Summary of SC98484, *Daven Fowler and Jerry Keller v. Missouri Sheriffs' Retirement System*

Appeal from the Jackson County circuit court, Judge Kevin D. Harrell
Argued and submitted April 13, 2021; opinion issued June 1, 2021

Attorneys: Fowler and Keller were represented by Adam S. Davis, Brian J. Madden, Eric D. Barton and Joan D. Toomey of Wagstaff & Cartmell LLP in Kansas City, (816) 701-1100; and Gerald F. McGonagle and Christopher S. Gahagan of McGonagle Spencer Gahagan PC in Kansas City, (816) 221-2222.

This summary is not part of the opinion of the Court. It is provided by 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: Two men who paid a $3 statutory surcharge assessed and collected as part of their municipal division court proceedings appeal from the circuit court's judgment dismissing their action for unjust enrichment against the sheriffs' retirement fund, which ultimately receives the statutory surcharge. The retirement fund cross-appeals. In a 6-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri vacates the judgment and remands (sends back) the case. The men had standing (legal ability to sue) and did not waive their constitutional challenges to the surcharge by failing to raise them in the municipal division. The municipal clerks who assessed and collected the surcharge were not necessary parties to the litigation, and the surcharge violates the open courts provision of the state constitution because, as compensation paid to executive branch officials, the surcharge is not a reasonably related expense to the administration of justice.

Facts: Section 57.955.1, RSMo, permits the collection of a $3 surcharge for the Missouri Sheriffs' Retirement System in all traffic law violation cases. In 2017, Daven Fowler and Jerry Keller (collectively, "the challengers") both received speeding tickets in the Kansas City area to which they pleaded guilty. The municipal division clerks assessed and collected the $3 surcharge in both cases. The challengers subsequently filed a lawsuit on behalf of themselves and a putative class in the circuit court alleging the surcharge violates the open courts provision of the Missouri Constitution and results in unjust enrichment. Following trial, the circuit court concluded – although the challengers had standing and did not waive their constitutional challenges by failing to raise them in the municipal division – the case must be dismissed because the municipal clerks were necessary and indispensable parties and the challengers failed to join the clerks as defendants. The circuit court further concluded the surcharge does not violate the open courts provision. The challengers appeal; the retirement system cross-appeals.

VACATED AND REMANDED.

Court en banc holds: (1) The challengers have standing to raise their unjust enrichment claim. Although their attorney originally paid the municipal division costs, the challengers reimbursed him; therefore, the challengers have a pecuniary interest in the outcome of the litigation.

(2) The challengers did not waive their constitutional claims by failing to raise them before the municipal division. This Court has held that the failure to raise constitutional questions in a municipal division is not considered a waiver of the constitutional issues. Accordingly, the challengers were not required to present their constitutional challenge to the municipal division.

(3) The retirement system failed to preserve its arguments regarding its defenses of voluntary payment and passive acquiescence. The retirement system's point relied on fails to comply with Rule 84.04(d), which requires a party to state concisely the legal reasons for its claims of error, and is multifarious in that it groups together multiple, independent claims of error; therefore, the point relied on preserves nothing for this Court's review.

(4) The municipal clerks are not necessary parties to the unjust enrichment claim. The challengers seek restitution or repayment of the surcharge, and the retirement system retained the benefit of the surcharge payment. Because complete relief can be accorded between the named parties, the municipal clerks are not necessary parties under Rule 52.04(a)(1). Likewise, the municipal clerks are not necessary parties under Rule 52.04(a)(2) because the clerks have not claimed an interest in the lawsuit at any point in the litigation.

(5) The $3 surcharge assessed pursuant to section 57.955 violates article I, section 14 of the Missouri Constitution. Court costs used to enhance compensation paid to executive branch officials are not reasonably related to the expense of the administration of justice and, thereby, violate the open courts provision. Because section 57.955 requires the collection of a surcharge used to enhance the compensation of retired county sheriffs, who are executive branch officials, it is not reasonably related to the expense of the administration of justice and, therefore, is constitutionally invalid.