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Argument

The Court should take notice that Appellant is not a trained Attorney and is pro se.

Respondent's Jurisdictional Statement is incorrect, this Court does have jurisdiction over Appellant's cause of action. This is better explained in the Missouri Attorney General's Amicus Brief, that is filed in this case.

The order to dismiss without prejudice, in the trial court, is a final judgment, because it bars Appellant from filing the case in his own name.

See Appendix Exhibit A, the trial courts order to dismiss states:

"--- The Court finds that Plaintiff has not brought this action through a Trustee as provided in Chapter 460."

See Appendix Exhibit B, the Respondent's Motion to Dismiss the action in the trial court, it states:

"4. Plaintiff failed to comply with the requirements of Chapter 460 of the Missouri Revised Statutes in that Plaintiff has not requested the appointment of a trustee so that this action can be brought in the trustee's name."

See Appendix Exhibit D, a simple reading of Chapter 460 indicates Respondent has read more than what this statute says.

Respondent, in this Court, has done a 180 degree reversal from their trial court position on their intrepertation of the meaning of RSMo. Chapter 460. Respondent's brief in this Court

states:

"--- the Statute simply allows the appointment of
a trustee ---"

This is better explained in Appellant's Motion for
Equitable Estoppel and Motion to Strike and Response, and
Memorandum of Law in Support of Motion, that was recently filed
in this Court.

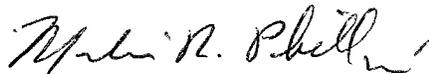
Respondent and Judge Ray's version of RSMo. Chapter
460, as applied to dismiss Appellant's trial court case
is unconstitutional. See their version in Appendix Exhibits
A,B,C. This is better explained in the Missouri Attorney
General's Amicus Brief.

This Court cannot allow these morally deficient and
unethical actions to take place in Missouri Courts. Sanctions
should be placed against Respondents, Attorney Poore and
Judge Ray. Upon reversal Judge Ray should be removed from
the case and a new Judge appointed. Appellant should be
awarded cost incurred in this action and compensated for the
illegal delay in the trial court.

Conclusion

Respondent applied an unconstitutional version of RSMo.
Chapter 460 to have Appellant's trial court case dismissed.
The decision of the trial court should be reversed.

Respectfully submitted.

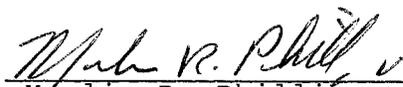


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Certificate of Service

I hereby certify that a true copy of this Reply Brief
was mailed postage prepaid this 22nd day of August, 2007 to:

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Cape Girardeau, Mo. 63703



Marlin R. Phillips

Appendix

Exhibit's	A. Judge Ray's Order to Dismiss	1
	B. Defendant's Motion to Dismiss	2-3
	C. Defendant's Memorandum in Support of Defendant's Motion to Dismiss	4-7
	D. RSMo. Chapter 460, Section 460.100 and Section 460.250	8-9

IN THE CIRCUIT COURT OF STODDARD COUNTY, MISSOURI

MULIN R PHILLIPS,)
)
 Plaintiff,)
)
 vs.)
)
 JASPER N EDMUNDSON JR.)
)
 Defendant.)

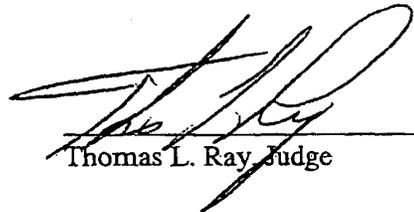
Cause No. 05SD-CC00081

DISMISSED WITHOUT PREJUDICE

Comes Now the Court on the 14 day of December, 2006 and Dismisses Plaintiff's Petition Without Prejudice. The Court finds that Plaintiff has not brought this action through a Trustee as provided in Chapter 460.

SO ORDERED!

cc: *Murten Phillips*
Curtis Poore



Thomas L. Ray, Judge

FILED
 DEC 18 2006
 SHERRY DISNEY
 CIRCUIT CLERK
 STODDARD COUNTY, MO

exh A
AT Pg 1

IN THE CIRCUIT COURT OF STODDARD COUNTY, MISSOURI

MURLIN R. PHILLIPS,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 05SD-CC00081
)	
JASPER N. EDMUNDSON, JR.,)	
)	
Defendant.)	

