
IN THE SUPREME COURT OF MISSOURI

JOSHUA DONALDSON,) **1^o SC88231**

Petitioner-Appellant, |

vs.

LARRY CRAWFORD, Director, }
Missouri Dep't of Corrections, |

Respondent. |

)

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY
THE HONORABLE RICHARD G. CALLAHAN, JUDGE

ON TRANSFER FROM THE MISSOURI COURT OF APPEALS, N^o WD66268

APPELLANT'S SUBSTITUTE OPENING BRIEF

Respectfully submitted,

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Department of Corrections must credit Appellant the requested time served because his time served in custody on the Maries County charge was related to his time served in custody on the Camden County charge. Respondent thereafter timely moved for rehearing/transfer pursuant to Mo. Ct. R. 83.02 and 84.17, which motion was denied by the court of appeals. Respondent then timely moved in this Court for transfer, and the Court granted the same on January 30, 2007.

Accordingly, this Court has jurisdiction of this case as though on original appeal pursuant to Art. V, §§ 5 and 10, MISSOURI CONST., and Mo. Ct. R. 83.04.

STATEMENT OF FACTS

Appellant Joshua Donaldson was convicted of the offense of sale of a controlled substance in Camden County Circuit Court on June 12, 2000, Case No. CR298-46FX. (L.F. 37). Mr. Donaldson was sentenced to a term of ten years, but execution thereof was suspended and he was placed on probation for a period of five years concurrently with any other sentence he was serving. (L.F. 37).

On January 30, 2002, Mr. Donaldson escaped from confinement at the Maries County Jail. (L.F. 38, ¶ 3). As a result of his escape, Mr. Donaldson was charged in Maries County Circuit Court with escape from confinement, (L.F. 22), and on February 15, 2002, the Camden County Circuit Court issued a warrant for Mr. Donaldson for violating the terms of his probation by having escaped from confinement. (L.F. 68). On April 26, 2002, the MO Board of Probation and Parole filed a formal field violation report alleging that Mr. Donaldson had violated his probation by, among other things, escaping from confinement on January 30, 2002. (L.F. 70-71). Mr. Donaldson pled guilty to escape from confinement on October 1, 2002, and was sentenced to a term of 3 years. (L.F. 22).

On February 9, 2004, after Mr. Donaldson had been released from the Department of Corrections on the Maries County charge, the Camden County Circuit Court revoked his probation in the aforesaid Case No. CR298-46FX, a ground for which was that he had escaped from confinement on January 30, 2002. (L.F. 16). Mr. Donaldson was received in the Department of Corrections on February 12, 2004, and Respondent thereafter has credited him with only 27 days' time served, rather than 742 days. (L.F. 51, 73).

On June 6, 2005, Mr. Donaldson filed his petition for a declaratory judgment as to his entitlement to credit for 742 days' time served. (L.F. 4-34). On August 9,

2005, Respondent filed his motion for summary judgment and legal memorandum based on the foregoing facts. (L.F. 2, 37-63). Mr. Donaldson, by counsel, filed his response and legal memorandum on August 29, 2005. (L.F. 64-82). Thereafter, on October 12, 2005, the trial court entered summary judgment in favor of Respondent, asserting that "The Department of Corrections may not award the time Donaldson seeks on case CR298-46FX because that decision is left to the discretion of the sentencing court under §558.031.1(3), RSMo 2000 and §559.100.2, RSMo 2000." (L.F. 84).

Mr. Donaldson timely filed his notice of appeal on November 18, 2005. (L.F. 83-86). As explained in Mr. Donaldson's jurisdictional statement *supra*, this Court granted transfer of this appeal on January 30, 2007.

POINTS RELIED ON

Point I.

The trial court erred in granting summary judgment for Respondent on its stated basis that the decision to credit Mr. Donaldson with time served is left to the discretion of the sentencing court because, as a matter of law, the sentencing court has no role in allowing credit for time served in custody in that MO. REV. STAT. § 558.031.1 requires the Missouri Department of Corrections to grant such credit where an offender's time served in custody on one charge is related to time served on the offense for which credit is sought.

