In the
Missouri Court of Appeals
Western District

NEIL DESAI M.D., ET AL.,	)	
	)	
Respondents,	)	**WD81220**
	)	
v.	)	**OPINION FILED: July 3, 2018**
	)	
SENECA SPECIALTY INSURANCE COMPANY,	)	
	)	
Appellant.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable James F. Kanatzar, Judge

Before Division Three: Victor C. Howard, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Seneca Specialty Insurance Company ("Seneca") appeals the trial court's denial of its motion to intervene and motion for relief from judgment. Seneca sought to intervene in a lawsuit filed by Neil Desai ("Neil") and Heta Desai ("Heta") (collectively the "Desais")[1] against Garcia Empire, LLC ("Garcia Empire") after those parties entered into a contract

[1]We refer to the Desais individually by their first names to avoid confusion. No familiarity or disrespect is intended.

under section 537.065.[2] Seneca argues that section 537.065, as amended on August 28, 2017, entitled it to notice of the section 537.065 contract and an opportunity to intervene in the Desais' lawsuit as a matter of right before the trial court entered judgment in the case. Finding no error, we affirm.

Factual and Procedural Background[3]

On October 2, 2014, Neil suffered a personal injury while being escorted from a Garcia Empire establishment by a Garcia Empire employee. In May 2016, the Desais filed an amended petition against Garcia Empire seeking damages arising from Neil's injury.[4] Garcia Empire held a commercial general liability policy with Seneca that was in effect at the time of Neil's injury. Garcia Empire advised Seneca of the Desais' lawsuit. Seneca offered to defend Garcia Empire subject to a full and complete reservation of rights regarding coverage. Garcia Empire rejected Seneca's offer to provide a defense subject to a reservation of rights. In November 2016, Garcia Empire entered into a contract with the Desais pursuant to section 537.065 wherein the Desais agreed to limit recovery of any judgment secured against Garcia Empire to insurance coverage.

On August 17, 2017, the Desais' lawsuit was tried to the court. The trial court entered judgment in favor of the Desais and against Garcia Empire on October 2, 2017.

---

[2]"Section 537.065 . . . allows a claimant and a tortfeasor to contract to limit recovery to specified assets or insurance coverage." *Allen v. Bryers*, 512 S.W.3d 17, 25 n.4 (Mo. banc 2016). All statutory references are to RSMo 2016 as supplemented unless otherwise indicated.

[3]"In reviewing the trial court's denial of intervention as of right, 'we consider the facts in the light most favorable to the court's judgment.'" *Kinney v. Schneider Nat'l Carriers, Inc.*, 200 S.W.3d 607, 610 (Mo. App. W.D. 2006) (quoting *In re M.B.*, 91 S.W.3d 122, 125 (Mo. App. E.D. 2002)).

[4]The Desais originally filed their lawsuit in the Circuit Court of Boone County, but the case was transferred by agreement to the Circuit Court of Jackson County in March 2017.

On October 31, 2017, Seneca filed a combined motion to intervene as a matter of right pursuant to Rule 52.12(a) and for relief from judgment pursuant to Rule 74.06(b).[5] Seneca argued that it was entitled to receive notice of the section 537.065 contract between Garcia Empire and the Desais, and to intervene as a matter of right in the Desais' lawsuit against Garcia Empire, based on an amendment to section 537.065 that took effect on August 28, 2017. The August 28, 2017 amendment to section 537.065 added several new subsections, including new subsection 2 which provides as follows:

> 2. Before a judgment may be entered against any tort-feasor after such tort-feasor has entered into a contract under this section, the insurer or insurers shall be provided with written notice of the execution of the contract and shall have thirty days after receipt of such notice to intervene as a matter of right in any pending lawsuit involving the claim for damages.

Section 537.065.2.

The trial court heard arguments on Seneca's motion by conference call on November 1, 2017, and received supplemental briefing from the parties on the same day. Seneca argued that the aforesaid amendment to section 537.065 was merely a procedural change that permissibly operated retroactively to require that Seneca receive notice and an opportunity to intervene in the Desais' lawsuit before the trial court could enter judgment. The Desais argued that the amendment to section 537.065 was substantive and could not apply to a section 537.065 contract entered into before the amendment's effective date without violating the Missouri Constitution's prohibition against laws retrospective in their operation. Garcia Empire also opposed Seneca's motion.

[5]All references to rules are to *Missouri Court Rules, Volume I -- State, 2017* unless otherwise indicated.

