

**IN THE
SUPREME COURT OF MISSOURI**

Case No. SC92469

**STATE OF MISSOURI, EX REL.
ST. CHARLES COUNTY, MISSOURI,**

Relator,

v.

HONORABLE JON A. CUNNINGHAM,

Respondent.

Petition for Writ of Prohibition
Arising from Circuit Court Case No. 0811-CV08506,
Eleventh Judicial Circuit, St. Charles County, Missouri

RELATOR'S BRIEF

St. Charles County Counselor's Office
Greg H. Dohrman, Mo. Bar No. 55067
Associate County Counselor
Joann M. Leykam, Mo. Bar No. 29075
County Counselor
St. Charles County
100 North Third Street, Suite 216
St. Charles, Missouri 63301
Tel.: (636) 949-7540
Fax: (636) 949-7541
GDohrman@sccmo.org
JLeykam@sccmo.org
Counsel for Relator

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

JURISDICTIONAL STATEMENT 1

STATEMENT OF FACTS 1

POINT RELIED ON 4

ARGUMENT..... 5

 I. RELATOR IS ENTITLED TO AN ORDER
PROHIBITING RESPONDENT FROM TAKING
ANY FURTHER ACTION IN THE UNDERLYING
CASE, BECAUSE RESPONDENT HAS ACTED
AND PLANS TO CONTINUE TO ACT BEYOND
THE SCOPE OF THE TRIAL COURT’S
JURISDICTION, IN THAT THE TRIAL
COURT LOST ITS JURISDICTION OVER THE
CASE UPON THE FILING OF RELATOR’S
VOLUNTARY DISMISSAL AFTER THIS
COURT’S GENERAL REMAND OF THE CASE 5

 A. The standard of review applicable to writs of
prohibition demonstrates that issuance in this
case falls within the essential function of prohibition..... 5

 B. Summary of Arguments 6

C. This Court issued a general remand, so the
County’s Voluntary Dismissal was valid
under Rule 67.02 and operated to immediately
dismiss the case 7

CONCLUSION 14

CERTIFICATE OF COMPLIANCE WITH RULE 84.06 15

CERTIFICATE OF SERVICE 16

TABLE OF AUTHORITIES

Cases

<i>Argeropoulos v. Kansas City Rys. Co.</i> , 212 S.W. 369 (Mo.App. 1919)	13
<i>Associated Indus. of Missouri v. Dir. of Revenue</i> ,	
918 S.W.2d 780 (Mo. banc 1996)	8-9
<i>Butcher v. Main</i> , 426 S.W.2d 356 (Mo. 1968)	8, 9
<i>Camden v. St. Louis Pub. Serv. Co.</i> , 206 S.W.2d 699 (Mo.App. 1947).....	13
<i>Freeman v. Leader Nat. Ins. Co.</i> ,	
58 S.W.3d 590 (Mo.App. E.D. 2001).....	4, 7, 10-11, 12, 13
<i>Givens v. Warren</i> , 905 S.W.2d 130 (Mo.App. E.D. 1995)	11
<i>Hoelzel v. Chicago, R. I. & P. Ry. Co.</i> , 102 S.W.2d 577 (Mo. 1937)	4, 7, 9
<i>Mo. State Bd. of Registration for Healing Arts v. Brown</i> ,	
121 S.W.3d 234 (Mo. banc 2003)	5
<i>Pinkston v. Ellington</i> , 845 S.W.2d 627 (Mo.App. E.D. 1992)	7, 8
<i>Richter v. Union Pac. R. Co.</i> , 265 S.W.3d 294 (Mo.App. E.D. 2008).....	13-14
<i>Senior Citizens Bootheel Services v. Dover</i> ,	
811 S.W.2d 35 (Mo.App. S.D. 1991)	10, 12-13
<i>Smith v. A.H. Robins Co.</i> , 702 S.W.2d 143 (Mo.App. W.D. 1985)	12, 13
<i>Sprague v. Ticonic Nat. Bank</i> , 307 U.S. 161, 168, 59 S.Ct. 777 (1939)	9
<i>Starling v. Union Pacific R. Co.</i> , 22 S.W.3d 213 (Mo.App. W.D. 2000).....	11

