

STATE COURT Docket Watch®

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INSIDE

MISSOURI SUPREME COURT UNANIMOUSLY DECLARES CAP ON PUNITIVE DAMAGES UNCONSTITUTIONAL

In *Lewellen v. Franklin (Lewellen)*,¹ the Missouri Supreme Court unanimously held that a mandatory cap on punitive damages,² enacted by the Missouri Legislature in 2005 as part of its comprehensive legislative tort reform, violated a plaintiff's right to a jury trial under the Missouri Constitution. Holding the punitive damages cap unconstitutional as to a fraudulent-misrepresentation claim, the *Lewellen* court unanimously followed the controversial 4-3 split decision in *Watts ex rel. Watts v. Lester E. Cox Medical Centers (Watts)*,³ in which the Missouri Supreme Court held a statutory cap on noneconomic damages in medical-negligence cases constitutionally infirm under a plaintiff's constitutional right to a jury trial.

I. FACTS

In *Lewellen*, the plaintiff alleged that the defendants' advertisements for the sale of vehicles constituted fraudulent misrepresentations and violated the Missouri Merchandising Practice Act (MMPA), Mo. Rev. Stat. §§ 407.010 *et seq.*⁴ In addition to awarding the plaintiff \$25,000 in actual damages, the jury awarded her \$1,000,000 in punitive damages on each of her claims.⁵

By Stephen R. Clark * Kristen E. Weinberg**

Upon the defendants' motions to cap the punitive damage awards pursuant to Mo. Rev. Stat. § 510.265, the trial court reduced the punitive awards to \$500,000 and \$539,050.⁶ The plaintiff appealed, asserting multiple state constitutional challenges to § 510.265's cap on punitive damages, including that it violated the Missouri Constitution's right to a jury trial.⁷ Specifically, the plaintiff argued that the statutory cap on punitive damages strips the jury of its function in determining damages.⁸

II. CONSTITUTIONAL RIGHT TO JURY TRIAL

Article I, section 22(a) of the Missouri Constitution provides, "[t]hat the right of trial by jury as heretofore enjoyed shall remain inviolate . . ." Relying on its 2012 split decision in *Watts*,⁹ in which it struck down a statutory cap on noneconomic damages in medical negligence cases under article I, section 22(a)'s right to a jury trial, the Missouri Supreme Court explained that the phrase "shall remain inviolate" "means that any change in the right to a jury determination of damages as it existed in

... continued page 7

MINNESOTA SUPREME COURT HOLDS MUNICIPALITY CANNOT REVOKE RIGHT TO MAINTAIN AN EXISTING COMMERCIAL LAND USE

By Luke A. Wake*

A difficult and recurring question of municipal law is how, and when, can an existing land-use be phased-out as circumstances in the community change? Obviously land-use planning would be difficult—if not impossible—if the authorities were powerless to control development and or to take steps to eliminate current uses that may be deemed socially undesirable. But, on the other side of the equation, landowners generally want to maintain their property rights to the full

... continued page 9

New Mexico Supreme Court Eliminates Foreseeability from Tort Duty Analysis

Supreme Court of Ohio Upholds Challenge to the Application of Zoning Resrtrictions

Powers v. State of Wyoming: Separation of Powers and the Role of the Judiciary

17 *Id.* (emphasis added).

18 *Id.* at 13 (quoting *Watts*, 376 S.W.3d at 640).

19 *Id.*

20 Mark A. Behrens, *Missouri Supreme Court Invalidates State's Legislative Cap on Punitive Damages*, THE LEGAL PULSE (Sept. 11, 2014), <http://wlfllegalpulse.com/2014/09/11/missouri-supreme-court-invalidates-states-legislative-cap-on-punitive-damages/>

MINNESOTA SUPREME COURT HOLDS MUNICIPALITY CANNOT REVOKE RIGHT TO MAINTAIN AN EXISTING COMMERCIAL LAND USE

Continued from front cover...

extent permitted at common law. This is especially true with regard to existing and long-standing uses that are called into question by recently enacted zoning regimes.

