MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BOONE COUNTY FIRE PROTECTION DISTRICT

RESPONDENT,

v.

CITY OF COLUMBIA, MISSOURI

APPELLANT,

and

COUNTY OF BOONE, MISSOURI

RESPONDENT.

DOCKET NUMBER WD84228

DATE: November 23, 2021

Appeal From:

Boone County Circuit Court
The Honorable Jeff Harris, Judge

Appellate Judges:

Division Three: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Clayton L. Thomson, Columbia, MO, for respondent.

Bradley C. Letterman, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BOONE COUNTY FIRE PROTECTION DISTRICT, RESPONDENT,
v.
CITY OF COLUMBIA, MISSOURI, APPELLANT,
and
COUNTY OF BOONE, MISSOURI, RESPONDENT.

WD84228 Boone County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, Gary D. Witt, Judge, and Edward R. Ardini, Jr., Judge

The City of Columbia ("City") appeals the Circuit Court's grant of summary judgment in favor of Boone County Fire Protection District ("BCFPD") on its petition for a declaratory judgment and denying City's counterclaim for declaratory judgment. City raises three points on appeal: (1) the trial court erred in granting BCFPD's motion for summary judgment because section 321.320.2, RSMo, does not give BCFPD command and control over fire incidents in the newly annexed territory by City ("subject areas"); (2) section 321.320.2 does not give BCFPD the ability to enforce BCFPD Ordinance 21 in the subject areas because command and control of fire incidents does not relate to fire prevention and fire control; and (3) the trial court erred in denying the City's cross motion for summary judgment. Because the trial court's grant of summary judgment in favor of BCFPD depends entirely on the application of section 321.320.2, as was amended by House Bill No. 1446 ("H.B. 1446") in 2018, which the Missouri Supreme Court held is unconstitutional and unenforceable, the judgment of the trial court is reversed and remanded with instructions to dismiss the cause of action.

REVERSED AND REMANDED.

Division Three holds:

City and BCFPD, in cross petitions for declaratory judgment, disputed the application of section 321.320.2 as amended by H.B. 1446 regarding the authority to manage and control fire incidents by certain fire protection districts in areas newly annexed into a city.

After the briefing in this case was complete, the Missouri Supreme Court held H.B. 1446, which includes the amendments to section 321.320 at issue in this case, to be unconstitutional and unenforceable because the passage of H.B. 1446 violated Missouri's single subject rule. *City of De Soto v. Parson*, 625 S.W.3d 412, 415 (Mo. banc 2021). Therefore, the language of section 321.320 is returned to the version of the statute prior to the amendments contained in H.B. 1446.

This is the version of the statute the City and BCFPD were operating under prior to 2018, when they reached multiple agreements granting BCFPD the authority to provide some fire

protection services within the City limits in the subject areas. BCFPD makes no argument that, absent the agreements with the City, it had authority over fire services in the subject area based on the prior version of section 321.320 in effect prior to the Supreme Court's ruling striking down the amendments to this section. Accordingly, the judgment of the trial court granting BCFPD's motion for summary judgment is reversed. The City's counterclaim and cross-claim requests a declaratory judgment which is also wholly related to the application of the same statute that has been struck down as unconstitutional. Further, the City agreed at oral argument that if this Court reversed the judgment in favor of BCFPD, the cause should be dismissed on remand.

Opinion by: Gary D. Witt, Judge November 23, 2021

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