State ex rel. Dir. of Revenue, State of Mo. v. Gaertner,
 32 S.W.3d 564 (Mo. banc 2000) 5
State ex rel. Fisher v. McKenzie, 754 S.W.2d 557 (Mo. banc 1988)..... 5
State ex rel. Stickelber v. Nixon, 54 S.W.3d 219 (Mo.App. W.D. 2001)..... 5
State ex rel. T.J.H. v. Bills, 504 S.W.2d 76 (Mo. banc 1974) 6
State ex rel. Womack v. Rolf, 173 S.W.3d 634 (Mo. banc 2005) 6

Constitution, Statutes, Rules

Art. V, § 4, Constitution of Missouri..... 1
 § 530.020 RSMo..... 1
 Rule 52..... 8
 Rule 67.01 (1980 amendment) 12
 Rule 67.02..... 1, 3, 4, 6, 7, 8, 9, 10, 12, 13
 Rule 84.23..... 1
 Rule 97.01 1

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this matter pursuant to Article V, § 4 of the Missouri Constitution, § 530.020 RSMo. and Supreme Court Rules 84.23 and 97.01.

STATEMENT OF FACTS

This is a case in which the trial court entered summary judgment in favor of the Plaintiff St. Charles County, Missouri (“County”) in 2009, and that judgment was reversed on appeal and generally remanded to the trial court for further proceedings in 2012. After the remand, the County filed a voluntary dismissal of the case pursuant to Rule 67.02. The Defendant Laclede Gas Company (“Gas Company”) objected to the dismissal and persuaded the trial court to believe, erroneously, that it had jurisdiction to take further action in the case. This Court has issued a preliminary writ of prohibition commanding the trial court to show cause why a permanent writ of prohibition should not issue prohibiting the trial court from taking any further action other than recognizing the voluntary dismissal. A more complete accounting of this context is set forth below.

Procedural History of Case Before Remand

The underlying cause of action in this case began on September 15, 2008 when the County filed a petition for a declaratory judgment against Gas Company. The petition sought the judicial interpretation of the effect of dedications of streets, roadways and utility easements in five subdivision plats. The County asserted that the dedications resulted only in the creation of public road right-of-way and could not have vested

independent utility easement rights in the same ground in Gas Company. *See* Ex. 1.¹

The Gas Company filed an answer and affirmative defenses in opposition to the County's Petition. Ex. 2.

Each party filed a motion for summary judgment in the case with supporting memoranda and affidavits. Ex. 3 and 4, and *see* Ex. 18. After the parties filed responses and replies regarding the motions, and after other non-dispositive motions were filed and ruled upon, the cross-motions for summary judgment were set for hearing on September 16, 2009. On that date, the Circuit Court heard arguments and took the matter under advisement. Ex. 18. On November 5, 2009, the Circuit Court entered a Judgment granting the County's motion for summary judgment and denying the Gas Company's motion for summary judgment. Ex. 5.

The Gas Company appealed the Judgment. Ex. 6. The appeal was heard first in the Missouri Court of Appeals, Eastern District, which issued an opinion that upheld the Judgment but also directly transferred the case to the Missouri Supreme Court. On August 30, 2011, the Missouri Supreme Court issued an opinion that reversed the trial court's entry of summary judgment. Ex. 7. The County filed a motion for rehearing, and the Missouri Supreme Court requested suggestions in opposition to that motion. *See* Ex. 19. On January 31, 2012, the Missouri Supreme Court overruled the motion for rehearing and issued its Mandate in the case. Ex. 8. The Mandate ordered that the trial

¹ All references to exhibits herein are to the Exhibit's to Relator's Petition for Writ of Prohibition.

court's Judgment of November 5, 2009 be "reversed, annulled and for naught held and esteemed" and further ordered that the case be "remanded to the said Circuit Court of St. Charles County for further proceedings to be had therein, in conformity with the opinion of this court herein delivered; and that the said Appellant recover against the said Respondent costs and charges herein expended, and have execution therefor." *Id.*

Status of Case After Remand

Shortly after the issuance of the Mandate, on the same day (January 31, 2012), the County filed a Memorandum of Voluntary Dismissal in the Circuit Court pursuant to Rule 67.02. Ex. 9. The County had not previously dismissed any civil action based upon the same claim. There had been no activity in the trial court between the time the Mandate was issued and the filing of the Voluntary Dismissal. Ex. 17. If the County had not filed its Voluntary Dismissal, the case would have been generally pending on the Circuit Court's docket for further proceedings. No discovery had been conducted by either party, and no trial was yet scheduled. *Id.* Gas Company refused to recognize the validity of the Voluntary Dismissal, and filed an opposition to it. Ex. 10. On March 9, 2012, the Respondent filed an order purporting to deny the Voluntary Dismissal as void and of no effect. Ex. 16. Gas Company then set a motion to conduct further proceedings, specifically requesting entry of judgment, for hearing before the Circuit Court on April 13, 2012. Ex. 17.

