

Appeal No. SC98442

SUPREME COURT OF MISSOURI

THE BOARD OF COMMISSIONERS OF THE COUNTY OF FRANKLIN, STATE OF MISSOURI; TIM BRINKER, PRESIDING COMMISSIONER; TODD BOLAND, FIRST DISTRICT COMMISSIONER; DAVE HINSON, SECOND DISTRICT COMMISSIONER; and ANGELA GIBSON, AUDITOR OF THE COUNTY OF FRANKLIN, STATE OF MISSOURI

Appellants

v.

TWENTIETH JUDICIAL CIRCUIT OF THE STATE OF MISSOURI,
by the Honorable I.I. Lamke, Presiding Judge,

Respondent

Petition for Review from the Judicial Finance Commission

APPELLANTS' REPLY BRIEF

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SUMMARY OF REPLY

The case brought before the Judicial Finance Commission (“JFC”) by the Franklin County Commission was to determine whether Franklin County could be compelled to contribute in excess of the “maintenance of effort” (“MOE”) amount, as calculated pursuant to Section 211.393.6, RSMo., toward the Twentieth Circuit’s budget for the Juvenile Court. It was not a dispute over whether the Twentieth Circuit’s budget for the 2020 fiscal year was “reasonable.” It was also not a dispute about the procedure by which this budgetary disagreement between the Franklin County Commission and the Twentieth Circuit is to be heard and adjudicated—it has been determined the proper place is with the JFC (and this Court on review).

The JFC erred in dismissing the Franklin County Commission’s petition for review as untimely because there was good cause to support that it could be filed after January 1, 2020. Moreover, the Missouri Court of Appeals, Eastern District’s opinion on the Twentieth Circuit’s writ petition (ED108658) did not address the merits of the budgetary dispute between Franklin County and the Twentieth Circuit, which is what the Franklin County Commission sought with review by the JFC. As such, there are no *res judicata* or collateral attack concerns. The JFC erred in dismissing the petition for review because the Court of Appeals’ opinion did not deprive the JFC of authority to hear the budgetary dispute. The JFC’s dismissal of the petition for review was in error and this Court should reverse that dismissal.

There is no authority under which Franklin County can be forced to contribute toward the Twentieth Circuit’s Juvenile Court budget in excess of the “MOE” amount. The

statutory scheme is clear that Franklin County cannot be required to contribute more than the “MOE,” and the JFC has previously so held in *Cooper County v. Circuit Court of Eighteenth Judicial Circuit of Missouri*, Case Nos. 03-0064 and 04-0066 (before the Judicial Finance Commission). The Twentieth Circuit should not be permitted to use the courts to force Franklin County into something it is not obligated to do under Missouri law. This is also an issue that until resolved will continue to arise each year with the development of budgets, including with the 2021 fiscal year budget, which is now starting to be prepared.

This Court should hold pursuant to Section 211.393.6 that all Juvenile Court personnel in the Twentieth Circuit should be paid by the State, rather than by Franklin County, and for all purposes the Franklin County Commission’s “MOE” of \$333,523 for the 2020 fiscal year was proper. Alternatively, the Franklin County Commission requests that the Court remand to the JFC for review in accordance with its opinion.

REPLY ARGUMENT

I. Timely Filing of Petition for Review

Supreme Court Operating Rule 12-9.05 expressly allows for filing a petition for review with the JFC after January 1 when there is “good cause shown.” Here, the Franklin County Commission timely filed its petition for review with the JFC because there was good cause to file the petition after January 1, 2020.

The budget dispute at issue involves a narrow question and a narrow portion of the Twentieth Circuit’s budget. Dispute over this narrow portion of the budget did not arise until after January 1 because the Franklin County Commission had not even approved its own budget until December 31, 2019 and it was not clear the Twentieth Circuit would reject the “MOE” amount until it filed its writ petition on January 27, 2020. Thus, the Franklin County Commission could not have filed its petition for review by the January 1, 2020 deadline.

The Twentieth Circuit claims that for the JFC to have found the petition for review timely required it to reject the Court of Appeals’ holdings on the writ petition, which the JFC allegedly did not have statutory authority to do. Respondent’s Brief, p. 18. However, in making this argument the Twentieth Circuit claims the Court of Appeals’ opinion went further than it actually did. And in relying on that opinion, the Twentieth Circuit fails to address the actual evidence of good cause before the JFC.

There were several bases for good cause to support the filing of the petition for review out of time, none of which would have required a finding that conflicted with the Court of Appeals’ holding. For example, a finding that good cause existed because

Franklin County's budget was not finalized and approved until December 31, 2019 would not have conflicted with the Court of Appeals' opinion.¹

The Twentieth Circuit also questions the Franklin County Commission's good faith in filing the petition for review after the Court of Appeals' opinion on the writ petition, and in filing it "2 weeks after [the Franklin County Commission] had lost on the merits in the writ proceeding." Respondent's Brief, p. 20. This statement is misleading in two respects.