State ex rel. Jones v. Cooksey,
830 S.W.2d 421 (Mo. 1992)

Murphy v. State,
873 S.W.2d 231 (Mo. 1994)

Butler v. Mitchell-Hugeback, Inc.,
895 S.W.2d 15 (Mo. 1995)

Habjan v. Earnest,
2 S.W.3d 875 (Mo. Ct. App. 1999)

Point II.

The trial court erred in failing to enter summary judgment in favor of Mr. Donaldson because he was entitled to credit for 742 days' time served in custody on the Maries County charge in that such time in custody was related to his time served in custody on the Camden County charge because the Camden County warrant was issued specifically because he escaped from confinement in Maries County and because there was no indication that, but for his confinement on the Maries County charge, he would have been free on bail.

Goings v. Mo. Dep't of Corrections,
6 S.W.3d 906 (Mo. 1999)

Umphenour v. State,
535 S.W.2d 579 (Mo. Ct. App. 1976)

Spradlin's Market, Inc. v. Springfield Newspapers, Inc.,
398 S.W.2d 859 (Mo. 1966)

STANDARD OF REVIEW

Appellate review of summary judgment is *de novo*. See *Hoffman v. Union Electric Co.*, 176 S.W.3d 706, 707 (Mo. 2005); *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. 1993). The record must be reviewed in the light most favorable to the nonmovant, according that party the benefit of all reasonable inferences that may be drawn from the record. See *ITT Commercial* at 376. If the evidence does not as a matter of law meet the minimum requirements to authorize the entry of summary judgment, the judgment must be reversed and the cause remanded for submission of the issue to the finder of fact. See *Spradlin's Market, Inc. v. Springfield Newspapers, Inc.*, 398 S.W.2d 859, 866 (Mo. 1966). However, "if under the evidence adduced the court would be compelled to direct a verdict for any of the parties, then said party is entitled to a summary judgment." *Id.*

"The criteria on appeal for testing the propriety of summary judgment are no different from those which should be employed by the trial court to determine the propriety of sustaining the motion initially." *ITT Commercial* at 376.

Accordingly, appellate review accords no deference to the trial court's judgment. See *id.*

ARGUMENT

POINT I.

The trial court erred in granting summary judgment for Respondent on its stated basis that the decision to credit Mr. Donaldson with time served is left to the discretion of the sentencing court because, as a matter of law, the sentencing court has no role in allowing credit for time served in custody in that MO. REV. STAT. § 558.031.1 requires the Missouri Department of Corrections to grant such credit where an offender's time served in custody on one charge is related to time served on the offense for which credit is sought.

In its one-page ruling granting Respondent summary judgment, the trial court erroneously declared and applied the law by ruling that the sentencing court, not the Department of Corrections, had discretion whether to credit Mr. Donaldson for time served in custody on the Maries County charge toward his Camden County sentence. As a matter of law, the Department of Corrections must credit Mr. Donaldson for time served in custody "when the time *in custody* was related to that offense." MO. REV. STAT. § 558.031.1 (emphasis added); *see State ex rel. Jones v. Cooksey*, 830 S.W.2d 421, 424 (Mo. 1992); *Murphy v. State*, 873 S.W.2d 231, 232 (Mo. 1994). Regarding § 558.031.1, the *Cooksey* court stated

It is to be noted that every provision of § 558.031 appears clearly to contemplate that the department, and not the sentencing court, is to be the actor in the crediting of *jail time*. The word "court" never appears in this section, although it consistently does wherever in the remainder of chapter 558 it is the court that is to act.

Cooksey at 425 (emphasis added). More compellingly, the *Cooksey* court stated, "It is thus clear, and this Court holds, that this statutory scheme contemplates an

administrative and not a judicial determination of the jail time to be credited, with no sharing of jurisdiction between the two branches of government." *Id.*

It is apparent that the trial court confused the statutory requirement that offenders be granted credit for time served in custody with the discretion associated with sentencing. The matter of sentencing "is for the purpose of suiting the punishment to the crime, rather than adjusting a sentence otherwise appropriate by the number of days perceived by the trial court to be creditable as jail time." *Cooksey* at 424. Furthermore, the trial court's citation to §§ 558.031.1(3) and 559.100.2 indicates that the trial court misconstrued Mr. Donaldson's cause of action as one seeking credit strictly for time while on probation on the Camden County charge, rather than one seeking credit for time served *in custody* on the Maries County charge toward the Camden County sentence.

