

IN THE MISSOURI SUPREME COURT

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STATE OF MISSOURI EX REL. HEARTLAND) )  
TITLE SERVICES, INC., F/K/A ) )  
HEARTLAND TITLE COMPANY AND ) )  
JOHN C. DAY, ) )  
RELATORS, ) )  
VS. ) )  
THE HONORABLE KEVIN D. HARRELL, ) )  
RESPONDENTS. ) )

CASE No. SC95377

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ON PRELIMINARY RULE IN PROHIBITION FROM THE SUPREME  
COURT OF MISSOURI TO THE HONORABLE KEVIN D. HARRELL,  
CIRCUIT JUDGE OF THE CIRCUIT COURT OF JACKSON COUNTY

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BRIEF OF RESPONDENT

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T. Michael Ward #32816  
Matthew G. Koehler #48760  
Derek H. MacKay #59078  
800 Market Street  
St. Louis, Missouri 63101  
(314) 242-5306  
(314) 242-5506  
mkoehler@bjpc.com  
dmackay@bjpc.com  
tmward@bjpc.com

Attorneys for Respondent and Defendants

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## STATEMENT OF FACTS

Respondent sustained Defendants' Motion to Dismiss Count II of Relators' Petition for lack of venue. Defendants predicated their Motion on the ground that neither the parties nor the underlying alleged legal malpractice had any nexus to the State of Missouri. (See Exhibit 2 to Relators' Petition, ¶¶ 1-12.)

Defendants, in support of their Motion, asserted as follows:

1. Paul Hasty Jr. is an individual with no principal place of residence in the State of Missouri.
2. Hasty and Associates, LLC is a Kansas limited liability company.
3. Hasty and Associates, LLC has no registered agent within the State of Missouri.
4. Hasty and Associates, LLC has no place of business within the State of Missouri.
5. James Day is an individual with no principal place of residence within the State of Missouri.
6. Day Advertising Inc. is a Kansas corporation.
7. Heartland Title Services, Inc. f/k/a Heartland Title Company, Inc., is a Florida Corporation that was previously a Kansas Corporation.
8. Plaintiffs Jim Day and Heartland Title Company Inc., retained Defendants to provide legal services with regard to a personal bankruptcy case filed by former employee of Plaintiffs, Deborah McGuire.

9. Plaintiffs Jim Day and Heartland Title Company were seeking to become creditors in the personal bankruptcy action of former employee Deborah McGuire.
10. The Deborah McGuire bankruptcy case was filed in, and was at all times under the jurisdiction of, the United States Bankruptcy Court for the District of Kansas.
11. Paul Hasty Jr. and Hasty and Associates LLC entered appearances in the United States Bankruptcy Court for the District of Kansas on behalf of Plaintiffs in the Deborah McGuire bankruptcy matter and the case was given Case Number 2:07-ap-06234.
12. At all times, Defendants represented Plaintiffs in this matter in the United States Bankruptcy Court for the District of Kansas.

(See Exhibit 2 to Relators' Petition, ¶¶ 1-12.)

The factual predicate for Defendants' Motion is undisputed. Relators so conceded in their Suggestions in Support of their Petition for Writ of Prohibition that they filed in this Court. There, Relators stated as follows:

All parties agreed that the claim at issue [in Count II] alleged a tort in which Relators were injured outside the state of Missouri, that Relators did not reside in Missouri, and that the Defendants included an individual whose principal residence was in Kansas and a Kansas corporate entity with no registered agent within the state of Missouri.

(See Relators' Suggestions in Support at 3-4.)

## STANDARDS FOR EXTRAORDINARY REVIEW

The Court's review in prohibition is governed by the following standards:

Relators bear the burden of persuasion in this case. In the first instance, they have the burden to show that venue is proper in this case. *State ex rel. Bank of Am. N.A. v. Kanatzar*, 413 S.W.3d 22, 26 (Mo. App. W.D. 2013).

