



**Missouri Court of Appeals**  
**Southern District**

**In Division**

BUTLER COUNTY DRAINAGE  
DISTRICT NO. 7 OF MISSOURI,

Plaintiff-Appellant,

v.

CONSERVATION COMMISSION OF  
MISSOURI,

Defendant-Respondent.

No. SD38829

Filed: November 4, 2025

APPEAL FROM THE CIRCUIT COURT OF BUTLER COUNTY  
Honorable John H. Shock

*(Bates, J., Burrell, J., and Goodman, J.)*

**AFFIRMED**

PER CURIAM. The Butler County Drainage District (“Drainage District”) appeals the judgment that dismissed – with prejudice – Drainage District’s claims for declaratory judgment and injunctive relief against the Conservation Commission of Missouri (“Conservation Commission”) relating to Drainage District’s demands that Conservation Commission remove intra-floodway levees that Drainage District and Conservation

Commission agreed to have constructed in 1995. Because Drainage District failed to plead facts that would support an exemption to the sovereign immunity that the Conservation Commission has as a governmental entity, we affirm.

### **Standard of Review**

The proper standard of review for a trial court's grant of a motion to dismiss a petition is *de novo*. *Lynch v. Lynch*, 260 S.W.3d 834, 836 (Mo. banc 2008). In determining the appropriateness of the trial court's dismissal of a petition, an appellate court reviews the grounds raised in the defendant's motion to dismiss. *Foster v. State*, 352 S.W.3d 357, 359 (Mo. banc 2011). The appellate court reviews the petition to determine whether the facts alleged by the plaintiff meet the elements of a recognized cause of action or of a cause of action that might be adopted in that case. *Id.*

*In re Estate of Austin*, 389 S.W.3d 168, 171 (Mo. banc 2013). "A judgment is presumed correct, and the party challenging the judgment bears the burden of proving it erroneous."

*Lands' End Props., LLC v. Grand Meridian Condo. Owners' Ass'n, Inc.*, 711 S.W.3d 566, 570 (Mo. App. S.D. 2025).

In reviewing a motion to dismiss,

[w]e "review[] the petition 'in an almost academic manner.'" *Foster v. State*, 352 S.W.3d 357, 359 (Mo. banc 2011) (quoting *City of Lake Saint Louis v. City of O'Fallon*, 324 S.W.3d 756, 759 (Mo. banc 2010)). We "accept all properly pleaded facts as true, giving the pleadings their broadest intendment, and construe all allegations favorable to the pleader." *G.B. v. Crossroads Acad.-Cent. St.*, 618 S.W.3d 581, 588 (Mo. App. W.D. 2020) (quoting *Bromwell v. Nixon*, 361 S.W.3d 393, 398 (Mo. banc 2012)). .... [A]n appellate court "will not consider matters outside the pleadings." *City of Lake Saint Louis*, 324 S.W.3d at 759 (citation omitted).

*Tolu v. Reid*, 639 S.W.3d 504, 514 (Mo. App. E.D. 2021) (internal citations omitted).<sup>1</sup>

### **Background**

Conservation Commission was created by the Missouri Constitution, and it is vested with control and management of Missouri's wildlife resources. In 1979, Conservation Commission purchased land in Butler County that lies between Drainage District's Black River Levee Ditch and the Black River's right bank. In 1990, Conservation Commission began making plans to develop that area into what is known today as the Coon Island Conservation Area. On March 28, 1995, Conservation Commission and Drainage District allegedly entered into a contractual agreement "permitting the construction and connections of intra-floodway cross levees to the Black River Levee Ditch, impoundment of water against the Black River Levee Ditch, and installation of electric service lines within the Black River Levee Ditch, for the stated term of 25 years."<sup>2</sup>

In July 2024, Drainage District sued Conservation Commission. Count 1 of that suit requested a declaratory judgment from the circuit court that Conservation Commission's land at issue is subject to a flowage easement in favor of Drainage District, along with an injunction that would require Conservation Commission to remove

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<sup>1</sup> Both parties have filed motions that request us to take judicial notice of certain documents and photographs that were not presented to the circuit court. Because our review of the circuit court's dismissal is based solely upon the averments of the Second Amended Petition, those motions are hereby denied.

