



**In the Missouri Court of Appeals
Eastern District**

SOUTHERN DIVISION

MC DEVELOPMENT COMPANY, LLC,)	No. ED90647
)	
Plaintiff/Appellant,)	Appeal from the Circuit Court
vs.)	of St. Francois County
)	
CENTRAL R-3 SCHOOL DISTRICT)	
OF ST. FRANCOIS COUNTY,)	Hon. Scott E. Thomsen
)	
Defendant/Respondent,)	
)	
FARMINGTON R-7 SCHOOL DISTRICT)	
OF ST. FRANCOIS COUNTY,)	
)	
Defendant/Cross-Appellant,)	
)	
DAMON BLACK, ASSESSOR OF)	Filed:
ST. FRANCOIS COUNTY,)	January 27, 2009
)	
Defendant/Respondent.)	

Plaintiff, MC Development Company, LLC (“MCD”), appeals from the trial court’s declaratory judgment finding a portion of MCD’s land (“Parcel 13”) was part of the Central R-3 School District (“Central R-3”). Farmington R-7 School District (“Farmington R-7”) cross-appeals also arguing Parcel 13 was not part of Central R-3. MCD and Farmington R-7 argue the trial court erred in declaring Parcel 13 to be part of Central R-3 because school districts are statutorily required to be composed of contiguous territory. Further, MCD and Farmington R-7 contend the trial court erred in relying on the assessor’s maps instead of the school districts’ evidence because the authority to determine school boundaries lies with the school districts and voters. We reverse and remand.

In 2004, MCD purchased a tract of property in St. Francois County. At closing, the sellers gave the assessor's map to MCD, and it indicated a portion of the property, Parcel 13, was located within Central R-3's boundaries. MCD subsequently wrote to Damon Black, then St. Francois County Assessor ("the Assessor"), inquiring about assessment of the property, and he responded that Parcel 13 had been continuously assessed as part of Central R-3 since 1965. The Assessor also noted he had no authority to change the school district boundary.

In April of 1967, a boundary change proposal appeared on the ballots of both Central R-3 and Farmington R-7 at the annual school election. The boundary change proposal was for Farmington R-7 to annex a parcel of property from Central R-3, and Parcel 13 was contiguous with the parcel that was annexed. The proposal passed in Farmington R-7, but failed in Central R-3. A board of arbitration subsequently ruled on the proposal on June 1, 1967. According to the board of arbitration's ruling in 1967, a boundary change detached a portion of property from Central R-3 and gave it to Farmington R-7. This created the remaining question of whether Parcel 13, which was contiguous with the parcel of property that was annexed, was part of Central R-3 or part of Farmington R-7.

MCD filed a declaratory action against Central R-3, Farmington R-7, and the Assessor asking the trial court to determine if Parcel 13 was within Farmington R-7. Farmington R-7 filed a cross-claim against Central R-3 seeking a determination of the boundary and a declaration that all taxes from Parcel 13 are due to Farmington R-7.

In its judgment, the trial court noted no official, authoritative repository for school district boundary maps existed and that each district is supposed to maintain a map or description of its own boundaries, although these maps are not determinative of district boundaries. The trial court found Farmington R-7 presented its maps, which indicated the property was within its boundaries. Central R-3 presented the testimony of Desmond Mayberry ("Mayberry"), the assistant superintendent at Central R-3, who testified that he did not find any complete legal description of Central R-3's boundaries in preparation for the trial. Mayberry also testified

Central R-3 did not have any school district maps for periods prior to 2000 that included Parcel 13 as part of Central R-3.¹ The office of the St. Francois County School Superintendent, according to the trial court, had authority to establish school district boundaries at the time of reorganization and consolidation of school districts, but that office no longer exists and there are no remaining maps from the office of the St. Francois County School Superintendent.²

The trial court explained there is no government agency or office with authority granted to it or responsibility given to it to establish school boundary lines or determine boundaries when there is a dispute. When there is a dispute, the trial court stated the general practice is to refer someone to the county assessor's office. The trial court found the Assessor's maps, which were based on the tax records, were the most persuasive evidence of what the boundaries are, although the Assessor does not have authority to make or determine school boundary decisions.

