

CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI

ALVIN BROOKS, et al., )  
 )  
 Plaintiffs, ) Cause No. 034-02425  
 )  
 v. )  
 )  
 STATE OF MISSOURI, a state )  
 government, et al., ) Division 2  
 )  
 Defendants, )  
 )  
 and )  
 BULL'S EYE, LLC., GERI )  
 STEPHENS, President of Bull's Eye, )  
 LLC and JIM STEPHENS, )  
 )  
 Defendants/Intervenors. )

**KIRKTON, NEWMAN AND KREWSON'S SUPPLEMENTAL  
MEMORANDUM IN OPPOSITION TO BULL'S EYE'S  
MOTION FOR ASSESSMENT OF DAMAGES**

Background

In October 2003, plaintiffs filed an amended petition against defendants for declaratory and injunctive relief concerning the conceal and carry weapons law. Over plaintiffs' objections, this Court allowed Bull's Eye to intervene in the case. The Court issued a preliminary injunction and required that plaintiffs post a \$250,000 cash bond. Kirkton, Newman and Krewson filed a cash bond on behalf of the plaintiffs. The Court heard oral arguments and found that the conceal and carry law violated Article 1, Section 23 of Missouri Constitution and was therefore void. The Court denied all of the other arguments made against the conceal and carry law. It issued a permanent

injunction enjoining the enforcement of §§50.535, 571.030 and 571.094. Over plaintiffs' objection, the Court maintained the \$250,000 bond in place pending appellate review.

The Missouri Supreme Court reviewed the Court's judgment and found that the conceal and carry law did not violate Article 1, Section 23 of the Missouri Constitution. It did, however, find that the conceal and carry law violated the Hancock Amendment to the extent that the law constituted an unfunded mandate in those counties (Jackson, Cape Girardeau, Greene and Camden) on which the parties presented evidence in the trial court. For all other counties, the Supreme Court found that the issue was not ripe as no evidence had been presented on any other county. The dissent would have found a state-wide violation of the Hancock Amendment.

To date, the St. Louis City and St. Louis County Sheriff's Departments have refused to accept applications for concealed weapons because they believe that, as applied to them, the conceal and carry law violates the Hancock Amendment. Nevertheless, Bull's Eye has filed a motion for assessment of damages and execution on the bond. Primarily, Bull's Eye seeks damages for lost business opportunities in training people who apply for concealed weapons in St. Louis City and St. Louis County and for legal fees. They seek those damages even though the City of St. Louis and St. Louis County, independent of the injunction, decided not to accept concealed weapon applications because of the Hancock Amendment violation.

I. Bull's Eye is not entitled to any damages because this Court's injunction did not cause it any damages.

A party (including an intervenor) may recover on a trial bond only if an injunction was the “actual, natural and proximate cause” of the loss. *Buttress v. Taylor*, 62 S.W.3d 672 (Mo.App. W.D. 2001). Absent a statutory definition, the Missouri Supreme Court has held that proximate cause means “that cause that, in a natural and continuous sequence, unbroken by any efficient intervening cause, produced the result complained of, and without which the result would not have occurred.” *Kilmer v. Mun*, 17 S.W.3d 545, 552 (Mo. banc 2000). Damages resulting from the underlying suit or factors other than from the injunction are not recoverable. *Newcourt Financial v. Lafayette Investments*, 983 S.W.2d 214, 217 (Mo.App. W.D. 1999); *Lipp v. Lipp*, 75 S.W.3d 736, 739 (Mo.App. E.D. 2002).

In its motion to intervene, Bull's Eye claimed that it had “exclusive contracts with the City of St. Louis and St. Louis County, through the respective police departments, to train and certify” security officers and that it is the “only organization in the St. Louis metropolitan area offering qualified training courses for private citizens.” (Intervention motion at ¶¶ 6, 8). Bull's Eye does not claim a lost economic opportunity outside of the St. Louis metropolitan area.

As a threshold matter, this Court must determine whether its dissolved injunction was the proximate cause, unbroken by any intervening cause, that produced the damages complained of and without which the result would not have occurred. If there were an intervening cause, it does not matter if Bull's Eye can prove its claim of

lost economic opportunity. Here, the intervening causes of Bull's Eye's alleged damages are the Sheriff's Departments' decisions to refuse to process any licenses for concealed weapons. Therefore, the cause of Bull's Eye's inability to capitalize on its alleged economic opportunities is not the injunction but rather the Sheriff Departments' decision not to process weapons applications.

