

COUNTY COURTS: A judgment rendered by the county court can be executed the same as a judgment by the circuit court.

November 23, 1938

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Honorable Carl E. Williamson
Prosecuting Attorney
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Doniphan, Missouri

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Dear Sir:

We are in receipt of your letter of November 7, 1938, requesting an official opinion from this department, which reads as follows:

"I desire an opinion from your office on Section 8070, R. S. Mo. 1929.

"A petition was duly circulated for improvement of a public road under Section 8069, and all matters under said section were complied with. Afterward a remonstrance against proposed road was duly signed and presented to the court and after due notice, a hearing was held, and the county court found that there were reasons why the proposed road could not be improved and the cost thereof charged against the lands in the district, ascertained the cost and expense incurred by the commissioners in the preparation of the plans, specifications, estimate, map and profile, in the list of lands, and dismissed the petition, and rendered judgment against the petitioners for costs, including the cost and expense incurred by the commissioners.

"My question now is as to the proper procedure toward collecting the judgment. Is a county court empowered to issue execution on such judgment? Or is it necessary, or proper, for a transcript to be filed in the Circuit Court such as in judgments from a Justice of the Peace Court?"

Section 8070, R. S. Mo. 1929, partly reads as follows:

"If any such protests have been so filed and the court finds after a hearing that such protests have been so filed by owners of a majority of the acres of land in the district that is within one-half mile of said public road or part of a public road; or if sufficient reason should be shown to the court why such public road or part of a public road cannot be so improved and the cost thereof charged against the lands in the district, it shall ascertain the cost and expense incurred by the commissioners in the preparation of such plans, specifications, estimate, map and profile, and said list of lands, and shall dismiss such petition and render judgment against the petitioners for costs, including such cost and expense incurred by said commissioners."

Article VI, Section 36, Constitution of Missouri, reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Section 1826, R. S. Mo. 1929, reads as follows:

"The supreme court of the state of Missouri, the courts of appeals, the circuit courts, the county courts and the probate courts in this state shall be courts of record, and shall keep just and faithful records of their proceedings."

Under Section 8070 as above partly set out, the county court has a special jurisdiction to issue a judgment against the petitioner on a petition for the improvement of a public road being refused. It is a special jurisdiction conferred upon the county court alone and not upon a circuit court. According to your request, the county court dismissed the petition and rendered judgment against the petitioners for costs, including the cost and expense incurred by the commissioners. All of the costs set out in your request are specifically specified in Section 8070 as above set out, and the judgment is proper.

Under Article VI, Section 36, of the Constitution of Missouri, the county court is a court of record in the same manner as a circuit court or other superior courts. The judgment of the county court granted by the court under the special jurisdiction as above set out is subject to execution the same as any other judgment in any other court of record.

Section 1152, R. S. Mo. 1929, reads as follows:

"The party in whose favor any judgment, order or decree is rendered, may have an execution in conformity therewith."

Section 1157, R. S. Mo. 1929, partly reads as follows:

"Any party entitled to an execution from a court of record may have it directed as provided in the preceding section, or, at his option, he may have it directed to any sheriff in the state of Missouri."

The previous section referred to in Section 1157 refers to the date of the return of the execution by the sheriff to the clerk issuing the same.

Section 1158, R. S. Mo. 1929, reads as follows:

"The clerk shall, before delivering any execution issued by him, indorse thereon the debt, damages and costs, or damages

and costs, to be recovered, and shall keep in his office a well-bound book, and enter therein an abstract of all executions issued out of his office, showing the date, the names of the parties, amount of debt, damages and costs, or damages and costs to what officer directed, when made returnable, the return, if any, and a reference to the book and page wherein the judgment or decree whereon such execution issued is entered; and every such clerk shall, moreover, keep a regular index to such abstract of executions, arranged alphabetically, both by the name of the plaintiff and defendant therein."

Under this section, the clerk of the county court may issue an execution the same as the clerk of the circuit court on account of the county court having special jurisdiction to render judgments as set out in that part of Section 8070, supra.

In the case of State v. Fulton, 152 Mo. App. 345, 1. c. 348, the court said:

"It was held in a number of the early cases in this state, among them Strouse v. Drennan, 44 Mo. 289; Gibson v. Vaughan, Adm., 61 Mo. 418, and several cases earlier than these, that the facts necessary to show jurisdiction of probate and county courts must appear from their records, but these cases were expressly overruled in the case of Johnson v. Beasley, 65 Mo. 250, and the principle announced in that case that while the probate and county courts are courts of limited jurisdiction and their power to act is provided by the statute, yet as to such matters as the statute places exclusively within their jurisdiction they stand on the same footing as courts of general jurisdiction, and the same presumptions are to be indulged in favor of the regularity of their proceedings and the validity of their judgments and orders in relation to the matters exclusively

confided to their jurisdiction as are indulged in favor of the judgments and orders of a court of general jurisdiction."

Also, in the case of Bingham v. Kollman, 256 Mo. 573, l. c. 589, the court said:

"That order or judgment is not open to collateral attack, and no direct attack is made upon it by the pleadings in this case. The county as well as the probate court, is one of inferior jurisdiction, but the rulings of some of the earlier cases as to the absence of any presumption of jurisdiction when the records of those courts do not affirmatively disclose their jurisdiction have been repeatedly overruled. The law is now settled that the orders and judgments of county and probate courts, made in the exercise of their statutory powers over subjects and matters conferred upon them, are entitled to the same favorable presumptions arising, either from the statements or the silence of their records, which are accorded in like cases to circuit courts or others of general jurisdiction. (Johnson v. Beazley, 65 Mo. 250; Desloge v. Tucker, 196 Mo. l. c. 601, and cases cited; Ancell v. Bridge Co., 223 Mo. l. c. 227; Macey v. Stark, 116 Mo. l. c. 494, and cases cited; McDonald v. McDaniel, 242 Mo. l. c. 176; Covington v. Chamblin, 156 Mo. 574; State v. Fulton, 152 Mo. App. l. c. 348; Deweese v. Yost, 161 Mo. App. l. c. 12; Spicer v. Spicer, 249 Mo. 582.)"

CONCLUSION

In view of the above authorities, it is the opinion of this department that when a judgment is rendered against petitioners who have filed a petition for the improvement of a public road under Section 8069, R. S. Mo. 1929, and the county court has dismissed said petition under Section 8070, R. S. Mo. 1929, and assessed the costs of the proceeding against the petitioners by a lawfully rendered judgment, then the county court is empowered to issue execution on such judgment in the same manner and form as a judgment rendered in the circuit court of the State of Missouri. It is further the opinion of this department that it is not necessary to file a transcript of the judgment rendered by the county court in the office of the clerk of the circuit court as is done in judgments before a justice of the peace court.

Respectfully submitted

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APPROVED:

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