The trial court denied Seneca's motion on November 1, 2017. The trial court held that the legislature did not expressly provide for the amendment of section 537.065 to be applied to proceedings had or commenced under the statute prior to the amendment.

This timely appeal followed.[6]

Standard of Review

An appellate court "will affirm a trial court's decision concerning intervention as a matter of right under Rule 52.12(a) unless there is no substantial evidence to support that decision, it is against the weight of the evidence, or it erroneously declares or applies the law." *State ex rel. Koster v. ConocoPhillips Co.*, 493 S.W.3d 397, 403 (Mo. banc 2016).

"Generally, the trial court's ruling on a motion to set aside a judgment under Rule 74.06 is reviewed for abuse of discretion. However, whether a judgment should be vacated because it is void is a question of law that is reviewed *de novo*." *Hooks v. MHS Hosp. Grp., LLC*, 526 S.W.3d 136, 142 (Mo. App. W.D. 2017) (quoting *Christianson v. Goucher*, 414 S.W.3d 584, 588 (Mo. App. W.D. 2013)).

[6]The trial court's October 2, 2017 judgment against Garcia Empire and in favor of the Desais became final for purposes of appeal on November 1, 2017. Seneca appealed the denial of its motion to intervene as a matter of right and for relief from the judgment. In *State ex rel. Koster v. ConocoPhillips Co.*, our Missouri Supreme Court held that "a final judgment necessarily incorporates all prior orders or judgments that adjudicated some--but fewer than all--of the claims and the rights and liabilities of all the parties" so that a would-be intervenor could appeal the denial of its motion to intervene after the trial court's entry of a final judgment. 493 S.W.3d 397, 401 (Mo. banc 2016). Although *ConocoPhillips* addressed a motion to intervene that was filed and denied prior to the entry of judgment, we find the rationale of *ConocoPhillips* to be equally applicable to post-judgment motions filed and denied while a trial court retains jurisdiction over a matter before a judgment becomes final for purposes of appeal.

Seneca's appeal named only the Desais as respondents. Though not named as a respondent in Seneca's appeal, Garcia Empire filed a respondent's brief and a motion to be made a party to the appeal on April 10, 2018, five months after Seneca filed its notice of appeal. Garcia Empire's late-filed motion to be made a party to the appeal was denied, though this court *sua sponte* authorized Garcia Empire's brief to be filed as an amicus brief.

Analysis

Seneca raises three points on appeal. In Point One, Seneca argues that the trial court erred in denying its motion to intervene and for relief from the judgment because section 537.065 as amended only applies prospectively to judgments entered after the amendment's effective date. In the alternative, Seneca argues in Point Two that retroactive application of section 537.065 to contracts which predate the statute's amendment is not constitutionally impermissible because the amendment is a procedural and not a substantive change in the law. In Point Three, Seneca argues that the trial court erred in denying the motion for relief from the judgment pursuant to Rule 74.06(b) because Seneca did not receive the notice or opportunity to intervene as a matter of right afforded by section 537.065 as amended.

Seneca acknowledges that the section 537.065 contract between the Desais and Garcia Empire was entered into prior to August 28, 2017, the effective date of the amendment to section 537.065. Seneca's points on appeal thus collectively depend for their success on our conclusion that section 537.065 as amended permissibly applies to section 537.065 agreements entered into before the amended statute became effective. Resolution of this issue requires us to address article I, section 13 of the Missouri Constitution which provides that "no . . . law . . . retrospective in its operation . . . can be enacted."

The Prohibition against Laws Retrospective in their Operation

In addressing article I, section 13 of the Missouri Constitution, "the terms retroactive and retrospective are frequently interchanged, [but] they are not synonymous." *Mo. Real Estate Comm'n v. Rayford*, 307 S.W.3d 686, 690 (Mo. App. W.D. 2010). There is a

