

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

RADER FAMILY LIMITED PARTNERSHIP, L.L.L.P.

Appellant

v.

CITY OF COLUMBIA, MISSOURI

Respondent

DOCKET NUMBER **WD70907**

April 13, 2010

Appeal From:

Circuit Court of Boone County, MO
The Honorable Kevin Micajah Joseph Crane, Judge

Appellate Judges:

Division Four: Thomas H. Newton, C.J., James M. Smart, Jr., and Cynthia L. Martin, JJ.

Attorneys:

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Counsel for Respondent.

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

RADER FAMILY LIMITED PARTNERSHIP, L.L.L.P.,
Appellant, v. CITY OF COLUMBIA, MISSOURI, Respondent

WD70907

Boone County

Before Division Four Judges: Thomas H. Newton, C.J., James M. Smart, Jr., and Cynthia L. Martin, JJ.

Rader Family Limited Partnership, L.L.L.P. suffered damages to its building after a sewer backup. It was determined that the cause of the backup was grease in the sewer line and that the grease originated from restaurants upstream of the blockage. Rader sued the City under a theory of inverse condemnation, contending that the City had notice that concentrations of restaurants were likely to cause grease blockages, that the City failed to take preventative measures, and this was an unreasonable operation of the sewer system that caused the damage to Rader's building. The jury found for the City. Rader appeals, raising four points.

AFFIRMED.

Division Four holds:

In its first point, Rader argues that the trial court erred in refusing to allow evidence of measures the City implemented to prevent grease-related sewage backups after Rader's building was damaged. The trial court excluded direct evidence of these measures under a rule that prevents the admission of subsequent remedial measures to prove liability in negligence cases. Rader first argues that the rule does not apply in this type of inverse condemnation suit, which springs from an underlying nuisance rather than negligence. Although this is not a negligence case, the trial court did not err in applying the rule because the public policy and evidentiary rationales behind the rule support its application. Rader also argues that even if the rule applies, the evidence it sought to introduce was admissible as an exception in rebuttal to the City's claim that the measures were not feasible. However, the record shows the trial court allowed rebuttal evidence during cross-examination to counter the City's claim that those same measures were not feasible options at the time of the incident. Finally, Rader argues that the trial court erred in excluding evidence of the City's subsequent actions as barred by sovereign immunity. However, the trial court's decision was based on relevancy concerns. Point one is denied.

In its second point, Rader argues that the trial court erred in refusing to allow evidence that the Missouri Department of Natural Resources cited the City for a backup caused by a Wal-Mart in August of 2004, five months after the damage to Rader's building. We disagree. Evidence of the August 2004 citation for an unrelated backup had little probative value, if any, to establishing the City's liability for Rader's backup in March 2004, and presented significant danger of confusing the issues, misleading the jury, and, most significantly, wasting time and creating undue delay. Thus, point two is denied.

In the third point, Rader contends the trial court erred in allowing the City to question Rader's appraiser about an appraisal of the building he performed in 2006, two years after the backup. The building's value in 2006 was not relevant to showing Rader's damages, which were sustained in 2004. However, the 2006 appraisal was relevant to the City's attempt to discredit the appraiser's estimation of the building's value in 2004. Point three is denied.

In the fourth point on appeal, Rader argues that the trial court erred in refusing to give its proffered verdict director. A verdict-directing instruction must hypothesize and require a finding of all the elements essential in law to establish the proposition which the verdict is based. The instruction given by the trial court required the jury to find that Rader had met its burden on each element of its claim for inverse condemnation. Although Rader argues the instruction incorrectly stated its burden of causation, we do not agree. The verdict director properly instructed the jury that it must find the City's unreasonable operation of the sewer caused injury to Rader, and required the jury to find the injury resulted in Rader's damages. Thus, point four is denied.

Therefore, the trial court's judgment is affirmed.

Opinion by: Thomas H. Newton, Judge

April 13, 2010

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