

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI EX REL.)
SEMSA SELIMANOVIC, et al.,)
)
Relators,)
)
vs.)
)
HON. ROBERT DIERKER, JR.,)
CIRCUIT COURT JUDGE, DIVISION 18,)
MISSOURI CIRCUIT COURT,)
TWENTY-SECOND JUDICIAL CIRCUIT,)
CITY OF ST. LOUIS,)
)
Respondent.)

Appeal No.: SC88697

Original Proceeding in Prohibition

On Preliminary Rule in Prohibition From the Supreme Court of Missouri
to the Honorable Robert Dierker, Jr., Circuit Judge of the
Circuit Court of the City of St. Louis

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A. The nature of Relators' injury is the resulting financial loss from their lack of an enforceable judgment against the individuals and/or entities responsible for Serif Selimanovic's death. That financial loss occurred in the City of St. Louis, where, but for Defendant's negligence, Relators would have an enforceable judgment;

B.	Relators were <u>not</u> first injured where Defendant’s office is located because Relators suffered no trauma or exposure at Defendant’s office, and were not injured at Defendant’s office; and	
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JURISDICTIONAL STATEMENT

Relators Semsal Selimanovic, Alen Selimanovic, Dervis Selimanovic, by his Next Friend Semsal Selimanovic, and Jasmin Selimanovic, by his Next Friend Semsal Selimanovic, brought this original proceeding in prohibition to obtain interlocutory review of an order entered by Respondent, the Honorable Robert Dierker, Jr., Presiding Judge of Division 18 of the Circuit Court of the City of St. Louis, on July 17, 2007, which granted Defendant's, Daniel P. Finney, Jr. d/b/a Daniel P. Finney, Jr., Attorney at Law, Motion to Transfer Venue from the Circuit Court of the City of St. Louis to the Circuit Court of the County of St. Louis. (A.1-5.) The underlying action, *Semsal Selimanovic, et al. v. Daniel P. Finney, Jr. d/b/a Daniel P. Finney, Jr., Attorney at Law*, Case No. 0722-CC00369 (Mo. Cir. Ct., City of St. Louis), is a legal malpractice action arising out of Defendant's failure to file a wrongful death action on behalf of Relators when engaged to do so. (A. 6-10.)

The Court has jurisdiction because it issued a Preliminary Writ of Prohibition on September 25, 2007. Under Article V, Section 4 of the Missouri Constitution, the Court has authority to determine and issue remedial writs.

STATEMENT OF FACTS

This original proceeding in prohibition arises from *Semsa Selimanovic, et al. v. Daniel P. Finney, Jr. d/b/a Daniel P. Finney, Jr., Attorney at Law*, Case No. 0722-CC00369 (Mo. Cir. Ct., City of St. Louis), a legal malpractice action filed in the Circuit Court of the City of St. Louis. Relator Semsa Selimanovic is the surviving wife of Serif Selimanovic, and Relators Alen Selimanovic, Dervis Selimanovic and Jasmin Selimanovic are the surviving children of Serif Selimanovic. (A. 6-7.) On February 15, 2007, Relators collectively filed a Petition against Defendant, Daniel P. Finney, Jr. d/b/a Daniel P. Finney, Jr., Attorney at Law, alleging legal malpractice for Defendant's failure to timely file a wrongful death claim for the death of Serif Selimanovic when engaged to do so. (A. 6-10.)

Collectively, Relators are the class of persons who could have rightfully prosecuted and shared in the proceeds of a wrongful death claim for the death of Serif Selimanovic. (A. 7.) In Relators' Petition, it is alleged that Serif Selimanovic died on July 19, 2002 while in the employ of Brentwood Plastics, Inc. (A. 6-10.) It is further alleged that on or about August 8, 2002 Semsa Selimanovic employed Defendant to act as her and her children's attorney to prosecute a wrongful death claim on their behalf thereby creating an attorney/client relationship. (A. 6-10.) It is further alleged that Defendant failed to file a wrongful death claim in the City of St. Louis Circuit Court before the expiration of the applicable statute of limitations, forever barring their right to recover for the death of Serif Selimanovic, and thereby causing Relators damage. (A. 6-10.)