Relators also have the burden to establish their claim for extraordinary relief. Before this Court, they must show that Respondent has exceeded his jurisdiction and that no adequate remedy is available to Relators by direct appeal at the case's conclusion. *State ex rel. Riverside Joint Venture v. Missouri Gaming Comm'n*, 969 S.W.2d 212, 221 (Mo. banc 1998). The discretionary authority of an appellate court to issue a writ of prohibition is to be exercised "when the facts and circumstances of the particular case demonstrate unequivocally that there exists an extreme necessity for preventive action." *Derfelt v. Yocom*, 692 S.W.2d 300, 301 (Mo. banc 1985). Furthermore,

[w]rits of prohibition are limited to the "fairly rare" situations where (1) the court or tribunal exceeded its personal or subject matter jurisdiction, (2) the court or tribunal lacked the power to act as it did, or (3) "absolute irreparable harm may come to a litigant if some spirit of justifiable relief is not made available[,]" or there is an issue of law that will likely escape review on appeal and cause considerable hardship or expense to the aggrieved party.

*State ex rel. Riverside Joint Venture v. Mo. Gaming Comm'n*, 969 S.W.2d 218, 221 (Mo. banc 1998).

## ARGUMENT

I. Relators are not entitled to an order prohibiting Respondent from dismissing Count II of Relators' Petition for lack of venue, because the Circuit Court of Jackson County is not a proper venue for Relators' legal malpractice claim, which involves only non-Missouri parties and which concerns alleged malpractice that occurred outside of Missouri, in that Missouri's venue statute, MO. REV. STAT. § 508.010, provides no venue for tort actions, such as Relators' legal malpractice action, brought by out-of-state plaintiffs against out-of-state defendants for injuries that occurred out of state; therefore, Respondent did not act in excess of his jurisdiction in dismissing Count II and not transferring the case to another venue because there is no proper venue for Relators' claim in Missouri. (This point addresses Relators' sole point relied on.)

### A. Introduction

The Court's preliminary writ of prohibition should be quashed. Respondent did not err, or act in excess of his jurisdiction, in dismissing Count II of Relators' Petition against Defendants for improper venue. Contrary to Relators' argument, venue in the Circuit Court of Jackson County, or any other Missouri county, for Relators' legal malpractice claim, as alleged in Count II, is improper. The 2005 amendment to Missouri's venue statute, MO. REV. STAT. § 508.010 (Cum. Supp. 2013) compels this conclusion. By its terms, Section 508.010 provides no venue for tort cases, such as this one, brought by out-of-state plaintiffs against out-of-state defendants for injuries that occurred out of state.

Relators' argument does not compel a contrary conclusion. Relators' position rests on the proposition that venue for their legal malpractice action is proper in any Missouri county because Missouri's venue statute does not prescribe a specific county in which Relators' action must be brought, and that Respondent's ruling deprives Relators of their right to access Missouri courts for purposes of advancing their legal malpractice action. In support, Relators cite the decision of the Western District of the Missouri Court of Appeals in *State ex rel. Neville v. Grate*, 443 S.W.3d 688 (Mo. App. W.D. 2014).

However, *State ex rel. Neville* does not govern this action. The decision is limited to its facts, which involved negligent conduct that occurred in Missouri. Here, Defendants committed no alleged malpractice in Missouri. Therefore, in the absence of any nexus to Missouri, the rule in *State ex rel. Neville* has no application and Relators' request for relief in prohibition should be denied and the preliminary writ should be quashed.

**B. There is no proper Missouri venue for the cause of action alleged in Count II of Relators' Petition because Missouri has no relationship to the claim.**

Relators acknowledge that their legal malpractice claim, as alleged in Count II of their Petition, has no relationship to Missouri. It is undisputed that Count II is a tort action in which the alleged injury did not occur in Missouri, that Relators are not Missouri residents, that the individual defendant is a Kansas resident, and that the corporate defendant is a Kansas corporate entity without a registered agent in Missouri. Under these undisputed circumstances, there is no proper venue in any Missouri county for Relators' action under Missouri's venue statute, MO. REV. STAT. § 508.010 (Cum. Supp. 2013).

Under Missouri law, venue is determined solely by statute. *State ex rel. Selimanovic v. Dierker*, 246 S.W.3d 931, 932 (Mo. banc 2008). The object of venue rules is to provide a convenient, logical, and orderly forum for litigation. *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 196 (Mo. banc 1991).

