



SUPREME COURT OF MISSOURI
en banc

DAVEN FOWLER, ET AL.,) *Opinion issued June 1, 2021*
)
Appellants/Cross-Respondents,)
)
v.) No. SC98484
)
MISSOURI SHERIFFS' RETIREMENT)
SYSTEM,)
)
Respondent/Cross-Appellant.)

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY
The Honorable Kevin D. Harrell, Judge

Daven Fowler and Jerry Keller appeal the circuit court's dismissal of their lawsuit against the Missouri Sheriffs' Retirement System ("MSRS"). MSRS cross-appeals. Because the municipal court clerks are not necessary and indispensable parties, and the statute authorizing the \$3 surcharge, § 57.955,¹ violates article I, § 14 of the Missouri Constitution, the circuit court's judgment is vacated and remanded.

¹ All statutory references are to RSMo 2016 unless otherwise provided.

Factual Background and Procedural History

The General Assembly enacted § 57.955 in 1983. At enactment, the statute provided in pertinent part:

After the effective date of the establishment of the system, in addition to all other legal costs in each civil suit, action, case and all other proceedings of a civil nature filed in each circuit court and the divisions^[2] thereof, except the juvenile divisions, in a county there shall be assessed and collected in the same manner as other civil court costs are collected a sum of three dollars and in all criminal cases a sum of two dollars, but no such costs shall be assessed when the costs are to be paid by the state for indigent defendants. The clerk, or other official responsible for collecting court costs in civil and criminal cases, shall collect such amounts and shall remit them monthly to the board for deposit in the sheriffs' retirement fund.

§ 57.955.1, RSMo Supp. 1983. From its enactment until 1997, the statute did not require municipal courts to collect either the \$3 or the \$2 surcharge.³

In 1997, the General Assembly amended the statute to its current version, which provides:

There shall be assessed and collected a surcharge of three dollars in all civil actions filed in the courts of this state and in all criminal cases including violation of any county ordinance or any violation of criminal or traffic laws of this state, including infractions, but no such surcharge shall be assessed when the costs are waived or are to be paid by the state, county or municipality or when a criminal proceeding or the defendant has been dismissed by the court. For purposes of this section, the term "**county ordinance**" shall not include any ordinance of the city of St. Louis. The clerk responsible for collecting court costs in civil and criminal cases, shall collect and disburse such amounts as provided by sections 488.010 to 488.020. Such funds shall be payable to the sheriffs' retirement fund. Moneys credited to the sheriffs' retirement fund shall be used only for the purposes provided for in sections 57.949 to 57.997 and for no other purpose.

² Municipal courts, as they are commonly called, are divisions of the circuit court. *State v. Severe*, 307 S.W.3d 640, 643 n.6 (Mo. banc 2010) (citing Mo. Const. art. V, §§ 23, 27).

³ The General Assembly amended the statute in 1984 to exclude municipal courts from collecting the surcharges. *See* § 57.955.1, RSMo Supp. 1984.

§ 57.955.1 (emphasis in statute). The municipal court clerks ("the clerks") assess and collect the surcharge and then remit collected surcharges to the Missouri Sheriffs' Retirement Fund ("the Fund"). The Fund pays its benefits to retired elected county sheriffs and their spouses, but only if the elected sheriff served in that capacity for at least eight years.

In May 2017, Daven Fowler and Jerry Keller received speeding tickets in Kansas City. Both men hired the same attorney and resolved their cases by pleading guilty and paying court costs totaling \$223.50 to the Kansas City municipal court. Three dollars of the total costs was the surcharge authorized by § 57.955. Neither Fowler nor Keller knew they were paying the \$3 surcharge. After discussions with their attorney, Fowler and Keller believed the surcharge was unconstitutional, and both men agreed to become class representatives for all Kansas City municipal court litigants who had paid the surcharge.

