Summary of SC99273, *City of Harrisonville, Missouri v. The Board of Trustees of the MO Petroleum Storage Tank Insurance Fund*

Appeal from the Cole County circuit court, Judge Aaron J. Martin
Argued and submitted May 24, 2022; opinion issued December 20, 2022

Attorneys: The board was represented by James R. Layton of Tueth Keeney Cooper Mohan & Jackstadt PC in St. Louis, (314) 880-3600. Harrisonville was represented by Steven E. Mauer, Christine Roto Smith and Alex C. Felzien of Mauer Law Firm PC in Kansas City, (816) 759-3300.

The Missouri Petroleum and Convenience Association, which filed a brief as a friend of the Court, was represented by Charles W. Hatfield and Alixandra S. Cossette of Stinson LLP in Jefferson City, (573) 636-6263.

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: Harrisonville and the board of trustees of the state's petroleum storage tank insurance fund appeal the circuit court's judgment awarding $8 million in punitive damages against the board on the city's claim of fraud and ordering post-judgment interest to accrue from the date of judgment. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri reverses the judgment, entering judgment in the board's favor under Rule 84.14. The board is a state agency entitled to sovereign immunity, the legislature has not waived sovereign immunity for the tortious conduct the city alleges, and the city has not established its claims fit within an exception to sovereign immunity.

Facts: This is the second time this case has come before this Court. After discovering its underground petroleum tank system was leaking, a gas station in Harrisonville in 1997 submitted a claim to the state's petroleum storage tank fund, created to provide insurance for cleanup costs associated with petroleum spills and leaks. In 2003, while updating its sewer system, the city discovered contaminated soil in its easement adjacent to the station. The city reported the leak to the department of natural resources, which informed the city the storage tank fund's board of trustees was monitoring the contamination. At the suggestion of an environmental engineer retained by the board and on recommendation of the fund's third-party administrator, the city hired a remediation company to install petroleum-resistant pipe and fittings in the easement, with the understanding the fund would reimburse the city's costs. After a dispute arose regarding payment of the costs, the city sued the fund for negligent misrepresentation and fraud, seeking both compensatory and punitive damages. The jury returned a verdict in the city's favor, assessing against the fund compensatory damages and $8 million in punitive damages, which the circuit court reduced to $2.5 million. On appeal, this Court affirmed the compensatory damages award but reversed the award of punitive damages against the fund, remanding (sending back) the case to the circuit court. On remand, the city substituted the board for the fund and filed an amended petition against the board. Venue over the case was transferred to the Cole County circuit court, which entered judgment against the board for $8 million in damages, plus post-judgment interest accruing from the date of its judgment against the board. The board and the city both appeal.

REVERSED.

Court en banc holds: Sovereign immunity bars the city's fraud claim against the board. Section 537.600, RSMo, codifies the state's sovereign immunity from tort claims. The board's enabling statute expressly designates it as a state agency, and the authority granted to the board is consistent with that designation. There was no misnomer; the board was not a party to the litigation until remand, when the city substituted the board in place of the fund. The board then timely asserted sovereign immunity as a defense. Further, no case has been found holding the board is not entitled to sovereign immunity for claims made against it based on the tortious conduct of it or its agents, regardless of whether the moneys in the fund itself are considered state funds. This Court's prior decision in this case did not consider the question of whether the board was an agent of the state. Because the board is a state agency entitled to sovereign immunity, the circuit court misapplied the law in entering the $8 million punitive damages judgment against it. Because this claim is dispositive, the Court will not address any other claims. The circuit court's judgment is reversed; pursuant to Rule 84.14, judgment is entered for the board on the city's fraud claim.