The trial court, basing its finding on the Assessor's maps, found that before the 1967 election, the annexation parcel and Parcel 13 were assessed in Central R-3. The 1967 boundary change created an annexation parcel that was to be detached from Central R-3 and made part of Farmington R-7. The trial court noted it was logical to assume the land from which the annexation parcel was detached, Parcel 13, would remain part of Central R-3. Because there have been no further boundary changes since 1967 and Parcel 13 has been continuously assessed as part of Central R-3 since 1950, the trial court concluded Parcel 13 was within the boundaries of Central R-3. The trial court found Parcel 13 was part of Central R-3 before 1967 and it continued to be part of Central R-3 after the 1967 boundary change. This appeal follows.

The standard of review for a declaratory judgment action is the same as in any other court-tried case, which is the standard set forth in Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976). Burris v. Mercer County, 252 S.W.3d 199, 201 (Mo. App. W.D. 2008). We will

¹ Mayberry was only testifying regarding the lack of maps maintained and/or possessed by Central R-3. His testimony does not impact the fact that the Assessor may have separately maintained and/or possessed maps based on the tax records from this period.

² Central R-3 was previously known as the St. Francois County (Central) School District, and the office of the St. Francois County School Superintendent oversaw that district.

affirm unless the trial court's judgment is against the weight of the evidence, is not sufficiently supported by the evidence, or erroneously declares or applies the law. Id. We will view the evidence and reasonable inferences therefrom in favor of the prevailing party and will disregard the contrary evidence. Id. We defer to the credibility determinations of the trial court. Id. Further, when there is conflicting evidence, we defer to the trial court, even if the conflicting evidence would support a different conclusion. Id. However, we review questions of law *de novo*. Hemsath v. City of O'Fallon, 261 S.W.3d 1, 3 (Mo. App. E.D. 2008)

In MCD's first point, it argues the trial court erred in declaring Parcel 13 to be part of Central R-3 because school districts are statutorily required to be composed of contiguous territory. MCD further asserts the trial court erred in relying on the Assessor's maps because the authority to determine school boundaries lies with the school districts and voters.³

Initially, we note MCD argues it requested a finding from the trial court as to whether "at the time of the 1967 annexation, Missouri state statute allowed for a non-contiguous pocket of a school district," and the trial court did not address this issue. Central R-3 contends this argument was not raised in a motion to amend the judgment and instead was raised for the first time in the argument section of MCD's first point and therefore is not preserved according to Rules 78.07(c) and 84.04(e). Central R-3 further contends MCD has not preserved this point for review because it is asserting for the first time on appeal that school districts are statutorily required to be contiguous.

³ Section 162.431.5 provided "the board of arbitration shall meet and consider the necessity for the proposed changes and shall decide whether the boundaries shall be changed as requested in the petition or be left unchanged, which decision shall be final." Central R-3 contends the board of arbitration's decision in 1967 is final and cannot be collaterally attacked. See State ex rel. King City, Mo. R-1 School Dist., 430 S.W.2d at 435 (finding the board of arbitration's decision was final and could not be collaterally attacked based on Section 165.294, the precursor to Section 162.431). In this case, Central R-3 argues MCD is trying to collaterally attack the decision of the board of arbitration, which affirmed the vote of the citizens of Farmington R-7 to accept the annexation parcel. However, the board of arbitration's decision only addressed whether the annexation parcel became part of Farmington R-7. It did not address the designation of Parcel 13. Thus, we find MCD is not collaterally attacking the decision of the board of arbitration.

We will address the challenge under Rule 78.07(c) first. Rule 78.07(c) provides “[i]n all cases, allegations of error relating to the form or language of the judgment, including the failure to make statutorily required findings, must be raised in a motion to amend the judgment in order to be preserved for appellate review.”

First, MCD’s point does not constitute an allegation of error relating to the form or language of the judgment, rather it takes issue with the legal justification for the court’s judgment. This is not the type of error contemplated by Rule 78.07(c)’s requirement that allegations of error must be raised in a motion to amend the judgment in order to be preserved for appellate review. Rule 73.01(d) states that “[e]xcept as provided in Rule 78.07(c), a party may, but need not, file a motion for new trial or a motion to amend the judgment or opinion, or both” Because we have noted MCD’s point is not the type of error contemplated by Rule 78.07(c), MCD did not have to file a post-trial motion to preserve the issue of whether at the time of the 1967 annexation Missouri state statute allowed for the creation of a non-contiguous pocket of a school district.