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S PETITION

COMES NOW Defendant, by and through counsel, and for his Motion to Dismiss Plaintiff's Petition states to the Court as follows:

1. Plaintiff has filed a Petition against Defendant alleging legal malpractice and fraud.
2. The Petition was filed by Plaintiff in his individual name and not in the name of a properly appointed trustee.
3. Plaintiff is now in the custody of the Missouri Department of Corrections and was at the time this action was filed.
4. Plaintiff failed to comply with the requirements of Chapter 460 of the Missouri Revised Statutes in that Plaintiff has not requested the appointment of a trustee so that this action can be brought in the trustee's name.

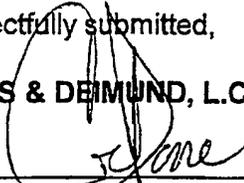
WHEREFORE, for the reasons stated above, and for the reasons in the attached Memorandum in Support of Defendant's Motion to Dismiss, the Defendant respectfully requests that Plaintiff's Petition be dismissed; that Defendant be discharged with costs

A2
exh B
Pg 2

herein incurred and expended; and for such other relief as the Court deems proper in the circumstances.

Respectfully submitted,

JONES & EDMUND, L.C.

By: 

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ATTORNEY FOR DEFENDANT

Certificate of Service

The undersigned hereby certifies that a copy of the above and foregoing was served upon the attorneys of record by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing same in the U.S. Mail at Cape Girardeau, Missouri, this 13th day of Dec., 2006.



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PG 3
A8

IN THE CIRCUIT COURT OF STODDARD COUNTY, MISSOURI

MURLIN R. PHILLIPS,)
)
 Plaintiff,)
)
 vs.)
)
 JASPER N. EDMUNDSON, JR.,)
)
 Defendant.)

Case No.: 05SD-CC00081

DEFENDANT'S MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS AND IN RESPONSE TO PLAINTIFF'S
BRIEF IN OPPOSITION TO A STAY ORDER

Defendant represented Plaintiff in a first degree murder case in which the State was seeking the death penalty. The Defendant successfully resolved the case by way of a plea agreement in which the State reduced the charge to second degree murder thereby removing the possibility of a sentence of death in return for the Plaintiff's guilty plea. The Plaintiff received a sentence of twenty-five (25) years in the Missouri Department of Corrections. The Plaintiff testified at his sentencing that he was satisfied with Defendant's services.

Despite his previous testimony, Plaintiff has filed a Petition against Defendant alleging legal malpractice and fraud. During a telephone conference with all parties, this Honorable Court expressed its concern about the logistics of proceeding with this case since the Plaintiff is now incarcerated in the Missouri Department of Corrections. This Court suggested the possibility of staying the Plaintiff's civil action until such time as Plaintiff is released from the Missouri Department of Corrections. The Plaintiff expressed his objection and this Court granted the Plaintiff time to file a Brief in Opposition of the Court's proposed Stay Order.

AA EXH C
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The Defendant has cited the case of Thompson vs. Bond, 421 F.Supp. 878 (W.D. 1976). In Thompson, the Plaintiffs challenged the constitutionality of Missouri Revised Statute §222.010 (1969), which was known as the "Civil Death Statute" and read as follows:

"A sentence to imprisonment in an institution within the State Department of Corrections for a term less than life suspends all civil rights of the person so sentenced during the term thereof, and forfeits all public offices in trust, authority and power; and the person sentenced to imprisonment for life shall thereafter be deemed civilly dead."

The Court in Thompson held that the Civil Death Statute with its "...broad and unqualified language, deprives all State inmates of the right to file any type of civil action in State Court contravenes the constitutional imperative that citizens are entitled to reasonable access to courts." Thompson, 882.

It appears that the Thompson case prohibits this Court from issuing an Order staying the Plaintiff's case until he is released from the Missouri Department of Corrections. However, the analysis does not stop there.

The Missouri Supreme Court in the case of Berdella vs. Pender, 821 SW2d 846 (Mo. 1991) addressed the Thompson holding. Berdella filed a Petition alleging legal malpractice by Pender. Pender filed a Motion to Dismiss on the basis that Berdella did not have the legal capacity under Chapter 460, RSMo. Supp. 1990, to file the Petition. The Circuit Court granted Pender's Motion and dismissed the case. The Missouri Supreme Court affirmed the dismissal.

Chapter 460 of the Revised Statutes of Missouri deals with the "estates of convicts" and Section 460.100 sets out the appointment of a trustee. That Section provides as follows:

"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's fees and expenses of litigation, to prosecute or defend such actions."