These questions and policy concerns were addressed by the Minnesota Supreme Court in *White, Trustee for Lorraine M. White, Trust Fund, et. al. v. City of Elk River*.¹ The case concerned the right of the White family (the Family) to continue lawfully operating a commercial campground on their land—an ongoing use that had continued since they acquired their property in 1973.² The Respondent, City of Elk River (the City), argued that—pursuant to its local zoning regime—it had the power to revoke the Family’s right to maintain their campground. But in December, the Minnesota Supreme Court definitively rejected the City’s argument—holding that enactment of new zoning restrictions cannot take away the right to maintain an existing use, and that a newly adopted zoning regime cannot require a landowner to waive the right to continue with such uses.

By way of background, the City adopted its first zoning code in 1980. Prior to 1980, the permitted uses of the property would have been defined by common law principles and any state enacted regulations governing the operation and maintenance of campground facilities.³ But with enactment of the City’s new zoning code, only “agricultural” uses were permitted. As such, the campground was technically out-of-compliance under the 1980 code.

This might have arguably subjected the Family to a threat of legal sanctions if the City had sought to strictly

enforce the zoning code.⁴ Thus, in apparent recognition of this problem, the City amended its zoning code in 1983, so as to allow for commercial campgrounds. But, the amended code required the Family to obtain a “conditional use permit” in order to continue campground operations. Thereafter, in 1984, the Family applied for—and was granted—a conditional use permit. But the question that the Minnesota courts struggled with in *White Trust* was whether the Family’s right to continue its campground operations was thereafter contingent upon the continued validity of the 1984 conditional use permit?

The dispute attracted the attention of several *amici*. In support of the Family, the Minnesota Vacation Rental Association and the National Federation of Independent Business Small Business Legal Center (MVRA and NFIB) filed an *amici* brief arguing that the Family’s property rights should not be viewed as contingent upon the 1984 permit because such an approach would open the door for municipalities to coerce landowners into waiving protected common law rights in order to avoid the threat of enforcement actions.⁵ The Minnesota League of Cities filed an *amicus* brief arguing that a municipality must be understood to have the power to revoke the right to maintain an existing use—if conditions imposed on a permit have been violated—because the threat of revocation serves as an effective enforcement tool that furthers public policy goals in discontinuing non-conforming uses.⁶ The dispute came to a head in 2011 when the City Council voted to revoke the Family’s right to continue their campground operations because they had failed to abide by conditions imposed on their 1984 permit. Specifically, the record indicates that the City was concerned about campers establishing permanent homes in the park. Accordingly, the 1984 permit was conditioned on the requirement that the campground must prohibit patrons from living on the premises year-round. Decades later, when the property came under scrutiny in 2010, it appeared that this condition had been violated.⁷ The City then decided to revoke the 1984 permit after the Family failed to come into compliance within a reasonable timeframe.

With revocation, the City maintained that the Family could no longer operate its campground. But, this assumed that the Family’s right to continue lawful operations was made contingent upon the 1984 permit at the time it was issued and accepted.⁸ This raised an important question of the background principles of property law in Minnesota, which will affect the way municipalities approach land-use planning in the future. For this reason, the case was also important to landowners throughout the state.⁹

The Family and their *amici* relied on a line cases recognizing that the Minnesota Constitution protects the right of a landowner to continue with an existing use, so long as that use does not constitute a nuisance and is not discontinued.¹⁰ This constitutional standard was codified under Minn. Stat. § 4623.357, subd. 1e (a), which protects “lawful non-conforming uses” until they are abandoned. Thus the Family and *amici* argued that the City never had the power to force the Family to acquire a permit to continue their on-going campground operations because the Family had a constitutional right to maintain the property’s preexisting use once the zoning code came into effect. Henceforth, the Family maintained that the City lacked the power to revoke their right to continue lawful operations.

