

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE

DONNY BENNARTZ,

Respondent,

v.

CITY OF COLUMBIA, MISSOURI,

Appellant.

DOCKET NUMBER WD70457

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 22, 2009

Appeal from

The Circuit Court of Boone County, Missouri
The Honorable Gary Oxenhandler, Judge

APPELLATE JUDGES

Division Three: Thomas H. Newton, C.J., and Mark D. Pfeiffer and Karen King Mitchell, JJ.;
Pfeiffer, J., WRITES A SEPARATE CONCURRING OPINION in which Newton, C.J., CONCURS.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

DONNY BENNARTZ,)
)
 Respondent,)
v.)
)
CITY OF COLUMBIA, MISSOURI,)
)
 Appellant.)

WD70457

Boone County

Before Division Three Judges: Thomas H. Newton, C.J., and Mark D. Pfeiffer and Karen King Mitchell, JJ.

The City of Columbia (“City”) appeals from the trial court’s judgment following a jury trial awarding Donny Bennartz (“Bennartz”) damages in the amount of \$68,000 for his wrongful demotion in violation of public policy. On appeal, the City claims that the trial court erred in denying its motion for judgment notwithstanding the verdict, in that Bennartz failed to make a submissible case for wrongful demotion in violation of public policy, and because, in any event, the City was protected from suit by sovereign immunity.

REVERSED.

Division Three holds:

In this case, we were not required to determine whether Bennartz, an otherwise at-will employee, made a submissible case on his constructive wrongful demotion in violation of public policy claim, because we found that, under Missouri law, the City was protected from suit for this common law claim by the doctrine of sovereign immunity.

Sovereign immunity protects municipalities from suit in all cases unless a statutory exception applies or where the municipality is performing a proprietary function, rather than a governmental function. Bennartz agrees that no statutory exception applies to his case but argues that, as a municipality providing water to its own citizens, the City was engaged in a proprietary function, and thereby not entitled to the protection of sovereign immunity. We find that Missouri law clearly establishes that, regardless of the particular function of the department by which Bennartz was employed, the administration of a municipal department and the hiring or firing of municipal employees (including constructive discharge or demotion) are governmental functions. Accordingly, sovereign immunity applies and the judgment of the trial court must be reversed.

Concurring opinion by Judge Mark D. Pfeiffer:

The author agrees in the majority opinion’s result but writes separately to urge the Missouri Supreme Court to examine the present fact pattern in the context of the law of sovereign immunity:

Given the current status of the law on municipal sovereign immunity, the result reached today is correct. However, something is wrong when municipal employee discharge or demotion, constructive or otherwise, occurs in the context of intentional misconduct by the supervisory entity responsible for personnel decisions. Such intentional misconduct should never be deemed “actions benefiting the general public,” and should not receive the shield of sovereign immunity. To do so turns the shield of sovereign immunity into a sword that promotes intentional misconduct by our city government officials instead of protecting our city government officials that make honest mistakes.

The concurrence believes that it would benefit our state for our Missouri Supreme Court to address the issue of intentional misconduct by a municipality in exercising personnel decisions and the impact that such intentional misconduct has upon the defense of sovereign immunity for a municipal immunity.

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.