

Summary of SC89752, *State ex rel. Chris Koster, Attorney General, The Missouri Department of Natural Resources, and the Missouri Dam and Reservoir Safety Council v. Paul and Marilil Olive*

Appeal from the Greene County circuit court, Judge J. Miles Sweeney

Attorneys: The state was represented by Don Willoh of the attorney general's office in Jefferson City, (573) 751-3321; and the Olives were represented by Jenifer M. Placzek and Matthew W. Placzek of Placzek & Francis in Springfield, (417) 883-4000.

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: The state challenges a trial court's grant of summary judgment allowing owners of a dam to avoid obtaining certain permits under the state's dam and reservoir safety act, enacted five years after the dam was built. In a unanimous decision written by Judge William Ray Price Jr., the Supreme Court of Missouri reverses the trial court's decision and remands (sends back) the case for further proceedings. Application of the act to these dam owners does not violate the constitutional prohibition against retrospective laws because it imposes a present duty to obtain permits that ensure the dam currently is operating safely. Further, a particular section of the law does not exempt the owners from either the requirement to obtain a registration or safety permit or from the present requirement to obtain a construction permit to bring the dam into compliance with the safety laws and to make it eligible for a registration permit.

Facts: Rainbow Lake Dam was built in 1974 in Greene County. Five years later, Missouri's dam and reservoir safety law (now at sections 236.400 to 236.500, RSMo 2000) became effective. In September 2005, Paul and Marilil Olive bought the land on which Rainbow Lake Dam is located. Two years later, the department of natural resources gave the Olives certain written material about operating the dam, including a copy of the safety law and regulations and an application for a registration permit. The Olives twice sought an agricultural exemption for their dam, pursuant to section 236.435.6, but neither request was granted. Ultimately, in November 2001, the state filed a petition for injunctive relief and civil penalties against the Olives, alleging they are violating the law by failing to obtain registration and construction permits and because of the dam's insufficient design and emergency-spillway capacity. The state sought an order compelling the Olives to bring the dam into compliance with the safety law and to pay a civil penalty of \$1,000 per day, as authorized by section 236.495.2. The Olives moved for summary judgment, alleging that the law's permitting requirements are unconstitutionally retrospective when applied to dams built before the law became effective and that their dam is exempt from the construction and permitting requirements. The trial court granted summary judgment in the Olives' favor. The state appeals.

REVERSED AND REMANDED.

Court en banc holds: (1) The Olives are not entitled to judgment as a matter of law on their claim that the dam and reservoir safety act is unconstitutionally retrospective. Citizens hold their property subject to a reasonable exercise of police power, which functions to promote the health, welfare and safety of the people. Property owners lawfully may be required to alter or reconstruct existing buildings without compensation when reasonably necessary to ensure the public safety or to protect the public health. It is a legitimate exercise of police power to require dam and reservoir owners to comply with certain permitting requirements, which are intended to prevent disaster caused when dams or reservoirs fail and to protect the public interest. All dams in operation – including those that existed before the law took effect – are legitimate public safety concerns. The permitting requirements – applied to owners of dams that predate the law – do not violate the constitutional prohibition against retrospective laws. The duty imposed to obtain a registration permit is based on the current existence, operation and safety of the dam and its present use and ability to hold back substantial amounts of water. The trial court erred in granting summary judgment on this point.

(2) The Olives are not entitled to judgment as a matter of law on their claim that their dam is exempt from all permitting requirements pursuant to section 236.435.7. The plain language of this section does not exempt the Olives from either the requirement to obtain a registration or safety permit pursuant to section 236.440 or from the present requirement to obtain a construction permit to bring the dam into compliance with the safety laws and to make it eligible for a registration permit. The Olives' argument and attached affidavit and exhibits prove only that the dam was exempt from permitting requirements when it first was built and, therefore, are irrelevant to the present permitting requirements. The trial court erred in granting summary judgment on this point.