



In the Missouri Court of Appeals Eastern District

DIVISION THREE

PLANNED PARENTHOOD OF	)	No. ED109654
ST. LOUIS REGION, et al.,	)	
	)	
Respondents,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
	)	
vs.	)	
	)	Honorable Christopher McGraugh
MISSOURI DEPARTMENT	)	
OF SOCIAL SERVICES, et. al.,	)	
	)	
Appellants.	)	Filed: December 14, 2021

The Missouri Department of Social Services, MO HealthNet Division, and Missouri Medicaid Audit and Compliance Unit (collectively “State”) appeal the circuit court’s award of attorney’s fees to Planned Parenthood of St. Louis Region and Reproductive Health Services of Planned Parenthood of St. Louis Region (collectively “Planned Parenthood”). The award was part of the circuit court’s judgment that reversed the decision of the Administrative Hearing Commission, and concluded that the State was required to pay Planned Parenthood for valid Medicaid claims submitted in fiscal year 2020. The circuit court remanded the cause to the Commission for a determination of the amount of the claims, interest, and attorney’s fees and expenses due Planned Parenthood. We dismiss the appeal, for lack of a final judgment.

Factual and Procedural Background

This appeal stems from the State’s denial of Planned Parenthood’s Fiscal Year 2020 claims for physician and family-planning services provided to Medicaid-eligible individuals. A brief background of the operation and funding of Missouri’s Medicaid program aids in understanding the background and posture of this case. Missouri’s Medicaid program is known as MO HealthNet, and is administered by the Mo HealthNet Division of the Missouri Department of Social Services. *Planned Parenthood of St. Louis Region v. Dept. of Social Servs., Div. of Med. Servs.*, 602 S.W.3d 201, 204 (Mo. banc 2020). Under Missouri law, payments are made “on behalf of” the Medicaid-eligible person receiving the services, but are made to the authorized provider from which the eligible person received the services. Sections 208.152.1(6) and (12); *Planned Parenthood of St. Louis Region*, 602 S.W.3d at 205. Missouri law further provides that “any person entitled to MO HealthNet benefits may obtain it from *any provider of services* with which an agreement is in effect under this section and which undertakes to provide the services, as authorized by the MO HealthNet division.” (Emphasis added). Section 208.153.1. MO HealthNet has authorized Planned Parenthood to provide physician and family-planning services to Medicaid-eligible individuals. In the past, this was sufficient to permit Planned Parenthood to provide those services and receive payment for them, from MO HealthNet, from money appropriated by the General Assembly. *Planned Parenthood of St. Louis Region*, 602 S.W.3d at 205.

House Bill No. 11 (2019) (“HB11”) was the Department of Social Services’ appropriations bill for Fiscal Year 2020.¹ The General Assembly appropriated funds for the fiscal year, for the

¹ Fiscal Year 2020 began July 1, 2019, and ended June 30, 2020. House Bill 11 (2019) was “an act to appropriate money for the expenses, grants, and distributions of the Department of Social Services and the several divisions and programs thereof to be expended only as provided in Article IV, Section 28 of the Constitution of Missouri, and to transfer money among certain funds for the period beginning July 1, 2019, and ending June 30, 2020....”

purpose of funding “physician services and related services, including, but not limited to ... family planning services under the MO HealthNet fee-for-service program....” Section 11.645 HB11.

But then the General Assembly attempted to prohibit funds from being paid to an abortion facility.

Section 11.930 of HB11 provided that:

“[n]o funds shall be expended to any clinic, physician’s office, or any other place or facility in which abortions are performed or induced other than a hospital, or any affiliate or associate of any such clinic, physician’s office, or place or facility in which abortions are performed or induced other than a hospital.”

Citing this section, the State notified Planned Parenthood that it would be denying Planned Parenthood’s fiscal year 2020 provider claims due to lack of appropriation authority. The State reasoned that because Reproductive Health Services of Planned Parenthood of St. Louis Region is licensed by the Missouri Department of Health and Senior Services as an abortion facility, and because Planned Parenthood of St. Louis Region is an affiliate and/or associate of that provider, the two were thus ineligible for payments pursuant to Section 11.930 of HB11 and Article IV, Section 28 of the Missouri Constitution.²

Planned Parenthood appealed the denial of its claims to the Administrative Hearing Commission. The Commission concluded the State’s denials were required by the language in Section 11.930 of HB11, and thus affirmed the denial of Planned Parenthood’s claims.

