

**IN THE
MISSOURI SUPREME COURT**

MURLIN R. PHILLIPS,)	
)	
Appellant,)	Appeal No. SC88442
)	
vs.)	
)	
JASPER N. EDMUNDSON, JR.,)	
AND EDMUNDSON, SUMMERS,)	
HOPKINS & EDMUNDSON,)	
)	
Respondents.)	

RESPONDENTS' BRIEF

On Appeal to the Missouri Supreme Court
From the Circuit Court of Stoddard County, Missouri

Honorable Thomas L. Ray, Special Judge

Murlin R. Phillips, 1076701
Jefferson City Correction Center
8200 No More Victims Rd.
Jefferson City, MO 65101

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Appellant acting pro se

Attorney for Respondents

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JURISDICTIONAL STATEMENT

Respondents only partially adopt Appellant’s Jurisdictional Statement. The Appellant is correct in that the Supreme Court of Missouri maintains jurisdiction to hear the constitutionality challenge of RSMo. § 460.100, pursuant to Article V, Sec. 3 of the Missouri Constitution. However, Respondents suggest that this Honorable Court lacks jurisdiction over Appellant’s cause of action.

The Appellant’s action was dismissed without prejudice in the Circuit Court of Stoddard County. (L.F. 24) Dismissal without prejudice is not a final judgment or order, nor is it allowed under any other appealable circumstances or exceptions in RSMo. § 512.020. Brown v. Lawless, et al., 2007 WL 1855607 (Mo.App.

E.D.) (*citing* Ampleman v. Schweiss, 969 S.W.2d 862, 863 (Mo.App. E.D. 1998)).

The Appellant may still bring his action in a lower court having jurisdiction. Due to lack of finality, this matter is not ripe for appeal and therefore, this Court should not assume jurisdiction over the matter.

Respondents' formal Motion to Dismiss, also filed with this Court, discusses this jurisdictional objection further and in more detail.

STATEMENT OF FACTS

Appellant, an inmate in the Missouri Department of Corrections, filed a civil action for legal malpractice in the Circuit Court of Butler County LF 56-59. Respondents filed their first motion to dismiss on December 16, 2004. LF 54-55. Appellant then filed his response to Respondents' Motion to Dismiss December 27, 2004. LF 52-53. On October 27, 2006, a status hearing via teleconference was conducted by the Honorable Thomas Ray between the Appellant and Respondents. LF 40. During said conference, the issue was raised as to whether the Appellant's case should be stayed pending his release from the Missouri Department of Corrections. LF 38. The Appellant opposed the stay of his cause of action, and was granted thirty (30) days from October 27, 2006 to brief the Court on the issue of whether his cause of action should be stayed. LF 38. Appellant filed his brief in opposition to the stay of this case pending release of incarceration on November 15, 2006. LF 27-37.

Respondents filed their second Motion to Dismiss based on Chapter 460 of the Missouri Revised Statutes on December 14, 2006. LF 25-26. The Trial Court dismissed Appellant's petition without prejudice on December 18, 2006. LF 24. Appellant filed his opposition to the Motion to Dismiss on December 22, 2006. LF 20-22.

Appellant filed a Motion Under Rule 75.01 Missouri Supreme Court Rule to Correct and Modify, and Request for Nunc Pro Tunc, for Appointment of Counsel and/ to Certify the Case to the Missouri Supreme Court on January 3, 2007. LF 10-19. Appellant filed his notice of appeal January 12, 2007. LF 7-9.

POINTS RELIED ON

POINT I

The Trial Court's dismissal of the Appellant's case should be upheld because the Estates of Convicts Statute, RSMo. § 460.100, does not violate the 5th or 14th Amendments to the United States Constitution, nor does it violate Article 1, Sections 2, 10 or 14 of the Missouri Bill of Rights in that the statute neither denies convicts access to courts, nor does it deny convicts due process, but rather the statute simply allows the appointment of a trustee to manage a convict's estate for administrative and procedural convenience purposes.

