

Summary of SC89614, *State ex rel. Pansy Henley v. The Honorable James R. Bickel*
Original proceeding in prohibition arising from the Dade County circuit court, Judge
James R. Bickel

Attorneys: Henley was represented by John D. Hammons Jr. and Paula S. Green of Ellis, Ellis, Hammons & Johnson in Springfield, (417) 866-5091; and the Graveses were represented by Michelle B. O’Neal and Patrick M. Martucci of The Hershewe Law Firm PC in Joplin, (417) 782-3790.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A married couple sued another married couple for negligence following a motor vehicle accident. The trial court overruled the motion to dismiss filed by the wife who was sued, who was a passenger in the vehicle driven by her husband, on the basis that the petition failed to state a claim against her. In a 5-2 decision written by Judge William Ray Price Jr., the Supreme Court of Missouri makes absolute (permanent) its writ prohibiting the plaintiffs from proceeding against the defendant wife, as modified to allow the plaintiffs to amend their petition to state a proper claim. Prohibition is available when a defendant is entitled to be dismissed from a suit as a matter of law because the plaintiff does not state a viable theory of recovery. The rules governing liability in a joint venture or a master-servant relationship are more restrictive when the defendants are a husband and wife, and here, the petition fails to plead facts necessary for the plaintiffs to proceed against the wife. In a dissenting opinion, Judge Zel M. Fischer notes that prohibition is not the appropriate remedy in this case, and issuance of this extraordinary writ here lacks judicial restraint and circumvents the normal trial and appellate processes. The trial court undisputedly has jurisdiction to hear the case, rule on the motion to dismiss and render a final judgment, and an adequate remedy is available to Henley: a motion for summary judgment, after discovery is complete, and an appeal, if necessary.

Facts: James and Connie Graves sued Pansy Henley and her husband for negligence, alleging that the husband drove through a stop sign and caused an accident with the Graveses’ motorcycle. At the time of the accident, Henley was a passenger in the vehicle her husband was driving. The trial court overruled Henley’s motion to dismiss the Graveses’ suit for failure to state a claim on which relief can be granted. She seeks this Court’s writ prohibiting the Graveses from proceeding with the lawsuit against her.

WRIT MADE ABSOLUTE AS MODIFIED.

Court en banc holds: (1) This Court may issue a writ of prohibition when a plaintiff’s petition does not state a viable theory of recovery and the defendant seeking the writ was entitled to be dismissed from the suit as a matter of law. *State ex rel. Union Electric Co. v. Dolan*, 256 S.W.3d 77, 81 (Mo. banc 2008). Use of a writ in the context of a motion to dismiss does not depend on jurisdictional analysis, as prohibition may be appropriate to

prevent unnecessary, inconvenient and expensive litigation, which also wastes judicial resources and taxpayer money.

(2) The Graveses' petition does not plead the facts necessary to state a claim for liability against Henley either for joint venture or for master-servant. The Graveses may amend their petition to state a proper cause of action. Absent such amendment, the trial court shall dismiss their petition.

(a) Generally, to state a claim against defendants as a joint venture, a plaintiff's petition must allege an express or implied agreement among the defendants; a common purpose to be carried out by the defendants; a community of pecuniary interest in that purpose among the defendants; and an equal right of control among the defendants in the direction of the enterprise. A more restrictive approach, however, is applied when the defendants are a husband and wife. This Court previously has held that the mere existence of the marital relationship does not cause one spouse's negligence to be imputed to the other, and that, absent other facts that establish a basis for imposing liability, co-ownership of an automobile does not give a realistic right of control over its movement to a passenger-owner. *Stover v. Patrick*, 459 S.W.2d 393, 398, 401 (Mo. banc 1970). Here, the Graveses' petition falls short of the "realistic right of control" test set forth in *Stover*, which requires a practical showing of an actual ability to control the driver.

(2) Generally, a principal does not need to control or direct every movement of the agent, only that necessary to the accomplishment of the final result. A more restrictive approach, however, is applied in cases involving a husband and wife. When a wife is a passenger in a vehicle driven by her husband, she is a mere guest, as she lacks the right to control his actions, and he legally is not either her servant or her agent; therefore, any negligence by the husband in driving the vehicle cannot be imputed to her. Here, the Graveses' petition fails to plead any facts other than those supporting the existence of a wife-husband relationship between Henley and her husband.

Dissenting opinion by Judge Fischer: The author does not believe this case warrants issuance of an extraordinary writ, as a writ of prohibition is available only to prevent usurpation of judicial power, to remedy an excess of jurisdiction or to prevent an absolute irreparable harm. Here, the trial court had authority to hear the case, rule on the motion to dismiss and render a judgment that binds the parties. Once the trial court overruled Henley's motion to dismiss, the routine procedure would have been for her to seek summary judgment after discovery was complete and, if necessary, to file an appeal. The writ here will not save litigation costs, especially given that the parties agree the case will go to trial against Henley's husband even if Henley is dismissed as a defendant. Issuance of the writ in these circumstances lacks judicial restraint and circumvents the normal trial and appellate processes.