



Missouri Court of Appeals
Southern District

In Division

ADAM BINGHAM and
IDA BINGHAM,

Appellants,

v.

PHELPS COUNTY PUBLIC WATER
SUPPLY DISTRICT #4,

Respondent.

No. SD38542

Filed: October 23, 2025

APPEAL FROM THE CIRCUIT COURT OF PHELPS COUNTY

Honorable William Earl Hickie, Judge

AFFIRMED

A suit for declaratory judgment by Adam and Ida Bingham (“the Bingham”) resulted in the invalidation of certain property liens filed by the Phelps County Public Water Supply District #4 (“the District”) for unpaid sewer charges. The Bingham prevailed on their claim that the sewer charges were improperly imposed while the property was uninhabitable, which is a violation of the District’s User Charge Ordinance. This Court vacated the circuit court’s judgment and remanded for the reason that the judgment failed to address the Bingham’s additional claim that the District’s sewer

charges were unauthorized taxes imposed in violation of the Hancock Amendment, which, if true, would also entitle the Bingham to attorney's fees and expenses. *See Bingham v. Phelps Cnty. Pub. Water Supply Dist. #4*, 687 S.W.3d 209 (Mo.App. 2024). Upon such remand, the circuit court determined that the District's sewer charges did *not* violate the Hancock Amendment and, as such, the Bingham were *not* entitled to attorney's fees and expenses thereunder. The Bingham appeal for a second time, contending in a single point that the circuit court "misapplied the law to the facts" in failing to rule that the District's sewer charges were not unauthorized taxes under the Hancock Amendment. On the same legal theory, the Bingham have moved for an order from this Court for their attorney's fees and expenses incurred in this appeal. Finding no error as alleged, we affirm the circuit court's judgment and deny the Bingham's motion.

Governing Law and Standard of Review

Our high court's opinion in *Zweig v. Metropolitan St. Louis Sewer Dist.*, 412 S.W.3d 223 (Mo. banc 2013), thoroughly describes the applicable law. Article X, section 22(a) of the Hancock Amendment to the Missouri Constitution "prohibits political subdivisions from levying any new or increased tax, license or fees without prior voter approval." *Zweig*, 412 S.W.3d at 226 (citation modified). However, "despite the breath of this language, section 22(a) does *not* prohibit a political subdivision from charging an individual user a fee in exchange for rendering a service to that user, so long as this charge is not simply a tax by another name." *Id.* (emphasis added).

Five criteria have served as a basis to aid courts in determining "*whether the charge is closer to being a 'true' user fee* or a tax denominated as a fee." *Id.* at 233; *see*

also *Keller v. Marion Cnty. Ambulance Dist.*, 820 S.W.3d 301, 304 n.10 (Mo. banc 1991) (where the five criteria first appeared and were described). These *Keller* criteria should be “viewed not as constitutional litmus tests to be applied with scientific rigor, but merely as relevant considerations that can point toward a proper classification.” *Zweig*, 412 S.W.3d at 233. Instead, *Keller* “offers these criteria solely to aid courts in applying the Court’s long-standing, ‘traditional’ test for distinguishing fees and taxes: Fees or charges prescribed by law to be paid by certain individuals to public officers for services rendered in connection with a specific purpose ordinarily are not taxes.” *Id.* at 234 (citation modified); see also *Leggett v. Missouri State Life Ins. Co.*, 342 S.W.2d 833, 875 (Mo. banc 1960) (setting out the aforementioned “traditional” test). Before the *Keller* criteria can provide any meaningful guidance, the *Leggett* test makes clear that there must be a “clear and complete understanding of the *service* that the political subdivision claims to provide, including the *users* of this service and the *transactions* in which that service supposedly is rendered in exchange for the user fee.” *Zweig*, 412 S.W.3d at 234. Due to “the critical importance of these determinations,” our high court in *Zweig* noted that “*Keller* fails to emphasize the scope or importance of this service analysis, probably because *Keller* assumes this is clear from the *Leggett* test.” *Id.* (bold added). Our high court, therefore, reordered the *Keller* criteria in the following manner, so that courts examine: first, whether the political subdivision is providing a service in exchange for the charge (*Keller* criterion 4); second, whether the charge is paid by mostly all the residents of the political subdivision or by those who actually use the service (*Keller* criterion 2); third, whether the charge is paid only on or after provision of the service (*Keller* criterion