Fowler and Keller, on behalf of a putative class, sued MSRS in the Jackson County circuit court. As germane to this case, the petition alleged one count of unjust enrichment and asserted the surcharge violated article I, § 14 of the Missouri Constitution. The case proceeded to a bench trial. After the close of all the evidence, the circuit court dismissed this case,⁴ concluding Fowler and Keller had failed to join the clerks responsible for assessing, collecting, and remitting the surcharge as necessary and indispensable parties.

⁴ The circuit court rejected MSRS' arguments that the plaintiffs did not have standing, waived their constitutional challenge by failing to raise it with the municipal court, waived their unjust enrichment claim under the "voluntary payment doctrine," and that MSRS' reception of surcharge funds was nothing more than passive acquiescence.

Despite this conclusion, the circuit court addressed the constitutional challenge and concluded § 57.955 did not violate article I, § 14 of the Missouri Constitution.

Fowler and Keller appealed, and MSRS cross-appealed. This Court has exclusive appellate jurisdiction over the appeal because Fowler and Keller challenge the constitutional validity of § 57.955. Mo. Const. art. V, § 3; *Mo. State Conf. of NAACP v. State*, 601 S.W.3d 241, 244 (Mo. banc 2020).

Analysis

I.

MSRS' Threshold Arguments

MSRS raises several arguments, which, if accepted, would prevent this Court from reaching the merits. Namely, MSRS argues: (1) Fowler and Keller do not have standing; (2) Fowler and Keller waived their constitutional claim by failing to raise it with the municipal court; (3) the "voluntary payment doctrine" bars Fowler and Keller's unjust enrichment claim; and (4) Fowler and Keller's unjust enrichment claim fails as a matter of law because MSRS' reception of funds was nothing more than "passive acquiescence." All of these arguments fail.

A.

Fowler and Keller Have Standing

MSRS argues Fowler and Keller do not have standing because their attorney originally paid the court costs (including the surcharge) on their behalf. "This Court reviews the issue of standing *de novo*." *Mo. Coal. for Env't v. State*, 579 S.W.3d 924, 926 (Mo. banc 2019). "Standing. . . requires a petitioner to demonstrate a personal stake in the

outcome of the litigation, meaning a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief." *Id.* (internal quotation marks omitted).

It was established that Fowler and Keller's attorney originally paid their respective court costs to the municipal court. However, both Fowler and Keller testified they reimbursed their attorney for the court costs.⁵ It is of no consequence that the attorney originally paid the court costs. Fowler and Keller reimbursed their attorney and, therefore, have a pecuniary interest. Their petition seeks a refund or reimbursement of the surcharge. Fowler and Keller have standing.

B.

Fowler and Keller Did Not Waive Their Constitutional Claim

MSRS argues Fowler and Keller waived their constitutional claim because they failed to raise the same with the municipal court. Fowler and Keller do not dispute they failed to present their constitutional challenge to the municipal court, but disagree they waived the claim. Because the parties do not dispute the facts related to the issue of waiver, it is a question of law this Court reviews *de novo*. *Hay v. Bankers' Life Co.*, 231 S.W. 1035, 1037 (Mo. App. 1921) ("[W]aiver is generally a question of fact . . . yet where the facts and circumstances relating to the subject are admitted or clearly established, waiver becomes a question of law."); *see also Malam v. State, Dep't of Corr.*, 492 S.W.3d 926, 928 (Mo. banc 2016) ("Questions of law are reviewed *de novo*").

⁵ Keller paid the attorney back directly while Fowler's mother originally reimbursed the attorney. Fowler testified he paid his mother back for the reimbursement.

Generally, to properly raise and preserve a constitutional challenge, a party must:

- (1) raise the constitutional question at the first available opportunity;
- (2) designate specifically the constitutional provision claimed to have been violated, such as by explicit reference to the article and section or by quotation of the provision itself; (3) state the facts showing the violation; and (4) preserve the constitutional question throughout for appellate review.