There was no dispute that Mr. Donaldson was incarcerated during the entire period from January 30, 2002, through February 9, 2004, and that Mr. Donaldson's petition sought credit toward his sentence on the Camden County charge for this period. Any argument that Mr. Donaldson would not be entitled to such credit because he was on probation is inapposite in that § 558.031 has been construed to require allowing credit for time served in custody while on probation for another offense. *See Goings v. Mo. Dept' of Corrections*, 6 S.W.3d 906, 908 (Mo. 1999) (parolee jailed for new offense given credit for time served in custody). Section 558.031 controls the granting of credit for time served in custody.

Respondent has argued that Mr. Donaldson is foreclosed from the relief sought because § 558.031.1(3) expressly excepts those cases controlled by § 559.100.2. Neither statute says so. In fact, § 558.031.1, in pertinent part, states that "Such person shall receive credit toward the service of a sentence of imprisonment

for all time in prison, jail or custody after the offense occurred and before the commencement of the sentence, when the time *in custody* was related to that offense" Mo. Rev. Stat. § 558.031.1 (emphasis added). As is clearly seen, the word "probation" is neither explicitly included nor can be fairly implicated therein. Section 559.100.2 provides, in pertinent part, that "[t]he circuit court may, in its discretion, credit any period of probation or parole as time served on a sentence." As is also clearly seen, the words "incarceration" or "custody" are neither explicitly included nor can be fairly implicated therein.

When interpreting statutes, our courts are to "ascertain the intent of the legislature from the language used and give effect to that intent, if possible, and to consider the words used in their plain and ordinary meaning." *Butler v. Mitchell-Hugeback, Inc.*, 895 S.W.2d 15, 19 (Mo. 1995). Because criminal statutes are to be construed strictly against the State and liberally in favor of the defendant, a strict construction requires that Respondent and this Court "not engraft upon the statute provisions which do not appear in explicit words or by implication from other language in the statute." *State ex rel. Rogers v. Bd. of Police Commr's of Kansas City*, 995 S.W.2d 1, 6 (Mo. Ct. App. 1999). Sections 558.031 and 559.100 essentially deal with the same subject matter; *i.e.*, credit for time served, either in custody (§ 558.031.1) or while on probation (§ 559.100.2). "Where two statutes concerning the same subject matter, when read individually, are unambiguous, but conflict when read together, we will attempt to reconcile them and give effect to both." *Habjan v. Earnest*, 2 S.W.3d 875, 881 (Mo. Ct. App. 1999). To the extent that this conflict cannot be reconciled, however, the more specific statute prevails over the general statute. *See id.* Pursuant to § 558.031.1, § 559.100.2 becomes

relevant only when time on probation, generally, is sought to be credited as time served on a sentence when a defendant is facing time in custody on the sentence. However, § 558.031.1 addresses the specific circumstance of having served time in custody when faced with serving more time in custody.

Therefore, it appears that §§ 558.031.1 and 559.100.2 conflict as applied to Mr. Donaldson's case because (1) Respondent argues that the Department of Corrections cannot credit Mr. Donaldson for time served in custody where Mr. Donaldson was also on probation, and because Mr. Donaldson argues that the Department of Corrections must so credit Mr. Donaldson because Mr. Donaldson served such time *in custody* after the Camden County offense was committed but before he began serving his sentence thereunder.

If the two statutes conflict, this Court should take into account the order in which the statutes were enacted. " [W]hen a general statute conflicts with one which is subsequently enacted with more detailed treatment of the same subject matter, the specific one is regarded as a qualification of the general statute." *State v. Stottlemeyer*, 35 S.W.3d 854, 860 (Mo. Ct. App. 2001) (*quoting Mo. Hosp. Ass'n v. Air Conservation Comm'n*, 874 S.W.2d 380, 394 (Mo. Ct. App. 1994)). The current incarnation of § 559.100.2, the statute of general application because of its applicability to probation/parole without qualification, was enacted in 1990. The current incarnation of § 558.031.1, the statute of specific application to time served in custody, was enacted in 1995. Therefore, § 558.031.1 must be regarded as a qualification of § 559.100.2 such that § 558.031.1 applies absolutely where a defendant was in custody, whether on probation or not.

