

Summary of SC90699, *Kate Goerlitz v. City of Maryville, Missouri, a Municipal Corporation*
Appeal from the Gentry County circuit court, Judge Brad J. Funk
Argued and submitted Sept. 2, 2010; opinion issued Jan. 11, 2011

Attorneys: Goerlitz was represented by Jerold L. Drake of Stephens, Drake & Larison in Grant City, (660) 564-2321, and the city was represented by Nikki Cannezzaro and Bradley Nielson of Franke, Schultz & Mullen PC in Kansas City, (816) 421-7900.

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 woman appeals the grant of summary judgment to a city that owns and operates a gun range on property adjoining hers. In a decision written by Judge Zel M. Fischer and joined by five other judges, the Supreme Court of Missouri affirms the trial court's judgment. The woman's claims are barred by a state statute prohibiting entry of any injunction or damages against the owner of a firearm range under theories of nuisance or trespass.

In a separate opinion, Judge Laura Denvir Stith concurs in result. She agrees the statute bars the woman from obtaining injunctive relief because the woman filed claims only for nuisance and trespass. She would not find, however, that by its terms the statute would not apply to other types of claims.

Facts: Kate Goerlitz lives in an unincorporated part of Nodaway County. The city of Maryville owns and operates a gun range on property outside the city limits. Goerlitz sued the city, alleging that the city was negligent in operating the range and that the range was a nuisance. She sought damages and an injunction prohibiting the city from operating a gun range on the property. On Goerlitz's motion, the case was transferred to the Gentry County circuit court, which ultimately entered summary judgment in the city's favor. Goerlitz appeals.

AFFIRMED.

Court en banc holds: (1) Section 537.294, RSMo, bars Goerlitz's claims. This statute provides, in part, that any actions in a state court to enjoin the use or operation of firearm ranges and any damages awarded against the owner or user of such a firearm range for nuisance or trespass are null and void. It further provides that it should not be construed to limit civil liability for compensatory damage arising from physical injury to a person, tangible personal property, or fixtures or structures placed on real property. Goerlitz's claim for injunctive relief acknowledges that any argument based on noise or general nuisance is barred specifically and unequivocally by section 537.294.2.

(2) Goerlitz fails to state a claim on which injunctive relief may be granted. She offers no appropriate support for a claim that bullets ricocheting on her property have caused physical injury to her or her property. Rule 74.04(e) requires affidavits to be made on personal knowledge. With no evidentiary support, Goerlitz's claims cannot survive the city's motion for summary judgment. Her petition does not purport to allege a cause of action for trespass, and

because she alleges no damage, her negligence claim cannot support an injunction to prohibit future damage. This leaves nuisance as the sole legal theory to support her request for an injunction, but as previously noted, section 537.294 divests the circuit court of any authority to enter an injunction or award damages against the owner of a gun range based on allegations of nuisance or trespass.

Opinion concurring in result by Judge Stith: The author concurs to the extent the Court holds that Goerlitz is barred from suing for damages for trespass or nuisance. The statute must be read in context of the language surrounding it. As such, it may permit recovery where a plaintiff such as Goerlitz alleges facts that may constitute battery or intentional or negligent infliction of emotional distress. Despite her factual allegations, however, Goerlitz asserts claims only for nuisance and trespass, and injunctive relief based on such claims is barred.