United C.O.D. v. State, 150 S.W.3d 311, 313 (Mo. banc 2004). However, this Court has recognized an exception to the general rule as it pertains to municipal courts, that is, "failure to raise constitutional questions in municipal court is not considered a waiver of the same."

State ex rel. Kansas City v. Meyers, 513 S.W.2d 414, 418 (Mo. banc 1974); *City of Ferguson v. Nelson*, 438 S.W.2d 249, 252 (Mo. 1969). Because Fowler and Keller were not required to present their constitutional challenge to the municipal court, and because they have otherwise sufficiently raised and preserved the issue, they did not waive their claim that § 57.955 violates article I, § 14 of the Missouri Constitution.

C.

MSRS' Remaining Arguments Not Preserved

MSRS' remaining point relied on provides: "**THE CIRCUIT COURT ERRED IN REJECTING [MSRS'] VOLUNTARY PAYMENT AND PASSIVE ACQUIESCENCE DEFENSES.**" This point relied on fails to comply with Rule 84.04(d) in that it fails to concisely state the legal reasons for MSRS' claims of error and fails to explain how those legal reasons, in the context of the case at hand, support MSRS' stated claims of error. Rule 84.04(d)(1)(B)-(C). Furthermore, the point relied on is multifarious in violation of Rule 84.04 because it groups together multiple, independent claims.

Macke v. Patton, 591 S.W.3d 865, 869 (Mo. banc 2019). Because Rule 84.04's requirements are mandatory, MSRS' noncompliant point relied on fails to preserve either argument for this Court's review. *Id.*; *see also Storey v. State*, 175 S.W.3d 116, 126 (Mo. banc 2005).

II.

Municipal Court Clerks Are Not Necessary Parties

Turning to the merits of Fowler and Keller's appeal, they first argue the circuit court erred in dismissing their petition for failing to include the clerks as necessary and indispensable parties. "This Court applies de novo review to a judgment dismissing a petition." *Rolwing v. Nestle Holdings, Inc.*, 437 S.W.3d 180, 182 (Mo. banc 2014).

Rule 52.04 governs whether a person is a necessary and indispensable party. More precisely, Rule 52.04(a) governs whether a party is "necessary." It provides:

A person shall be joined in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

"If either prong of Rule 52.04(a) has been satisfied, courts have traditionally labeled such party 'necessary.'" *State ex rel. Woodco, Inc. v. Phillips*, 603 S.W.3d 873, 876 (Mo. banc 2020).

MSRS argues, in conclusory fashion, that the clerks must be necessary and indispensable parties because they are the party responsible for assessing, collecting, and remitting the surcharge; therefore, a court could not grant complete relief without them.⁶ The only relief sought by Fowler and Keller is restitution or repayment of the \$3 surcharge. If the plaintiffs prevail on their unjust enrichment claim, they are entitled to restitution from MSRS as the party that retained the benefit of their surcharge payment. *Polk Tp., Sullivan Cnty. v. Spencer*, 259 S.W.2d 804, 807 (Mo. 1953); *see also* Restatement (Third) of Restitution and Unjust Enrichment § 1 (2011) ("A person who is unjustly enriched at the expense of another is subject to liability in restitution."). MSRS does not argue it is incapable of providing restitution directly to Fowler and Keller if their unjust enrichment claim is successful, nor does it explain how the clerks are necessary to ensuring restitution is paid. Because complete relief can be accorded among the named parties, the clerks are not necessary parties under Rule 52.04(a)(1). Nor are the clerks necessary parties under Rule 52.04(a)(2).