Planned Parenthood petitioned for judicial review in the circuit court. While that review was pending, the Supreme Court of Missouri issued its decision in *Planned Parenthood of St. Louis Region v. Department of Social Services, Division of Medical Services*, 602 S.W.3d 201 (Mo. banc 2020). In that case, like here, the State refused to reimburse Planned Parenthood for family-

² Article IV, Section 28 of the Missouri Constitution prohibits the Department of Social Services from spending any funds in excess of the assigned amount and/or outside the assigned purpose of an appropriation.

planning and physician services provided to Medicaid-eligible individuals.³ Like here, the State based its denial on a provision in fiscal year's appropriation bill prohibiting funds from being expended to an abortion facility. That provision, Section 11.800 of House Bill No. 2011 (2018)(“HB2011”), stated: “No funds shall be expended to any abortion facility as defined in Section 188.015, RSMo, or any affiliate or associate thereof.”

Planned Parenthood challenged the constitutional validity of Section 11.800 of HB2011, contending it was impermissible to use an appropriation bill to amend substantive law – in particular, Sections 208.153.2 and 208.152.1(6), (12) – because such action violated the single-subject requirement of Article III, Section 23 of the Missouri Constitution. The Supreme Court of Missouri reached the same conclusion and declared Section 11.800 unconstitutional.

Article III, Section 23 of the Missouri Constitution prohibits bills with more than one subject.⁴ *Planned Parenthood of St. Louis Region*, 602 S.W.3d at 206-207. “Any bill that purports to combine appropriations with the enactment or amendment of general or substantive law necessarily contains more than one subject in violation of article III, section 23....”⁵ *Id.* at 207. Sections 208.153.2 and 208.152.1(6), (12) require MO HealthNet to pay its authorized providers, including Planned Parenthood, for covered physician and family-planning services provided to Medicaid-eligible individuals. *Id.* at 209. Section 11.800 of HB2011, however, purported to add a limitation on which health-care providers could receive payments. *Id.*

³ The providers in the case before the Supreme Court of Missouri are the same providers in the instant case: Planned Parenthood of St. Louis Region and Reproductive Health Services of Planned Parenthood.

⁴ Article III, Section 23 of the Missouri Constitution provides: “No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated.” Section 23 allows a narrow exception to the prohibition on multi-subject bills for appropriation bills because such bills necessarily include multiple subjects, i.e., appropriations of differing amounts from differing accounts for differing subjects. *Planned Parenthood of St. Louis Region*, 602 S.W.3d at 206-207. However, this narrow exception did not apply in the case. *Id.* at 207.

⁵ Further, such a bill does not fall within the exception for general appropriation bills. *Planned Parenthood of St. Louis Region*, 602 S.W.3d at 207.

The Supreme Court of Missouri concluded that Section 11.800 of HB2011 was in direct conflict with Sections 208.153.2 and 208.152.1(6), (12), and thus was an attempt to amend those general statutes. *Id.* at 208-209. Specifically, the Supreme Court of Missouri stated: “the language in section 11.800 seeking to disqualify certain authorized providers based on services they provide separately and apart from the MO HealthNet program – and for which no MO HealthNet payments can be made – is a naked attempt to use HB2011 both to appropriate funds for various purposes and to amend sections 208.153.1 and 208.152.1(6), (12).” *Id.* at 209. Accordingly, the Supreme Court of Missouri declared Section 11.800 unconstitutional, as a “clear and unmistakable violation of the proscription in article III, section 23 of the Missouri Constitution against bills with multiple subjects.” *Id.* at 209-11.⁶

We return to the instant case. Planned Parenthood raised the same constitutional challenge to Section 11.930 of HB11, as it had to Section 11.800 of HB2011. The State conceded the validity of Section 11.930 was controlled by the Supreme Court of Missouri’s *Planned Parenthood* decision, and therefore the section was invalid.

