

Summary of SC90383, Jay Purcell v. Cape Girardeau County Commission

Appeal from the Cape Girardeau County circuit court, Judge Stephen R. Mitchell
Argued and submitted Feb. 24, 2010; opinion issued April 6, 2010

Attorneys: Purcell was represented by John P. Clubb of The Clubb Law Firm LLC in Cape Girardeau, (573) 651-1900, and the commission was represented by Thomas Ludwig of Ludwig & Boner LC in Jackson, (573) 243-8188.

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: A county commissioner appeals a trial court's summary judgment finding the county commission did not violate the state's Sunshine Law (chapter 610, RSMo). In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the trial court's judgment. The commissioner's suit sought declaratory and injunctive relief instead of a statutory remedy provided under the Sunshine Law, and because he instigated the closed session and led or participated in the discussions he now complains were unlawful, the doctrine of unclean hands bars him from obtaining equitable relief.

Facts: Jay Purcell was one of three Cape Girardeau county commissioners who met April 17, 2008, in closed session. The commission's notice for the meeting indicated it planned a closed executive session "to discuss legislation or litigation, leasing, purchasing, sale of real estate, or personnel matters." During the meeting, Purcell moved that the commission go into closed session to discuss the "county auditor issue" and the "McBryde easement issue." The closed session discussions – which were disclosed publicly after Purcell revealed he had recorded the closed session using a recording device inside his jacket – included discussions about whether the commission could fire, discharge or discipline the county auditor as well as about the easement issue. Despite the fact that he led or participated in these discussions, Purcell later filed suit alleging that the closed session discussions violated the Sunshine Law and that the notice of the meeting failed to comply with the Sunshine Law and requesting an injunction ordering the commission to comply with the Sunshine Law in the future. The trial court entered summary judgment in the commission's favor. Purcell appeals.

AFFIRMED.

Court en banc holds: The trial court did not err in determining the commission was entitled to judgment as a matter of law. The record in the case supports the commission's affirmative defenses that Purcell was not entitled to declaratory relief because he acted with "unclean hands," thereby barring him from receiving relief for his own misconduct. He instigated the closed session and led or participated in the discussions he now complains were unlawful, never objecting to the fact the commission was in closed session. Further, Purcell's suit sought declaratory and injunctive relief instead of a specific statutory remedy provided under the Sunshine Law.