POINT RELIED ON

- I. Relator is entitled to an order prohibiting Respondent from taking any further action in the underlying case, because Respondent has acted and plans to continue to act beyond the scope of the trial court’s jurisdiction, in that the trial court lost its jurisdiction over the case upon the filing of Relator’s voluntary dismissal after this Court’s general remand of the case.**

Rule 67.02 (a) (2)

Freeman v. Leader Nat. Ins. Co., 58 S.W.3d 590 (Mo.App. E.D. 2001)

Hoelzel v. Chicago, R. I. & P. Ry. Co., 102 S.W.2d 577 (Mo. 1937)

ARGUMENT

I. Relator is entitled to an order prohibiting Respondent from taking any further action in the underlying case, because Respondent has acted and plans to continue to act beyond the scope of the trial court’s jurisdiction, in that the trial court lost its jurisdiction over the case upon the filing of Relator’s voluntary dismissal after this Court’s general remand of the case.

A. The standard of review applicable to writs of prohibition demonstrates that issuance in this case falls within the essential function of prohibition.

To successfully obtain a writ of prohibition, the relator “must establish that the respondent acted in excess of his jurisdiction, that action is necessary to prevent usurpation of judicial power, or that [the superior court] must act to prevent an absolute and irreparable harm to a party.” *State ex rel. Stickelber v. Nixon*, 54 S.W.3d 219, 221 (Mo.App. W.D. 2001), citing *State ex rel. Dir. of Revenue, State of Mo. v. Gaertner*, 32 S.W.3d 564, 566 (Mo. banc 2000). One of the categories in which writs of prohibition are proper is when the “trial court exceeded its jurisdiction or abused its discretion to such an extent that it lacked the power to act as it did.” *Mo. State Bd. of Registration for Healing Arts v. Brown*, 121 S.W.3d 234, 236 (Mo. banc 2003). Therefore, if the Relator’s voluntary dismissal was authorized, the Circuit Court had no further jurisdiction after its filing and a writ of prohibition is appropriate. *State ex rel. Fisher v. McKenzie*, 754 S.W.2d 557, 562 (Mo. banc 1988).

The present circumstances fall within the scope of the “essential function of prohibition”. *State ex rel. Womack v. Rolf*, 173 S.W.3d 634, 636 (Mo. banc 2005) (“The essential function of prohibition is to correct or prevent inferior courts ... from action without or in excess of their jurisdiction” [citation omitted]). When a lower court has exceeded its jurisdiction, prohibition is the method by which a higher court “exercises its superintendence over the inferior authority to keep it within the bounds of its lawful jurisdiction.” *State ex rel. T.J.H. v. Bills*, 504 S.W.2d 76, 78-79 (Mo. banc 1974). *T.J.H.* also specified that “[w]here, as here, the court is wholly wanting in jurisdiction to proceed in the case, appeal is not an adequate remedy because any action by the court is without authority and causes unwarranted expense and delay to the parties involved.” *Id.* This case presents the same issue. This Court has jurisdiction since the Circuit Court issued an order outside of its jurisdiction and plainly intended to continue acting beyond its jurisdiction by conducting further proceedings in the underlying action.

B. Summary of Arguments

The underlying case has been voluntarily dismissed pursuant to Rule 67.02. The trial court has conducted proceedings outside of the scope of its authority to act, and absent intervention through a writ of prohibition it will continue to do so. This case therefore falls squarely within the essential function of prohibition, which is to prevent an inferior court from taking action in excess of its jurisdiction. *State ex rel. Womack v. Rolf, supra*. In such instances, appeal is not an adequate remedy. *State ex rel. T.J.H. v. Bills, supra*.