The role of the courts in addressing venue legislation is limited. Venue is within the legislature's province, and the courts must be guided by what the legislature says. *State ex rel. Bunker Res., Recycling and Reclamation, Inc. v. Dierker*, 955 S.W.2d 931, 933 (Mo. banc 1997). Where, as here, relief in prohibition depends on the interpretation of Section 508.010, the Court reviews the statute's meaning *de novo*. *State ex rel. White Family P'ship v. Roldan*, 271 S.W.3d 569, 572 (Mo. banc 2008). In so doing, the Court is guided by the primary rule of statutory interpretation, namely, to give effect to the legislative intent as reflected in the statute's plain language. *Id.*

Section 508.010(5) provides, in pertinent part, as follows:

In all actions in which there is any count alleging a tort and in which the plaintiff was first injured outside the state of Missouri, venue shall be determined as follows:

- (1) If the defendant is a corporation, then venue shall be in any county where a defendant corporation's registered agent is located or, if the plaintiff's principal place of residence was in the state of Missouri on the date the plaintiff was first injured, then venue may be in the county of the plaintiff's principal place of residence on the date the plaintiff was first injured;

(2) If the defendant is an individual, then venue shall be in any county of the individual defendant's principal place of residence in the state of Missouri or, if the plaintiff's principal place of residence was in the state of Missouri on the date the plaintiff was first injured, then venue may be in the county containing the plaintiff's principal place of residence on the date the plaintiff was first injured;

The undisputed facts demonstrate there is no venue for Count II in any Missouri county. The prerequisites for venue in Missouri cannot met. The injury did not occur in Missouri, and no party is a Missouri resident, and the sole corporate defendant is a Kansas corporate entity with no registered agent in Missouri.

The fact that Respondent possessed venue for Count I of Relators' Petition does not call for a different conclusion. In *State ex rel. Turnbough v. Gaertner*, 589 S.W.2d 290, 291-92 (Mo. banc 1979), this Court made plain that the plaintiff's joinder of two or more separate causes of action in a single petition does not create venue for all pleaded causes of action so long as venue is proper for one of the pleaded causes of action. Rather, the plaintiff bears the burden to establish venue for each separate cause of action independently. *State ex rel. Jinkerson v. Koehr*, 826 S.W.2d 346, 348 (Mo. banc 1992).

**C. The Western District's decision in *State ex rel. Neville*, which is limited to its facts, namely, a cause of action involving negligence that occurred in Missouri, does not govern this matter.**

Relators' argument rests principally on the Western District's decision in *State ex rel. Neville v. Grate*, 443 S.W.3d 688 (Mo. App. W.D. 2014). (Relators' Brief at 7-10.)

However, the Western District's decision in *State ex rel. Neville*, which is limited to its facts, is not controlling.

Relators agree that Count II of their Petition does not meet any of the venue requirements, as prescribed under Section 508.010. Relators nonetheless argue, without any statutory authority, that because venue for Count II does not meet any of the specifications as enumerated in Section 508.010, then venue is proper in *any venue* in Missouri.

Relators' argument ignores that venue in Missouri is governed solely by statute. *State ex rel. Selimanovic v. Dierker*, 246 S.W.3d 931, 932 (Mo. banc 2008). There is no statutory basis for venue in Missouri for Count II, where the statutory prerequisites for venue under Section 508.010 are not met and Relators' claim has no relationship to Missouri.

Relators' citation to *State ex rel. Neville v. Grate*, 443 S.W.3d 688 (Mo. App. W.D. 2014), does not compel a contrary conclusion. Relators have sought to characterize the facts in *State ex rel. Neville* in a manner to suggest that the case is on all fours with the facts alleged in Count II of Relators' Petition. The contrary is true. The two cases are not analogous in the least.

In *State ex rel. Neville*, Palmer Neville, James W. Neville, Jr., and Jennifer Neville petitioned for a writ of prohibition to prohibit the trial court from transferring their underlying tort action from the Circuit Court of Jackson County to the Circuit Court of Bates County. In 2012, the Nevilles filed their petition in the Circuit Court of Jackson

County against Michael and Ava Christie and the Midland Land and Cattle Company. (collectively, “defendants”).

The Nevilles were Kansas residents. *State ex rel. Neville*, 443 S.W.3d at 691. The Christies were also Kansas residents. *Id.* And Midland was a Kansas corporation without a Missouri registered agent. *Id.*

The defendants filed a motion to dismiss the underlying action or, in the alternative, a motion to transfer venue to Bates County, Missouri. In their motion, the defendants argued that the underlying action should be dismissed, without prejudice, because no Missouri county constituted a proper venue under the general venue statute, Section 508.010. Alternatively, the defendants asked that the case be transferred to Bates County because Bates County had the only logical nexus to the case in that the alleged negligent entrustment, supervision, and instruction occurred on the defendants’ property in Bates County. The Nevilles opposed the motion, asserting that venue is proper in any Missouri county because Section 508.010.5 does not prescribe a venue under the particular facts and circumstances of the case. The trial court granted the defendants’ motion to transfer venue, and the underlying case was transferred to Bates County after which the Nevilles sought relief in prohibition to prevent the transfer.