As Rule 52.04(a)(2)'s plain language makes clear, the clerks themselves must claim an interest in the subject matter of this lawsuit to be a necessary party. Rule 52.04(a)(2); *see also Aversman v. Danner*, 616 S.W.2d 117, 123 (Mo. App. 1981) (holding natural

⁶ MSRS argued the clerks are necessary and indispensable parties because, as the state officials required to enforce § 57.955, the clerks would have an "interest that would be affected by a court's *declaration*." *See Mo. Health Care Ass'n v. Att'y Gen. of the State of Mo.*, 953 S.W.2d 617, 621 (Mo. banc 1997) (emphasis added). Of course, this line of thinking applies only to a declaratory judgment action. Because Fowler and Keller seek restitution through an unjust enrichment theory—and at no point seek a declaration § 57.955 is unconstitutional—the clerks are not necessary and indispensable parties for that reason.

mother and her present husband were not required to be joined as necessary and indispensable parties because they claimed no interest in the underlying wrongful death lawsuit). At no point in this litigation have the clerks claimed an interest in this lawsuit, and none of the parties suggest they have claimed such an interest at any time. Because the clerks do not satisfy either prong of Rule 52.04(a), they are not necessary parties and this Court need not address whether they are indispensable parties. *State ex rel. Twenty-Second Jud. Cir. v. Jones*, 823 S.W.2d 471, 475 (Mo. banc 1992).

III.

Section 57.955 Violates Article I, § 14 of the Missouri Constitution

Fowler and Keller argue § 57.955's \$3 surcharge violates article I, § 14 of the Missouri Constitution. "This Court reviews the constitutional validity of a statute *de novo*." *Donaldson v. Mo. State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 62 (Mo. banc 2020). "A statute is presumed constitutional and will not be found unconstitutional unless it clearly and undoubtedly violates the constitution." *Priorities USA v. State*, 591 S.W.3d 448, 452 (Mo. banc 2020) (internal quotation marks omitted).

Article I, § 14 of the Missouri Constitution provides "[t]hat the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay." This Court has recognized, "Art. I, § 14 embodies the principle found in Chapter 40 of the Magna Carta that 'To no one will We sell, to no one will We deny or delay, right or justice.'" *Harrison v. Monroe Cnty.*, 716 S.W.2d 263, 267 (Mo. banc 1986). For a statute imposing

a court cost to withstand an article I, § 14 challenge to its validity, this Court has held the statute must be "reasonably related to the expense of the administration of justice." *Id.*

Harrison is directly on point. In *Harrison*, the plaintiff alleged Senate Bill 601 violated article I, § 14. *Id.* at 264 & n.1. SB 601 provided for additional compensation to county officials (including county sheriffs) if those officials attended a certain training program. *Id.* at 264-65. To fund the additional compensation, SB 601 authorized the assessment of a \$4 surcharge in criminal and civil proceedings. *Id.* at 265. As in this case, the clerk of court collected the \$4 surcharge and paid any amount to the county treasurer, who then transmitted the funds to the state treasurer for deposit into the "County Officers Compensation Fund." *Id.* The circuit court dismissed the plaintiff's suit, and the plaintiff appealed to this Court. *Id.*

In addressing SB 601's constitutional validity, this Court reasoned:

S.B. 601 civil court costs bear no reasonable relationship to the expenses of the administration of justice; S.B. 601 civil court costs are collected to enhance the compensation of officials of the executive department of county government. We, therefore, hold that the fees imposed in civil cases by S.B. 601 are unreasonable impediments to access to justice in violation of art. I, § 14.

Id. at 267. *Harrison* laid down a bright-line rule that court costs used to enhance compensation paid to executive officials are not "reasonably related to the expense of the administration of justice" and, therefore, violate article I, § 14. Like SB 601, § 57.955 requires the collection of a court cost used to enhance the compensation of executive department officials—retired county sheriffs. Applying *Harrison's* bright-line rule,

§ 57.955 is not "reasonably related to the expense of the administration of justice" and therefore, violates article I, § 14 of the Missouri Constitution.

Conclusion

Because the circuit court erred in determining that the clerks were necessary parties and that § 57.955 did not violate article I, § 14 of the Missouri Constitution, this Court vacates the circuit court's judgment. This case is remanded for further proceedings consistent with this opinion.

Zel M. Fischer, Judge

Draper, C.J., Wilson, Russell,
Powell and Breckenridge, JJ., concur.