The circuit court, in following the Supreme Court’s decision, reached the same conclusion, and reversed the Commission’s decision. The circuit court declared Section 11.930 of HB11 unconstitutional, and ruled invalid the State’s decision to deny payment to Planned Parenthood for physician and family-planning services based on that section. The circuit court thus found that the Missouri Department of Social Services was required to pay Planned Parenthood for valid MO HealthNet claims submitted in fiscal year 2020, including interest on money wrongfully withheld by the state pursuant to Section 621.055, and attorney’s fees and expenses pursuant to Section 536.087. The circuit court, as argued for by the State, then remanded the cause to the Commission

⁶ The Supreme Court of Missouri concluded that Section 11.800 was severable from HB2011. *Planned Parenthood of St. Louis Region*, 602 S.W.3d at 212.

for a “determination of the amount of the claims, interest, and attorney’s fees and expenses due [Planned Parenthood.]”

The State appeals, contesting the attorney’s fees aspect of the circuit court’s judgment. The State contends Planned Parenthood’s purported application for attorney’s fees and the circuit court’s judgment both run afoul of the requirements set out in Section 536.087, which is the statute that authorizes an award of attorney’s fees to a prevailing party in an action against the State or State agency, if the State or agency’s position was not substantially justified. Planned Parenthood has moved to dismiss the appeal for lack of a final judgment.

Discussion

“The right to appeal is purely statutory and, where a statute does not give a right to appeal, no right exists.” *Wilson v. City of St. Louis*, 600 S.W.3d 763, 767 (Mo. banc 2020). “An appeal without statutory sanction confers no authority upon an appellate court except to enter an order dismissing the appeal.” *Wunderlich v. Wunderlich*, 505 S.W.3d 434, 436 (Mo. App. W.D. 2016)(quoting *Fannie Mae v. Truong*, 361 S.W.3d 400, 405 (Mo. banc 2012); *Schrock v. Gan*, 494 S.W.3d 631, 637 (Mo. App. W.D. 2016)(only authority is to dismiss and transfer case to entity that does have authority).

Many statutes govern the right to appeal. *Wilson*, 600 S.W.3d at 767. Attorney’s fees in this case are authorized by Section 536.087. Section 536.087 further authorizes an appeal if a party or the State “is dissatisfied with a determination of fees and other expenses....” Section 536.087.7.⁷ Section 536.087.7 is the statute applicable here. *Jackson County v. McClain Enters.*,

⁷ In full, Section 536.087.7 provides:

If a party or the state is *dissatisfied with a determination of fees and other expenses made in an agency proceeding*, that party or the state may within thirty days after the determination is made, seek judicial review of that determination from the court having jurisdiction to review the merits of the underlying decision of the agency adversary proceeding. If a party or the state is *dissatisfied with a determination of fees and other expenses made in a civil action arising from an agency proceeding*, that party or the state may, within the time permitted by law, appeal that order or

Inc., 190 S.W.3d 633, 638 (Mo. App. W.D. 2006)(statute addressing appealability in specific terms controls over Section 512.020, which governs appeals generally).⁸ The question, then, is whether this statute affords an appeal at this point in the case. We conclude that it does not.

Any time this Court is called upon to apply a statute, our primary obligation is to ascertain the intent of the legislature from the language used, and to give effect to that intent if possible. *Kehlenbrink v. Dir. of Revenue*, 577 S.W.3d 798, 800 (Mo. banc 2019); *Hixson v. Missouri State Highway Patrol*, 611 S.W.3d 923, 926 (Mo. App. E.D. 2020). We do so by considering the words used in their plain and ordinary meaning. *Hixson*, 611 S.W.3d at 926. We interpret statutes not in a hyper-technical way, but in a reasonable, logical way that gives meaning to the statute and the legislature’s intent as reflected in the statute’s plain language. *Id.*

To appeal in this case, there must be a “determination of fees.” The word “determination” is not statutorily defined in Chapter 537. We thus turn to dictionary definitions to determine the word’s plain and ordinary meaning. *Lapponese v. Carts of Colorado, Inc.*, 422 S.W.3d 396, 402 (Mo. App. E.D. 2013). The word “determination” has many meanings. Relevant here, however are the following: “the act of deciding definitely and firmly;” “the act of finding out or calculating something;” and “a fixing or finding of the position, magnitude, value, or character of something.”

judgment to the appellate court having jurisdiction to review the merits of that order or judgment. The reviewing or appellate court’s determination on any judicial review or appeal heard under this subsection shall be based solely on the record made before the agency or court below. *The court may modify, reverse or reverse and remand the determination of fees and other expenses if the court finds that the award or failure to make an award of fees and other expenses, or the calculation of the amount of the award, was arbitrary and capricious, was unreasonable, was unsupported by competent and substantial evidence, or was made contrary to law or in excess of the court’s or agency’s jurisdiction.* Awards made pursuant to this act shall be payable from amounts appropriated therefor. The state agency against which the award was made shall request an appropriation to pay the award.

