

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JOHN A. HEUER, individually and as)
Personal Representative of the Estate of) ED96721
Ivan Heuer, Deceased,)
) Appeal from the Circuit Court
Appellant,) of Cape Girardeau County
)
v.) Honorable William L. Syler
)
CITY OF CAPE GIRARDEAU,) 09CG-CC00138
)
Respondent.) Filed: May 29, 2012

Appellant John Heuer (Heuer) appeals the judgment of the trial court denying Heuer’s petition for removal of a fence erected in an alley at the rear of his property, and his claim for inverse condemnation under Missouri law and 42 U.S.C. § 1983 (2006). Heuer argues the placement of the fence failed to comply with ordinances of the City of Cape Girardeau (City) and resulted in a violation of Heuer’s constitutional rights.

REVERSED AND REMANDED.

Southern District Holds: The trial court erroneously applied the law regarding Heuer’s inverse condemnation claim. The City required a fence where the ordinance authorizing the fence was inapplicable. The public use of the alley has changed in that JJP now uses the alley as part of its drive-through and part of its rear yard. Finally, because the fence was not mandated by an applicable valid city ordinance, the City failed to provide Heuer the constitutionally required notice that the fence would be built. In these ways, the City unreasonably restricted Heuer’s abutter’s right of access to the alley by approving the erection of the fence in its current location, and such restriction amounted to inverse condemnation of Heuer’s property. Because of this unreasonable and unlawful restriction of Heuer’s right of ingress and egress, Heuer is entitled to a restoration of his rights through ejectment, namely, removal of the fence. He is entitled to nominal damages for violation of a constitutional right where he provided no further proof of damage to his property. Claims brought under § 1983 are within the scope of § 1988(b), thus as a prevailing party on this claim, Heuer may recover his reasonable attorney’s fees.

Opinion by: Gary M. Gaertner, Jr., P.J.
Sherri B. Sullivan, J., and Robert M. Clayton, III, J. concur.

Attorney for Appellant: Tom. K. O’Laughlin
Attorney for Respondent: Mary Eftink Boner