

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

METROPOLITAN ST. LOUIS SEWER DISTRICT,)	ED101713
)	
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Louis County
v.)	13SL-CC03760
)	
CITY OF BELLEFONTAINE NEIGHBORS, et al.,)	Honorable Mark D. Seigel
)	
Respondents.)	Filed: February 24, 2015

Metropolitan St. Louis Sewer District (MSD) appeals the trial court’s dismissal of all of its claims against the City for damage to MSD’s sewer pipes resulting from the City’s street improvement project. MSD argues that it had standing to sue the City for inverse condemnation because the City has the power to condemn public property. MSD also argues its petition adequately stated claims of negligence and trespass against the City because sovereign immunity does not apply when the plaintiff is also a public entity.

TRANSFERRED TO MISSOURI SUPREME COURT.

Division Three Holds: First, because inverse condemnation arises from the constitutional protection against taking or damage of private property, and presently under the law this protection is not extended to public property, inverse condemnation is not available to MSD, and we would affirm the trial court’s dismissal of MSD’s claim. Second, MSD’s reliance on its public status as an exception to sovereign immunity was mistaken, but despite this, the petition sufficiently alleged facts establishing that the City acted in a proprietary capacity in carrying out the Project, thus sovereign immunity does not apply. Granting all reasonable inferences to MSD, the petition also alleges causation. Thus, we would reverse the trial court’s dismissal of MSD’s tort claims against the City. However, due to the general interest and importance of the issues on appeal, we transfer to the Missouri Supreme Court. Rule 83.02.

Opinion by: Gary M. Gaertner, Jr., J.
Kurt S. Odenwald, P.J., and Robert G. Dowd, Jr., J., concur.

Attorney for Appellant: Byron E. Francis, Jeffrey T. McPherson, and Christopher R. LaRose
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