(Emphases added).

⁸ Even under Section 512.020, the circuit court’s judgment would not be final for purposes of appeal because it does not dispose of all issues in the case, but instead leaves matters for future determination. *See, e.g., ACU Credit Union v. Estate of Melman*, 788 S.W.2d 803, 804 (Mo. App. E.D. 1990)(no final judgment where trial court granted motion for attorney’s fees but did not enter a monetary amount to be paid).

Merriam-Webster Dictionary.⁹ “Determination” also means “the ascertaining or fixing of the quantity, quality, position, or character of something.” *The American Heritage Dictionary of the English Language, 5th Edition*.¹⁰

Additionally, in ascertaining the intent of the legislature, we do not read the words of a statute in isolation; rather, we read the words and language used in the context of the entire statute to determine their plain and ordinary meaning. *Kehlenbrink*, 577 S.W.3d at 800; *Hixson*, 611 S.W.3d at 926. We note that in crafting Section 536.087.7 the legislature provided that this Court may:

modify, reverse or reverse and remand the determination of fees and other expenses if the court finds that the award or failure to make an award of fees and other expenses, **or the calculation of the amount of the award**, was arbitrary and capricious, was unreasonable, was unsupported by competent and substantial evidence, or was made contrary to law or in excess of the court’s or agency’s jurisdiction.

(Emphasis added). Inclusion of a remedy for the calculation of the amount of the award indicates that the legislature intended there be an amount of an award before an appeal is taken.

In light of these guiding principles, the definitions of the word “determination,” and the context of the statute, which affords a remedy for the calculation of the amount of an award, we hold that the word “determination,” as it is used in Section 536.087.7, means the ascertainment of an amount of fees. A “determination” of fees is not just an entitlement to fees, but the calculation and fixing of how much those fees will be. Such a construction comports with the long-established principle of Missouri law, which provides that a final disposition in an agency proceeding or a civil action occurs “whenever the decision disposes of all issues as to all parties and leaves nothing for future determination.” *Davis v. Angoff*, 957 S.W.2d 340, 343 (Mo. App. W.D. 1997); *Schulze*

⁹ Online at <https://www.merriam-webster.com/dictionary/determination>(accessed December 6, 2021)

¹⁰ Online at <https://ahdictionary.com/word/search.html?q=determination> (accessed December 6, 2021)

v. Erickson, 17 S.W.3d 588, 591 (Mo. App. W.D. 2000). Such a construction also comports with the age-old policy against piecemeal appeals.

Here, there has not been a determination of attorney's fees. All that has been decided is that the State must pay Planned Parenthood for valid MO HealthNet claims submitted in fiscal year 2020, including attorney's fees and expenses pursuant to Section 536.087. The circuit court then remanded the matter back to the Commission for a determination of the amount of the claims, interest, attorney's fees, and expenses due Planned Parenthood. The circuit court's judgment leaves matters to future determination. The Commission has not determined the valid claims, nor the amount of those claims. The Commission has not yet ascertained, calculated, or fixed the amount of attorney's fees. Further proceedings are required, at which additional evidence will be adduced, and additional findings and conclusions of law made. For this Court to entertain matters now would inevitably lead to piecemeal presentation of cases on appeal.