Had the legislature intended § 558.031.1 to not apply where a defendant was

in custody but also on probation, the legislature would have so indicated in § 559.100.2. For example, the legislature would have inserted therein "[t]he circuit court may, in its discretion, credit any period of probation or parole, whether or not in custody, as time served on a sentence," or language of similar import (exemplary language emphasized). The legislature appears to have clearly indicated an intent that time spent in custody is the controlling factor as to whether § 558.031.1 would apply in cases such as Mr. Donaldson's. Clearly, such a legislative intent is evident in § 558.031.1, and there can be little doubt that the legislature gave careful consideration as to what controlling factors to include in §§ 558.031.1 and 559.100.2, and which factors to exclude. Conspicuously absent from § 559.100.2 is anything akin to that claimed by Respondent as intended by the legislature to be applicable herein: namely, that only the circuit court has the discretion to award credit for time served where a defendant was both in custody and on probation. Section 559.100.2 does not state as such, and it clearly appears that the legislature indeed intended to ensure that § 558.031.1 absolutely apply where a defendant was in custody, whether on probation or not. Such is how the Missouri Supreme Court has construed § 558.031.1. *See Goings*, supra, 6 S.W.3d at 907.

As a matter of law, the trial court clearly erred by declaring that the law is that the sentencing court has discretion whether to allow credit for time served in custody where, in fact, § 558.031.1 requires the Department of Corrections to allow such credit. The trial court also clearly erred in applying the law to these facts and entering summary judgment in favor of Respondent. Therefore, because this Court need not defer to the trial court's judgment herein, the judgment should be reversed in this regard. *See ITT Commercial* at 376.

POINT II.

The trial court erred in failing to enter summary judgment in favor of Mr. Donaldson because he was entitled to credit for 742 days' time served in custody on the Maries County charge in that such time in custody was related to his time served in custody on the Camden County charge because the Camden County warrant was issued specifically because he escaped from confinement in Maries County and because there was no indication that, but for his confinement on the Maries County charge, he would have been free on bail.

Mr. Donaldson's time served in custody was related to both offenses

Pursuant to MO. REV. STAT. § 558.031.1, Mr. Donaldson is entitled to credit for time served in custody if it is "related to" his Camden County offense. Section 558.031.1, provides:

A sentence of imprisonment shall commence when a person convicted of a crime in this state is received into the custody of the department of corrections or other place of confinement where the offender is sentenced. Such person shall receive credit toward the service of a sentence of imprisonment for all time in prison, jail or custody after the offense occurred and before the commencement of the sentence, when the time in custody was *related to* that offense

MO. REV. STAT. § 558.031.1 (emphasis added). Criminal statutes are to be construed strictly against the State and liberally in favor of the defendant. See *Goings, supra*, 6 S.W.3d at 908; *Fainter v. State*, 174 S.W.3d 718, 721 (Mo. Ct. App. 2005); *State v. Jones*, 172 S.W.3d 448, 456 (Mo. Ct. App. 2005). The purpose of § 558.031 is to eliminate the disparity of treatment between indigent defendants, who typically are in custody prior to sentencing, and non-indigents, who typically are free on bond prior to sentencing. See *Goings* at 908.

Where a defendant is in custody on a charge otherwise unrelated to the offense for which he is currently serving time, he is entitled to credit for time served on that charge where there was a detainer during such time served for the offense for which he is currently serving time. *See Blackwell v. Sanders*, 615 S.W.2d 467, 469 (Mo. Ct. App. 1981); *Umphenour v. State*, 535 S.W.2d 579, 581 (Mo. Ct. App. 1976). In such a case, the time served in custody is thereby "related to" the offense for which he is currently serving time. *See Umphenour* at 582.