First, the Court of Appeals' opinion was not released until February 11, 2020 and the Franklin County Commission filed its petition for review with the JFC on February 18, 2020. A3-7, A43-51; LF007-300. Therefore, the Franklin County Commission filed the petition for review with the JFC within one week, not two. The Franklin County Commission moved diligently after the Court of Appeals' opinion to file a petition for review with the JFC.

Second, as will be discussed in greater detail in part II of the reply argument, the Court of Appeals' holding was not on the merits of the budget dispute. The Court of Appeals deferred ruling on whether Franklin County could be compelled to apportion in excess of its "MOE." The Court of Appeals held that dispute was better heard and adjudicated by the JFC because "JFC review is mandated and necessary." A51. It was the Court of Appeals' very refusal to rule on the merits of the dispute that prompted the Franklin County Commission to subsequently file a petition for review with the JFC.

¹ We do not know the reasoning of the JFC in dismissing the petition for review as untimely. The JFC did not provide a reasoned opinion in compliance with Operating Rule 12-21.05.

The Franklin County Commission had good cause to file its petition for review after January 1, 2020. The JFC erred in dismissing the petition as untimely. This Court should reverse the JFC's dismissal and conduct a *de novo* review of the petition, or remand to the JFC with guidance.

II. *Res Judicata* and Collateral Attack Are Not at Issue

The Twentieth Circuit claims *res judicata* and/or the ban on collateral attacks of judgments prevented the JFC from hearing and adjudicating the Franklin County Commission's petition for review. Respondent's Brief, pp. 21-27. However, as will be discussed below, the issue before the Court of Appeals on the Twentieth Circuit's writ petition was narrow; indeed, the Court of Appeals characterized the issue before it as a narrow one and ruled accordingly. As a result, there has been no ruling on the merits of the issue presented to the JFC (i.e., the "MOE" restriction); thus, the *res judicata* and collateral attack doctrines have no application here.

The doctrine of *res judicata* is based on the principle that a party should not be able to litigate a claim and then, after an adverse judgment, seek to relitigate the identical claim in a second proceeding. *Brown v. Simmons*, 335 S.W.3d 481, 485 (Mo. App. S.D. 2010) (citing *Bolz v. Hatfield*, 41 S.W.3d 566, 569 (Mo. App. S.D. 2001)). *Res judicata* protects the adversaries of parties who have had a full and fair opportunity to litigate their claim. *Id.* "Significantly, *res judicata* can only be applied where a final judgment on the merits has been rendered involving the same claim sought to be precluded in the case in question." *Id.* (emphasis added) (citing *Vogt v. Emmons*, 158 S.W.3d 243, 247 (Mo. App. E.D. 2005)).

Similarly, Missouri law holds that if a court has jurisdiction, the judgment by the court is not subject to collateral attack based on the judgment's validity or conclusiveness as to matters actually adjudicated. *Reimer v. Hayes*, 365 S.W.3d 280, 283 (Mo. App. W.D. 2012) (emphasis added); 2 Mo. Proc., Methods of Prac.: Litigation Guide § 21.8 (4th ed.). “An adjudication on grounds purely technical, where the merits cannot come into question, is limited to the point actually decided, and does not preclude the maintenance of a subsequent action brought in a way to avoid the objection which proved fact in the first action. As to the technical point decided, however, the judgment is conclusive, even though it is not conclusive as to the merits of the entire controversy.” *Healy v. Atchison, T.&S.F.R. Co.*, 287 S.W.2d 813, 816 (Mo. 1956).

For example, in *Brown*, the plaintiff's tort case filed in the federal district court was dismissed for failure to pay the filing fee. 335 S.W.3d at 483-84. The plaintiff then filed the same cause of action in Missouri state court and the defendants moved to dismiss based upon *res judicata* grounds, which the trial court granted. *Id.* at 484. On appeal, the Missouri Court of Appeals, Southern District held the defendants' motion to dismiss had been converted into a motion for summary judgment due to the addition of facts outside the pleading, and that the dismissal of the case in federal court was not an adjudication on the merits, such that *res judicata* did not apply. *Id.* The appellate court therefore reversed and remanded. *Id.* On remand, the defendants filed a second motion for summary judgment based on affidavits arguing the plaintiff's tort claims failed as a matter of law. *Id.* The trial court granted the motion for summary judgment, and plaintiff appealed. *Id.*

In the second appeal, the plaintiff argued the first motion for summary judgment, which had been effectively denied by the appellate court's ruling, had *res judicata* effect, barring a second motion for summary judgment. *Id.* at 484-85. In its analysis of the issue the Missouri Court of Appeals, Southern District stated, "an essential element for application of *res judicata* is missing." *Id.* at 485. The court further explained that *Brown I* was a "narrow decision" that permitted the plaintiff to move forward in his state case after the federal case was dismissed. *Id.* The court clarified there was no "final judgment on the merits as to [the plaintiff's] tort claims [so that] an essential element of *res judicata* is lacking." *Id.* The court held there was no *res judicata* effect from the ruling on the first motion for summary judgment. *Id.* at 486.