Berdella v. Pender, 821 S.W.2d 846 (Mo. banc. 1991)

POINT II

This Court should not address Appellant's request for sanctions because the Respondents did not take the very action Appellant claims is deserving of sanctions in that Respondents did not file a motion to stay proceedings in the Circuit Court of Stoddard County.

ARGUMENT

POINT I

The Trial Court's dismissal without prejudice of the Appellant's case should be upheld because the Estates of Convicts Statute, RSMo. § 460.100, does not violate the 5th or 14th Amendments to the United States Constitution, nor does it violate Article 1, Sections 2, 10 or 14 of the Missouri Bill of Rights in that the statute neither denies convicts access to courts, nor does it deny convicts due process, but rather the statute simply allows the appointment of a trustee to manage a convict's estate for administrative and procedural convenience purposes.

The Appellant does not cite any authority regarding any application of RSMo. § 460.100 that violates the 5th or 14th Amendments to the United States Constitution. Therefore, Respondents do not address that allegation.

The Appellant's allegation that RSMo. § 460.100 violates Article 1, Sections 2, 10 or 14 of the Missouri Bill of Rights is similarly broad and unsubstantiated. However, Respondents assume that Appellant has indirectly alleged that RSMo. § 460.100 has denied him due process and access to the court system as are contained within those sections of the Missouri Bill of Rights. This issue, however, is not one of first impression, and the Appellant's position is not

supported. Therefore, the Appellant's constitutionality challenge of RSMo. § 460.100 should fail.

Appellant's brief cites Berdella v. Pender, a 1991 Missouri Supreme Court case in which a convict raised nearly the same constitutionality challenge to the same statute, RSMo. § 460.100. *See* Berdella v. Pender, 821 S.W.2d 846, 851 (Mo. banc 1991). The Appellant, however, misconstrues that case's outcome. In Berdella, this Court outlined the constitutionality of RSMo. § 460.100, ruling specifically that RSMo. § 460.100 adequately allows convicts access to courts and does not deny convicts due process:

“The provisions of Chapter 460 do not unconstitutionally infringe on an inmate's right of access to the courts . . . Chapter 460 is a valid and constitutional mechanism for handling the problems related to an inmate's estate during his incarceration.”

Berdella, 821 S.W.2d at 851.

The statute does not deny the convict from suing on his own behalf, nor does it restrict an inmate from personally petitioning for the appointment of a trustee that may sue on behalf of his estate. Id at 850. Thus, Berdella further held, “the convict, or the trustee on behalf of the convict's estate, is allowed to sue in all cases,” and, “an inmate may now request the appointment of a trustee when the inmate believes that the estate would be better managed by someone on the

outside.” Id. A trustee’s powers are limited to those related to the estate of the convict. Id. The purpose of the statute is merely to protect the interests associated with an inmate’s estate while he is incarcerated; actions that do not involve the estate of the convict are not covered by Chapter 460. Id.

The Missouri Supreme Court in Berdella firmly objected to the constitutionality challenge raised. Here, the Appellant’s attempted use of case law otherwise is wrong, not to mention excessive and confusing. The Appellant’s brief does not contain any citations to authority that show he has been denied due process or court access under RSMo. § 460.100; he merely alleges RSMo. § 460.100 violates Article 1, Sections 2, 10 and 14 of the Missouri Bill of Rights. Furthermore, the Appellant cites, Lynk v. LaPorte, Superior Court No. 2, 789 F.2d 554 (C.A. 7 1986), a case in regard to prisoners’ rights to divorce, a right that is not under consideration, nor is divorce a concern of a trustee under RSMo. § 460.100. Additionally, most cases cited by Appellant are not binding precedent. For example, three cases, only one of which relates to the Missouri statute, discuss the Civil Death Statute. The same was repealed in Missouri by L.1977, S.B. No. 426, p. 658, § 1, eff. Jan. 1, 1979.