In response, the City argued that the Family voluntarily applied for the permit, so as to obtain its benefits.¹¹ As such, the City maintained that the Family waived any underlying property rights in accepting the 1984 permit and was therein foreclosed from contesting its validity today—having enjoyed its benefits for nearly thirty years.¹² But as MVRA and NFIB addressed in their *amici*, this argument runs into the doctrine of unconstitutional conditions doctrine, which generally holds that government cannot condition the receipt of discretionary benefits on the waiver of constitutional rights.¹³

The court might have been hesitant to call into question the power of a municipality to require landowners to obtain permits in order to continue lawful uses.¹⁴ Indeed, a rule preventing municipalities from requiring grandfathered landowners to obtain conditional use permits would severely impede the ability of a municipality to regulate uses that have become disfavored over time. But, that is precisely what the Minnesota Supreme Court did in *White Trust*.

The opinion emphasized that constitutional principles—as well as enacted statutes—protect the right of Minnesota landowners to continue with a nonconforming use that was lawful at the time a new restriction came into effect.¹⁵ Starting with that premise, the court recognized that the Family was under no obligation to discontinue their longstanding use when the City adopted its zoning restrictions in the 1980s. Turning then to the legal effect of the Family’s acceptance of a conditional use permit in 1984, the court said that it could not be assumed that the Family waived its constitutionally protected property rights by accepting the permit.¹⁶ This is because, under Minnesota law, a waiver of rights requires both (a) knowledge of the right and (b) an intent to waive it.¹⁷

In some respects the decision simply reaffirmed well established constitutional principles protecting grandfathered rights. But, this was a notable win for property rights because the decision stands for the proposition that a municipality may not force a landowner to waive constitutional rights by requiring the owner to obtain a permit for an existing use. This makes clear that the only legitimate way to enjoin an existing use would be to either bring a nuisance action, or an eminent domain proceeding through which the landowner will be compensated for the loss of grandfather rights.¹⁸

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Endnotes

1 840 N.W.2d 43, 49 (Minn. 2013).

2 The record indicates that the land had been used as a commercial campground before the family acquired the property. *Id.* 46-47.

3 The City noted that state regulations may call into question the legality the campground’s operations even before the property was subjected to the 1980 zoning code; however, neither the record nor the briefing before the Supreme Court focus on this issue.

4 If this had happened, the Family might have argued that the campground was a protected grandfathered use. *See* *Cnty. of Freeborn v. Claussen*, 295 Minn. 96, 99 (1972); *Hooper v. City of St. Paul*, 353 N.W.2d 138, 140 (Minn.1984) (recognizing the “fundamental principle” that uses of land that are “lawfully existing at the time of an adverse zoning change may continue to exist until they are removed or otherwise discontinued”).

5 *White Trust v. City of Elk River*, Amici Curiae Br. of the National Federation of Independent Business Small Business Legal Center and the Minnesota Vacation Rental Association, Case No. A120681 (2013). In the interest of full disclosure, I was the principal author of this brief.

6 *White v. City of Elk River*, Amicus Curiae Br. of the Minn. League of Cities, Case No. A120681 (2013).

7 This dispute arose after an essential structure on the property burned in a 1999 fire. The Family applied for a permit to rebuild this structure, and was granted an interim permit in 2010. Pursuant to the terms of the interim permit, the Family would have to apply for a new permit to continue using the newly constructive facility in 2010. And it was during the course of reviewing this new permit application, in 2010, that the City raised its concerns about year-round residents in the park. This eventually led the City Council to revoke the 1984 conditional use permit. *White*, 840 N.W.2d at 47-48.

8 The Family also asserts that—even assuming that the 1984 permit altered their rights—the campground became a lawful non-conforming use in 1988 when the City amended its zoning code so as to prohibit all campgrounds, without regard to previously issued permits. By statute, *lawful* non-conforming uses are protected in

Minnesota. MINN. STAT. § 4623.357, subd. 1e (a). But, the City contends that the campground only remained a “lawful” non-conforming use to the extent it remained in compliance with the 1984 permit—without which the City contends the campground would have been *illegal*. *White v. City of Elk River*, 822 N.W.2d 320, 324 (Minn. Ct. App. 2012), *review granted* (Jan. 15, 2013), *rev’d*, 840 N.W.2d 43 (Minn. 2013). Yet this seems to beg the question of what legal effect the 1984 permit had in the first place?