The Western District, in *State ex rel. Neville v. Grate*, noted that Section 508.010.5 did not prescribe a venue under the particular circumstances of that case and that if venue were strictly construed under Section 508.010.5, then potentially an entire group of nonresident plaintiffs would be barred from asserting otherwise viable tort claims in a Missouri court *for negligent conduct that occurred in Missouri*. *State ex rel. Neville*, 443

S.W.3d at 693. The Western District then went on to discuss how this strict construction of Section 508.010 would violate the “open courts” provision of the Missouri Constitution. *Id.* at 693-94. The Western District further observed that under the defendants’ interpretation of Section 508.010.5, there would be no available Missouri venue for the Nevilles’ viable causes of action for negligent acts committed in Missouri but if Midland had a registered agent in Missouri, the Nevilles would undeniably have had venue in Missouri and, therefore, would be able to assert their claims in a Missouri court. The Western District then concluded that this was an arbitrary and unreasonable distinction because the Nevilles would be asserting, in such a case, the same cause of action for negligent acts committed in Missouri. The Western District held: “Consequently, we are left to the conclusion that the legislature did not intend to prescribe a particular venue under the present set of circumstances. Thus, it follows that, *under the facts of this case*, venue is proper in any Missouri county, including Jackson.” *Id.* at 695 (emphasis added).

The Western District, in so ruling, made plain that its decision was limited to the unique set of facts before it, namely, a claim involving “negligent conduct that occurred in Missouri.” *State ex rel. Neville*, 443 S.W.3d at 694.

Therefore, if we were to accept Defendants’ interpretation of § 508.010.5, we would be forced to conclude that the legislature intended § 508.010.5 to bar some, but not all, plaintiffs from accessing Missouri courts despite the fact that Missouri courts possessed both subject matter and personal jurisdiction over the alleged cause of action.

*Id.*

This case stands in stark contrast. Relators' claim against Defendants, as alleged in Count II of their Petition, has no nexus to Missouri. Indeed, the State of Missouri has no relationship of any kind to Relators' action. There are no Missouri residents involved, there is no corporate defendant with a registered agent in Missouri, Relators sustained no injury in Missouri, and Relators have no tort claim against Defendants for negligent conduct that occurred in Missouri.

Under these circumstances, the Western District's decision in *State ex rel. Neville* has no application. The case's holding is limited to "the present set of circumstances" then before the Western District, namely, a case involving negligent conduct occurring in Missouri.

Apparently, the Western District, in denying Relators' request for extraordinary relief did not disagree with Respondent's reading of *State ex rel. Neville* or his application of Section 508.010. Where, as here, there is no injury in Missouri and no negligent conduct occurring in Missouri, *State ex rel. Neville* has no application, and inasmuch as the Missouri General Assembly prescribed no venue for such a cause of action, Respondent properly dismissed Count II of Relators' Petition for lack of venue.

**D. The application of MO. REV. STAT. § 508.010 to this case, which deprives Relators of a venue in Missouri, does not violate the "open courts" provisions of the Missouri Constitution or the transfer procedure set forth in MO. REV. STAT. § 476.410.**

Relators argue that Respondent's Order dismissing Count II was an act in excess of his jurisdiction because dismissals are not authorized when a case has been filed in an

improper venue. In support, Relators cite MO. REV. STAT. § 476.410 and assert that Respondent lacked jurisdiction to dismiss their claim because the statute mandates transfer, not dismissal. Relators also argue Respondent's dismissal of Count II violates the "open courts" provision of the Missouri Constitution. Relators' arguments fail to save their claim for litigation in Missouri.

**1. The "open courts" provision to the Missouri Constitution does not provide guaranteed access to Missouri courts to out-of-state plaintiffs suing out-of-state defendants for injuries occurring out-of-state with no nexus to Missouri.**

Relators argue Respondents' dismissal of Count II violates the "open courts" provision of the Missouri Constitution by depriving them of the right to seek redress for their out-of-state injury in Missouri. (Relators' Brief at 11-13.) Their argument should be denied. Respondent's dismissal of Count II of Relators' Petition based on the absence of any proper Missouri venue under Section 508.010 for their claim does not violate the "open courts" provisions of the Missouri Constitution, MO. CONST., art. I, § 14.

