

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION IV

ST. LOUIS COUNTY, MISSOURI,)	No. ED93958
)	
Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	
)	Honorable Robert Cohen
RICHARD F. BERCK, and)	
ALL AMERICAN PAINTING, L.L.C.,)	
)	
Appellants,)	FILED: October 12, 2010

Richard F. Berck and All American Painting (hereafter collectively referred to as Berck) appeal from the trial court’s Order and Judgment dismissing the condemnation petition filed by St. Louis County (County) for lack of jurisdiction. Berck asserts that County’s motion to dismiss constituted an abandonment of the condemnation action under Section 523.040, RSMo 2000,¹ and that he is entitled to seek certain benefits, including interest, under the condemnation statutes as a consequence of that abandonment. Berck argues that the trial court erred when it failed to treat County’s motion to dismiss as abandonment, and instead dismissed the condemnation action for lack of jurisdiction.

REVERSED AND REMANDED.

Division Four holds: In accordance with the Missouri Supreme Court’s pronouncement regarding jurisdiction in J.C.W. ex rel. Webb v. Wyciskalla, 275 S.W.3d 249 (Mo. banc 2009), we find that the trial court retained constitutional subject matter jurisdiction over the condemnation action after County abandoned the action by filing its motion to dismiss. Despite the time restrictions of Section 99.810.1(3) of the TIF Act, we hold that the trial court also had statutory authority under Chapter 523 to consider Berck’s rights according to Section 523.045, including an award of interest. Therefore, we reverse the trial court’s judgment of dismissal and remand this matter to the trial court for a determination of Berck’s rights to an award of interest under the condemnation statutes.

Opinion by: Kurt S. Odenwald, P.J. Robert G. Dowd, Jr., J. and Nannette A. Baker, J., Concur.

Attorney for Appellant: Robert Denlow and Paul G. Henry
Attorneys for Respondent: Paul J. Puricelli and Sam J. Alton

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.

¹ All subsequent statutory citations are to RSMo 2000, unless otherwise indicated.