"distinct and legally material difference in the meaning of" retroactive and retrospective, though "the terms are often misused by both the bench and bar." *Id.* "A law is retroactive in its operation when it looks or acts backward from its effective date and is retrospective if it has the same effect as to past transactions or considerations as to future ones." *Id.* (quoting *State v. Thomaston*, 726 S.W.2d 448, 459-60 (Mo. App. W.D. 1987)). "In other words, 'the constitutional inhibition against laws retrospective in operation . . . does not mean that no statute relating to past transactions can be constitutionally passed, but rather, ***that none can be allowed to operate retrospectively*** so as to affect such past transactions to the substantial prejudice of parties interested.'" *Id.* (emphasis added) (quoting *Thomaston*, 726 S.W.2d at 460). "A law is not retrospective simply 'because it relates to prior facts or transactions but does not change their legal effect, or because some of the requisites for its action are drawn from a time antecedent to its passage . . . .'" *State ex rel. Schottel v. Harman*, 208 S.W.3d 889, 892 (Mo. banc 2006) (quoting *Jerry-Russell Bliss, Inc. v. Hazardous Waste Mgmt. Comm'n*, 702 S.W.2d 77, 81 (Mo. banc 1985)). But, "[i]f a law 'creates a new obligation, imposes a new duty, or attaches a new disability with respect to transactions or considerations already past' or '[gives] to something already done a different effect from that which it had when it transpired,' it is a retrospective law." *Accident Fund Ins. Co. v. Casey*, No. SC96899, 2018 WL 2311331, at *4 (Mo. banc May 22, 2018) (alteration in original) (quoting *State ex rel. Schottel*, 208 S.W.3d at 892). On the other hand, if a law "merely . . . 'relates to prior facts or transactions but does not change their legal effect,'" it is not retrospective. *Accident Fund Ins. Co.*, 2018 WL 2311331, at *4 (quoting *State ex rel. Schottel*, 208 S.W.3d at 892).

In addressing the prohibition against laws retrospective in their operation, our courts have announced related presumptions and general principles which are intended to provide guidance, but which can create unnecessary confusion when applied to misdirect attention from the simply stated constitutional prohibition. For example, it is said that because statutes are presumed to be valid, and because a statute that is retrospective in its operation would be unconstitutional, "[a]bsent evidence of clear legislative intent to the contrary, [we] presume all statutes operate prospectively, not retrospectively." *Id.* at *4 (citing *State ex rel. Schottel*, 208 S.W.3d at 892). It is also said that "statutory provisions that are substantive 'are generally presumed to operate prospectively, unless the legislative intent that they be given retroactive operation clearly appears from the express language of the act or by necessary or unavoidable implication.'" *Callahan v. Cardinal Glennon Hosp.*, 863 S.W.2d 852, 872 (Mo. banc 1993) (quoting *Dept. of Soc. Servs. v. Villa Capri Homes*, 684 S.W.2d 327, 332 (Mo. banc 1985)). And it is conversely said that "statutory provisions that are remedial or procedural operate retrospectively[7] unless the legislature expressly states otherwise." *Cook v. Newman*, 142 S.W.3d 880, 893 (Mo. App. W.D. banc 2004) (citing *Callahan*, 863 S.W.2d at 872). Yet, it is at the same time settled that "[l]egislative intent to apply a law retroactively, no matter how clear, 'cannot supercede [sic] a constitutional provision.'" *Rayford*, 307 S.W.3d at 698 (quoting *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. banc 1993)). In other words, clear

[7]Where *Cook v. Newman*, 142 S.W.3d 880, 893 (Mo. App. W.D. banc 2004), and similar cases refer to a remedial or procedural statutory provision possibly applying retrospectively, the term used should be "retroactively" rather than "retrospectively." As we stated in *Mo. Real Estate Comm'n v. Rayford*, "[t]his represents an example of the confusion that results from misuse and improper interchanging of the terms 'retroactive' and retrospective.'" 307 S.W.3d 686, 698 n.13 (Mo. App. W.D. 2010).

legislative intent to apply a law in a manner that would be retrospective in its operation cannot supersede the constitutional prohibition against retrospective laws. *Doe v. Phillips*, 194 S.W.3d 833, 851 (Mo. banc 2006).

The above stated presumptions and general principles are misleading to the extent they are argued to suggest that in determining whether a statute is impermissibly retrospective, either legislative intent or the substantive or procedural nature of a statute is controlling. Neither is the case. Instead, we presume a substantive statute applies prospectively because generally, by its nature, a substantive statute create new obligations, imposes new duties, or attaches new disabilities with respect to a transaction or consideration already past, or gives to something already done a different effect from that which it had when it transpired. And we presume a procedural statute applies retroactively because generally, by its nature, when a procedural statute is applied to antecedent facts or transactions, it does not change their legal effect or impose a new or greater duty. Both of these "presumptions" yield, however, to express legislative intent to the contrary. And express legislative intent yields to the constitutional prohibition against laws retrospective in operation.

