In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

CITY OF WASHINGTON, Respondent, v. TODD HENDRICKS AND LEISA HENDRICKS, Appellants, v. DONALD E. PETERS, ROBERT HORNBUCKLE, DAN BOYCE, ANDREA LUEKEN, BILL HALMICH, KEVIN QUAETHEM, KERRY DUKE, AND DAVID J. PICKETT, Respondents.	)	ED114402 Filed: November 17, 2026

Appeal from the Circuit Court of Franklin County
The Honorable Joseph W. Purschke, Judge

Todd and Leisa Hendricks appeal from the circuit court's entry of summary judgment in favor of the City of Washington ("the City") and its employees, Donald Peters, Robert Hornbuckle, Dan Boyce, Andrea Lueken, Bill Halmich, Kevin Quaethem, Kerry Duke, and David Pickett (collectively, "the Employees"). Because the circuit

court's certification of the judgment for immediate appeal under Rule 74.01(b)[1] was improper, we must dismiss the appeal.

Background

Years of complex litigation began when the City sued the Hendrickses alleging encroachment on the City's utility easement. According to the petition, the City issued a building permit to the Hendrickses for the construction of an inground swimming pool and notified them that the pool was not to encroach on any utility easements located on the property. After construction was complete, the City learned that the pool and associated structures did indeed encroach on its utility easement. The City's petition sought a permanent injunction directing the Hendrickses to remove the structures at issue because they completely obstructed the City's access to a sewer main. The City also sought damages on the theories of nuisance and negligence.

The Hendrickses filed counterclaims against the City and third-party claims against the Employees. The Hendrickses alleged the City and the Employees represented that the permits issued for installation of the pool complied with the City's ordinances. The Hendrickses also claimed that the Employees had "marked with spray paint" the location of the sewer main and had "asserted . . . the location planned for the construction of the swimming pool and associated structures would be acceptable and not encroach over the line marked." The Hendrickses averred that the Employees took photos after construction of the pool was complete showing it was over the sewer line. According to

[1] All rule references are to the Missouri Supreme Court Rules (2026).

the Hendrickses, they did not know about the encroachment until they attempted to sell their property years later. Based on these facts, the Hendrickses pleaded counts for fraud,[2] inverse condemnation, negligent infliction of emotional distress, conspiracy, and civil rights violations against the City and the Employees. Their pleading alleged that, in concert with others, the City and the Employees had engaged in conduct—namely, issuing a noncompliant permit, incorrectly marking the location of the sewer line, and allowing construction that encroached on the sewer line—that constituted an unconstitutional taking without just compensation, causing them damage. The Hendrickses also lodged quiet title, declaratory judgment, and equitable relief counts solely against the City, alleging that its claimed easement clouded their title to the property.

On the Employees' motion, the circuit court dismissed the third-party inverse condemnation and civil rights claims against them, but those claims remained pending against the City. The City and the Employees then filed a motion for summary judgment on all the Hendrickses' counterclaims against the City and on the remaining third-party claims against the Employees, which the circuit court granted. Although the judgment resolved all of those claims, the claims brought by the City against the Hendrickses remained unresolved. The circuit court initially certified that the portion of the judgment in favor of the Employees was final and appealable under Rule 74.01(b) and there was no

[2] The Hendrickses did not name Kerry Duke or David Pickett in the fraud claim.

just reason for delay. Then, on the Hendrickses' motion, the circuit court similarly certified for immediate appeal the portion of the judgment in favor of the City.

The Hendrickses appeal, challenging the circuit court's grant of judgment with respect to all their claims except inverse condemnation.

Discussion

Before proceeding to review the merits of this appeal, we must determine if we have jurisdiction to do so. *Wilson v. City of St. Louis*, 600 S.W.3d 763, 765 (Mo. banc 2020). "The right to appeal is purely statutory and, where a statute does not give a right to appeal, no right exists." *Id.* at 767 (internal quotation marks and citation omitted). As relevant here, section 512.020(5)[3] permits an appeal from a "final judgment"—that is, one that "resolves all issues in a case, leaving nothing for future determination." *Id.* at 768 (internal quotation marks and citation omitted). Rule 74.01(b) provides an exception to the final judgment rule when a circuit court enters judgment "as to one or more but fewer than all of the claims or parties" and expressly determines there is "no just reason for delay" of an appeal. *Id*. Without certification under Rule 74.01(b), however, such a partial judgment is not final "for purposes of section 512.020(5) and, because it is interlocutory only, can be revised or withdrawn at any time prior to the entry of a judgment resolving the last of the claims in the lawsuit." *Id*.

A judgment's eligibility for certification under Rule 74.01(b) is a matter of law that we decide without deference to the circuit court. *Id*. at 771. A judgment is eligible for

[3] All statutory references are to RSMo (2016).

certification "only if it disposes of a 'judicial unit' of claims," meaning it either (1) "disposes of all claims by or against one or more—but fewer than all—of the parties" or (2) "resolves one or more claims that are distinct from those claims that remain to be resolved." *Id.* at 769-70 (emphasis omitted). "If, as a matter of law, a judgment is eligible for certification under Rule 74.01(b), the circuit court may—but is not required to—certify the judgment for immediate appeal under Rule 74.01(b)." *Id.* at 770. The discretionary determination that there is "no just reason" to delay an appeal of an eligible judgment is dependent on the facts and circumstances of the case. *Id*. at 771.