This Court has made plain that the application of the doctrine of interstate forum *non conveniens* to bar the prosecution of a particular action within the State of Missouri does not violate the Missouri Constitution's "access to courts" provision. *See, e.g., Loftus v. Lee*, 308 S.W.2d 654, 660 (Mo. 1958); *Elliott v. Johnston*, 292 S.W.2d 589, 591-93 (Mo. 1956). "The people of Missouri are not obliged to make their courts available to lawsuits in which there is no significant Missouri nexus." *Besse v. Missouri Pacific R.R. Co.*, 721

S.W.2d 740, 742 (Mo. banc 1986) (addressing the inter-state forum *non conveniens* doctrine).

In the same way, Respondent's dismissal of Count II of Relators' action does not violate the Missouri Constitution. Section 508.010, when applied to out-of-state plaintiffs suing out-of-state defendants for out-of-state injuries with no Missouri nexus, necessarily passes constitutional muster. In *Lofus*, this Court explained as follows:

It is further obvious, we think, that neither our constitution nor our statutes were intended to mean that our courts be required to submit to an abuse of their process by nonresidents. To construe our constitution or statutes otherwise would be to afford nonresident plaintiffs a forum that could be used by them to work an injustice upon their adversaries when there was another forum available where *justice could be had by both parties*. Such construction would defeat, *pro tanto*, the constitutional provision for the establishment of courts for the administration of justice.

308 S.W.2d at 660. *See also Elliott*, 292 S.W.2d at 591-93 (This Court found no abuse of trial court discretion in its refusal to exercise jurisdiction over six lawsuits filed by Kansas residents against a Kansas resident for injuries sustained in an automobile accident occurring in Kansas.).

This Court, in passing on Section 508.010, should uphold the statute as constitutional when applied to the facts of this claim. Courts, when addressing legislative enactments, will not presume that the legislature intended to adopt an unconstitutional statute unless it clearly appears otherwise. *Spradlin v. City of Fulton*, 924 S.W.2d 259, 262-

63 (Mo. banc 1996). Indeed, when a constitutional and an unconstitutional reading of a statute are equally possible, the Court must choose the constitutional one. *Id.*

Under the facts of this claim, Respondent's application of Section 508.010 was constitutional. Relators' claim, as alleged in Count II, has no nexus to the State of Missouri, as Relators so concede. Moreover, the Missouri Constitution provides no guaranteed access to Missouri courts to out-of-state plaintiffs suing out-of-state defendants for injuries occurring out-of-state. Therefore, Relators' argument under the "open courts" provision of the Missouri Constitution should be denied.

**2. The transfer provision of MO. REV. STAT. § 476.410 has no application to this claim because there is no proper Missouri venue to which Respondent could have transferred Relators' claim.**

Relators' citation to MO. REV. STAT. § 476.410 does not save their position. (Relators' Brief at 13-14.) Section 476.410 defines what a circuit court must do when a case is filed in the wrong circuit. The statute provides as follows:

The division of a circuit court in which a case is filed laying venue in the wrong division or wrong circuit shall transfer the case to any division or circuit in which it could have been brought.

Section 476.410 has no application to this case. Under Section 508.010, there is no proper venue for Relators' claim, as alleged in Count II. Therefore, there was no venue in Missouri to which Relators' claim could have been transferred by Respondent. In the end, the dismissal of Relators' claim was the only procedural option available to Respondent.

Moreover, unlike the very narrow factual predicate in *State ex rel. Neville*, the application of Section 508.010 to the facts of the case and the necessary conclusion that there is no applicable Missouri venue for Count II of Relators' Petition operates as the legislative equivalent of the forum *non conveniens* doctrine. Although the Western District in *State ex rel. Neville* observed that Missouri does not recognize intra-state forum *non conveniens*, Missouri has long recognized the application of inter-state forum *non conveniens*. 443 S.W.3d at 692. *See Friberg v. Chrysler Motors Corp.*, 786 S.W.2d 923, 925 (Mo. App. S.D. 1990)(The doctrine of inter-state forum *non conveniens* is available to bar prosecution in Missouri of an action more appropriately heard in another state).