Simply stated, therefore, when a statute is alleged to apply to antecedent facts or transactions, the proper analysis should begin with whether the legislature has plainly expressed an intent to apply the statute prospectively only. If so, that express intent is controlling (regardless whether the statute is procedural or substantive in nature), and negates the need to address article I, section 13 of the Missouri Constitution. However, if the statute does not plainly express an intent to apply prospectively only, then the analysis

should turn to whether application of the statute to antecedent facts or transactions would be impermissibly retrospective because it would create new obligations, impose new duties, or attach new disabilities with respect to a transaction or consideration already past, or give to something already done a different effect from that which it had when it transpired. This determination cannot be overridden by express legislative intent to apply the statute to antecedent facts or transactions, and is not dependent on whether the statute is procedural or substantive in nature.

With this analytical framework in mind, we turn to Seneca's points on appeal.

Point One

In its first point on appeal, Seneca argues that the August 28, 2017 amendment of section 537.065 only applies prospectively to judgments entered after the effective date of the amendment, eliminating any need to address article I, section 13 of the Missouri Constitution. Seneca cites to section 537.065.2's requirement that an insurer be given notice and an opportunity to intervene as a matter of right "[b]efore a judgment may be entered against any tort-feasor" to argue that the "trigger date" of the amendment is a judgment entered after the amendment's effective date, rendering the amendment prospective only in its application. Because the trial court did not enter judgment against Garcia Empire until October 2, 2017, well after the August 28, 2017 effective date of the amendment to section 537.065, Seneca argues that article I, section 13 of the Missouri Constitution is not implicated, and that its motion to intervene should have been granted.

We question whether Seneca has preserved this argument for appellate review. When Seneca moved to intervene as a matter of right, Seneca did not argue that the

"[b]efore a judgment may be entered" language in section 537.065.2 rendered the amendment prospective only in its application. Instead, in its pleadings before the trial court, Seneca argued that section 537.065 as amended did not violate article I, section 13 of the Missouri Constitution because the amendment was a procedural, and not a substantive, change in the law--the subject of Seneca's second point on appeal. The difference between these arguments is material. The first suggests that article I, section 13 of the Missouri Constitution is not implicated at all. The second suggests that even though section 537.065.2 applies to antecedent facts or transactions, article I, section 13 of the Missouri Constitution has not been violated because the amendment of section 537.065 resulted in a procedural and not a substantive change in the law. "In general, where there is no pleading or argument in the record concerning the issue presented on appeal and the issue is raised for the first time on appeal, it has not been preserved for review." *In re G.M.G.*, 525 S.W.3d 162, 165 (Mo. App. W.D. 2017). "We decline to convict the trial court of error on something which it was not accorded an opportunity to rule and which is presented for the first time on appeal." *Metro. St. Louis Sewer Dist. v. St. Ann Plaza, Inc*., 371 S.W.3d 40, 48 (Mo. App. E.D. 2012) (quoting *Arnold v. Minger*, 334 S.W.3d 650, 654 (Mo. App. S.D. 2011)).

In any event, even presuming Seneca's first point on appeal is preserved for our review, it is without merit. The plain language of section 537.065.2 provides that "[b]efore a judgment may be entered against any tort-feasor ***after such tort-feasor has entered into a contract under this section***," an insurer shall be given notice of the execution of the section 537.065 contract and an opportunity to intervene. Section 537.065.2 (emphasis

added). Though section 537.065.2 imposes preconditions on the entry of a judgment, the rights to notice and to intervene created by section 537.065.2 arise only ***after*** a contract is entered into pursuant to section 537.065. Plainly, the rights to notice and to intervene afforded by section 537.065.2, and about which Seneca now complains, are not "triggered" by a judgment.[8] They are "triggered" by entry into a section 537.065 contract. We therefore reject Seneca's suggestion that amended section 537.065 reflects clearly expressed legislative intent to apply the statute prospectively only. As Seneca admits, its desired construction of section 537.065.2 would result in the application of amended 537.065 to section 537.065 contracts entered into ***before*** the amendment's effective date.

Point One is denied.

Point Two

In its second point on appeal, Seneca alternatively argues that section 537.065.2 permissibly applies to section 537.065 contracts entered into before the effective date of the statute's amendment because the amendment is a procedural and not a substantive change in the law. As explained, *supra*, however, though the characterization of amended section 537.065 as procedural or substantive might lend itself to a ***preliminary*** presumption about whether the statute was intended to apply to antecedent facts or transactions, the controlling question is whether application of amended section 537.065 to antecedent facts or transactions will render the statute impermissibly retrospective in its operation. As we

[8]We also observe that notwithstanding Seneca's assertion that section 537.065.2 expresses an intent to apply prospectively only to judgments entered after its effective date, section 537.065.2's reference to "[b]efore a judgment may be entered" includes ***no*** temporal reference to ***when*** the judgment is entered. The premise inherent in Seneca's first point on appeal--that section 537.065.2 expresses a clear intent to apply only to judgments entered after August 28, 2017--is not borne out by the language of the statute.

explain, if amended section 537.065 is construed to apply to antecedent section 537.065 contracts, it will be impermissibly retrospective.

