



CIVIL PROCEDURE FORM NO. 8-A(2)

IN THE 19th JUDICIAL CIRCUIT, COLE COUNTY, MISSOURI

Judge or Division: Judge Daniel R. Green	Circuit Court Case Number: 20AC-CC00515	
Plaintiff/Petitioner: Shannon Robinson, Twisted Tree, B&R STL LLC d/b/a Satchmo's Bar & Grill, and Church of the Word	Appellate Number:	<input type="checkbox"/> Filing as an Indigent
	Date of Judgment/Decree/Order: (ATTACH A COPY) November 22, 2021 Judgment December 22, 2021 Order	Court Reporter:
vs.	Date Post Trial Motion Filed: N/A	<input type="checkbox"/> Sound Recording Equipment
Defendant/Respondent: Missouri Department of Health and Senior Services	Date Ruled Upon: N/A	The Record on Appeal will consist of: <input checked="" type="checkbox"/> Legal File only or <input type="checkbox"/> Legal File and Transcript

(Date File Stamp)

Notice of Appeal to Missouri Court of Appeals - Civil

District: Western Eastern Southern

Notice is given that Intervenors - Board of Trustees, Livingston County Health Center and Administrator, Cooper County Public Health Center appeal from the judgment/decree/order entered in this action on November 22, 2021 (Judgment) and on December 22, 2021 (Order) (date).

Appellant's Name (If multiple, list all or attach additional pages) Board of Trustees, Livingston County Health Center, Intervenor-Appellant Melanie Hutton, Administrator, Cooper County Public Health Center, in her official capacity, Intervenor-Appellant	Respondent's Name (If multiple, list all or attach additional pages) Shannon Robinson, Plaintiff-Respondent
Address Board of Trustees, Livingston County Health Center 800 Adam Dr. Chillicothe, Missouri 64601 Administrator, Cooper County Public Health Center 17040 Kinton Dr. Boonville, MO 65233-3542	Address 1984 Woodmoor Ridge Dr. Wildwood, MO 63011
Appellants' Attorney/Bar Number (If multiple, list all or attach additional pages) Stephen G. Jeffery, MBE 29949	Respondent's Attorney/Bar Number (If multiple, list all or attach additional pages) Kimberley Mathis, #46128
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Brief Description of Case (May be completed on a separate page)
On January 13, 2021, Plaintiffs-Respondents Shannon Robinson, Twisted Tree, Satchmo's Bar & Grill, and Church of the Word ("Plaintiffs-Respondents") filed their First Amended Petition for Declaratory Judgment under § 536.050, RSMo against Defendant Missouri Department of Health and Senior Services ("DHSS"). In their First Amended Petition, Plaintiffs-Respondents allege harm caused by local public health orders and guidelines. But, instead of filing

any administrative appeal or an action challenging the local public health orders and guidelines, Plaintiffs challenged the lawfulness of certain Department of Health & Senior Services (DHSS) rules. Plaintiffs-Respondents named only DHSS as a Defendant.

On November 22, 2021, the Court entered its Judgment invalidating several DHSS rules and ordering “local health authorities . . . to refrain from taking actions . . . that require independent discretion in a manner inconsistent with this opinion and inconsistent with the constitution’s limitation on legislative delegations and the APA’s limitations on rulemaking authority.” The Court’s Judgment declared that 19 CSR 20-20.010(26); 19 CSR 20-20.040(2)(G)-(I); 19 CSR 20-20.040(6); 19 CSR 20-20.050(3), “including references to discretionary control measures contained in 19 CSR 20-20.010 et seq.” violate the Missouri Constitution and Missouri statutes and are invalid. The Court also declared “null and void” any “discretionary orders or rules” that were implemented by “all local health authorities” that would violate the Court’s Judgment.

After the Missouri Attorney General publicly announced that he would not appeal the Judgment on behalf of DHSS (despite DHSS’ apparent wish to appeal), several Intervenors timely filed their Motions to Intervene seeking to intervene for the purpose of appealing and staying the Judgment. On December 22, 2021, the Court denied all pending Motions to Intervene.

Issues Expected To Be Raised On Appeal (May be completed on a separate page. Appellant is not bound by this list.)