This Court issued a general remand when it reversed the original trial court

judgment in the underlying case and remanded the case for further proceedings. When any case is remanded in such a manner, the trial court is free to act on all issues and a voluntary dismissal pursuant to Rule 67.02 is just as effective as it would have been before the reversed judgment was entered. *See Pinkston v. Ellington, Associated Indus. of Missouri v. Dir. of Revenue, and Hoelzel v. Chicago, R. I. & P. Ry. Co., infra.* The appeal did not limit that right in any way, nor could it have unless the case was reversed and remanded with instructions for entry of a specific judgment. The pendency of summary judgment motions in the trial court does not limit a plaintiff's options under Rule 67.02, either. *Freeman v. Leader Nat. Ins. Co., infra.*

The County exercised its right to dismiss the case pursuant to that Rule. The dismissal was, pursuant to the Rule and the cases construing the effect of voluntary dismissals, fully effective upon its filing. The trial court lost jurisdiction for any further action as of the date of the dismissal. Any step it attempted to take after that is a nullity, and it must be prohibited from taking any further steps beyond its jurisdiction. *See Freeman v. Leader Nat. Ins. Co., infra.*

C. This Court issued a general remand, so the County's Voluntary Dismissal was valid under Rule 67.02 and operated to immediately dismiss the case.

As more fully set forth below, an appellate court remanding a case for further proceedings consistent with its opinion is without any doubt a general remand, with the inescapable consequence that all issues are once again open to consideration in the trial

court. All normal procedural steps are available, including the option of a plaintiff to voluntarily dismiss the case in the manner provided by Rule 67.02.²

[W]hen a case is remanded “for further proceedings consistent with this opinion” such an order is a simple reversal and remand because every remanded case is remanded for further proceedings in accordance with the appellate court opinion. **Words of that character do not import a direction to the trial court and the remanding order stands exactly as if such language had been omitted.** The reversal and remand in this case used the language “consistent with this opinion” and is therefore a simple reversal and does not import a specific direction for the trial court on remand. **A general remand leaves all issues open to consideration on the new trial.** The pleadings may be amended and new facts produced. *Butcher v. Main*, 426 S.W.2d 356, 358 (Mo. 1968).

Pinkston v. Ellington, 845 S.W.2d 627, 629 (Mo.App. E.D. 1992) (some citations omitted, emphasis added). This is so because “[a] mandate is controlling only as to matters within its compass; a lower court is free to act as to other issues.” *Associated*

² Rule 67.02 (a) states: “Except as provided in Rule 52, a civil action may be dismissed by the plaintiff without order of the court anytime: Prior to the swearing of the jury panel for the voir dire examination, or (2) In cases tried without a jury, prior to the introduction of evidence at the trial.”

Indus. of Missouri v. Dir. of Revenue, 918 S.W.2d 780, 783 (Mo. banc 1996), citing *Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 168, 59 S.Ct. 777, 780-81 (1939).

If a trial court, upon remand, is free to act as to issues including amendment of pleadings and the production of new facts (even *controlling* new facts, as specified in *Butcher v. Main, supra*), then a plaintiff must also be free to voluntarily dismiss the case in accordance with the Rules. In fact, this Court has so held.

It was not necessary for this court to dictate, and it did not dictate, in what manner the mandate should be complied with. Our mandate ... could properly be interpreted as meaning only, that the court to which it was addressed should follow it **in one of the modes permitted by law**. By it jurisdiction and authority were granted that court to take such steps as were ordered and such incidental steps as were necessary to carry our mandate into execution. Beyond this, nothing. **Voluntary dismissal by the plaintiff was one of the lawful modes**. ... This is so well settled as to require no citation of authorities.

Hoelzel v. Chicago, R. I. & P. Ry. Co., 102 S.W.2d 577, 578 (Mo. 1937) (citations omitted, emphasis added). This case predates the passage of the present Rule 67.02, but its principle still applies. In the present case, the County's exercising its option of voluntary dismissal pursuant to Rule 67.02 falls within the "modes permitted by law" of following the Mandate in precisely the same way.

