arises out of the same act or transaction as the facts on which the Court of Appeals’ writ decision was predicated. Common operative facts include how much money the Circuit Court requested, the date the Circuit Court’s budget estimate was submitted, the date Franklin County voted on the budget, the amount of money appropriated by the budget, and Franklin County’s unilateral attempts to

fire court employees. These facts are cited in the pleadings of both the writ proceeding and the Petition for Review submitted to the JFC. *Compare* AA 8-21 (writ petition) with LF 007-012 (JFC Petition for Review). Similarly, both suits are based on the act or transaction (or series of acts and transactions) that made up the FY 2020 budget process. This is apparent from the fact that Franklin County is making similar arguments to those made at the Court of Appeals. For example, Franklin County argues in its brief that under the *Cooper County* decision, it does not have to follow the procedures of § 50.640 before unilaterally reducing the Juvenile Court portion of the Circuit Court’s budget to the MOE amount. (App. Br. 35-38). That argument was made to—and rejected by—the Court of Appeals in deciding the writ of mandamus. (AA 34-36); *Twentieth Judicial Circuit*, 597 S.W.3d at 765.

The second two elements of *res judicata* concern whether the same parties are involved in both lawsuits in the same capacity. *Miceli*, 480 S.W.3d at 363. This case is between the same parties—Franklin County on one side and the Circuit Court on the other. *Res judicata* applies.

Franklin County’s discussion of the “law of the case” doctrine (App. Br. 25-28) is off topic. First, the argument is outside the scope of the Point Relied On and is therefore not properly raised for review. *See C.S. v. Missouri Dept. of Social Svcs.*, 491 S.W.3d 636, 654-55 (Mo. App. W.D. 2016) (claims raised in argument section but not point relied on are not preserved for appellate review).

Second, and more importantly, this argument is a red herring because the “law of the case” doctrine does not apply. Law of the case and *res judicata* are “similar” doctrines,

but law of the case applies where the argument “involves relitigation of an issue within the same pending case.” *Walton v. City of Berkeley*, 223 S.W.3d 126, 128 (Mo. banc 2007). Franklin County’s Petition for Review to JFC is *not* the same pending case. Rather, it is a separately filed proceeding instituted after the Court of Appeals issued a permanent, dispositive writ arising out of the same set of operative facts.

Finally, within its argument about the “law of the case,” Franklin County asserts that it was the Circuit Court’s responsibility to appeal its own decreased budget to the JFC. (App. Br. 29). The Court of Appeals rejected this point, and Franklin County’s argument directly contradicts § 50.640, which requires the “governing body” to (1) accept the court’s budget estimate, (2) get the court’s approval to modify, or (3) file a petition for review with the JFC and obtain the JFC’s determination as to reasonableness of the proposed expenses. *Twentieth Judicial Circuit*, 597 S.W.3d at 766 (interpreting § 50.640). It is also inconsistent with this Court’s Operating Rules, which contemplate appeal by the governing body, not a circuit court. *See, e.g.*, Supreme Court Operating R. 12-1.01(d) (defining “Petitioner” as “any local governing body responsible for funding a circuit court that brings a petition seeking review of the proposed budget of that circuit court before the commission”); Supreme Court Operating R. 12-9.03 (“The county governing body shall file the petition with the commission.”).

III. This Court should decline Franklin County’s invitation to issue a ruling on the merits because it improperly seeks collateral review of the Court of Appeals’ writ decision and is based on flawed statutory analysis. (Responds to Point III)

In Point III, Franklin County asks this Court to consider the merits of the dispute even though the JFC did not make any initial determinations and the Court of Appeals *already addressed the merits and issued a writ that is now final*. The Court of Appeals determined that § 211.393 did not trump § 50.640 and granted the Circuit Court relief that Franklin County seeks to undo here. *Twentieth Judicial Circuit*, 597 S.W.3d at 766. Whether an appeal could have been filed directly with this Court if Franklin County had timely filed the Petition for Review misses the point—Franklin County does not seek to address the merits for the first time in this Court, but rather seeks to collaterally attack the Court of Appeals’ writ decision. The arguments that Franklin County seeks to make now are precluded as discussed in Point II; therefore, whether they theoretically could have been raised at this Court in the first instance is a moot point.