Relators allege in their Petition that Serif Selimanovic's death was the direct and proximate result of the negligence of several individuals and entities including the supervisors and owners of Brentwood Plastics by reason of the "something more" doctrine recognized under Missouri law. (A 6-10.) On April 18, 2007, Defendant filed Defendant's Motion to Transfer Because of Improper Venue. (A. 11-18.) Therein, Defendant sought further detail regarding the identities and residencies of the unnamed defendants that were alleged to support venue in the City of St. Louis for the underlying wrongful death claim. (A. 12.)

On May 14, 2007, Relators timely filed Plaintiffs' Reply to Defendant's Motion to Transfer Because of Improper Venue and Plaintiffs' Motion to Allow Discovery on the Issue of Venue. (A. 19-37.) Therein, Relators identified Sam Longstreth as a supervisor of Serif Selimanovic at the time of his death, and provided Relators' basis for the liability of Sam Longstreth had the underlying wrongful death claim been timely filed. (A. 22-23.) Moreover, Relators attached exhibits establishing Sam Longstreth's residency in the City of St. Louis from the time of Serif Selimanovic's death up to the time that the statute of limitations expired. (A. 31-33.)

On or about June 20, 2007, Defendant filed Defendant's Response to Plaintiffs' Reply to the Motion to Transfer Venue. (A. 38-82.) On or about June 28, 2007, Relators filed Plaintiffs' First Amended Reply to Defendant's Motion to Transfer Because of Improper Venue and Plaintiffs' Motion to Allow Discovery on the Issue of Venue, as well as a Motion for Leave to file the same. (83-130.) Therein, Relators cited and attached additional exhibits establishing their basis for liability of Sam Longstreth in the

underlying wrongful death claim had it been timely filed. (A. 104-128)

On or about July 2, 2007, Defendant filed Defendant's Response to Plaintiffs' First Amended Reply to the Motion to Transfer Venue. (131-139.) Thereafter, on or about July 9, 2007, Relators filed Plaintiffs' Sur-reply to Defendant's Response to Plaintiffs' Reply to the Motion to Transfer Venue. (A. 140-147.) In response, Defendant filed Defendant's Response to Plaintiffs' Sur-reply to the Motion to Transfer Venue on July 10, 2007. (A. 148-150.) A great majority of the pleadings concerned arguments as to whether Sam Longstreth would have been a proper defendant in the underlying wrongful death claim, and, thus, whether the underlying wrongful death claim would have been permitted in the City of St. Louis based on the residency of Sam Longstreth. (See Generally A. 11-150.) The trial court found that a colorable claim could have been made against the City of St. Louis resident. (A. 3.)

While the venue issue was being briefed, the deposition of Defendant was taken by Relators on June 7 and 8, 2007. His testimony, which was cited in the pleadings on the venue issue, was that plaintiffs' cases statistically do better in the City of St. Louis, and that he would have preferred to file the wrongful death claim in the City of St. Louis. (A. 138-139.)

On July 10, 2007, Respondent heard arguments on Defendant's Motion to Transfer Venue. (A. 151.) On July 17, 2007, Respondent granted Defendant's Motion to Transfer Venue, and transferred the case to St. Louis County. (A. 1-5.) In so ruling, Respondent held that: "a colorable claim could have been asserted against the decedent's supervisor [Sam Longstreth], and that such a claim would have permitted defendant to

file the wrongful death action in the City of St. Louis.” (A. 3.) Respondent stayed the transfer to St. Louis County for ten days to permit Relators to seek relief in the Eastern District of the Missouri Court of Appeals. (A. 5.)

On July 26, 2007, Relators filed a Petition for Writ of Prohibition in the Eastern District of the Missouri Court of Appeals, being Appeal No. ED90033 (Mo. App. E.D.) On July 31, 2007, the Eastern District denied their Petition. (A. 152.) On August 1, 2007, Respondent again stayed the transfer to St. Louis County for ten days to permit Relators to seek relief from this Court. (A. 153.) This original proceeding in prohibition followed.