Whether the Court erred in denying Intervenors’ Motions to Intervene.

Whether the Court lacked jurisdiction under § 536.050, RSMo because the local public health orders and guidelines alleged in the First Amended Petition are not promulgated rules under Chapter 536, RSMo.

Whether Plaintiffs lacked standing because they failed to exhaust their available administrative remedies.

Whether Plaintiffs lacked standing to bring a declaratory judgment action because DHSS had not taken any action against any Plaintiff and there is no justiciable case or controversy between Plaintiffs and DHSS.

Whether the Court erred in holding the DHSS rules are unconstitutional under the Equal Protection clause, Article I, § 2 of the Missouri Constitution because Plaintiffs fail to allege or show they are members of any “suspect class” or have any legally protected constitutional “fundamental right” that is infringed.

Whether the Court erred in holding the DHSS rules are unconstitutional because the protection of public health is a paramount exercise of police power and the General Assembly lawfully exercised its legislative power under Article III, § 1 of the Missouri Constitution to enact §§ 192.020 and 192.290, RSMo, which expressly confer rulemaking authority to DHSS and a statutory duty on local health agencies to enforce such DHSS rules.

Whether the Court erred in holding the DHSS rules are unconstitutional because §§ 192.020, 192.290, RSMo, and the DHSS rules lawfully delegate authority to local health agencies and local health authorities to make discretionary decisions only in limited circumstances with reasonable standards regarding the protection of the public health.

Whether the Court erred in the portion of the Judgment requiring “a county council or commission [that] enacts a law to prevent the spread of contagious diseases that is generally applicable to all individuals, schools, businesses, governments and other organizations” to submit such orders or ordinances for legislative review so that “the legislature must determine that the order or ordinance is so necessary that a violation of law justifies applicable criminal sanctions” because § 192.300, RSMo does not require any county health ordinances and health regulations to be submitted to the General Assembly for any legislative review.

Whether the Court erred in declaring the DHSS rules invalid under Chapter 536, RSMo because the local public health orders and guidelines alleged in the First Amended Petition are not required to be promulgated as rules in accordance with the rulemaking procedures set forth in Chapter 536, RSMo.

Whether the Court erred in entering a Judgment on grounds that were not set forth in Plaintiffs’ First Amended Petition or Motion for Summary Judgment.

Whether the Court erred in declaring rules and orders that were not before the Court “null and void.”

Whether the Court erred in granting Plaintiffs their attorneys’ fees and costs when Plaintiffs failed to comply with the applicable procedures in § 536.050, RSMo.

Docket Fee Information

The docket fee in the amount of \$70.00 is being tendered with this notice of appeal.

No docket fee is being tendered because:

a docket fee is not required by law pursuant to _____ (cite specific statute or other authority).

a motion to prosecute the appeal in forma pauperis has been or will be filed.

a docket fee in the amount of \$70.00 cannot be tendered at this time but will be submitted at a later date or this appeal will be subject to dismissal pursuant to Rule 84.08(a). Check to be delivered on 1-3-2022.

Signature of Attorney or Appellant
/s/ Stephen G. Jeffery

Date
December 30, 2021

Certificate of Service on Persons other than Registered Users of the Missouri eFiling System

I certify that on _____ (date), a copy of the foregoing was sent to the following by facsimile, hand-delivery, electronic mail or U.S. mail postage prepaid to their last known addresses.

Appellant or Attorney for Appellant

Directions to Clerk

Transmit a copy of the notice of appeal and all attached documents to the clerk of the Court of Appeals and to any person other than registered users of the eFiling system in a manner prescribed by Rule 43.01. Clerk shall then fill in the memorandum below. See Rule 81.08(i). Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by regular mail registered mail certified mail facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

I have transmitted a copy of the notice of appeal to the clerk of the Court of Appeals, _____ District.

Docket fee in the amount of \$70.00 was received by this clerk on _____ (date) which will be disbursed as required by statute.

No docket fee was received.

Date

Clerk

Additional Parties and Attorneys

List every party involved in the case not listed on page 1, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional pages to identify all parties and attorneys if necessary.

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