

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

Division One

Alok Ahuja, Presiding Judge

Cynthia Martin, Judge

Thomas N. Chapman, Judge

March 12, 2024

University of Missouri School of Law

Columbia, Missouri

WD86126

Jessica A. Goodman, Saline County Assessor, Appellant,

v.

Saline County Commission and Kile Guthrey, Jr., Presiding Commissioner, and Stephanie Gooden, Northern Commissioner, and Charles Monte Fenner, Southern Commissioner, and Cindy Sims, Saline County Collector, Respondents.

Appellant Jessica Goodman, Saline County Assessor, appeals the judgment of the Circuit Court of Lafayette County dismissing her petition against the Saline County Commission, certain Commissioners, and the Saline County Collector. Goodman's petition alleged that, pursuant to Missouri Revised Statute section 137.720, the Saline County Collector is required to deposit one percent of the ad valorem taxes collected by the county into the Assessment Fund. The Saline County Collector had only been depositing one-half a percent of the tax into the fund. The petition asserted that the Saline County Commission had refused to approve any budget that did not reflect the one-half percent. Goodman met with the Commission to alert them to what she felt was a failure to comply with the statute but, allegedly, no action was taken by the Commission or the County Collector. On June 10, 2020, Goodman gave her employees the day off after completing their yearly tax evaluations. Goodman informed her staff it would be a compensated day. However, the Commission refused to compensate her employees for the day. Goodman brought suit against the Respondents seeking to correct the payroll issue as well as other remedies related to the ad valorem taxes. The circuit court dismissed the petition. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in granting the Respondents' motion to dismiss because as a matter of law the petition does not need to set forth the assessed valuation of Saline County on August 13, 1988, in that the petition sets forth the prior five years of assessed valuation and argues either the statutes should be interpreted for the Assessor to receive 1% of the ad valorem taxes to the assessment fund or in the alternative Saline County should be classified as a third class county.
2. The trial court erred in granting the Respondents' motion to dismiss because as a matter of law Saline County is improperly classified in that the petition sets forth that Saline County meets the assessed valuation of a third-class county and a classification change to a third-class county is appropriate for Saline County.

3. The trial court erred in granting the Respondents' motion to dismiss because as a matter of law the Assessor has authority over the compensation of her employees in that the petition states a claim that the Assessor has the ability to declare compensation for employees and the pay in question was not a bonus.
4. The trial court erred in granting the Respondents' motion to dismiss because as a matter of law trial the court's interpretation is unconstitutional in that the current version of section 48.020, RSMo, violates Article VI Section 8 of the Missouri Constitution because section 48.020, RSMo, purports to create two different criteria for classifying counties: the first criteria for first through third-class counties and another criteria for fourth-class counties.

WD86378

Brandie C. Noble, Appellant,

v.

L.D. Enterprises, Inc., Respondent.

Appellant Brandie Nobel appeals the judgment of the circuit court dismissing her petition against Respondent L.D. Enterprises, Inc ("L.D. Enterprises"). The petition alleged that Noble was walking across property owned by L.D. Enterprises and fell, allegedly due to a crack and uneven ground that was in disrepair. On September 19, 2022, L.D. Enterprises filed a motion to compel responses to discovery. The circuit court ordered Nobel to respond within 30 days. Nobel failed to respond, and, on December 13, 2022, L.D. Enterprises filed a motion to dismiss the petition for failure to produce discovery. Nobel delivered her discovery responses to L.D. Enterprises in court on January 4, 2023. At that time, the circuit court took the motion to dismiss under advisement. On March 29, 2023, L.D. Enterprises filed a renewed motion alleging that the responses produced were insufficient. On April 1, 2023, Nobel filed amended responses. On April 5, 2023, the court heard argument on the renewed motion and granted L.D. Enterprises motion to dismiss. Nobel filed a motion to reconsider which was denied. The dismissal order was denominated as a judgment for purposes of appeal on June 6, 2023. This appeal followed.

Appellant's points on appeal:

1. The trial court abused its discretion and committed prejudicial err by entering the June 6, 2023 judgment and order because the alleged failure to sign the interrogatory answers was insufficient to warrant a dismissal of Appellant's case with prejudice under Rule 61.01(b) and (d) in that (a) the sanction was excessive and (b) partial violations of a discovery order do not warrant a dismissal with prejudice.
2. The trial court abused its discretion and committed prejudicial err by entering the June 6, 2023 judgment and order because the alleged failure to completely answer Interrogatory No. 1 was insufficient to warrant a dismissal of Appellant's case with prejudice under Rule 61.01(b) and (d) in that (a) the sanction was excessive and (b) partial violations of a discovery order do not warrant a dismissal with prejudice.

3. The trial court abused its discretion and committed prejudicial err by entering the June 6, 2023 judgment and order because the alleged failure to attach medical bills to Appellant's responses to Respondent's interrogatories, while producing them as a response to Appellant's responses to Respondent's request for production of documents was insufficient to warrant a dismissal of Appellant's case with prejudice under Rule 61.01(b) and (d) in that (a) the sanction was excessive and (b) partial violations of a discovery order do not warrant a dismissal with prejudice.
4. The trial court abused its discretion and committed prejudicial err by entering the June 6, 2023 judgment and order (L.F. doc 90) because the alleged failure to produce a full list of all of Appellant's convictions was insufficient to warrant a dismissal of Appellant's case with prejudice under Rule 61.01(b), (d) in that (a) the sanction was excessive and (b) partial violations of a discovery order do not warrant a dismissal with prejudice.