This conclusion is apparent once the Departments' decisions are put in the timeline of the litigation. The Circuit Court enjoined anyone from implementing or enforcing the concealed weapon law. The Missouri Supreme Court dissolved the injunction in those counties for which no evidence had been introduced in the circuit court. The Supreme Court *did not* find that the conceal and carry law was constitutional. It simply found that the constitutional issue was not yet ripe in the other counties (including St. Louis City and County). In essence, the Supreme Court left it to the individual counties to determine whether there was an unfunded mandate in violation of the Hancock Amendment. Many Missouri sheriff departments concluded that they were adequately funded and began processing concealed weapon permits. On the other hand, many other Missouri sheriff departments – including St. Louis City and County – refused to accept applications for concealed weapons because they believed that, as applied to them, the conceal and carry law was an unfunded mandate in violation of Hancock. (Exhibit 1). St. Louis City and County could have reached the opposite conclusion but they did not. They were no longer under this Court's injunction when they reached their conclusion. Bull's Eye has not sustained any damage from the injunction. Rather, any alleged damage was caused by the intervening decision of St.

Louis City and County not to process concealed weapon permits. If the trial Court had not issued an injunction, Bull's Eye would have been in the exact same position as it is today. Neither County would have issued any concealed weapon permits. Accordingly, Bull's Eye has not have suffered any damage due to the injunction.

II. Bull's Eye is not entitled to claim damages because the Court's injunction was not improvidently granted.

Section 526.200, RSMo, provides that “[u]pon the dissolution of an injunction, in whole or in part, damages shall be assessed by a jury ....” Missouri courts have interpreted this statute many times. They have uniformly held that the dissolution of an injunction does not automatically entitle a defendant to damages. The reason for the dissolution is important. Generally, “[d]amages are allowable where the injunction was improvidently granted, was wrongful in its inception or at least was continued owing to some wrong on the part of the plaintiff.” *Burney v. McLaughlin*, 63 S.W.3d 223, 234 (Mo.App. 2001).

Therefore, the mere dissolution of an injunction does not automatically give a defendant a cause of action. This *Burney* decision is logical. A defendant cannot be awarded damages if the injunction was not wrongful, as here. For example, in *Burney*, the court dissolved its injunction (in the form of a TRO) but refused to grant any damages because the dissolution was based on the court granting a declaratory judgment that rendered the TRO moot. Because the TRO was not wrongful, defendants were not entitled to claim damages even though the TRO was dissolved.

Similarly, in *Kelder v. Dale*, 313 S.W.2d 59 (Mo.App. 1958) the court granted a temporary injunction. One group of defendants voluntarily chose to put themselves in line with what the plaintiffs were requesting. The plaintiffs then voluntarily dismissed their case before the issuance of a permanent injunction, thus dissolving the temporary injunction. Nevertheless, those defendants requested damages based on the dissolution of the temporary injunction. The court refused to award any damages as the injunction was never deemed improper, but was dissolved because the defendants voluntarily mooted the issue by complying with the plaintiffs' demands.

As in *Burney* and *Kelder*, there has been no determination that the trial court's injunction was improvidently granted, wrongful at inception, or improperly continued. The Missouri Supreme Court found that the concealed weapon law may be an unconstitutional unfunded mandate. The law's ultimate constitutionality requires a county by county analysis. For those counties where evidence was adduced at the hearing, the Supreme Court affirmed the injunction. In all other counties, the constitutionality of the concealed weapon law is not yet settled. No Court has determined the constitutionality of the law in St. Louis City or County. Because St. Louis County and St. Louis City have voluntarily put themselves in line with the relief that plaintiffs sought, there is no basis for the continuation of the lawsuit by plaintiffs. As applied to these two counties, plaintiffs have received all of the relief that they have sought. Like *Kelder*, the defendants voluntary decision to put themselves in line with the relief that plaintiffs requested bars Bull's Eye's motion for damages.

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**CERTIFICATE OF SERVICE**

I certify copy of this document was mailed on October 8, 2004 to:

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IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

ST. LOUIS COUNTY, MISSOURI, )  
 )  
 and )  
 )  
 CHARLIE A. DOOLEY, individually and )  
 in his capacity as County Executive )  
 of St. Louis County, Missouri, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 STATE OF MISSOURI, )  
 )  
 Defendant. )

Cause No. 04CV32913

Division No. I

JUDGMENT AND ORDER

Plaintiffs St. Louis County, Charlie A. Dooley in his capacity as County Executive, Charlie A. Dooley as an individual taxpayer of the State of Missouri and of St. Louis County, and Defendant State of Missouri, each submit their cross motions for summary judgment.