<sup>2</sup> Rule 55.22(a) requires that "[w]hen a claim or defense is founded upon a written instrument, the same shall be recited verbatim in the pleading, or a copy shall be attached to the pleading as an exhibit." Neither of those requirements were met by Drainage District. Missouri Court Rules (2025).

the levees from Conservation Commission's land on the ground that Conservation Commission's levees constitute a nuisance. Count 2 sought a declaratory judgment and a related injunction that would require Conservation Commission to disconnect its intra-floodway levees, remove its electrical lines from Drainage District's levee, and prohibit Conservation Commission from using the Black River Levee Ditch for water impoundment and ingress and egress to or from Conservation Commission's Coon Island Conservation Area.

The circuit court dismissed Drainage District's Second Amended Petition with prejudice on the grounds that Conservation Commission enjoys sovereign immunity, Drainage District lacks standing to obtain the relief requested, and Drainage District's claims were barred by the applicable statute of limitation. This appeal timely followed.

### **Analysis & Decision**

Drainage District raises eight points on appeal, but because it failed its burden to "plead facts with specificity that give rise to an exception to sovereign immunity[.]" *State ex rel. City of Kansas City v. Harrell*, 575 S.W.3d 489, 492 (Mo. App. W.D. 2019) (citation omitted), that omission is dispositive, and we need not reach any of Drainage District's points on appeal.

Conservation Commission is part of Missouri's Executive Department and is protected by sovereign immunity. *See* Mo. Const. art. IV, sec. 12; *Kersh v. State*, 487 S.W.2d 872, 872-73 (Mo. App. S.D. 1972). Conservation Commission raised that basis for dismissal in its Motion to Dismiss Second Amended Petition, and it is a valid basis

upon which the judgment may be affirmed. See *Austin*, 389 S.W.3d at 171 (the “appellate court reviews the grounds raised in the defendant’s motion to dismiss”).

“Sovereign immunity is the default rule in all suits against the state[.]” *Ramirez v. Mo. Prosecuting Attorneys*, 694 S.W.3d 432, 437 (Mo. banc 2024), and it applies to both tort and non-tort claims. *Id.* (sovereign immunity barred a claim for unjust enrichment); *Metcalfe v. Beard*, 717 S.W.3d 579, 585 (Mo. App. S.D. 2025) (sovereign immunity applies to tort and non-tort claims). When sovereign immunity applies, “the only inquiry is whether the state waived its sovereign immunity through express statutory consent or a recognized common law exception.” *Ramirez*, 694 S.W.3d at 437. Thus, sovereign immunity is not an affirmative defense. *Estes as Next Friend for Doe v. Bd. of Trs. of Mo. Pub. Entity Risk Mgmt. Fund*, 623 S.W.3d 678, 709 n.26 (Mo. App. W.D. 2021). Instead, “the burden is on the plaintiff to plead facts with specificity that give rise to an exception to sovereign immunity” or show a waiver or consent to the action. *Id.* (quoting *Harrell*, 575 S.W.3d at 492); *Ramirez*, 694 S.W.3d at 437 (a sovereign may waive its immunity by express statutory consent).

In order to state a claim for relief, the Second Amended Petition had to plead facts that showed the Conservation Commission either waived its sovereign immunity or expressly consented by statute to the action. We have examined the Second Amended Petition, and we find no such facts averred. And as to injunctive relief, Drainage District would only be entitled to an injunction if it had pleaded a recognized legal theory of recovery, *State ex rel. Gardner v. Stelzer*, 568 S.W.3d 48, 51 (Mo. App. E.D. 2019), and it failed to do so. *Id.*

Because Drainage District failed to plead facts that demonstrated a waiver of sovereign immunity, the circuit court correctly dismissed the petition with prejudice on that basis. The judgment of the circuit court is affirmed.