Second, MCD was seeking an answer to the question of whether at the time of the 1967 annexation, Missouri state statute allowed for the creation of a non-contiguous pocket of a school district. This question represents a conclusion of law not a finding of fact. Findings of fact and conclusions of law are treated differently under Missouri law. Cohen v. Cohen, 178 S.W.3d 656, 663 (Mo. App. W.D. 2005). Rule 73.01(c) provides:

The court shall render the judgment it thinks proper under the law and the evidence.

If a party so requests, the court shall dictate to the court reporter or prepare and file a brief opinion containing a statement of the grounds for its decision and the method of deciding any damages awarded.

The court may, or if requested by a party shall, include in the opinion findings on the controverted fact issues specified by the party. Any request for an opinion or findings of fact shall be made on the record before the introduction of evidence at trial or at such later time as the court may allow.

All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached.

Thus, under Rule 73.01(c), while a court is required, if requested by a party, to include in its opinion findings on controverted fact issues, the court is only required to include a statement of grounds for its decision and is not required to fulfill any requests for specific conclusions of law. Cohen, 178 S.W.3d at 663.

Because the question of whether at the time of the 1967 annexation Missouri state statute allowed for the creation of a non-contiguous pocket of a school district involves the interpretation and application of a statute, we find it is a question of law, which we review *de novo*. Dodson v. City Of Wentzville, 216 S.W.3d 173, 176 (Mo. App. E.D. 2007). The court was not required to make a specific finding on this issue under Rule 73.01(c). Thus, MCD's argument that the trial court's judgment is deficient for its failure to make a specific finding on this issue is without merit.

Next we address the assertion that MCD's claim of error was not preserved under Rule 84.04(e). Rule 84.04(e) provides, in pertinent part "[t]he argument shall be limited to those errors included in the 'Points Relied On.'" We are reviewing the question of law, which is whether at the time of the 1967 annexation Missouri state statute allowed for the creation of a non-contiguous pocket of a school district. Thus, it is clear MCD properly preserved this issue by including it in its first point relied on as required by Rule 84.04(e).

Finally, we address Central R-3's argument that MCD has not preserved this point for review because it is asserting for the first time on appeal that school districts are statutorily required to be contiguous. In its first amended petition, MCD asserted

a controversy exists between [MCD] and [Central R-3], [Farmington R-7] and the Assessor and there is a justiciable issue in that: [t]he tax records and map of the Assessor's Office in St. Francois County depicts [MCD's] parcel as a noncontiguous pocket of [Central R-3] surrounded by [Farmington R-7] . . . [and] [t]hat until 2005, all state school maps depicted [MCD's] parcel as [Farmington R-7] and showed no noncontiguous pockets within St. Francois County.

Rule 55.05 provides “[a] pleading that sets forth a claim for relief shall contain (1) a short and plain statement of the facts showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader claims to be entitled.” We find MCD’s first amended petition sufficiently stated facts supporting its claim that Parcel 13 should be deemed part of Farmington R-7 because it is contiguous. Further, Rule 55.33(b) provides in pertinent part “[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.” As noted above, in a written motion filed pursuant to Rule 73.01(c) on the first day of trial, MCD asked the trial court for a finding as to whether at the time of the 1967 annexation, Missouri state statute allowed for a non-contiguous pocket of a school district. Further, in this case, there was substantial testimony that was not objected to at trial regarding Parcel 13’s lack of contiguousness with Central R-3 and the propriety of such a lack of contiguousness. As a result, we find the issue of whether a school district can be comprised of non-contiguous territory was sufficiently raised by MCD.