WD86197

Charles Basham, Respondent,

v.

Norman Pursley, Appellant.

Appellant Norman Pursley appeals the judgment of the Circuit Court of Benton County finding that J.M. was incapacitated and appointing her son as her conservator. As alleged by Pursley, J.M. and Pursley were in a romantic relationship. They co-owned and resided in a home in Greene County, Missouri. On December 2, 2022, J.M.'s son filed a petition for guardianship and conservatorship alleging that his mother was no longer legally capable of taking care of herself or her finances. Pursley, representing himself, sought to intervene in the case and challenged the jurisdiction of the Benton County Circuit Court, claiming that J.M. was domiciled in Greene County. Pursley also indicated that he and J.M. jointly held assets. On February 1, 2023, Pursley filed a counter-petition for guardianship and conservatorship. On February 6, 2023, the court denied Pursley's request to intervene. The circuit court entered its judgment on March 6, 2023. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in finding and concluding that J.M. was domiciled in Benton County, Missouri, for purposes of proper venue for the probate proceedings because there was not substantial evidence presented to support any finding that as of the time of the probate petition J.M. had effectuated a change of her domicile to Benton County, Missouri, from Greene County, Missouri, in that the testimony and evidence presented at trial only established that J.M. was presently located in Benton County, Missouri, and did not establish J.M.'s present intention to remain in Benton County, Missouri, as is required by Missouri law.
2. The trial court erred in denying the Appellant's motion to intervene as a matter of right because the trial court's decision to deny intervention was against the weight of the evidence and/or abuse of discretion in that the Appellant's verified pleadings and record

before the trial court overwhelmingly demonstrated that Appellant filed his application timely, had a financial interest relating to the property of J.M.'s estate, that Appellant's ability to protect the interest was impaired or impeded, and that the existing parties were inadequately representing the Appellant's interest.

3. The trial court erred in denying the Appellant's motion for permissive intervention because the trial court's decision to deny intervention was abuse of discretion in that the Appellant's verified pleadings and record before the trial court overwhelmingly demonstrated that Appellant filed his application timely, had a financial interest relating to the property of J.M.'s estate, and that the Respondent's petition and Appellant's pleadings had a common question of law or fact as to the proper domicile of J.M.

WD86414

David Barrett, Appellant,

v.

Cole County, Missouri, Respondent.

Appellant David Barrett appeals the judgment of the Circuit Court of Cole County dismissing his petition for failure to state a claim. The facts as alleged in his amended petition were that Barrett worked as a deputy sheriff for Cole County, Missouri, for approximately 15 years. Barrett alleged that he believed himself to be Caucasian, and his appearance was consistent with that belief. However, Barrett submitted his DNA to test for genetic analysis and found that he had African American ancestry. Barrett alleged that, before Christmas, 2020, he informed Sheriff Wheeler that he was Black. On January 19, 2021, Barrett received a suspension with pay during an investigation into allegations that Barrett abused his authority and was incompetent. On February 17, 2021, a third allegation was added alleging that Barrett had engaged in offensive conduct or language. On February 19, 2021, Barrett was informed that he was found to be incompetent while the other allegations were determined to be unfounded. On February 25, 2021, Sheriff Wheeler terminated Barrett. Following his termination, Barrett filed a petition alleging that he was terminated because of his race. The circuit court dismissed the petition. This appeal followed.

Appellant's points on appeal:

1. The trial court erred in dismissing the first amended petition for failing to allege sufficient facts, because the trial court was required to accept the allegations of the first amended petition as true, in that the first amended petition stated the ultimate facts of race or color discrimination under the Missouri Human Rights Act.
2. The trial court erred in dismissing the first amended petition for failing to allege sufficient facts, because the trial court was required to accept the allegations of the first amended petition as true, in that the first amended petition stated the ultimate facts of perceived race of color discrimination under the Missouri Human Rights Act.
3. The trial court erred in dismissing the first amended petition for failing to allege sufficient facts, because the trial court was required to accept the allegations of the first

amended petition as true, in that the first amended petition stated the ultimate facts of unlawful retaliation under the Missouri Human Rights Act.

4. The trial court erred in dismissing the first amended petition for failing to allege sufficient facts, because the trial court was required to accept the allegations of the first amended petition as true, in that the first amended petition stated the ultimate facts of associational discrimination and retaliation under the Missouri Human Rights Act.
5. The trial court erred in dismissing the first amended petition for failing to allege sufficient facts, because the trial court was required to accept the allegations of the first amended petition as true, in that the first amended petition stated the ultimate facts of denial of due process by refusing to consider Petitioner's grievance of the Bollinger report.
6. The trial court erred in dismissing the first amended petition for failing to allege sufficient facts, because the trial court was required to accept the allegations of the first amended petition as true, in that a petition for judicial review of a non-contested case does not require the statement of specific ultimate facts.