POINT RELIED ON

- I. Relators are entitled to an order prohibiting Respondent from transferring venue from the Circuit Court of the City of St. Louis to the Circuit Court of the County of St. Louis, because Section 508.010, R.S.Mo. Supp. 2005 permits venue in the Circuit Court of the City of St. Louis, in that venue shall be in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action, and:
 - A. The nature of Relators' injury is the resulting financial loss from their lack of an enforceable judgment against the individuals and/or entities responsible for Serif Selimanovic's death. That financial loss occurred in the City of St. Louis, where, but for Defendant's negligence, Relators would have an enforceable judgment;
 - B. Relators were not first injured where Defendant's office is located because Relators suffered no trauma or exposure at Defendant's office, and were not injured at Defendant's office; and
 - C. St. Louis County is not a more appropriate venue than the City of St. Louis, and Relators have a right to choose among proper venues.

Jones v. Overstreet, 865 S.W.2d 717 (Mo. App. E.D. 1993)

Tucker v. Fianson, 484 So.2d 1370 (Fla. Dist. Ct. App. 1986)

Section 508.010, R.S.Mo. Supp. 2005

ARGUMENT

I. Relators are entitled to an order prohibiting Respondent from transferring venue from the Circuit Court of the City of St. Louis to the Circuit Court of the County of St. Louis, because Section 508.010, R.S.Mo. Supp. 2005 permits venue in the Circuit Court of the City of St. Louis, in that venue shall be in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action, and:

- A. The nature of Relators' injury is the resulting financial loss from their lack of an enforceable judgment against the individuals and/or entities responsible for Serif Selimanovic's death. That financial loss occurred in the City of St. Louis, where, but for Defendant's negligence, Relators would have an enforceable judgment;
- B. Relators were not first injured where Defendant's office is located because Relators suffered no trauma or exposure at Defendant's office, and were not injured at Defendant's office; and
- C. St. Louis County is not a more appropriate venue than the City of St. Louis, and Relators have a right to choose among proper venues.

1. Standard of Review

The question presented by this original proceeding in prohibition is whether venue is proper for this legal malpractice action in the Circuit Court of the City of St. Louis. Relators request the Court to make permanent its preliminary writ of prohibition because Relators were first injured in the City of St. Louis.

Prohibition is an original proceeding brought to confine a lower court to the proper exercise of its jurisdiction. *State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855, 857 (Mo. banc 2001). Prohibition is a discretionary writ. The writ will issue “to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent exercise of extra-jurisdictional power.” *Id.*

A writ of prohibition is appropriate when a trial court improperly grants a motion to transfer venue. *State ex rel. Private Nursing Service, Inc. v. Romines*, 130 S.W.3d 28, 28 (Mo. App. E.D. 2004). While it is generally true that prohibition will not lie when an act has already been done, prohibition will lie to undo acts done in excess of a court's jurisdiction, and to restrain the further enforcement of orders that are beyond or in excess of the authority of the judge. *Id.* at 29. Here, Respondent improperly granted Defendant's Motion to Transfer Venue. Therefore, prohibition is warranted.

2. Introduction to Argument

Here, Respondent held: “a colorable claim could have been asserted against the decedent's supervisor [Sam Longstreth], and that such a claim would have permitted defendant to file a wrongful death action [on Relators' behalf] in the City of St. Louis.” (A. 3.) In spite of holding that venue for the underlying wrongful death claim would have been permitted in the City of St. Louis, Respondent held that Relators' legal malpractice action for Defendant's failure to file a claim in the City of St. Louis was not permitted to be filed in the City of St. Louis. (A. 4.) In doing so, Respondent erroneously focused on the location of Defendant's office rather than focusing on where Relators

were first injured. Relators suffered no trauma or exposure at Defendant's office, and were not injured at Defendant's office.

Rather, Relators were first injured in the City of St. Louis where Defendant should have filed the underlying wrongful death claim, but did not. Had Defendant filed the underlying wrongful death claim in the City of St. Louis, where it is alleged he should have, the case would have been before a jury in the City of St. Louis. As a result of Respondent's Order, Relators now have to prove to a jury in St. Louis County that their underlying wrongful death claim would have been successful in front of a jury in the City of St. Louis. This result, in addition to confusing the issues in this case, deprives Relators of their right to have a jury in the City of St. Louis, where the underlying wrongful death action should have been filed, decide upon facts surrounding the death of their family's husband and father.

