

**Summary of SC89148, *State ex rel. C.F. White Family Partnership et al. v. The Honorable Marco Roldan***

Original proceeding arising from the circuit court of Jackson County, the Honorable Marco Roldan.

**Attorneys:** The family was represented by Robert Denlow and Paul G. Henry of Denlow & Henry in Clayton, and the city was represented by Steven E. Mauer, Jeremiah J. Morgan and Michelle C. Campbell of Bryan Cave LLP in Kansas City and Mr. Collin A. Dietiker of the city counselor's office in Independence.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** This case involves an interpretation of condemnation statutes enacted in 2006 that established an entitlement to "heritage value" for certain property that has been owned by the same family for 50 years or more where the condemnation prevented the owner from using the property in substantially the same manner as it was being used at the time of the taking. In a decision written by Chief Justice Laura Denvir Stith, the Supreme Court of Missouri holds, 7-0, that the trial court erred in failing to require the commissioners it appointed to determine the value of the property taken to determine also whether the property had been in the owners' family for 50 years or more. By a 6-1 vote, the Court issues its writ requiring the trial court to direct the commissioners to prepare an amended report that includes a determination of whether the property has been in the family for 50 or more years and, if so, to determine heritage value. In so doing, the Court finds that the fact that exceptions were filed to the commissioners' determination of damages has no effect on the trial court's obligation to determine heritage value if property is found to have been in a family for 50 years or more. Judge Patricia Breckenridge wrote an opinion concurring in part and dissenting in part.

**Facts:** The C.F. White Family Partnership and the Lupton Living Trust owned 45 acres of land in Independence, 15 acres of which the city of Independence sought to condemn through eminent domain proceedings in 2007. Newly enacted statutes define "just compensation" to include both fair market value plus an additional enhancement of 50 percent in cases where the condemned property had been owned by the same family for 50 or more years and where the condemnation prevented the owner from using the property in substantially the same manner as it was being used at the time of the taking.

When it instructed the commissioners it had appointed to determine the value of the property being taken, the trial court did not require them to decide whether the property had been owned by the same family for 50 or more years. As a result, the commissioners did not determine that issue. After the commissioners filed their report, both the city and the owners filed exceptions to the report, requiring a jury trial on the exceptions. The

owners also moved the court to determine whether their property qualifies for heritage value. The trial court overruled this motion “by reason of the filing of exceptions.” The owners believe that they were entitled to a determination of the heritage value of their property and payment of just compensation regardless of whether exceptions were filed. They seek this Court’s writ of prohibition directing the trial court to determine the heritage value of their property and to award them just compensation.

### **WRIT MADE ABSOLUTE AS MODIFIED.**

**Court en banc holds:** (1) Under section 523.061, RSMo Supp. 2007, once the commissioners’ report of damages for the taking of property is filed with the trial court, the judge is required to determine whether heritage value is payable. If so, then the statute requires the judge to add heritage value to the damages found so that this total constitutes just compensation. Section 523.061 imposes on the court the duty to determine heritage value and just compensation without regard to whether one or more parties have filed exceptions that will require a jury trial, even though that trial may result in a different measure of damages and heritage value.

(2) Section 523.039.3, RSMo Supp. 2007, authorizes only the commissioners and jury to determine whether the condemned property has been owned within the same family for 50 or more years. The trial court, therefore, did not err in refusing to make this determination where the commissioners had not done so, but the court should have directed the commissioners to make this determination. This Court issues its writ directing the trial court to do so and, then, to determine heritage value if the commissioners find that the property has been owned by the White family for 50 years or more.

(3) In a writ proceeding such as this it would be inappropriate for this Court to reach the additional issue raised as to whether the city must pay into the court registry only the damages found by the commissioners or instead the full amount of just compensation if the property qualifies for heritage value. That would be an advisory opinion only, as the commissioners or jury have not yet determined whether the property has been in the family for 50 years or more and the trial court has not yet determined whether heritage value should be added to the damage award to achieve just compensation.

**Opinion concurring in part and dissenting in part by Judge Breckenridge:** (1) The author agrees that the trial court erred in failing at the outset to direct the commissioners to make the factual findings necessary to determine heritage value but disagrees that the trial court erred in not requiring the commission to make these findings after both parties filed exceptions. Because exceptions have been filed, a jury must make these factual findings instead. As a result, the commissioners’ report has no further legal competence, and no purpose would be served by having the commissioners amend their report. Remand to the commission for such a determination now, therefore, is superfluous.

(3) The author would hold that a writ should not issue. The trial court's error in not requiring the commission to make a necessary factual finding was a mere misapplication of law, and because the jury can make the necessary finding instead, no hardship will result. Further, instead of promoting judicial economy, the Court's writ directs the trial court to conduct unnecessary proceedings.

(4) The author would find that, under the provisions of chapter 523, RSMo Supp. 2007, the city is not required to pay heritage value to the clerk. The commission determines only the factual findings relevant to heritage value – not heritage value itself – and, therefore, the damages the commission assesses, which the city must pay to the clerk, inherently cannot include heritage value. Because the amount of the commissioners' award to be paid to the clerk does not include heritage value, remand back to the commissioners will have no impact on any actions taken by either party.