When Garcia Empire and the Desais entered into their section 537.065 contract, Seneca had no standing to intervene as a matter of right in the Desais' lawsuit. Rule 52.12(a) governs intervention of right and provides:

> (a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In the context of intervention pursuant to Rule 52.12(a)(2), Missouri law is settled that "[t]he liability of an insurer as potential indemnitor of the judgment debtor does not constitute a direct interest in such a judgment so as to implicate intervention as of right in that action." *Sherman v. Kaplan*, 522 S.W.3d 318, 326 (Mo. App. W.D. 2017) (quoting *Whitehead v. Lakeside Hosp. Ass'n*, 844 S.W.2d 475, 479 (Mo. App. W.D. 1992)); *accord Charles v. Consumers Ins.*, 371 S.W.3d 892, 901 (Mo. App. W.D. 2012). Section 537.065.2 thus creates a ***new*** legal right in favor of an insurer to intervene as a matter of right pursuant to Rule 52.12(a)--a right that did not exist prior to the amendment of section 537.065. In addition, section 537.065.2 affords insurers an additional right they did not previously have--the right to notice of a section 537.065 contract prior to the entry of a judgment.

The fact that amended section 537.065 creates new rights in favor of a tortfeasor's insurer does not end our inquiry. An insurer's new rights to intervene and to receive notice of a section 537.065 contract, ***standing alone***, do not create new obligations, impose new duties, or attach new disabilities to antecedent transactions, nor give to something already done a different effect from that which it had when it transpired. However, if the newly created rights to intervene and to receive notice are construed to apply to a section 537.065 contract entered into ***before*** amended section 537.065 took effect, then in its operation, amended section 537.065 would create a new obligation, impose a new duty, and attach a new disability to the antecedent section 537.065 contract, and would give that contract a different effect from that which it had when it transpired.

Before the amendment to section 537.065 took effect, the parties to a section 537.065 contract had no legal duty to notify a tortfeasor's insurer about the contract. And before the amendment to section 537.065 took effect, the parties to a section 537.065 contract had the right to thereafter seek a judgment resolving liability and damages without the tortfeasor's insurer's participation in the proceedings.

Amended section 537.065 imposes a new legal duty and obligation on parties to a section 537.065 contract to afford notice of the contract to the tortfeasor's insurer as a condition of securing a judgment; attaches a new disability on the parties to a section 537.065 contract by permitting the settling tortfeasor's insurer to intervene as a matter of right in litigation addressed by the contract; and gives to the antecedent section 537.065 contract a different effect from that which it had when it transpired. As to this latter point, although the legal consequence of failing to comply with section 537.065.2 need not be

determined in this opinion, there can be no meaningful debate that a failure to comply with section 537.065.2 where required will have legal consequences. Those legal consequences arguably might include the right to seek to vacate a judgment, a basis for an insurer to contest coverage, and a right to challenge the legal force and effect of the section 537.065 contract.[9]

Our conclusion that the new rights to notice and to intervene created by amended section 537.065 are impermissibly retrospective if applied to antecedent section 537.065 contracts is consistent with other Missouri cases which have found that new notice obligations are impermissibly retrospective if applied to antecedent facts or transactions. In *Brune v. Johnson Controls*, 457 S.W.3d 372, 379 (Mo. App. E.D. 2015), the Eastern District found that a statutory notice requirement imposed a new obligation on claimants seeking redress for certain workplace injuries so that it could apply prospectively only absent legislative intent to the contrary.[10] In *Ruecking Const. Co. v. Withnell*, 191 S.W.

[9]Though the section 537.065 contract entered into between the Desais and Garcia Empire in November 2016 is not in the record, common sense supports the assumption that the terms of the contract reflect the state of the law at that time the contract was entered into.