Here, similar to *Brown*, the Court of Appeals did not address the merits of the budgetary dispute, which was whether Franklin County could be required to contribute more than the "MOE" to the Juvenile Court's budget. Rather, the Court of Appeals reached its holding based upon procedural findings.

The Court of Appeals characterized the Twentieth Circuit's writ petition as requesting a writ to "immediately appropriate and begin disbursement of the total Fiscal Year 2020 Court Budget Estimate ("FY 2020"), including the amount requested for Juvenile Court operations, salaries, and benefits and payment of Juvenile Court expenses, retroactive to January 1, 2020." A44. This was the relief sought by the Twentieth Circuit in its writ petition. A18. And, in turn, this is what the Court of Appeals ordered ("to appropriate funds to the Circuit Court of the Twentieth Judicial Circuit in the amounts

estimated by the Circuit Court in Relator’s Writ Exhibit 1, \$921,331,15 and to immediately pay any salaries denied retroactive to January 1, 2020”). A51.

The Court of Appeals’ holding preserved full appropriation for the court’s budget, but indicated the JFC was the proper entity to hear and adjudicate the merits of the budgetary dispute. The Court of Appeals analyzed this Court’s holding in *Twentieth Judicial Circuit of State of Missouri v. Board of Commissioners of County of Franklin*, 911 S.W.2d 626 (Mo. banc 1995), to conclude that Franklin County should file a petition for review with the JFC to hear the budget dispute. It stated, “JFC review is mandated and necessary.” A51.

Nowhere in its opinion did the Court of Appeals state either (a) the Franklin County Commission could not subsequently file a petition for review with the JFC on the dispute (assuming it first appropriated the Twentieth Circuit’s budget in accordance with the Order in Mandamus, which it has done) or (b) Franklin County could be forced to contribute over the “MOE” amount to the Juvenile Court’s budget. Thus, after exhausting relief on the writ, Franklin County complied with the Order in Mandamus and is paying the Twentieth Circuit’s budget as ordered, but it also filed a petition for review with the JFC so that the merits of the dispute could be adjudicated by the JFC—especially for use in subsequent budget years.

As much as the Twentieth Circuit wants to defer the merits of the dispute from being heard and decided, there was no part of the Court of Appeals’ opinion that prohibited a subsequent filing with the JFC. Because the Court of Appeals did not reach the merits of

the budget dispute, just as the appellate court found in *Brown*, there are no concerns here with a collateral attack or *res judicata*.

III. Within Statutory Authority

The Twentieth Circuit also maintains the JFC had to dismiss the Franklin County Commission's petition for review because otherwise it would have had to alter the writ issued by the Court of Appeals, which it does not have the statutory authority to do. Respondent's Brief, pp. 18-19, 23-24. Again, in making this argument the Twentieth Circuit ignores that the Franklin County Commission requested the JFC to consider whether it had to allocate more than the "MOE" amount, not to determine the procedural avenues to have the issue heard and adjudicated.

The JFC has statutory authority to hear budgetary disputes involving a Missouri court. § 477.600.5(1)-(2), RSMo. And, that is exactly what the Franklin County Commission requested the JFC to do—to hear a budgetary dispute involving a Missouri court. The Franklin County Commission did not request the JFC to effectively overrule the Court of Appeals' opinion on the writ petition because the Court of Appeals did not rule on the merits of the budgetary dispute between Franklin County and the Twentieth Circuit.

Rather, as discussed above, the Court of Appeals held the JFC was the proper entity to rule on the merits of the budgetary dispute. The Franklin County Commission complied with the writ order but sought adjudication from the JFC as the Court of Appeals suggested it should do. The JFC had the authority to hear the budgetary dispute before it and should not have dismissed the petition for review.

IV. The Merits of the Budget Dispute

The Twentieth Circuit failed to adequately address the merits of the budget dispute or to explain how Franklin County could lawfully be compelled to contribute in excess of the “MOE.” In its lone argument on the merits, the Twentieth Circuit argued use of the term “maintain” in Section 211.393.6 indicated the “MOE” was “a floor, and not a ceiling.” Respondent’s Brief, pp. 28-30.