3. Relators were "first injured" in the City of St. Louis.

Serif Selimanovic was killed while working at Brentwood Plastics. (A 6-10.) Relators allege that his death was the result of the combined negligence of several individuals and entities including Sam Longstreth, a supervisor at Brentwood Plastics. Sam Longstreth was a resident of the City of St. Louis at the time of Serif Selimanovic's death, and at all times while Defendant represented Relators. (A 6-10.) Thus, Relators alleged, and Respondent held, that the underlying wrongful death claim would have been permitted in the City of St. Louis if it had been filed. (A 3 and 6-10.) Moreover, Defendant admitted that if the underlying wrongful death claim would have been filed, the City of St. Louis would have been the preferred venue. (A. 138-139.)

The nature of Relators' injury is the resulting financial loss from their lack of an enforceable judgment against the individuals and/or entities responsible for Serif Selimanovic's death. Relators were exposed to this financial loss, and were first injured in the City of St. Louis, which is where their wrongful death claim should have been filed prior to the expiration of the statute of limitations, and where Relators would have an enforceable judgment in the absence of Defendant's negligence.

Defendant's alleged negligence in not filing the underlying wrongful death action in the City of St. Louis deprived Relators of their ability to obtain a judgment in the City of St. Louis. Now, Defendant is being allowed to dictate venue in this action, again depriving Relators of their ability to obtain a judgment in the City of St. Louis. At the same time Defendant opposes venue in the City of St. Louis for this legal malpractice action, he admits that he would have preferred to file the underlying wrongful death claim in the City of St. Louis. Relators were prejudiced the first time they were deprived of their right to file a claim in the City of St. Louis, and Relators are again prejudiced by Respondent's holding, on erroneous grounds, depriving them for the second time of their right to file a claim in the City of St. Louis.

Section 508.010.14, R.S.Mo. Supp. 2005, provides that: "A plaintiff is considered first injured where the trauma or exposure occurred rather than where symptoms are first manifested." While there are no cases applying the "first injured" standard in Missouri, and the definition finds easier application to fact patterns involving actual physical invasion of plaintiff's person or property, as held by Respondent, it is possible to give effect to the legislature's definition under the facts presented in this case. In cases

involving financial loss, exposure occurs where the financial gain would have occurred in the absence of Defendant's negligence. The common meaning of exposure includes both: "the condition of being subject to some effect or influence;" and "the condition of being at risk of financial loss." Indeed, the latter can only occur where the financial gain would have occurred. Here, that financial gain would have occurred in the City of St. Louis in the form a judgment.

Instructive on this issue is the Florida Court of Appeal's decision in *Tucker v. Fianson*, 484 So.2d 1370 (Fla. Dist. Ct. App. 1986). In that case, an attorney with an office and residence in Broward County allegedly rendered negligent professional advice regarding a property in Dade County. *Id.* at 1371. In the legal malpractice action that ensued, plaintiff asserted venue in Dade County, where the property was located, which the defendant attorney contested. *Id.* The court found that Florida's venue statute required it to determine where the cause of action accrued, which in turn, required it to determine "where the plaintiff suffered his or her injuries." *Id.* On the issue of where the plaintiff suffered her injuries, which is similar to Missouri's "first injured" standard, the court held that plaintiff was injured and venue was proper in Dade County where the asserted negligence impacted upon the plaintiff's economic interests. *Id.* Here, as shown above, Relators economic interests were impacted upon in the City of St. Louis.

Moreover, to prevail in a legal malpractice action the plaintiff has to prove that its underlying claim would have been successful. *McDowell v. Waldron*, 920 S.W.2d 555, 559 (Mo. App. E.D. 1996). Here, Relators will have to prove that their underlying wrongful death claim in front of a jury in the City of St. Louis would have been

successful. If this case is allowed to be transferred to St. Louis County, Relators would be in the perplexing position of proving to a jury in St. Louis County what a jury in the City of St. Louis would have done had the wrongful death claim been timely filed. Such a result would be prejudicial to Relators and is certainly not the intent of Section 508.010, R.S.Mo. Supp. 2005.