When inter-state forum *non conveniens* applies, dismissal is the proper remedy. *See, e.g., Besse v. Missouri Pacific R.R. Co.*, 721 S.W.2d 740, 742 (Mo. banc 1986); *Chandler v. Multidata Systems International Corp., Inc.*, 163 S.W.3d 537, 546-48 (Mo. App. E.D. 2005). Transfer is not an option. As explained by this Court, “[t]rial courts are obliged to give attention to the doctrine [of forum *non conveniens*] and to dismiss cases which have no tangible relationship to Missouri.” *Besse*, 721 S.W.2d at 742.

The same is no less true in this case. There was no proper Missouri venue for Relators' action, as alleged in Count II. Moreover, the claim has no Missouri nexus. Therefore, Respondent cannot be charged with acting in excess of his jurisdiction in dismissing Relators' claim. Under the law, the venue statute, and the facts of Relators' claim, Respondent possessed no other procedural remedy but to order the dismissal of Count II.

**E. A contrary ruling – one permitting Count II to be filed in any Missouri country – would encourage forum shopping, in derogation of Missouri’s venue statute and public policy.**

Relators’ request for extraordinary relief should be denied because the rule that Relators advance would encourage forum shopping. Such a rule would be contrary to Missouri’ venue laws specifically and Missouri public policy generally.

Venue is determined solely by statute. *State ex rel. Selimanovic v. Dierker*, 246 S.W.3d 931, 932 (Mo. banc 2008). When interpreting a statute, the Court’s primary objective is to give effect to legislative intent as reflected in the statute’s plain language. *Id.*; *State ex rel. Burns v. Whittington*, 219 S.W.3d 224, 225 (Mo. banc 2007).

Section 508.010 was enacted as part of the 2005 Tort Reform Act, H.B. 393, Laws 2005. The Missouri General Assembly’s intent, in adopting the venue reforms in House Bill 393, was to restrict the venue options for plaintiffs, so as to reduce forum-shopping. *McCoy v. The Hershewe Law Firm, P.C.*, 366 S.W.3d 586, 592 (Mo. App. W.D. 2012).

Relators’ attempt to extend the rule in *State ex rel. Neville v. Grate* to cases without any nexus to Missouri would undermine the objectives underlying the General Assembly’s enactment of Section 508.010 by encouraging forum shopping. If *State ex rel. Neville* is extended as Relators suggest, Relators, who are residents of Kansas could file suit in Jackson County against a California corporation with no registered agent in Missouri for a car accident that took place in Jackson County and then add an additional count against the California corporation for fraudulent inducement to contract in a completely unrelated

matter for a contract that they entered into for the sale of property in Kansas. As to the second claim, as in this case, Section 508.010 does not provide a proper venue.

Indeed, an extension of the holding in *State ex rel. Neville* in the manner suggested by Relators would result in a slippery slope and open the gates to forum shopping in Missouri by permitting cases with no ties to Missouri to be heard in any Missouri venue. Consider the impact that such a rule would have on Missouri's courts. Indeed, the courts in Missouri's major metropolitan areas would be inundated with case filings because of the perceptions of claimants and their counsel that those venues provide particularly favorable forums for the prosecution of their claims.

Absent a Missouri nexus, there would be nothing to prevent out-of-state plaintiffs from filing their lawsuits in Missouri against foreign corporations without registered agents in Missouri in any county of their choosing. Such a result could not have been one contemplated by the legislature.

If this were the rule, non-residents suing non-residents and foreign corporations for injuries that first occurred outside of Missouri would hold superior rights to freely choose venues for their lawsuits than Missouri residents who actually suffered injuries in Missouri. Such is not the public policy of Missouri, as expressed by the Missouri General Assembly in Section 508.010.

The Western District's decision in *State ex rel. Neville* was limited to "the present set of circumstances" then before the Western District, namely, a case involving "negligent conduct that occurred in Missouri." 443 S.W.3d 694-95. The decision, however, has no application when the claim has no nexus to Missouri. Otherwise, the venue regime

established by the Missouri General Assembly in enacting Section 508.010 would be undermined and venue would be afforded in Missouri in derogation to Section 508.010 and Missouri public policy.

Further, nothing in the enactment of Section 508.010 suggests that the absence of a specific venue for a cause of action with no relationship to Missouri was a legislative oversight. It is reasonable to conclude that the General Assembly, in the interest of preventing forum shopping, chose to foreclose a Missouri state-court forum to out-of-state plaintiffs suing out-of-state defendants for out-of-state injuries.

