

Summary of SC89704, *State ex rel. the Kansas City Southern Railway Company v. The Honorable W. Stephen Nixon*

Original proceeding in prohibition arising from the Jackson County circuit court,
Judge W. Stephen Nixon

Attorneys: Kansas City Southern was represented by James M. Yeretsky, Gregory F. Maher, Craig M. Leff and G. Stuart Englebort of Yeretsky & Maher LLC in Kansas City, (816) 842-5566; and the McFarlands and Cockerell (the plaintiffs in the trial court) were represented by Mark E. Parrish of Parrish, Nash & Franciskato in Kansas City, (816) 221-6600, and Richard L. Rollings Jr. of Camdenton, (417) 861-2199.

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 defendant corporation challenges a trial court's action allowing plaintiffs to amend their petition, adding another defendant to make venue proper in one county, rather than granting the corporation's timely motion to transfer venue to a second county. In a 5-2 decision written by Judge Michael A. Wolff, the Supreme Court of Missouri quashes its preliminary writ prohibiting the trial court from granting the motion to amend the pleadings. Although the governing statute and rule provide that a trial court "shall" transfer a case from an improper venue to one where venue is proper, they do not require such action immediately and do not preclude allowing plaintiffs leave to amend their pleading to cure the venue defect. In a dissenting opinion, Judge Zel M. Fischer would hold the trial court had no authority, under the "shall" language of the Court's current rule, but to grant the motion to change venue to a county where venue was proper.

Facts: A Kansas City Southern Railway Company train collided, in the state of Louisiana, with a vehicle driven by Lauren Cockerell and in which Clifford McFarland, Kimberly McFarland and their daughter, Hannah McFarland, were passengers. Hannah McFarland died in the collision. The McFarlands and Cockerell – all residents of Louisiana – sued the railway in Jackson County. The railway moved to transfer venue, pursuant to Rule 51.045, to St. Louis County, arguing the plaintiffs were injured out of state, no plaintiff lived in Missouri and the railway's registered agent is in St. Louis County. Before the trial court ruled on the motion, it granted the McFarlands and Cockerell leave to amend their petition to add as a defendant railway employee Kevin McIntosh, a resident of Jackson County. Because McIntosh's addition as a defendant rendered venue in Jackson County proper under section 508.010.5, RSMo Supp. 2008, the trial court overruled the railway's motion to transfer venue. The railway seeks to make permanent this Court's preliminary writ prohibiting the trial court from enforcing its order granting the McFarlands and Cockerell leave to amend their petition to add McIntosh as a defendant.

PRELIMINARY WRIT QUASHED.

Court en banc holds: The trial court did not exceed its jurisdiction or its authority by allowing the McFarlands and Cockerell to cure the venue defect by adding McIntosh as a defendant. Jurisdiction, which describes a court's authority to hear a case, affects substantive rights. Venue, on the other hand, is a matter of process that determines, among various courts with jurisdiction, the appropriate forum for the trial. Under *State ex rel. DePaul Health Center v. Mummert*, 870 S.W.2d 820, 821 (Mo. banc 1994), venue is not a jurisdictional requirement. Nevertheless, trial courts have a ministerial duty to transfer cases to correct venues. But neither section 476.410, RSMo 2000, nor Rule 51.045 – both of which provide that a trial court “shall” transfer a case filed in an improper venue to a proper venue – require the court to make such a transfer immediately or preclude a party opposing a motion to transfer venue from filing, in response, a motion to amend the petition. Here, had the trial court done so, the McFarlands and Cockerell merely could have dismissed the action under Rule 67.02 and filed a new suit against the railway and McIntosh in Jackson County, where venue would have been proper, wasting time and money. Instead, their amendment of the pleading, by adding McIntosh as a defendant, rendered venue proper in either Jackson County, where McIntosh resided, or in St. Louis County, where the railway's registered agent was located.

Dissenting opinion by Judge Fischer: The author would make absolute (permanent) this Court's preliminary writ of prohibition. At the time the motion to transfer venue was filed, venue was improper in Jackson County. Under *State ex rel. Dilliard's, Inc. v. Ohmer*, 190 S.W.3d 570, 573 (Mo. App. 2006), the trial court had no option but to transfer the case under Rule 51.045(a), and nothing in section 508.012, RSMo Supp. 2008 – which presupposes that venue is proper – gives the trial court authority to act in excess of its authority by adding another party to cure a venue defect. As such, the trial court's only option was to grant the timely motion to transfer venue to St. Louis County.