

SC96376

IN THE MISSOURI SUPREME COURT

BRAINCHILD HOLDINGS LLC,
Plaintiff/Respondent,

v.

STEPHANIE CAMERON,
Defendant/Appellant.

Appeal from the Circuit Court of St. Louis City
Associate Circuit Court
Case No. 1522-AC11511
The Honorable Michael Noble

On Transfer from the Missouri Court of Appeals, Eastern District
Case No. ED104122

Brief of ArchCity Defenders, Inc. as *Amicus Curiae*, conditionally filed pursuant to
Mo. R. App. P. 84.05(f)(3).

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TABLE OF CONTENTS

TABLE OF CONTENTS2

TABLE OF AUTHORITIES3

STATEMENT OF INTEREST OF AMICUS CURIAE.....8

CONSENT OF PARTIES TO FILING OF THIS BRIEF9

POINTS RELIED ON.....10

ARGUMENT11

I. The trial court erred in denying Appellant’s jury trial demand because tenants have a due process right to jury trials in rent and possession cases under the United States and Missouri Constitutions.

CONCLUSION.....25

CERTIFICATION OF COMPLIANCE26

CERTIFICATE OF SERVICE.....27

TABLE OF AUTHORITIES

Cases

Belton v. Bd. of Police Comm'rs,
 708 S.W.2d 131 (Mo. banc 1986)15, 16

Board of Regents v. Roth,
 408 U.S. 564, (1972)16

Brock v. Roadway Express, Inc.
 481 U.S. 252 (1987)14

Cleveland Bd. of Educ. v. Loudermill
 470 U.S. 532 (1985)13

De Stefano v. Apts. Downtown, Inc.,
 879 N.W.2d 155 (Iowa 2016).....22

Dep't of Hous. v. Rucker,
 535 U.S. 125 (2002)16

Fed. Nat. Mortg. Assn v. Wingate,
 273 N.W.2d 456, (Mich. 1979)24

Gray v. Netherland,
 518 U.S. 152 (1996)14

Gentry v. Lee's Summit,
 10 F. 3d 1340 (8th Cir. 1993)16

Goldberg v. Kelly

397 U.S. 254 (1970)14

Green v. Lindsey,

456 U.S. 444 (1982)16

Jamison v. Dep't of Soc. Servs., Div. of Family Servs.,

218 S.W.3d 399 (Mo. 2007)15

King v. Moorehead,

495 S.W.2d 65 (Mo. App. 1973)16

Lindsey v. Normet,

405 U.S. 56 (1972)14, 18, 19 20, 21

Mathews v. Eldridge,

424 U.S. 319 (1976)14

Moore v. Board of Educ.,

836 S.W.2d 943 (Mo. banc 1992)15

Pernell v. Southall Realty,

416 U.S. 363 (1974)17, 20, 21

Phillips v. Wash. Legal Found.,

524 U.S. 156 (1998).....16

Stiens v. Dir. of Revenue,

19 S.W.3d 695 (Mo. App. E.D. 2000)15

Wheeler v. Briggs,

941 S.W.2d 512 (Mo. 1997)25

Zimmerman v. Burch,

494 U.S. 113 (1990)13

Missouri Constitution

Mo. Const. art. I, Sec. 1015

Mo. Const. art. I, Sec. 22(a)17

United States Constitution

US Const. Amend. XIV...16

US Const. Amend. VII.....17

Missouri Statutes

§ 535 *et seq.* RSMo11, 19

State Statutes

ARIZ. REV. STAT. ANN. § 12-1176(A)18

CAL. CIV. PROC. CODE § 117118

COLO. R. CIV. P. 38(a)18

CONN. GEN. STAT. ANN. § 47a-4418

ILL. ANN. STAT. ch. 735, para. 5/2-110518

KAN. STAT. ANN. § 61-2309 (1983)18

OHIO REV. CODE ANN. § 1923.1018

Additional Sources

David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 Cal. L. Rev. 389, (2011)22

Mary B. Spector, *Tenants’ Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 Wayne L. Rev. 135 (2000)18, 21, 23

Paul D. Carrington, *The Civil Jury and American Democracy*, 13 Duke J. Comp. & Int'l L. 79 (2003)23

Randy G. Gerchick, *Comment: No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. Rev. 759 (1994).....18, 19

Christopher N. Patterson, *Guest Column: The Importance of Jury Duty*, Jackson County Floridian (Apr. 28, 2017) http://www.dothaneagle.com/jcfloridan/news/editorials/guest-column-the-importance-of-jury-duty/article_52b41a11-dedf-5e3a-91d3-dd8a35e31185.html24

REFERENCE NOTE

All statutory references are to the Revised Statutes of Missouri 2016. References to the Missouri Court of Appeals, Eastern District, Opinion in this case are referred to as “CoA Op.” References to Appellant’s Substitute Opening Brief are referred to as “App. Sub. Br.”

STATEMENT OF INTEREST OF AMICUS CURIAE

ArchCity Defenders (ACD) is a 501(c)3 non-profit civil rights law firm providing holistic legal advocacy to combat the criminalization of poverty and state violence against poor people and people of color. ACD uses direct services, impact litigation, and policy and media advocacy as its primary tools to promote justice, protect civil and human rights, and bring about systemic change on behalf of the poor and communities of color directly impacted by the abuses of the legal system. To this end, ACD has a strong housing practice geared at ensuring clients' access to safe and habitable housing, to avoid client homelessness by preventing evictions, and to advocate on behalf of those experiencing homelessness in the St. Louis region.