Here, the portion of the judgment that resolved the Hendrickses' claims against the City was not eligible for certification as a matter of law. There were still claims brought *by* the City that remained pending, so it did not meet the first definition of judicial unit. *See id.* Nor did it satisfy the second definition of judicial unit because the counterclaims resolved by that portion of the judgment were not distinct from the claims that remained unresolved. *See id.* "[A] judgment resolves a distinct judicial unit if it resolves claims that do not arise from the same set of facts, and the same transactions and occurrences, as the counts yet to be disposed of in the circuit court." *Id.* (internal quotation marks and citation omitted). The resolved counterclaims against the City and the unresolved claims brought by the City arose from the same set of facts, transactions, and occurrences. All of them were based on the existence of the City's utility easement across the Hendrickses' property, the City's issuance of permits for construction of a pool on that property, and the encroachment of the Hendrickses' pool and associated structures on the easement.

The Hendrickses contend that, despite these shared "background facts," their counterclaims against the City were distinct because they were premised on different legal theories and required proof of different facts than the claims in the City's petition. To be sure, the unresolved claims and the resolved counterclaims take opposing positions about who is responsible for the fact that the Hendrickses' pool and associated structures were built over the City's easement and what must be done to correct it. But, irrespective of the various theories and regardless of any variance in the proof required to succeed on them, all the claims and counterclaims clearly arose out of the same factual circumstances. Therefore, they are not distinct for purposes of the second judicial unit definition. For example, in *Topping Ests. v. Spalitto Living Tr.*, 680 S.W.3d 144, 155 (Mo. App. E.D. 2023), this Court found that unresolved counterclaims were not distinct from the claims resolved by a partial judgment for purposes of this definition. Even though the counterclaims were brought on different legal theories than the resolved claims and one of them would require additional proof not needed to succeed on the resolved claims, they all arose from the same set of operative facts. *Id*. Similarly, in *First Nat'l Bank of Dieterich v. Pointe Royale Prop. Owners' Ass'n, Inc.*, 515 S.W.3d 219, 223 (Mo. banc 2017), the Supreme Court of Missouri concluded that the partial judgment on a declaratory judgment count did not resolve a distinct judicial unit under this definition. Although the unresolved slander of title count sought a different remedy and may have required additional evidence of damages not relevant to the resolved declaratory judgment count, the facts giving rise to both counts were the same. *Id.*; *see also Ndegwa v. KSSO, LLC*, 371 S.W.3d 798, 802 (Mo. banc 2012) (finding multiple counts premised

on different legal theories were not distinct where they were all based on the same underlying transaction); *Energy Mkt. 709, LLC v. City of Chesterfield*, 614 S.W.3d 643, 649-50 (Mo. App. E.D. 2020) (rejecting argument that claims based on differing legal theories were distinct because they were nevertheless premised on same set of facts).

Because the judgment in favor of the City did not resolve claims that were sufficiently distinct from the claims that are still pending in the circuit court, that portion of the judgment was not eligible for certification under Rule 74.01(b). As such, it is interlocutory and subject to revision at any point prior to resolution of "the last claims in the lawsuit." *Wilson*, 600 S.W.3d at 768.

On the other hand, the portion of the judgment that resolved all the third-party claims brought against the Employees was eligible for Rule 74.01(b) certification as a matter of law, but certification was nevertheless inappropriate under the circumstances. Because it disposed of all claims against the Employees, and there were no claims brought by those parties, this portion of the judgment meets the first definition of judicial unit. *See id.* at 769. Still, an otherwise eligible judgment should not be certified for immediate appeal when the resolved and unresolved claims are so intertwined that "an appellate ruling on the partial judgment could affect the rights of someone who is not party to that judgment (and, therefore, not a party to the appeal) but who remains a party to the unresolved claims still pending in the circuit court." *Id*. at 772. This is precisely the circumstance that precludes certification in this case. As a result of our determination that the portion of the judgment resolving the counterclaims as to the City was interlocutory and subject to revision, the City remains a party to those unresolved counterclaims in the

circuit court and is not a party to this appeal. The fraud, conspiracy, and negligent infliction of emotional distress claims against the Employees resolved by the portion of the judgment sought to be appealed are not simply intertwined with the unresolved counterclaims pending against the City—they are the *same claims*. These counts were all asserted against the City and the Employees collectively and without any distinction between the conduct of the City and the conduct of the Employees. Therefore, an appellate ruling on the portion of the judgment in favor of the Employees on these claims would necessarily affect the rights of the City, which "is not party to that judgment (and, therefore, not a party to the appeal) but [which] remains a party to the unresolved claims still pending in the circuit court." *Id*. As such, it was not proper to certify that portion of the judgment under Rule 74.01(b).

Conclusion

For the foregoing reasons, the appeal is dismissed.



MICHAEL E. GARDNER, Presiding Judge

James M. Dowd, Judge, concurs.
John P. Torbitzky, Judge, concurs.