

**Summary of SC91434, *State of Missouri ex rel. Neal W. Holzum, M.D. v. The Honorable Nancy L. Schneider*, consolidated with SC91418, *State of Missouri ex rel. BC Missouri Emergency Physicians, LLP, Scott L. Landry, M.D., and David Poggemeier, M.D. v. The Honorable Nancy L. Schneider***

Proceedings originating in the St. Charles County circuit court, Judge Nancy L. Schneider  
Argued and submitted May 10, 2011; opinion issued July 19, 2011

**Attorneys:** Holzum was represented by Michael J. Smith and Tricia J. Mueller of Lashly & Baer PC in St. Louis, (314) 621-2939; BC Emergency Physicians, Landry and Poggemeier were represented by Terese A. Drew and Kara L. Kezios of Hinshaw & Culbertson LLP in St. Louis, (314) 241-2600; Eric Katz was represented by Mark T. McCloskey and Patricia N. McCloskey of McCloskey PC in St. Louis, (314) 721-4000; and Barnes-Jewish St. Peters was represented by Peter J. Krane and Jennifer C. Hansen of Williams, Venker & Sanders LLC in St. Louis, (314) 345-5000.

*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:** Medical professionals seek a writ prohibiting a circuit court from allowing a man's amended wrongful death suit against them to proceed. In a unanimous decision written by Judge Michael A. Wolff, the Supreme Court of Missouri makes permanent its preliminary writ. Because the man failed to show the medical professionals received notice of the original lawsuit – filed just before the three-year statute of limitations on the action expired – the applicable rule prohibits the amended petition – filed two years later – to relate back to the date of the original petition's filing. As a result, the statute of limitations bars the amended petition against the medical professionals.

**Facts:** Eric Katz's mother died October 2, 2005, as a result of head injuries she sustained in a fall. At 5 p.m. October 2, 2008, attorneys for Katz filed a wrongful death suit against Washington University and/or its medical center, Barnes-Jewish St. Peters Hospital, and John and Jane Doe as the health-care providers who treated Katz's mother at the Barnes-Jewish St. Peters Hospital emergency room. The attorneys first were contacted only 24 minutes before the three-year statute of limitations on the cause of action expired. The parties then engaged in discovery. More than two years after the suit was filed – and more than five years after Katz's mother's death – Katz amended the petition, deleting Washington University and/or its medical center as well as John and Jane Doe, and adding BC Emergency Physicians LLC, Dr. Scott Landry and Dr. David Poggemeier in place of John Doe and Dr. Neal Holzum in place of Jane Doe. The newly added defendants moved to dismiss the amended petition on the ground that the action against them was not commenced within the three-year statute of limitations period and that the amendment adding them did not "relate back" to the date of the original filing. The circuit court overruled the motion to dismiss; the doctors and BC Emergency Physicians seek this Court's writs prohibiting the circuit court from proceeding on the suit.

**PRELIMINARY WRITS MADE PERMANENT.**

**Court en banc holds:** The statute of limitations bars Katz’s lawsuit against Holzum, Landry, Poggemeier and BC Emergency Physicians. To determine whether an amended petition relates back to the date the first petition was filed, this Court looks to Rule 55.33(c) and the common law principle of “misnomer.” Under either the rule or the principle, the correct party must have been notified of the original lawsuit within the time for serving the action. In the misnomer situation, the correct party simply was misnamed in the original lawsuit, but it is clear from the name used who or what the party is. In such a situation, the amended petition relates back to the date of the original filing as long as it is clear the party had notice of the suit. *Watson v. E.W. Bliss Co.*, 704 S.W.2d 667, 670 (Mo. banc 1986). Under Rule 55.33(c), there can be a change in the party, but the correct party must have received notice of the original action within the time for serving the lawsuit. Here, there is no showing that the three doctors and BC Emergency Physicians received notice of the original lawsuit. The original petition’s description of the John and Jane Doe defendants was vague and insufficient for an actual defendant to know or should know that, but for a mistake concerning the proper party’s identity, the action would have been brought against the actual defendant, as Rule 55.33(c)(2) requires. Katz had more than two years after filing the original petition, during which he conducted discovery to ascertain the identities of the actual defendants. Because he has not shown these actual defendants received notice of the original lawsuit, the requirements of Rule 55.33(c) for relation back are not met.