The Mandate entered by this Court provided no specific directives to the Circuit Court. Once that mandate was issued, therefore, the trial court had authority over all

issues in the case, all of which were open to consideration. The summary judgment ruling entered on November 5, 2009 was annulled. Since this Court clearly contemplated further proceedings were to take place in the case, it would have, but for the dismissal, been heading for discovery and for trial. At the least, it would have been heading for reconsideration and reargument of the summary judgment motions. (Exhibit 10, the Gas Company's memorandum in opposition to the Voluntary Dismissal filed on February 1, 2012, even admitted that further proceedings were necessary at that point in the case by stating it intended to seek them and requesting further proceedings in its prayer for relief.) Even if the cross-motions for summary judgment would have been considered as once again pending in the case, the County retained its option of voluntary dismissal under the Rules. Rule 67.02(a) allows a plaintiff to voluntarily dismiss a lawsuit without order of the court any time prior to the introduction of evidence at trial, even if summary judgment motions are pending at the time of the dismissal.

[T]he Plaintiffs' power to dismiss is here unaffected by the pendency of summary judgment motions. Rule 67.02(a) allows a plaintiff to voluntarily dismiss a lawsuit without order of the court anytime prior to the introduction of evidence at trial. In accordance with Missouri caselaw, while the filing of an affidavit in support of, or in opposition to, a motion for summary judgment, or the use of deposition testimony or other evidence, may constitute the "introduction of evidence," this evidence is not "at the trial." *Senior Citizens Bootheel Services v. Dover*, 811 S.W.2d 35, 39-40 (Mo.App. S.D. 1991). Moreover, the introduction of evidence at

a pre-trial hearing also does not affect the right of voluntary dismissal. *Id.*, at 40. To the contrary, **even if motions are pending, the circuit court loses jurisdiction to take any further action to rule on those motions as of the date the plaintiff dismisses the lawsuit.** *Starling v. Union Pacific R. Co.*, 22 S.W.3d 213, 215 (Mo.App. W.D. 2000), citing *Givens v. Warren*, 905 S.W.2d 130, 132 (Mo.App. E.D. 1995). Thus, we find that the trial court erred in granting summary judgment to Brown & James because Plaintiffs' previous voluntary dismissal of Brown & James stripped the court of jurisdiction to render its later ruling. Accordingly, we reverse and remand for the trial court to vacate its grant of summary judgment to Brown & James.

Freeman v. Leader Nat. Ins. Co., 58 S.W.3d 590, 596 (Mo.App. E.D. 2001) (emphasis added).

In the Circuit Court, Gas Company attempted to cite cases supporting a contrary result, but it did not cite a single case matching the procedural posture of the present case at the time of dismissal.³ The County was not an appellant; nor was it seeking to dismiss

³ Gas Company also included a mistaken fact in its opposition memorandum, stating on page 2 that the parties filed their motions for summary judgment and briefs thereon “after extensive written discovery in this matter”. Ex. 10. There was, however, absolutely no discovery conducted by either party in this case—no interrogatories, requests for production of documents or admissions, or any other form of discovery.

a trial court judgment entered against it before the case was on appeal. In addition, the Gas Company erroneously attempted to rely primarily upon one case that has no precedential value on this issue. Even more significant is that this became the *sole case* cited by the trial court as the legal basis for the purported denial of the Voluntary Dismissal. That case, *Smith v. A.H. Robins Co.*, 702 S.W.2d 143 (Mo.App. W.D. 1985), ***specifically labeled its discussion of the issue as dicta***. *Id.* at 147 (“The foregoing observations as to the effect of appellant’s attempted partial dismissal ... are essentially dicta”). The court in *Smith* took appropriate care in labeling its discussion of that issue as dicta, yet the Gas Company and the Circuit Court are improperly disregarding that carefully made notation. The mistaken attempt to rely upon *Smith* has led to a plain legal error, which leaves the Circuit Court acting without proper jurisdiction.

Freeman, supra, contains the correct statement of the law applicable here. That case, along with the other cases cited therein, are consistent with the 1980 amendment to the relevant Missouri Supreme Court Rule, as described in comments to Rule 67.01 made by the 1981 Rules Committee. These comments are recited in *Senior Citizens, supra*, which *Freeman* cited (and Gas Company also cited in the Circuit Court, but without discussing this part of the opinion). After the 1980 amendment, the first sentence of Rule 67.01 stated: “A civil action may be dismissed by the plaintiff without prejudice without order of court anytime prior to the introduction of evidence at the trial.” This contains the same operative language for cases tried without a jury as the present Rule 67.02. According to *Senior Citizens*, “The 1981 Committee Note to Rule 67.01 states that the 1980 amendment which added ‘at the trial’ to the end of the first sentence was ‘added to

make it clear that the introduction of evidence at a pretrial hearing does not affect the right of voluntary dismissal.” 811 S.W.2d at 40.