Section 460.250 provides for the compensation of the trustee:

"The trustee shall be allowed reasonable compensation to be determined by the court together with expenses of administration to be paid from the trust estate."

On appeal, Berdella claimed that Chapter 460 was invalid because of the manner in which it was passed by the Legislature. After reciting the facts surrounding the passage of Chapter 460 and much discussion of this issue, the Missouri Supreme Court concluded that Chapter 460 was validly passed by the Legislature.

Berdella also claimed on appeal that Chapter 460 was unconstitutional and cited Thompson vs. Bond, supra, in support of his claim. The Missouri Supreme Court found that Chapter 460 was not unconstitutional.

In so holding, the Missouri Supreme Court first identified the concerns the Court in Thompson had with the Civil Death Statute. Those concerns were first, only a trustee could sue on behalf of the inmate and second, there was no mechanism for an inmate to request the appointment of a trustee. In effect, an inmate had no real way to access the courts because only a trustee could bring the action and there was no way to appoint a trustee.

The Missouri Supreme Court recognized that Chapter 460 does not have the same constitutional problems as those found by the court in Thompson with the Civil Death Statute. The Missouri Supreme Court first noted that there are some cases that do require a trustee and some that do not require a trustee.

"...If the inmate is seeking an injunction, writ or decree that would have a direct affect on his personal status, then he has a right to file the suit and pursue it without

(emphasis own) the involvement of the trustee. If the injunction, writ, or decree would affect an inmate's property or damages are sought, then, if a trustee has been appointed, the inmate cannot sue on his own behalf; and the trustee is the only person authorized to pursue the action...." Berdella at 850, Footnote 2.

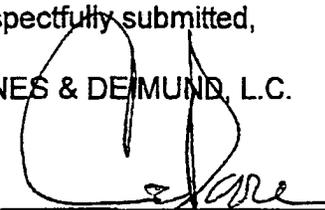
In those cases where a trustee is not required, the inmate can file the action in his own name and on his own behalf. In those cases in which a trustee is required, the inmate now has a mechanism for requesting the appointment of a trustee. "This change answers a key objection in Thompson, the inability of an inmate to request a trustee." Berdella at 850.

The Plaintiff's case is one which requires the appointment of a trustee. Chapter 460 provides the mechanism for Plaintiff's request for a trustee. Just as was done in Berdella, Plaintiff's Petition must be dismissed so that he can comply with the requirements of Chapter 460.

Respectfully submitted,

JONES & DEIMUND, L.C.

By:

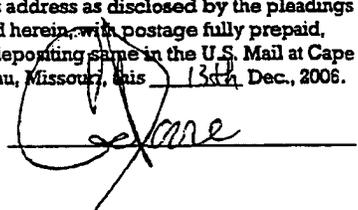


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AT 897

Missouri Revised Statutes

Chapter 460 Estates of Convicts Section 460.100

August 28, 2006

Trustee may sue and be sued--right to attorney and costs of litigation.

460.100. 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.

(RSMo 1939 § 9234. Repealed 1990 H.B. 974. A.L. 1990 S.B. 563)

Prior revisions: 1929 § 12978; 1919 § 2301; 1909 § 2901

(1991) Where senate bill amended and reenacted two sections of chapter without mention of other sections of chapter, senate bill was more specific than house bill which only repealed section and senate bill takes precedence even though house bill was signed by governor twenty-six days after senate bill and despite contention that a later in time rule should be applied: bills were enacted in same session, and thus had same effective date. *Berdella v. Pender*, 821 S.W.2d 846 (Mo. banc).

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Missouri General Assembly

Missouri Revised Statutes

Chapter 460 Estates of Convicts Section 460.250

August 28, 2006

Compensation of trustee.

460.250. The trustee shall be allowed reasonable compensation to be determined by the court together with expenses of administration to be paid from the trust estate.

(RSMo 1939 § 9253. Repealed 1990 H.B. 974. A.L. 1990 S.B. 563)

Prior revisions: 1929 § 12997; 1919 § 2320; 1909 § 2920

(1991) Where senate bill amended and reenacted two sections of chapter without mention of other sections of chapter, senate bill was more specific than house bill which only repealed section and senate bill takes precedence even though house bill was signed by governor twenty-six days after senate bill and despite contention that a later in time rule should be applied; bills were enacted in same session, and thus had same effective date. *Berdella v. Pender*, 821 S.W.2d 846 (Mo. banc).

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