However, the Twentieth Circuit failed to explain how even if the “MOE” were “a floor,” Franklin County could be compelled to pay more than the “floor.” In fact, when the section is read as a whole, there is no language to suggest a court is permitted to compel the county to pay more than the “MOE.” See e.g., *Lane v. Lensmeyer*, 158 S.W.3d 218, 226 (Mo. banc 2005) (“In determining legislative intent, the statute is read as a whole and *in pari materia*, with related sections”) (citing *State, Mo. Dep’t of Soc. Servs., Div. of Aging v. Brookside Nursing Ctr., Inc.*, 50 S.W.3d 273, 276 (Mo. banc 2001)). Thus, whether the “MOE” effectively acts as a “floor” or a “ceiling” is to the discretion only of the county.

The Twentieth Circuit’s argument also completely disregards the JFC’s holding in *Cooper County v. Circuit Court of the 18th Judicial Circuit of Missouri*, Case Nos. 03-0064 and 04-0066 (Before the Judicial Finance Commission). In *Cooper County*, the JFC stated, “211.393, RSMo, specifically relieves counties of growth in the juvenile budget beyond the specified maintenance of effort amount. Therefore, as to any amount included in its budget that exceeds its maintenance of effort amount, the county has the discretion as to whether or not the particular item shall be funded. In essence, maintenance of effort acts

as a mandatory minimum level for funding that the county can choose to exceed but cannot be ordered to exceed.” A76 (emphasis added).

Thus, as the JFC reasoned, the “MOE” funding required by Section 211.393.6 trumps the reasonableness test in Section 50.640 such that, even if reasonable, a county is under no obligation to pay amounts above its “MOE” amount. A74-76. In fact, the JFC stated that to conclude otherwise would render Section 211.393.6 meaningless. A75. The JFC went on to state that it presumed Section 211.393.6 had meaning “and that the meaning of that section was to mandate the maintenance of a specific amount for juvenile services, and no more than that specific amount.” A77 (emphasis added).

Cooper County is directly on point and remains the applicable law. Here, it is irrelevant whether the Twentieth Circuit’s budget estimate was reasonable, as the Franklin County Commission cannot be compelled to pay more than its “MOE” amount. Though Section 211.393, like Section 50.640, also allows for a reasonableness challenge to be made to the JFC, which could arise if items within the budget are thought to be unreasonable apart from the issue of the “MOE” amount, that situation is simply not present here. As such, the Franklin County Commission was under absolutely no obligation to make a reasonableness challenge to the JFC, and the decision not to do so in no way increases the Franklin County Commission’s obligations above the “MOE” amount it adopted in the 2020 Juvenile Court budget.

Applicable law makes clear the Franklin County Commission properly funded the juvenile portion of the Twentieth Circuit budget, and that amount cannot be increased. The “MOE” was the maximum Franklin County could be compelled to appropriate. As such,

this Court should issue an order finding the Franklin County’s budget allocation to the Juvenile Court was proper. This Court should hold pursuant to Section 211.393 that all Juvenile Court personnel in the Twentieth Circuit should be paid by the State, and for all purposes the Franklin County Commission’s “MOE” of \$333,523 was proper. Alternatively, the Franklin County Commission requests that the Court remand to the JFC for review in accordance with its opinion.

CONCLUSION

As explained above and in Points I, II, and III of the Franklin County Commission's opening brief, the JFC erred in dismissing the Franklin County Commission's petition for review. The petition was not untimely because good cause existed for its filing after January 1, 2020. The JFC also had authority to hear the petition because the Missouri Court of Appeals, Eastern District's opinion on the Twentieth Circuit's writ petition did not deprive the JFC of authority. The JFC's dismissal of the petition for review should be reversed.

Furthermore, on the merits of the petition for review, this Court should hold pursuant to Section 211.393 that all Juvenile Court personnel in the Twentieth Circuit should be paid by the State, and for all purposes the Franklin County Commission's "MOE" of \$333,523 was proper. Alternatively, the Franklin County Commission requests that the Court remand to the JFC for review in accordance with its opinion.

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CERTIFICATE OF COMPLIANCE AND SERVICE

I certify this reply brief complies with the provisions of Rules 55.03 and 84.06(b). This brief contains 3,746 words, including the cover, the certificate required by Rule 84.06(c), and the signature block. Counsel has relied upon the word-counting utility of Microsoft Word in making this certification.

I further certify that a copy of this brief was filed electronically on August 13, 2020 using the Court's electronic filing system, causing automated delivery to counsel of record in this matter.

/s/ Katrina L. Smeltzer