1); fourth, whether the charge is more or less dependent on the amount of service provided (**Keller** criterion 3); and fifth, whether the service is historically and exclusively governmental (**Keller** criterion 5). *Id.* at 234-40. In its discussion of **Keller** criterion 2, our high court observed:

As **Keller** makes clear, if the political subdivision ties its charge to the use of the political subdivision's service, and if it charges this fee to all who use its service, it is likely that the political subdivision is setting the price for rendering its services to individual users and voter approval under section 22(a) is not required. But if the political subdivision ties the fee to residency or ownership instead of use, the charge is not a user fee and prior voter approval is required.

Id. at 236 (bold added).

In addressing the Bingham's claim of error involving these legal principles, we are not bound to the circuit court's application of the **Keller** criteria to the facts in this case.

Id. at 231. Rather, we defer to the circuit court's factual determinations and review *de novo* the circuit court's legal conclusions and its application of law to the facts. *Id.* at 231. In this context:

Application of the **Keller** criteria (and other relevant considerations) are not facts to be determined solely by the factfinder and deferred to on appeal. Instead, such criteria are a means of evaluating those facts and are intended only to shed what light they can on the application of section 22(a), i.e., a question of law.

Id. (bold added).

The Circuit Court's Factual Determinations

The District was statutorily created under Chapter 247. As set out in its User Charge Ordinance, the District charges a monthly \$51.50 "flat Sewer Availability Charge" to single-family dwellings or equivalent. Approximately two hundred twenty

properties are connected to the District’s sewer line and at least fifteen are not. The District does not provide water service and is unable to measure the amount to which a property owner utilizes its sewer service. According to the circuit court, the District’s sewer service, whether needed or not, is “arguably available” on an “equal basis,” thereby “potentially justifying an equal charge” for single-family dwellings or equivalent. The circuit court further found that “the District only imposes charges against those who are connected to its public sewer system” and that certain property owners “are not charged since they are not connected to the District public sewer line.” Additionally, the circuit court found, that upon “the request of a property owner” to disconnect their sewer line, the District “will make arrangements to disconnect the property from the public system, either by contracting with a plumber to disconnect, or allowing the owner to make the disconnection themselves.” The Bingham’s private lateral sewer line remained connected to the District’s public sewer line throughout the disputed time period and they never requested a disconnection.

Analysis and Decision

Turning now to the application of law to the aforementioned facts, the District, in responding to the Bingham’s point relied on, analogizes the instant case with a post-*Zweig* case out of the eastern district of this Court, *Eclipse Prop. Dev. LLC v. Ammari*, 635 S.W.3d 205 (Mo.App. 2021). We agree with the District that *Eclipse* is on point and dispositive.

Similar to the instant case, *Eclipse* involved a Hancock Amendment challenge to sewer charges by a statutorily-created public sewer district. *Id.* at 209-10. The sewer

district did not provide a metered water service and charged a monthly flat fee of \$31.73 for its sewer service. *Id.* at 210. Not all properties within the sewer district’s territory were connected to its sewer line and its service fee applied only to those properties that were connected. *Id.* A property owner, however, could disconnect property from the sewer line, and the district would facilitate such disconnection at its expense. *Id.* The disputed sewer charges were for a property that did not use the sewer services that were available to it, yet was connected and remained connected to the sewer line throughout the period in which sewer charges were unpaid. *Id.*