4. Relators were not “first injured” at Defendant’s office.

Respondent misapplied Section 508.010, R.S.Mo. Supp. 2005 in holding that Relators were first injured in St. Louis County. Respondent reached that result by holding that the first injury occurred where the act or omission constituting malpractice in fact occurred. (A 4.) In so ruling, Respondent improperly focused on Defendant’s negligent acts, and not on Relators’ injuries, as is required by Section 508.010, R.S.Mo. Supp. 2005.

Prior to the reenactment of Section 508.010, R.S.Mo. Supp. 2005, that statute provided in part that venue in tort actions was proper where the cause of action accrued. Section 508.010, R.S.Mo. 2000. Courts applying that statute held that a cause of action “accrues” at the place where the wrongful conduct causing injury or damage occurred. *State ex rel. Drake Publishers, Inc. v. Baker*, 859 S.W.2d 201, 204 (Mo. App. E.D. 1993). The primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute. *State ex rel. Burns v. Whittington*, 219 S.W.3d 224, 224 (Mo. banc 2007). Courts presume that the legislature was aware of the state of the law at the time of the statute's enactment. *Pollock v. Wetterau Food Distribution Group*, 11 S.W.3d 754, 769 (Mo. App. E.D. 1999). In addition, courts

presume that a change in a statute is ordinarily intended to have some effect, and courts will not presume the legislature engaged in a useless act. *Ristau v. DMAPZ, Inc.* 130 S.W.3d 602, 606 (Mo. App. W.D. 2004).

Here, by holding that Relators were first injured where the act or omission constituting malpractice in fact occurred, Respondent overlooked well settled principles of statutory construction. Indeed, in determining venue, the prior statute focused on the location of defendant's acts and omissions, while the newly enacted statute focuses on the location of plaintiff's injury for which the action is filed. In applying the standard from the prior statute, Respondent erroneously failed to give the newly enacted statute effect.

5. St. Louis County is not a more appropriate venue than the City of St. Louis, and Relators have a right to choose among proper venues.

Relators do not dispute that venue in the underlying wrongful death claim would have been permitted in St. Louis County, as St. Louis County is where Serif Selimanovic was killed. Thus, it can be argued that the venue of this professional malpractice claim would be permissible in St. Louis County as also being a location of Relators' first injury. However, Relators allege that the underlying wrongful death claim *should* have been filed in the City of St. Louis, and by Defendant's own admission, he would have rather filed the action in the City of St. Louis where, in his opinion, plaintiffs' cases statistically do better. Moreover, if there are two statutorily proper venues, plaintiff has the choice as to which venue to select, and the court has no discretion to disturb that choice. *Jones v. Overstreet*, 865 S.W.2d 717, 718 (Mo. App. E.D. 1993).

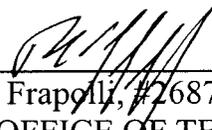
Relators do not contend that venue for a legal malpractice action is proper in any circuit court where the underlying claim *could* have been filed, as the underlying action could have been filed in any circuit court in the State of Missouri, subject to a later transfer. Rather, under Section 508.010, R.S.Mo. Supp. 2005, venue is proper where a plaintiff is first injured, which in this case, as established above, is the circuit court where the underlying claim *should* have been properly filed. Here, Respondent held that the underlying action would have been permitted in the City of St. Louis, and Defendant admits that the City of St. Louis would have been the preferred venue. Because Defendant's negligence deprived Relators of the ability to obtain a judgment in the City of St. Louis, Relators were first injured in the City of St. Louis.

Under Section 508.010, R.S.Mo. Supp. 2005, it is irrelevant where Defendant's office was located, where the attorney/client relationship was formed, or where the attorney/client communications occurred. Moreover, it is irrelevant where Defendant allowed the statute of limitations to expire. Indeed, there was no evidence presented to the trial court as to Relators' or Defendant's whereabouts when the statute of limitations expired at 12:01 a.m. on July 20, 2005. The only relevant inquiry is where Relators were first injured, and based on the statute, that injury occurred where Relators were deprived of their wrongful death judgment, which was in the City of St. Louis. The facts and the law compel venue in the City of St. Louis.