Generally speaking, though, these cases do present the rule that prisoners should not be denied court access or due process. This idea is not challenged by the

Respondents. Berdella reinforces the Appellant's right to court access and due process ideals. Berdella, 821 S.W.2d at 850-51. However, Berdella also clearly held that RSMo. § 460.100 is in accordance with the same. Id.

As such, the Appellant has left no constitutionality question to determine and his argument fails at the hand of one of the very cases he relies on. Therefore, RSMo. § 460.100 must be upheld as constitutional.

POINT II

This Court should not address Appellant's request for sanctions because the Respondents did not take the very action Appellant claims is deserving of sanctions in that Respondents did not file a motion to stay proceedings in the Circuit Court of Stoddard County.

The Appellant states in his second point on appeal, "The motion to stay civil action in this case borders [sic] on being patently frivolous so that appellant is entitled to sanctions and cost." The Legal File clearly reflects that Respondents did not move to stay the civil action while in the Circuit Court of Stoddard County. LF 24. In fact, it was the Honorable Thomas L Ray, the Circuit Court judge, that suggested staying the motion. LF 38. Respondents only moved to dismiss, which was sustained. LF 24-26. Therefore, the Trial Court's granting of Respondents' Motion to Dismiss is evidence enough that the motion was not frivolous. Simply put, Respondents took no action to give rise to a claim for sanctions.

CONCLUSION

The Estates of Convicts Statute, RSMo. § 460.100, does not violate the 5th or 14th amendments to the United States Constitution, nor does it violate Article I, Sections 2, 10 or 14 of the Missouri Bill of Rights. The statute does not deny convicts access to courts, nor does it violate any due process provisions in the United States Constitution or the Missouri Bill of Rights. Prior precedent set by this Court holds accordingly. The statute merely allows for the appointment of a trustee to manage the affairs of a convict as a convenience factor. Therefore, Appellants complaint that the statute is unconstitutional must fail.

Further, Respondents did not file a motion to stay proceedings in the Circuit Court below. Therefore sanctions founded on an alleged motion to stay are improper.

With no constitutional issue left to be resolved, the Judgment of the Trial Court in favor of the Respondents should be affirmed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

COMES NOW Respondents, Jasper N. Edmundson, Jr. and the firm Edmundson, Summers, Hopkins & Edmundson, by and through their attorney, Curtis O. Poore of the law firm Jones & Deimund, L.C., and certifies this Brief complies with the limits in Rule 84.06(b) insofar as it is a Respondent's Brief with less than 27,000, containing only 1912 words, and that two copies of the same were served upon the Appellant by United States mail, postage prepaid, addressed to Murlin R. Phillips, Jefferson City Correction Center, 8200 No More Victims Rd., Jefferson City, MO 65101 on this ____ day of August, 2007.

Rule 84.06(g) requires that an electronic copy of Respondents' brief, scanned for and free of viruses, be served upon the adverse party. However, the Appellant is incarcerated in the Jefferson City Correction Center with no access to computers or electronic devices used to open a brief in electronic form. Furthermore, metallic objects, such as on a diskette, or the sharp edges of a broken CD may be used as a weapon and would likewise be considered contraband. Therefore, and upon direction by the Office of General Counsel at the same facility, that such is common practice, Respondents have foregone serving the Appellant with an electronic copy of this brief.

Respectfully Submitted,

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APPENDIX

SECTION

PAGE

§460.100 RSMo

A1

V.A.M.S. 460.100: Trustee may sue and be sued--right to attorney and costs of litigation

Such trustee may sue for and recover, in his own name, any of the estate, property or effects belonging to, and all debts and sums of money due, or to become due, to such imprisoned convict, and may prosecute and defend all actions commenced by or against such convict. By leave of court, such trustee may employ counsel and, subject to court approval, pay reasonable attorney fees and expenses of litigation, to prosecute or defend such actions.