We will now turn to the merits of MCD’s first point, and begin by addressing whether, at the time of the boundary change in 1967, school districts had to be composed of contiguous territory. Section 162.171, RSMo 1963, provided in pertinent part:

[i]n recommending prepared reorganization plans, the county board of education may divide all existing unreorganized districts and any reorganized district not offering an approved program of work through the twelfth grade if division is in the best interests of the children, and place any portion in any proposed district, but *each proposed district shall be composed of contiguous territory*. (emphasis added).⁴

Central R-3 argues this statute is specific to reorganization plans and is not generally applicable to all boundary changes. Further, Central R-3 argues, and MCD agrees, Central R-3 was contiguous after it was reorganized in 1966 and before the boundary change in 1967.

⁴ Because the boundaries of the school districts at issue in this case were last changed in 1967, we look to the statutes in effect at that time in deciding this case. All further statutory references are to RSMo 1963 unless otherwise indicated.

However, the annexation made Parcel 13, which the trial court found to be part of Central R-3, non-contiguous with the rest of Central R-3. Central R-3 maintains the key statutory provision is Section 162.431, which spells out the procedure to be followed for a boundary change, but does not include a contiguousness requirement.⁵ Central R-3 contends if the Missouri legislature intended to require school districts to be contiguous, this requirement would appear in Section 162.431. For further support, Central R-3 points to the testimony of Tom Quinn, the Director of School Governance for the Department of Elementary and Secondary Education, where he stated there are other districts in Missouri that are non-contiguous. Thus, Central R-3 asserts if non-contiguous districts were not permitted, none would exist.

On the other hand, MCD relies on State, at Inf. of Taylor ex rel. Schwerdt v. Reorganized School Dist. R-3, Warren County, 257 S.W.2d 262, 268 (Mo. App. 1953), where the court described the possibility that a school district would be divided into two separate and non-contiguous areas as “anomalous and irreconcilable” and went on to state “[i]n proceedings to release parts of school districts for annexation to other districts, the law does not contemplate that two portions of a district should be left entirely segregated from each other.” Further, Article 9, Section 1(b) of the Missouri Constitution states “[s]pecific schools for any contiguous territory may be established by law.” MCD also contends Section 162.431 must be read in conjunction with Sections 162.171 and 162.223 both of which included a requirement of contiguousness.⁶

⁵ Section 162.431 provided in part:

[w]hen it is necessary to change the boundary lines between two six-director school districts or between a six-director school district and a common school district, ten percent of the voters in any district affected, as determined by the total vote cast for all candidates for election as members of the school board, divided by the number of members of the school board elected at the last preceding election of such members, may petition the district boards of directors in the districts affected, regardless of county lines, for a change in boundaries. The secretaries of the district school boards shall give notice of an election on the desired change before the next annual or biennial election in the manner provided by section 162.061.

⁶ Section 162.223 provided in pertinent part “[w]hen the voters in any two or more *adjacent* districts without limitation as to size or enrollment desire to consolidate and form a new district, a petition asking for an election upon the question of consolidation shall be filed with the boards of education of the affected districts . . .” (emphasis added).

Thus, we must determine whether and how these different statutes interact. The primary rule of statutory interpretation is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words in their plain and ordinary meaning. State ex rel. Evans v. Brown Builders Elec. Co., Inc., 254 S.W.3d 31, 35 (Mo. banc 2008). In determining the intent and meaning of statutory language, the words must be considered in context and sections of the statutes in *pari materia*, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words. Id. The provisions of a legislative act are not read in isolation but construed together, and if reasonably possible, the provisions will be harmonized with each other. Id.

While Section 162.431 did not contain any language stating school district boundaries can only be changed if they remain contiguous, we find it must be read in conjunction with Sections 162.171 and 162.223 as well as Article 9, Section 1(b). The contiguous requirement of these other school district statutes demonstrates the intent of the legislature to have school districts composed of contiguous territory. Further, as a practical matter, having school districts on contiguous territory allows for more efficient and economical use of school district resources.⁷ Thus, we find the statutes in 1967 required school districts to be comprised of contiguous territory and to the extent that the trial court's judgment had the effect of creating a non-contiguous school district, it was in error.

