OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

SPECIAL DIVISION

MARK BOLES, ET AL.,	)	No. ED111495
	)	
Respondent/Cross-Appellant,	)	Appeal from the Circuit Court of
	)	the City of St. Louis
vs.	)	
	)	Honorable Jason M. Sengheiser
CITY OF ST. LOUIS, ET AL.,	)	
	)	
Appellant.	)	Filed: May 28, 2024

This consolidated appeal must determine the meaning of the City of St. Louis' Earnings Tax Ordinance § 5.22.020 ("Earnings Tax Ordinance" or "Ordinance"), which imposes a one percent tax on "[s]alaries, wages, commissions and other compensation earned after July 31, 1959, by nonresident individuals of the City for work done or services performed or rendered in the City[.]" The parties contest whether the earnings tax should be assessed when nonresidents work remotely outside of the City for their City-based employers. Appellants Gregory F.X. Daly (the "City Tax Collector"), in his official capacity as the Collector of Revenue for the City of St. Louis, and the City of St. Louis ("City") (collectively, "Collectors") appeal from a final judgment entered on March 30, 2023, incorporating a January 2022 order and a January 2023 order and judgment, in which the trial court granted, in part, Respondents' – Mark Boles, Nicholas Oar, Kos Semonski, Christian E. Stein, II, Marc S. Kolaks, and Raymond T. Jaeger (collectively, "Employees") – summary judgment motion.

Collectors raise two points on appeal. In Point I, Collectors contend the trial court erred in interpreting the Ordinance because its reading violates the rules of statutory construction. In Point II, Collectors argue the trial court erred because they are entitled to judgment as a matter of law in that the undisputed facts show Employees rendered services in the City, and therefore, the remote work at issue is subject to the earnings tax.

Employees cross-appeal and assert seven claims of error. The cross-appeal challenges the trial court's March 30, 2023 final judgment incorporating the January 2023 summary judgment order and judgment, and parts of the January 2022 order dismissing all but two claims asserted in their Second Amended Petition. In Points I–V, Employees argue the trial court erred in dismissing the counts in which they sought class action certification under § 139.031 and, alternatively, under 42 U.S.C. § 1983. In Point VI, Employees argue the trial court erred in partially granting Collectors' summary judgment motion as to Count IX because Collectors violated the Hancock Amendment when they began taxing remote work, which was not previously taxed and, in effect, broadened the definition of the tax base. In Point VII, Employees contend the trial court erred in denying their motion for attorneys' fees because this case falls within the special-circumstances and the balancing-of-the-benefits exceptions to the American Rule.

AFFIRMED.

SPECIAL DIVISION HOLDS: This Court holds the Ordinance's language is clear and unambiguous, and the remote work done and/or services at issue were not performed or rendered in the City. Thus, Employees were not liable for the earnings tax for the days they worked remotely outside of the City and are entitled to refunds. This Court holds Employees' cross-appeal claims of error are without merit. Accordingly, the trial court's judgment is affirmed.

Opinion by: Michael S. Wright, J.
Robert M. Clayton III, P.J. and Philip M. Hess, J. concur.

Attorney for Appellant: Michael A. Garvin, David H. Luce and Zachary R. McMichael

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