Indeed, the rules governing statutory interpretation compel the conclusion that the legislature made such a determination when it enacted Section 508.010. The statutory construction rule stated as “*expressio unius est exclusio alterius*,” or “the express mention of one thing implies the exclusion of another,” allows an inference that obvious omissions are generally presumed to be intentional exclusions. *See Wolff Shoe Co. v. Dir. of Revenue*, 762 S.W.2d 29, 32 (Mo. banc 1988); *Gasconade Cnty. Counseling Servs., Inc. v. Mo. Dep’t of Mental Health*, 314 S.W.3d 368, 376 n. 7 (Mo. App. E.D. 2010). *See also McCoy v. The Hershewe Law Firm, P.C.*, 366 S.W.3d 586, 594 (Mo. App. W.D. 2012) (“We can reasonably infer that the omission of “intervenor” in section 508.012 [which governs venue transfer based on the addition or removal of parties], especially in light of the legislature’s specific inclusion of third parties, was an intentional act by the legislature to exclude intervenors from falling under the purview of section 508.012.”).

**F. There is no need for discovery on the issue of venue.**

Relators conclude their argument by asserting, in the alternative, that they should be permitted to conduct discovery on the question of venue. (Relators' Brief at 14-15.) Respondent did not abuse his discretion in denying their request. Under Rule 51.045(b), there is no mandatory right to conduct discovery. The decision to permit discovery is discretionary. The rule states: "If a reply is filed, the court may allow discovery on the issue of venue and shall determine the issue."

Here, Respondent did not abuse his discretion in denying Relators' request. The facts controlling venue are undisputed. The parties are in agreement that neither Relators nor Defendants reside in Missouri, that the corporate Defendant has no registered agent in Missouri, and that Relators were injured outside of Missouri. Under these circumstances, no discovery was needed on the question of venue. The undisputed facts demonstrate beyond cavil that Relators' claim, as alleged in Count II, has no proper venue in Missouri. Therefore, the Court's preliminary rule in prohibition should be quashed and Relators' Petition for Writ of Prohibition should be dismissed. The undisputed facts and the plain language of Section 508.010 permit no other conclusion.

**CONCLUSION**

Respondent The Honorable Kevin D. Harrell, by and through counsel for Defendants Paul Hasty, Jr., and Hasty and Associates, LLC, respectfully requests the Court to quash the Court’s preliminary rule in prohibition and dismiss Relators’ Petition of Writ of Prohibition.

Respectfully submitted,

*/s/ T. Michael Ward*

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T. Michael Ward #32816  
Matthew G. Koehler #48760  
Derek H. MacKay #59078  
800 Market Street  
St. Louis, Missouri 63101  
(314) 242-5306  
(314) 242-5506  
mkoehler@bjpc.com  
dmackay@bjpc.com  
tmward@bjpc.com

Attorneys for Respondent and Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of April, 2016, the foregoing was electronically filed using the Missouri e-Filing system, which will send notice of electronic filing to all registered attorneys of record.

In addition, I certify that on the 28th day of April, 2016, I sent a copy of the foregoing to The Honorable Kevin D. Harrell, Circuit Court of Jackson County, 415 East 12th Street, 8th Floor, Kansas City, Missouri 64106.

*/s/ T. Michael Ward*

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### CERTIFICATE OF COMPLIANCE

The undersigned certifies under Rule 84.06 of the Missouri Rules of Civil Procedure that:

1. Respondent's Brief includes the information required by Rule 55.03.
2. Respondent's Brief complies with the limitations contained in Rule 84.06;
3. Respondent's Brief, excluding cover page, signature blocks, certificate of compliance, and affidavit of service, contains 5,616 words, as determined by the word-count tool contained in the Microsoft Word 2010 software with which this Respondent's Brief was prepared; and
4. Respondent's Brief has been scanned for viruses and to the undersigned's best knowledge, information, and belief is virus free.

*/s/ T. Michael Ward*

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**CERTIFICATION UNDER RULE 55.03(A)**

Pursuant to Rule 55.03(a) of the Missouri Rules of Civil Procedure, the undersigned hereby certifies that he/she signed an original of this pleading and that an original of this pleading shall be maintained for a period not less than the maximum allowable time to complete the appellate process.

*/s/ T. Michael Ward*

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