CONCLUSION

Unless the preliminary writ is made absolute, Relators will be deprived of their right to a trial before a jury in the City of St. Louis, where they were first injured by Defendant's failure to file a wrongful death claim on their behalf, when engaged to do so. As a result, Relators request that the Court make the writ of prohibition absolute.

Respectfully submitted,

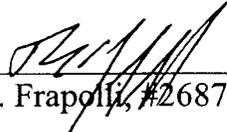


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AFFIDAVIT OF SERVICE

The undersigned certifies that a copy of Relators' Brief and a disk containing same were deposited on this ____ day of November, 2007, in the United States Mail, postage prepaid, addressed to: The Honorable Robert Dierker, Jr., Respondent, Circuit Court of the City of St. Louis, Carnahan Courthouse, 1114 Market Street, St. Louis, Missouri 63101 (314-622-4331); and R.C. Wuestling, Wuestling & James, L.C., Attorneys for Defendant, 720 Olive Street, Suite 2020, St. Louis, Missouri 63101 (314-421-6500).



Ted F. Frapolli, #26873

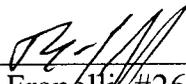
Subscribed and sworn to before me this 21st day of November, 2007.

Notary Public

My Commission Expires:

CERTIFICATE OF COMPLIANCE

The undersigned certifies that Relators' Brief contains 4,071 words, and that the computer disk filed with Relators' Brief under Rule 84.06 has been scanned for viruses and is virus-free.



Ted F. Frapolli, #26873

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Constitutional Provisions

Const. 1945, Art. 3, § 40(3) prohibits the general law changing the venue in civil or criminal assembly from enacting any local or special cases.

Cross References

Criminal cases, change of venue, see § 545.420 et seq.
Delinquent tax suit, see § 242.600.
Jackson County, filing in improper division within circuit, see § 478.462.
Jurisdiction over federal enclaves, cession and retrocession, see § 12.028.
Levee districts, see § 245.255.
Lewis county circuit court, see § 478.343.
Registered limited liability partnership venue, see § 358.150.

Law Review and Journal Commentaries

Code for civil procedure interpreted. Carl C. Wheaton, 18 Mo.L.Rev. 422 (1953).

VENUE

508.010. Suits by summons, where brought

Suits instituted by summons shall, except as otherwise provided by law, be brought:

- (1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;
- (2) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;
- (3) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;
- (4) When all the defendants are nonresidents of the state, suit may be brought in any county in this state;
- (5) Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant or defendants reside, or in the county suing and where the defendants, or one of them, may be found;
- (6) In all tort actions the suit may be brought in the county where the cause of action accrued regardless of the residence of the parties, and process therein shall be issued by the court of such county and may be served in any county within the state; provided, however, that in any action for defamation or for invasion of privacy the cause of action shall be deemed to have accrued in the county in which the defamation or invasion was first published.

(R.S. 1939, § 871. Amended by L. 1965, p. 659, § 1.)

V.A.M.S. 508.010

C

VERNON'S ANNOTATED MISSOURI STATUTES
TITLE XXXV. CIVIL PROCEDURE AND LIMITATIONS
CHAPTER 508. VENUE AND CHANGE OF VENUE
VENUE

→ **508.010. Suits by summons, where brought**

1. As used in this section, "**principal place of residence**" shall mean the county which is the main place where an individual resides in the State of Missouri. There shall be a rebuttable presumption that the county of voter registration at the time of injury is the principal place of residence. There shall be only one principal place of residence.

2. In all actions in which there is no count alleging a tort, venue shall be determined as follows:

(1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;

(2) When there are several defendants, and they reside in different counties, the suit may be brought in any such county;

(3) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;

(4) When all the defendants are nonresidents of the state, suit may be brought in any county in this state.

3. The term "**tort**" shall include claims based upon improper health care, under the provisions of chapter 538, RSMo.

4. Notwithstanding any other provision of law, in all actions in which there is any count alleging a tort and in which the plaintiff was first injured in the State of Missouri, venue shall be in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action.