9 In addition to addressing the City’s authority to revoke the Family’s right to continue campground operations on their land, the Supreme Court also addressed the Family’s asserted statutory right to rebuild and maintain an essential facility that burned in a 1999 fire. That issue—though an interesting question of land-use law as well—is beyond the scope of this article.

10 See *Hooper*, 353 N.W. 2d at 140; *Freeborn Cnty.*, 295 Minn. at 99.

11 The record is unclear as to whether the Family was prompted to do so at the behest of city officials.

12 The City argued that the Family was foreclosed from contesting the validity of the 1984 permit at this juncture because it failed to prosecute this argument in the lower court; however, the Supreme Court dismissed that argument because it was set forth in the Family’s early pleadings. *White*, 840 N.W.2d at 50.

13 See *Cnty. of Morrison v. Wheeler*, 722 N.W. 329, 334 (Minn.App., 2006) (noting municipalities have broad discretion to make zoning decisions); *but see* *Koontz v. St. Johns River Management Dist.*, 2013 WL 3184628, 7 (U.S., 2013) (applying heightened scrutiny where the exercise of constitutional rights are conditioned on the receipt of discretionary land use approvals).

14 See *White*, 822 N.W.2d at 325 (the court of appeal interpreted Minnesota law to allow for revocation of non-conforming uses in order further the legislative purposes in advancing the general welfare of the public).

15 *White*, 840 N.W.2d at 49.

16 *White*, 840 N.W.2d at 51.

17 The Court refused to accept the City’s assertion that intent can be inferred by acquiescence to the City’s requirement to obtain a permit. This makes sense because, as *amici* MVRA and NFIB pointed out, a landowner might accept such a permit to avoid the threat of enforcement actions without intent to actually waive any preexisting property rights.

18 *Id.* at 51 (also noting that it is possible for a landowner to freely waive property rights in entering an agreement with a land use authority).

POWERS V. STATE OF WYOMING: SEPARATION OF POWERS AND THE ROLE OF THE JUDICIARY

Continued from page 4...

controlling language of the section, with the State arguing that the Wyoming Legislature may proscribe or remove duties at will, while Hill argued that the powers to generally supervise the public schools must have some limiting effect and that the duty could not be transferred to an appointee of the governor. Reviewing the section’s language, the court’s majority first compared it to provisions in other state constitutions as interpreted in their respective high courts. Specifically, these interpretations arose in cases from Arizona, Idaho, Minnesota, and New Mexico.⁸ The majority also distinguished a case from North Dakota that the state relied upon in its arguments.⁹ All of these cases supported Hill’s contention that, “[w]hile the legislature can prescribe powers and duties of the superintendent, it cannot eliminate or transfer powers and duties to such an extent that the Superintendent no longer maintains the power of ‘general supervision of the public schools.’”¹⁰

The majority also looked at constitutional history, specifically the minutes of the Wyoming constitutional convention. “The delegates envisioned that the scope of the Superintendent’s duties would be statewide and would involve a broad array of concerns.”¹¹ From there, the majority examined legislative history, or how the superintendent’s duties had changed since 1889. Of particular importance was a law passed in 1917 that “transferred nearly all of the powers and duties of the Superintendent to a Commissioner of Education and the Board of Education.”¹² After examination by the state attorney general, “[t]he legislation was repealed two years later amid concerns about its constitutionality.”¹³ The majority concluded that “[i]f legislative history is a relevant consideration in constitutional interpretation, it reflects legislative action consistent with our interpretation of the plain language of Article 7, Section 14”¹⁴

After determining that the Wyoming Constitution reserves responsibilities to the superintendent, the court then considered whether SEA 1 violated this edict. In a cut-and-dry fashion, the majority said that SEA 1 is unconstitutional. “The 2013 Act relegates the Superintendent to the role of general observer with limited and discrete powers and duties.”¹⁵ With limited exceptions, SEA 1 stripped the superintendent of nearly all of her powers and duties under the law. “In the Act,