[10]In its Reply Brief, Seneca argued for the first time that the legislature expressly intended section 537.065.2 to apply to section 537.065 contracts entered into before the amendment's effective date. Seneca argues that section 537.065.2 states that its provisions apply after a tortfeasor "has entered into a contract under this section," and that the phrase "has entered into" demonstrates clear legislative intent to apply section 537.065.2 to contracts predating that section's enactment. "We will not address issues raised for the first time in a reply brief." *Salvation Army, Kansas v. Bank of Am.*, 435 S.W.3d 661, 670 (Mo. App. W.D. 2014).

Even if we assume, *arguendo*, that the referenced phrase could be construed as legislative intent to apply section 537.065.2 to contracts which predate the section's effective date, legislative intent does not supersede the constitutional prohibition against laws retrospective in operation. *Rayford*, 307 S.W.3d at 698-99. Rather, "[i]f the presumption normally favoring prospective operation is overcome [as a result of evaluation of legislative intent], the inquiry focuses on whether the statute falls within the proscription against retrospective laws." *Id.* at 698 (alterations in original) (quoting *Dep't of Soc. Servs. v. Villa Capri Homes, Inc.*, 684 S.W.2d 327, 332 (Mo. banc 1985)).

In any event, we find Seneca's argument to be without merit. The "has entered into" language is immediately followed by "under this section," necessarily referring to amended section 537.065.1 which describes section 537.065 contracts. When section 537.065 was amended to add section 537.065.2, the existing language in the statute became section 537.065.1, and was amended to add the requirement that a section 537.065 contract ***may not be entered into unless*** the "tort-feasor's insurer or indemnitor has the opportunity to defend the tort-feasor

685, 688 (Mo. banc 1916), our Supreme Court found that new provisions in a statute "requiring the giving of notice within the time imposed creates an additional burden upon the plaintiff . . . and hence requires that the section be given prospective, and not a retrospective, application."

In summary, if applied to antecedent section 537.065 contracts, amended section 537.065 would impose new duties and obligations on the parties to the section 537.065 contract, and would give different legal effect to contracts already in existence. If applied to antecedent section 537.065 contracts or judgments entered prior to its effective date, amended section 537.065 would thus be impermissibly retrospective in violation of article I, section 13 of the Missouri Constitution.[11] As a result, because we construe statutes to be valid if at all possible, we conclude that amended section 537.065 applies prospectively only to section 537.065 contracts entered into after the amended statute took effect. The trial court did not err in denying Seneca's motion to intervene as a matter of right.

Point Two is denied.

---

without reservation but refuses to do so." Section 537.065.1. This amendment imposed a new condition on the ability to enter into lawful and enforceable section 537.065 contracts that could not, as a practical and legal matter, be applied to void or negate contracts already in existence. *See* article I, section 13 of the Missouri Constitution (prohibiting laws impairing the obligations of existing contracts). Because section 537.065.1 must be read to apply to contracts entered into ***after*** the effective date of its amendment, section 537.065.2's reference to "has entered into a contract under this section" cannot be inconsistently construed to refer to contracts entered into ***before*** its effective date. "When determining the legislative intent of a statute, no portion of the statute is read in isolation, but rather the portions are read in context to harmonize all of the statute's provisions." *BASF Corp. v. Dir. of Revenue*, 392 S.W.3d 438, 444 (Mo. banc 2012).

[11]Article I, section 13 of the Missouri Constitution also provides that "no . . . law impairing the obligation of contracts . . . can be enacted." Because we find that the application of section 537.065.2 would be impermissibly retrospective in this case, we need not address whether its application would also impair the obligations of the contract between Garcia Empire and the Desais entered into prior to August 28, 2017.

Point Three

In Point Three, Seneca argues that the trial court erred in denying its motion for relief from judgment because it did not receive the notice or opportunity to intervene it was entitled to receive under section 537.065.2, rendering the judgment in favor of the Desais and against Garcia Empire irregular and void.

Because we have concluded that the rights to notice and an opportunity to intervene created by section 537.065.2 do not apply to section 537.065 contracts entered into before August 28, 2017, Seneca was not entitled to notice of the section 537.065 contract entered into between Garcia Empire and the Desais, and Seneca was not entitled to intervene as of right in the Desais' lawsuit against Garcia Empire. As such, Seneca's third point on appeal is rendered moot.[12]

Point Three is denied.

Conclusion

The judgment of the trial court is affirmed.

Cynthia L. Martin

Cynthia L. Martin, Judge

All concur

[12]The Desais and Garcia Empire (who filed an amicus brief) both argue that Seneca had no standing to seek relief from the trial court's judgment pursuant to Rule 74.06(b) because Seneca was not a party to the judgment. We need not address this argument.