Mr. Donaldson is similarly-situated to the defendant in *Goings* in that Mr. Donaldson was on probation when he was charged with the Maries County offense. (L.F. 7, ¶ 13; 38, ¶ 3). The *Goings* defendant was on parole. *Goings*, *supra*, 6 S.W.3d at 906-07. Both picked up new charges during their times of release. Mr. Donaldson was convicted and sentenced prior to his Camden County probation being revoked. (L.F. 22). Mr. Donaldson's Maries County sentence was calculated as having begun the day of his arrest and confinement on January 30, 2002. (L.F. 8, ¶ 16; 20). The *Goings* defendant was returned to the Department of Corrections for having violated his parole. *Goings* at 907. Thereafter, he was sentenced on the new charge and received credit on the new sentence for the time served for having violated his parole. *Id.* at 908.

The inexorable conclusion to be drawn from this comparison is that Mr. Donaldson's time served on the escape charge is "related to" the Camden County offense because his escape charge was the basis upon which Camden County had issued its warrant. After all, "[i]f one basis for revocation is the crime for which a defendant is convicted and sentenced, then the time in custody is 'related to' that convicted offense." *State ex rel. Gater v. Burgess*, 128 S.W.3d 907, 911 (Mo. Ct. App. 2004). The *Goings* court put it this way

In the present case, the time Goings spent in custody prior to receiving his Stoddard County sentence was "related to" that sentence. It was the Stoddard County charge that resulted in revocation of his parole on his earlier Franklin County sentences. His arrest on the Stoddard County charge placed him in custody in the first place on the current stealing charge.

Id. Tying together Mr. Donaldson's case and *Goings* is § 558.031.1, the pertinent part of which states "[s]uch person shall receive credit toward the service of a sentence of imprisonment for all time in prison, jail or custody *after the offense occurred and before the commencement of the sentence . . .*" MO. REV. STAT. § 558.031.1 (emphasis added). Mr. Donaldson's Camden County sentence did not commence until he was received in the Department of Corrections after his probation was revoked on February 9, 2004. Therefore, because the warrant for his arrest had been issued on February 15, 2002 (L.F. 38), and because he was already in jail on the escape charge and remained incarcerated on that charge until February 9, 2004, Mr. Donaldson must be credited for time served since at least the time the Camden County warrant had been issued: 724 days. Because Mr. Donaldson's Maries County sentence was calculated as having begun the day of his arrest and confinement on January 30, 2002, he should be given credit for that time, as well, for a total of 742 days.

Much the same reasoning applies when comparing Mr. Donaldson's case with the defendant in *Umphenour, supra*, 535 S.W.2d 579. In *Umphenour*, the defendant was allowed credit on a sentence for time served in jail when a detainer was in place which would have prevented his release. *Id.* at 582. The court observed that
Under the particular facts of this case, however, it must be held that
appellant's incarceration in Clay County was occasioned by the

joint actions of Clay and Jackson Counties--Clay County by reason of its charge, and Jackson County authorities by reason of the detainer issued, which was the reason appellant chose not to make bond in Clay County. Obviously, to do so would have been futile. His Jackson County bond had been forfeited, and he would have been subject to being picked up by Jackson County authorities.

Id. at 581. Likewise, it must be held herein that Mr. Donaldson Donaldson's incarceration in Maries County and the Department of Corrections until February 9, 2004, was occasioned by the joint actions of Maries County and Camden County – Maries County by reason of its charge, and Camden County by reason of the warrant issued. Therefore, his time served in custody on the Maries County charge was "related to" his Camden County offense because the Camden County warrant had been in place since February 15, 2002, and because the Camden County warrant was issued specifically because of the Maries County charge.

Respondent argues that § 558.031 should not be applied to Mr. Donaldson because he was on probation during his incarceration for the Maries County escape charge, and that, pursuant to § 558.031.1(3), § 559.100 would govern whether he would be entitled to credit for time served. (L.F. 61). This argument misapprehends the nature of Mr. Donaldson's cause of action and the applicable law. Section 559.100.2 provides, in pertinent part as apparently urged by Respondent, that "[t]he circuit court may, in its discretion, credit any period of probation or parole as time served on a sentence." Mr. Donaldson was placed on probation on June 12, 2000, and was arrested on the escape charge on January 30, 2002. From January 30, 2002, until February 9, 2004, he was in custody. While Mr. Donaldson may have been on probation during this time, it is undisputed that his cause of action seeks credit only for time served in custody. (L.F. 38). He does

not now, nor has he ever sought credit for "any period of probation." For the trial court to find that § 559.100 would be Mr. Donaldson's exclusive remedy would be to eviscerate § 558.031 and fly in the face of *Goings* and its progeny.