Freeman is more recent than *Smith* and more significantly it avoids any reliance upon dicta. It is also consistent with the plain language of Rule 67.02 as well as the 1981 Committee Note regarding the same operative language. *Freeman* contains the correct statement of the law in Missouri. Because *Smith* discussed the voluntary dismissal issue only in dicta, it should not even be construed to be at odds with *Freeman*.

If the Circuit Court’s purported denial of the County’s lawful voluntary dismissal is not permanently prohibited by writ, then the ability of any plaintiff to voluntarily dismiss its petition after an appeal and remand will be placed in serious doubt. Such ability, though, is deeply rooted in the law. “[A] nonsuit may be taken after reversal and remand for a new trial under a statute allowing a nonsuit at any time before trial, as the cause then stands for trial de novo.” *Argeropoulos v. Kansas City Rys. Co.*, 212 S.W. 369, 372 (Mo.App. 1919) (citation omitted). *Camden v. St. Louis Pub. Serv. Co.*, 206 S.W.2d 699, 705-06 (Mo.App. 1947), cited *Argeropoulos* with approval and applied the same reasoning to a case where a verdict and judgment had been set aside, and a new trial ordered, before the plaintiff exercised a right of dismissal.

Therefore, the voluntary dismissal pursuant to Rule 67.02 was fully effective at the time it was filed. Once a case is so dismissed, “the trial court may take no further action and any step attempted is viewed as a nullity,” or “[i]n other words, the trial court loses jurisdiction as of the date of dismissal.” *Freeman* at 595 (citations omitted). “Once a plaintiff has voluntarily dismissed an action under this rule, it is as if the suit had never

been filed.” *Richter v. Union Pac. R. Co.*, 265 S.W.3d 294, 297 (Mo.App. E.D. 2008)
(citations omitted).

CONCLUSION

For the foregoing reasons, the County respectfully requests that this Court issue a permanent writ of prohibition to the Honorable Jon A. Cunningham prohibiting him from doing anything in the underlying case other than vacating his order of March 9, 2012 and acknowledging the voluntary dismissal of said case, all as requested in the Petition, and for any such further and other relief this Court deems just.

Respectfully submitted,

OFFICE OF THE ST. CHARLES
COUNTY COUNSELOR

/s/ Greg H. Dohrman

Greg H. Dohrman, Mo. 55067
Joann M. Leykam, Mo. 29075
Office of the County Counselor
St. Charles County, Missouri
100 North Third Street, Suite 216
St. Charles, Missouri 63301
636/949-7540
636/949-7541 Facsimile
GDohrman@sccmo.org
JLeykam@sccmo.org

CERTIFICATE OF COMPLIANCE WITH RULE 84.06 (b)

I certify that this brief complies with the limitations contained in Rule 84.06 (b), as effective July 1, 2008, and that this brief contains 3,919 words according to the word processing program used to prepare it, exclusive of the cover, the following certificate of service page, this certificate page, signature block, and the appendix.

OFFICE OF THE ST. CHARLES
COUNTY COUNSELOR

/s/ Greg H. Dohrman

Greg H. Dohrman, Mo. 55067
Office of the County Counselor
St. Charles County, Missouri
100 North Third Street, Suite 216
St. Charles, Missouri 63301
636/949-7540
636/949-7541 Facsimile
GDohrman@sccmo.org

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2012, a true copy of the foregoing was delivered through the Court's electronic filing system, according to the information available on the system at the time of filing, to the following:

Booker T. Shaw
Mary M. Bonacorsi
Paul D. Lawrence III
Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
bshaw@thompsoncoburn.com
mbonacorsi@thompsoncoburn.com
plawrence@thompsoncoburn.com

and was sent by hand delivery to:

The Honorable Jon A. Cunningham
Circuit Judge, Division 5
St. Charles County Circuit Court
301 North Second Street
St. Charles, Missouri 63301

/s/ Greg H. Dohrman