The State acknowledges that a remand to the Commission is generally not appealable. "In general, a cause remanded to an agency does not constitute a final judgment, and, therefore, is not appealable." *Schrock*, 494 S.W.3d at 636. For example, appeals are not authorized when there is a remand to an agency requiring the consideration of additional evidence or further proceedings. *Id.* (citing *Taylor v. Civ. Serv. Comm'n of St. Louis Cty., Mo.*, 969 S.W.2d 763, 764 (Mo. App. E.D. 1998)). But the State argues this is one of those limited circumstances when a remand to the Commission may be appealable. The State relies on *Buchheit* and *Schrock* for proposition that finality of an agency's decision depends on the nature of the remand. *Buchheit, Inc. v. Mo. Com'n on Human Rights*, 215 S.W.3d 268 (Mo. App. W.D. 2007); *Schrock v. Gan*, 494 S.W.3d 631 (Mo. App. W.D. 2016). Those cases state that "whether a decision may be appealed depends on whether or not there was a determination of the underlying merits of the case." *Schrock*, 494 S.W.3d at

636. If a case is remanded “without a determination of the underlying merits, the appeal should be dismissed due to a lack of final judgment.” *Id.*; *Buchheit*, 215 S.W.3d at 275. The State argues that the circuit court’s rulings in this case – that Section 11.930 of HB11 was unconstitutional, that the State’s denial of payment was invalid, and that the State is required to pay Planned Parenthood for valid MO HealthNet claims for fiscal year 2020 – constitute a determination of the underlying merits, such that the circuit court’s judgment should be deemed final for purposes of appeal.

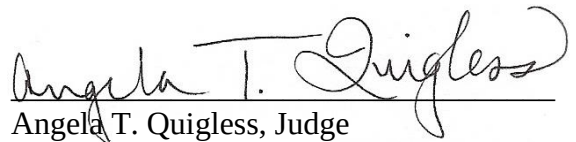
The circuit court’s judgment in *Buchheit* was determined final for purposes of appeal because the basis for remanding was lack of sufficient evidence to support the Commission’s decision and because the circuit court had reviewed the merits of the underlying claim. *Buchheit*, 215 S.W.3d at 275-6. The circuit court’s judgment in *Schrock* was determined to not be final for purposes of appeal because the circuit court did not make a judgment on the underlying merits of the case. Instead, the court decided that the Commission had to consider the facts under a new legal standard, which would require new factual findings. In sum, the judgment left questions unanswered for future consideration. *Schrock*, 494 S.W.3d at 637.

We agree with the principles stated in *Buchheit* and *Schrock*, but find that in applying those principles here, the circuit court’s judgment is not final. Though the State conceded the invalidity of Section 11.930 of HB11, upon which the State had based its denials, and though the circuit court ruled that the State was required to pay Planned Parenthood for valid MO HealthNet claims submitted in fiscal year 2020, including interest, attorney’s fees, and expenses pursuant to Section 536.087, this does not mean that the underlying merits of Planned Parenthood’s claim have been fully resolved. The circuit court reviewed some, but not all of the merits of the underlying claim. As in *Schrock*, the circuit court left questions unanswered for future consideration. Section 536.087 authorizes award of attorney’s fees for prevailing party, “unless the court or agency finds

that the position of the State was substantially justified or that special circumstances make an award unjust.” No such findings have been made by the circuit court. Further, the amount of attorney’s fees has yet to be determined, as new evidence is needed. New findings must be made, not only as to validity and the amount of claims, but as to the amount of fees and expenses. The circuit court concluded that the determination of claims to be paid by the State would go beyond the application of law to the facts, and thus the matter had to be remanded to the Commission, for the Commission to determine the specific amount of claims, including attorney’s fees, to be paid by the State. The State acknowledges that new evidence must be adduced, and argued to the circuit court that it would be inappropriate for the circuit court to hear additional evidence on the matter, and requested that the matter be remanded to the Commission for just such a determination.¹¹ The Court in *Shrock* sagely noted that the Commission must be allowed to complete its work before it may be reviewed on appeal. The same is true here.

Conclusion

The circuit court’s judgment is not final for purposes of appeal. We grant Planned Parenthood’s motion. We dismiss the appeal for lack of a final judgment and remand the cause to the Commission.


Angela T. Quigless, Judge

Philip M. Hess, P.J., and
Colleen Dolan, J., concur.

¹¹ We note the circuit court agreed with the State’s argument, and followed the State’s request to remand the matter to the Commission. It is well-settled that a party on appeal cannot complain of a matter in which the party joined at trial. *See, e.g., Bowers v. Bowers*, 543 S.W.3d 608, 615 (Mo. banc 2018).