Franklin County’s arguments are also unpersuasive on the merits. Based on its reading of *Cooper County*, Franklin County argues that “the ‘MOE’ funding required by Section 211.393.6 trumps the reasonableness test in Section 50.640[.]” (App. Br. 37). This argument ignores the plain language of § 211.393.6, RSMo, which provides for JFC review of juvenile court budget disputes:

The juvenile court shall provide a proposed budget to the county commission each year. The budget shall contain a separate section specifying all funds to be expended in the juvenile court. Such funding may be used for contractual costs for detention services, guardians ad litem, transportation costs for those circuits without detention

facilities to transport children to and from detention and hearings, short-term residential services, indebtedness for juvenile facilities, expanding existing detention facilities or services, continuation of services funded by public grants or subsidy, and enhancing the court's ability to provide prevention, probation, counseling and treatment services. *The county commission may review such budget and may appeal the proposed budget to the judicial finance commission pursuant to section 50.640, RSMo.*

(Emphasis added).

Applying basic rules of statutory construction demonstrates why Franklin County's argument fails. "The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning." *Treasurer of State-Custodian of Second Injury Fund v. Witte*, 414 S.W.3d 455, 461 (Mo. banc 2013) (quoting *State ex rel. Unnerstall v. Berkemeyer*, 298 S.W.3d 513, 519 (Mo. banc 2009)). Franklin County's argument is contrary to the plain language of § 211.393.6, RSMo, which directly references § 50.640's appeal process and makes it available to a county as the method by which it may obtain review of juvenile court budget estimates. There would be no reason to include this provision if Franklin County were free to unilaterally disregard any juvenile court funding above the MOE amount. Section 211.393.6 specifies that a county "may appeal the proposed [juvenile court] budget to the judicial finance commission *pursuant* to section 50.640, RSMo." (Emphasis added). "Pursuant to" means "[i]n compliance with; in accordance with...." Black's Law Dictionary (11th ed. 2019). Thus, by its plain terms, a county seeking to challenge and avoid appropriation of a juvenile court budget estimate must follow the procedures and requirements set forth in § 50.640, RSMo. And any failure

to follow such procedures and requirements for obtaining review by the JFC pursuant to § 50.640, RSMo, makes the county's duty to appropriate the juvenile court budget mandatory for the reasons set forth in the Court of Appeals' opinion (597 S.W.3d 761) and in *Twentieth Judicial Circuit of State of Missouri*, 911 S.W.2d 626.

Franklin County is also mistaken about the legislature's intent regarding MOE funding. Contrary to the County's arguments, the word "maintain" is not synonymous with "limit" or "cap." Maintain means "to keep or keep up; to continue in or with; to carry on." Webster's New Twentieth Century Dictionary, Unabridged 1087 (2d. Ed. 1968). Thus, the General Assembly's choice of language in § 211.393.6 is evidence of its intent to make MOE funding a floor for counties, and not a ceiling. When the General Assembly has desired to express a maximum amount of funding in other settings, it has used terms such as "not exceeding" or "maximum amount" in the statutory provisions. *See, e.g.*, § 87.405, RSMo (using term "not exceeding" to express maximum amount for municipal authorities to set aside for certain pension funds); § 537.756, RSMo (using term "maximum amount" to set limit on payments from Missouri Public Entity Risk Management Fund). The General Assembly's use of the phrase "not less than" in § 211.393.6, RSMo, further confirms that the MOE funding was intended by its plain language to be a floor, and not a ceiling.

Conclusion

Franklin County's arguments in this appeal should be rejected. First, the JFC properly concluded that Franklin County lacked good cause to file its Petition for Review 48 days out of time because when Franklin County tendered its Petition to the JFC, the Court of Appeals had already issued a permanent writ of mandamus directing Franklin

County to pay the Circuit Court's FY 2020 Budget as submitted and had rejected the statutory arguments that Franklin County sought to advance in the JFC. Second, the JFC properly dismissed Franklin County's Petition for Review on grounds that it lacked authority to overturn the Court of Appeals' writ directives because Franklin County's opportunity for further review of the writ was limited to the procedures listed in Rule 84.24(m). Finally, this Court should decline Franklin County's invitation to issue a ruling on the merits because it improperly seeks collateral review of the Court of Appeals' writ decision and is based on flawed statutory analysis.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 84.06(c) and Rule 55.03, the undersigned hereby certifies the following:

1. This brief includes the information required by Rule 55.03.
2. This brief complies with the limitations contained in Rule 84.06(b) and contains 7,742 words.
3. Microsoft Word was used to prepare Respondent's Brief.

/s/Heidi Doerhoff Vollet

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Clerk of the Court on this 29th day of July, 2020, to be served by operation of the Court's electronic filing system on all counsel of record.

/s/ Heidi Doerhoff Vollet