We must also address MCD's second argument under its first point. In MCD's second argument on this point, it argues the trial court erred in its reliance on the Assessor's records because the authority to determine school boundaries lies with the school districts and voters, and therefore, the trial court should have relied on the maps of the school districts. MCD argues,

⁷ We note the current version of 162.431.3(2), RSMo 2000, provides that in determining whether it is necessary to change the boundary line between districts, the board of arbitration shall base its decision upon, among other things, "the presence of actual educational harm to school-aged children, either due to a significant difference in the time involved in transporting students or educational deficiencies in the district which would have its boundary adversely affected." It was noted at trial that Parcel 13 is 1.9 miles from the closest Farmington R-7 school and 5.1 miles from the closest Central R-3 school.

in particular, that there was no assessor's map in existence until 1985 when a map was created based on the tax record books, not the plats of the school districts.

Here, the trial court found “[t]here is no government office or agency with the authority granted to it or responsibility given to it to establish school boundary lines or determine boundary lines where there is a dispute.” However, Section 162.431 provided the voters and the boards of arbitration are responsible for deciding on boundary changes. Further, Section 162.841 provided “the [school] district clerk shall . . . record in the record book of the district a correct plat of the district . . . and shall furnish the county clerk and county superintendent with copies of the same and shall officially notify them of any change whenever made.” In State ex rel. King City, Mo. R-1 School Dist. v. Ueligger, 430 S.W.2d 433, 435 (Mo. App. 1968), the court found the county clerk had only a ministerial duty to perform and that he was in no position to question either the incorporation of the school district or the inclusion of the land in question within the district.

As a result, MCD argues the trial court erred in finding the maps of the school districts are not authoritative because the county superintendent merely retained copies of the maps of the school districts. The trial court found “[t]he authority to establish school district boundaries at the time of reorganization and consolidation of school districts was vested in the County School Superintendent,” but Sections 179.040 and 179.050, which spelled out the powers and duties of the county superintendent contained no provision stating the county superintendent had authority to establish school district boundaries.

Therefore, we find the statutory framework in existence in 1967, and especially Section 162.841, demonstrated the best evidence of a school district's boundaries were the plats maintained by the school districts. The trial court should have relied on the records of the school districts in making its decision rather than the Assessor's records. See also Reorganized School Dist. R-I of Crawford County v. Reorganized School Dist. R-III of Washington County, 360 S.W.2d 376, 380-81 (Mo. App. 1962) (relying on maps of school districts and the State

Department of Education to determine school district boundaries rather than the maps of the county assessors.).

The trial court concluded, based on the evidence at trial including inferences drawn from the Assessor's records, that Parcel 13 was part of Central before the 1967 election and it remained so after the election and boundary change. We found above that based on the relevant Missouri statutes in 1963, the Assessor's records are not authoritative with respect to the boundaries of school districts.⁸ Further, it should be noted Farmington R-7 presented its maps, which indicated the property was within its boundaries, and Central R-3 presented the testimony of Mayberry, who testified that he did not find any complete legal description of Central R-3's boundaries in preparation for the trial and that Central R-3 did not have any school district maps for periods prior to 2000 that included Parcel 13 as part of Central R-3. Therefore, the trial court erred in declaring Parcel 13 to be part of Central R-3 because school districts were statutorily required to be composed of contiguous territory and in relying on the Assessor's maps because the authority to determine school boundaries was with the school districts and voters. Point granted.⁹

Having found the trial court erred by declaring Parcel 13 to be part of Central R-3 in MCD's first point, we need not address MCD's second point or Farmington R-7's fourth point on cross-appeal.

The judgment of the trial court is reversed and remanded for proceedings consistent with this opinion.

⁸ We also note there was evidence that the Assessor's location of the school district boundary lines changed between 2001 and 2006. There is no evidence in the record proving that these boundaries were altered according to proper procedures during this time period. This fact demonstrates the unreliability of the Assessor's designation of the school district boundaries.

⁹ Farmington R-7's first two points on cross-appeal deal with the issue of whether school districts are required to be contiguous. Because we have found school districts are required to be contiguous based on MCD's first point, we hereby grant Farmington R-7's first two points on cross-appeal. Also, Farmington R-7's third point deals with the issue of the trial court relying on the assessor's records and maps as opposed to the school districts' records or plats, which coincides with the second subargument in MCD's first point, which was granted. Thus, Farmington R-7's third point is also granted.

Nannette A. Baker, C.J. and
Roy L. Richter, J., concur.