A similar argument was made by the State in *Goings*, where it was alleged that § 558.031 should not apply to the defendant because he was on parole at the time of the new offense. *Goings*, 6 S.W.3d at 908. The court stated
But this statute is not so limited. The statute requires only that the time in custody be "related to" the offense.

* * * * *

In the present case, the time *Goings* spent in custody prior to receiving his Stoddard County sentence was "related to" that sentence. It was the Stoddard County charge that resulted in revocation of his parole on his earlier Franklin County sentences. His arrest on the Stoddard County charge placed him in custody in the first place on the current stealing charge.

* * * * *

The statute's use of the very broad term "related to" instead of, for example, "caused by" or "the result of" compels the conclusion that his custody can be "related to" both offenses and the statutory credit will nevertheless apply.

Id. Such is the case here, where it was the Maries County charge which resulted in the revocation of his Camden County probation, and his arrest on the Maries County charge placed him in custody in the first place on the Camden County violation.

Mr. Donaldson's probation was revoked two years after the offense which led to his revocation. Had the Camden County court revoked Mr. Donaldson's

probation and ordered him delivered to the Department of Corrections on January 30, 2002, the day of his arrest, he most certainly would have been entitled to credit toward his Maries County charge for time served in custody on the Camden County charge. That being the case, it would defy logic – not to mention that it would be manifestly unfair – to rule that his time served in custody was not related to both offenses only because Camden County waited two years to revoke his probation. Indeed, because he was incarcerated the entire time that the Camden County warrant was in effect, his time served in custody was "related to" both offenses. *Umphenour, supra*, 535 S.W.2d at 582. Such can be the only logical and fair conclusion, especially where he was in custody because both Maries and Camden County alleged the same reason therefor and because there was no indication that he would otherwise have been free on bail.

Mr. Donaldson is entitled to summary judgment

Clearly, the record herein shows that Respondent cannot meet the minimum requirements for entry of summary judgment in his favor because the Department of Corrections is required to credit Mr. Donaldson for time served in custody, and because such time served in custody is related to both his Camden County and Maries County offenses. Therefore, at the very least, the judgment would have to be reversed and this matter would have to be remanded to the trial court for further proceedings. However, it is equally clear from the record that Mr. Donaldson is absolutely entitled to the credit for time served in custody. Therefore, there are no genuine issues in this case such that summary judgment in favor of Mr. Donaldson would be proper. *See Spradlin's Market, supra*, 398 S.W.2d at 866. Mr. Donaldson should be given such credit for time served in custody.

As a matter of law, the trial court clearly erred by failing to grant summary

judgment to Mr. Donaldson in that his time served in custody from January 30, 2002, until February 9, 2004, was related to both the Camden County and Maries County offenses. The trial court also clearly erred in applying the law to these facts and entering summary judgment in favor of Respondent. Therefore, because this Court need not defer to the trial court's judgment herein, the judgment should be reversed in this regard. *See ITT Commercial* at 376.

CONCLUSION

This Court must review the trial court's grant of summary judgment *de novo* without according the trial court deference. *See ITT Commercial* at 376. Because the trial court clearly erred in declaring that the sentencing court has discretion to allow credit for time served in custody, and because Mr. Donaldson's time served in custody was related to both the Camden County and Maries County offenses, the trial court's judgment should be reversed and judgment should be rendered by this Court in favor of Mr. Donaldson on all issues. Mo Ct. R. 84.14; *Kulaga v. Kulaga*, 149 S.W.3d 570, 574 (Mo. Ct. App. 2004).

Respectfully submitted,

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CERTIFICATE OF ATTORNEY

I hereby certify that the foregoing brief complies with Mo. Ct. R. 84.06(c) in that:

(A)It contains 4,957 words, as calculated by the undersigned's word-processing program;

(B)A copy of this brief is on the attached 3½-inch diskette; and that

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WILLIAM P. NACY

CERTIFICATE OF SERVICE

I hereby certify that I did, on February 21, 2007, forward one true copy of the foregoing brief, together with a 3½-inch diskette thereof, by 1st class U.S. mail, postage prepaid, to:

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