In addressing the applicability of the Hancock Amendment to these facts, the eastern district distinguished *Feese v. City of Lake Ozark, Mo.*, 893 S.W.2d 810 (Mo. banc 1995) (also involving charges for sewer services), and the aforementioned *Zweig* case (involving charges for stormwater services), both of which held that the charges at issue were unauthorized taxes. *Eclipse*, 635 S.W.3d at 213-14. The eastern district noted that in *Eclipse* the connection of the subject property to the sewer line “clearly distinguishes the matter” from *Feese* because in *Feese* “the sewer district imposed its sewer charge against a property that was not connected to the sewer system.” *Id.* (citing *Feese*, 893 S.W.2d at 812). The eastern district then noted that the factual scenario before it—where “the base sewer fee imposed could have been eliminated” and yet the subject property “remained connected” to the sewer line such that the availability of sewer service was “ascertainable and determinative”—“radically differs” from that in *Zweig*, “where stormwater services were rendered regardless of whether the properties were connected to the stormwater drainage system or paid the stormwater charge.” *Id.* (citing

Zweig, 412 S.W.3d at 234, 236-37). The eastern district concluded by emphasizing that (1) the sewer district “did not and does not impose the base sewer fee against any property that is not connected to the sewer service line and (2) “the sewer service supporting the base fee is tied directly to a property’s access to the sewer service line *over which a property owner has the ability to reduce or eliminate payment obligations.*” *Id.* at 215. The application of the “relevant” *Keller* criteria to this factual record led the eastern district to hold that the sewer district’s “base sewer fee is not a levied tax subject to the Hancock Amendment.” *Id.*

We cannot discern any difference that is material between the instant case and *Eclipse*. In their reply brief, the Binghams note that the sewer district in *Eclipse* “charged residents for the connection during the full amount of time it was in place.” They then note that the District did not charge themselves, or the previous owners of their property, “for an unknown number of years” prior to determining that the Binghams were the current owners. No explanation as to how such a distinction is material, however, is provided. Next, the Binghams argue that the holding in *Eclipse* does not apply because, here, connection to the District’s sewer line is “mandatory” and it is “a matter of the District’s discretion as to whether and how the owner could extract itself from paying the charges.” Our standard of review precludes this characterization of the facts, however, because it runs contrary to the circuit court’s aforementioned, explicit factual determination that upon a property owner’s request the District will arrange to remove a property from the sewer line. Accordingly, these arguments by the Binghams attempting to distinguish *Eclipse* fail.

We need, however, to address one final matter. The Bingham place much significance on the fact that the District utilized property liens rather than service disconnection for its unpaid sewer charges. As relevant to this argument, the case *Beatty v. Metropolitan St. Louis Sewer Dist.*, 867 S.W.2d 217 (Mo. banc 1993), “*sub silentio* identified a sixth factor, stating that its uncertainty as to which party the five *Keller* factors favored was ‘heightened by the fact that unpaid sewer charges trigger a lien against real property by operation of law.’” *Arbor Inv. Co. v. City of Hermann*, 341 S.W.3d 673, 681 (Mo. banc 2011) (bold added) (quoting *Beatty*, 867 S.W.2d at 221). Our high court in *Arbor* stressed, however, that

while a court should first consider the five *Keller* factors and while *in most cases they will be dispositive*, when the balance is a close one other factors also may need to be considered. In *Beatty*, that included the fact that any unpaid charges became a lien on the estate, making the charges more in the nature of taxes than fees.

Id. at 683 (bold and emphasis added).

It is important to note that, similar to the District’s liens at issue here, the sewer district in *Eclipse* was also attempting to enforce its unpaid sewer charges with property liens. 635 S.W.3d at 210. In both the instant case and in *Eclipse*, the liens were statutorily authorized and a discretionary remedy. Compare *id.* at 214 n.5 (discussing section 249.255 RSMo. (2016)) with section 247.110.3 RSMo. (2016) (applicable to the District and stating that a board of directors “may” cause a lien to be filed against a property for delinquent payments). This issue apparently proved immaterial to the Hancock Amendment analysis in *Eclipse*, however, in light of the eastern district’s express holding

that the application of the relevant ***Keller*** criteria alone proved dispositive. *See Arbor*, 341 S.W.3d at 683; ***Eclipse***, 635 S.W.3d at 215. The same is the case here. Point denied.

The circuit court's judgment is affirmed, and the Bingham's motion for attorney's fees and expenses is denied.

BECKY J. WEST, J. – OPINION AUTHOR

JEFFREY W. BATES, J. – Concurs

MATTHEW P. HAMNER, J. – Concurs