5. Notwithstanding any other provision of law, in all actions in which there is any count alleging a tort and in which the plaintiff was first injured outside the State of Missouri, venue shall be determined as follows:

(1) If the defendant is a corporation, then venue shall be in any county where a defendant corporation's registered agent is located or, if the plaintiff's principal place of residence was in the State of Missouri on the date the plaintiff was first injured, then venue may be in the county of the plaintiff's principal place of residence on the date the plaintiff was first injured;

(2) If the defendant is an individual, then venue shall be in any county of the individual defendant's principal place of residence in the State of Missouri or, if the plaintiff's principal place of residence was in the State of Missouri on the date the plaintiff was first injured, then venue may be in the county containing the plaintiff's principal place of residence on the date the plaintiff was first injured.

6. Any action, in which any county shall be a plaintiff, may be commenced and prosecuted to final judgment in the

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V.A.M.S. 508.010

county in which the defendant or defendants reside, or in the county suing and where the defendants, or one of them, may be found.

7. In all actions, process shall be issued by the court in which the action is filed and process may be served in any county within the state.

8. In any action for defamation or for invasion of privacy, the plaintiff shall be considered first injured in the county in which the defamation or invasion was first published.

9. In all actions, venue shall be determined as of the date the plaintiff was first injured.

10. All motions to dismiss or to transfer based upon a claim of improper venue shall be deemed granted if not denied within ninety days of filing of the motion unless such time period is waived in writing by all parties.

11. In a wrongful death action, the plaintiff shall be considered first injured where the decedent was first injured by the wrongful acts or negligent conduct alleged in the action. In any spouse's claim for loss of consortium, the plaintiff claiming consortium shall be considered first injured where the other spouse was first injured by the wrongful acts or negligent conduct alleged in the action.

12. The provisions of this section shall apply irrespective of whether the defendant is a for-profit or a not-for-profit entity.

13. In any civil action, if all parties agree in writing to a change of venue, the court shall transfer venue to the county within the state unanimously chosen by the parties. If any parties are added to the cause of action after the date of said transfer who do not consent to said transfer then the cause of action shall be transferred to such county in which venue is appropriate under this section, based upon the amended pleadings.

14. A plaintiff is considered first injured where the trauma or exposure occurred rather than where symptoms are first manifested.

Statutes and Constitution are current with emergency legislation approved through September 4, 2007, of the 2007 First Extraordinary Session of the 94th General Assembly. (State Revisor's corrections are not incorporated until they are received from the state.)

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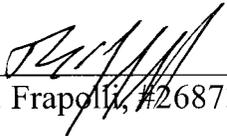
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AFFIDAVIT OF SERVICE

The undersigned certifies that a copy of Relators' Brief and a disk containing same were deposited on this ____ day of November, 2007, in the United States Mail, postage prepaid, addressed to: The Honorable Robert Dierker, Jr., Respondent, Circuit Court of the City of St. Louis, Carnahan Courthouse, 1114 Market Street, St. Louis, Missouri 63101 (314-622-4331); and R.C. Wuestling, Wuestling & James, L.C., Attorneys for Defendant, 720 Olive Street, Suite 2020, St. Louis, Missouri 63101 (314-421-6500).



Ted F. Frapolli, #26873

Subscribed and sworn to before me this 21st day of November, 2007.

Notary Public

My Commission Expires:

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI EX REL.)
SEMSA SELIMANOVIC, et al.,)
)
Relators,)
)
vs.)
)
HON. ROBERT DIERKER, JR.,)
CIRCUIT COURT JUDGE, DIVISION 18,)
MISSOURI CIRCUIT COURT,)
TWENTY-SECOND JUDICIAL CIRCUIT,)
CITY OF ST. LOUIS,)
)
Respondent.)

Appeal No.: SC88697

Original Proceeding in Prohibition

On Preliminary Rule in Prohibition From the Supreme Court of Missouri
to the Honorable Robert Dierker, Jr., Circuit Judge of the
Circuit Court of the City of St. Louis

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