The Court, having considered the various memoranda of law filed by the parties, the record, and the argument of counsel, makes the following findings of fact:

1. St. Louis County is a constitutional charter county.
2. Charlie Dooley is County Executive of St. Louis County and a resident and taxpayer of St. Louis County and the State of Missouri.
3. If an authorized law enforcement official for St. Louis County undertook the processing of applications for endorsements to carry concealed weapons pursuant to Sections 571.101 et seq, RSMo, that official would incur costs. Such costs would include costs that are not for the purchase of equipment or the provision of training,

such as the costs of fingerprint checks performed by state or federal law enforcement agencies. The costs that are not for training and equipment would be more than *de minimis*.

4. The State of Missouri has neither funded nor made an appropriation to fund those costs that law enforcement officials would incur for undertaking the processing of applications for endorsements to carry concealed weapons pursuant to Section 571.101 et seq., apart from authorizing the fee described in Sections 50.535 and 571.101.10-.11.
5. The State of Missouri has not taken any action to compel an authorized law enforcement official for St. Louis County to process applications for endorsements to carry concealed weapons pursuant to Sections 571.101 et seq.

On the basis of the findings of facts, the Court reaches the following conclusions of law:

1. Only in first class counties may a law enforcement official authorized to process concealed carry endorsement applications designate a police chief of a city, town or municipality within such county to process the applications. Under the Missouri Constitution, Article VI, Section 18(a), counties that originally were first class counties but which have adopted a charter are a separate class of counties outside of the classification system established under section 8 of Article VI; therefore, the authorized law enforcement official in St. Louis County is not statutorily authorized to make such designation.

2. Because the costs of processing concealed carry applications would involve costs not for purchase of equipment or the provision of training that would be more than *de minimis*, and because the State of Missouri has neither funded nor made an appropriation to fund those costs that law enforcement officials would incur for undertaking the processing of applications for

endorsements to carry concealed weapons pursuant to Section 571.101 et seq., apart from authorizing the fee described in Sections 50.535 and 571.101.10-.11, the State of Missouri has, with the enactment of the Concealed Carry Law, imposed an unfunded mandate upon St. Louis County in violation of the Hancock Amendment, Mo. Const. Art. X., Sections 16 and 21.

3. That the State of Missouri has not taken any action to compel an authorized official for St. Louis County to process concealed carry endorsement applications does not mean that there is no ripe issue between the County and its taxpayer Charlie A. Dooley. The obligation to comply with the Concealed Carry Law contested by the Plaintiffs arose upon its effective date, and thus there is an issue ripe for judicial determination between the parties. However, Charlie A. Dooley in his capacity as County Executive lacks standing to pursue the claim. In accordance with its findings of fact and conclusions of law, the Court **ORDERS AND**

**ADJUDGES THAT:**

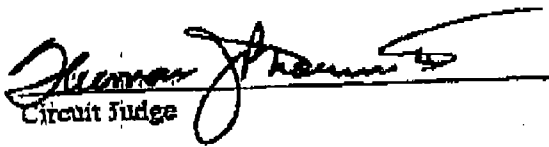
1. The Cross Motion for Summary Judgment of Plaintiffs is sustained as it pertains to the claims of St. Louis County and Charlie A. Dooley as an individual taxpayer of the State of Missouri and St. Louis County. It is denied as it pertains to the claims of Plaintiff Charlie A. Dooley in his capacity as County Executive.

2. The Cross Motion for Summary Judgment of Defendant State of Missouri, solely as it pertains to the standing to sue of Charlie A. Dooley in his capacity as County Executive of St. Louis County, is sustained, and denied as to the remainder.

**IT IS FURTHER ORDERED, ADJUDGED AND DECLARED** that those portions of the Concealed Carry Law, Sections 571.101 RSMO, et seq. (Supp. 2003) that require the expenditure of County funds that are not reimbursable from the Sheriff's Revolving Fund constitute an unfunded mandate in violation of the Hancock Amendment, Article X, Sections 16

and 21 of the Missouri Constitution as such portions pertain to St. Louis County, and such portions shall not be enforceable against St. Louis County, nor shall St. Louis County or its authorized law enforcement official be required to accept applications for concealed carry endorsements, or to issue them.

**SO ORDERED:**

  
Circuit Judge

10-8-04