CONSENT OF PARTIES TO FILING OF THIS BRIEF

Appellant Stephanie Cameron consents to the filing of this brief. Amicus Curiae ArchCity Defenders, Inc. (ACD) attempted to contact Respondent Brainchild Holdings, but has not been able to reach the party. Assuming Respondent does not consent to the filing of this brief, ACD filed for leave to submit this brief pursuant to Mo. R. App. P. 84.05(f)(3).

POINTS RELIED ON

- I. **The trial court erred in denying Appellant’s jury trial demand because tenants have a due process right to jury trials in rent and possession cases under the United States and Missouri Constitutions.**

Mo. Const. art. I, Sec. 22(a)

US Const. Amend. 14 § 1

Lindsey v. Normet, 405 U.S. 56 (1972)

Pernell v. Southall Realty, 416 U.S. 363 (1974)

ARGUMENT

ArchCity Defenders, Inc. (ACD) as *Amicus curiae* (“*Amicus*”) respectfully submits this brief for the Court’s benefit in order to highlight the importance of jury trials in rent and possession actions and the due process implications the trial court’s ruling has on Missouri tenants, especially those living in poverty.

I. The trial court erred in denying Appellant’s jury trial demand because tenants have a due process right to jury trials in rent and possession cases under the United States and Missouri Constitutions.

Missouri residents, such as Ms. Cameron, have a constitutionally-protected right to a jury trial and a constitutionally-protected interest in an opportunity to meaningfully defend actions filed against them in state courts. Both the state and federal constitutions provide these protections, grounded in due process, which prohibit any state action that infringes upon an individual’s interest in life, liberty, and property. Because a tenant has a property interest in her leasehold, she cannot be deprived of that interest without a full and fair procedure provided at a meaningful time and in a meaningful manner.

The state and federal constitutions also provide for a right to a jury trial. The issue before this Court is whether that right exists in rent and possession actions where it is not expressly provided for in Chapter 535 of the Missouri Revised Statutes. Rent and possession cases, such as the instant case, are summary proceedings designed to protect a landlord’s interest in his property and his rental income. Due to their expeditious nature, such proceedings occur on or shortly after the summons date, providing little time for a

tenant to engage in discovery and limiting a tenant's ability to adequately raise all available defenses, all in conflict with her right to due process. This imbalance of power between a landlord and a tenant begins at the outset of the lease, extends throughout the course of the relationship, and is carried into the courts where tenants, especially those living in poverty, often go unrepresented against landlords and their hired counsel.

Proponents of summary proceedings claim they ensure judicial efficiency. However, it is also in the interest of judicial efficiency and economy that these matters should be addressed at one time, in one case, instead of piecemeal in separate actions. Currently, it is possible that one case can result in a landlord obtaining a judgment against a tenant for rent and possession and the same tenant later obtains a judgment against the landlord in a subsequent breach of contract action where the court determines the tenant's rental obligation was abated by the landlord's breach. The tenant still has an outstanding judgment against her for a case where a court later determined she should not have had to pay rent. It is consistent with good public policy that a tenant should not have a pending judgment where a court later finds not rent was due. It is in the public interest that tenants not face limited housing opportunities and continued poverty that often result from evictions and money judgments owed to landlords. As experienced by many of *Amicus'* own clients, the adverse effects of a rent and possession action extend far beyond any unfavorable eviction judgment, compromising and often precluding a prospective tenant's ability to obtain subsequent rental housing. A jury trial enables a landlord and a tenant's peers to apply common sense and community values in meaningful review of all the

evidence and to make fact findings disposing of all claims between the landlord and the tenant at one time, in one case.

Finally, a concern voiced by the appellate courts is the public's interest in efficient dockets. One fear is that the courts would experience a flood of jury trial cases clogging or slowing down the dockets. However, as the Appellant addressed in its brief, very few jury trials are requested in unlawful detainer matters and even fewer make it to trial, despite the unlawful detainer statute's explicit jury trial provision. A right to a jury trial does not necessarily mean it is regularly or frequently elected.

For these reasons, this Court should uphold a tenant's right to a jury trial in a rent and possession action, reverse the trial court's decision, and remand this case for a new trial.

A. Due Process

The present case involves a fundamental constitutional right enjoyed by all United States citizens: protection from state action to deprive her of life, liberty, or property, without due process of law. The Fourteenth Amendment guarantees an individual a fair legal process before she can be deprived of these constitutionally-protected interests. *See Zimmerman v. Burch*, 494 U.S. 113, 125 (1990); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985).

In *Lindsey v. Normet*, 405 U.S. 56, 67 (1972), the U.S. Supreme Court held that due process requires states to provide individuals the opportunity to be heard in a meaningful time and a meaningful manner with the ability to present "every available defense" in determining the measure of process necessary. In expanding on the definition of a

meaningful time and manner, the Court has also stated “absent a full, fair, potentially effective opportunity” to address allegations against a party, the right to a hearing would be “but a barren one.” *Gray v. Netherland*, 518 U.S. 152, 182 (1996). The Court further has acknowledged that depending on circumstances of the individual case, a meaningful time and manner can be anything from an extensive evidentiary hearing to a simple process that makes an “initial check against mistaken decisions[.]” *Brock v. Roadway Express, Inc.* 481 U.S. 252, 261 (1987).

In *Goldberg v. Kelly*, 397 U.S. 254, 268-69 (1970), the Court held the “opportunity to be heard” meant the procedure must be “tailored to the capacities and circumstances of those who are to be heard.” The Court further held that the following factors must be considered when determining whether a procedure provides an individual sufficient due process protections:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976), citing *Goldberg*, 397 U.S. at 263-271.

While the Fourteenth Amendment of the United States Constitution extends federal due process protections to state actions, the Missouri Constitution contains its own due process clause mirroring the language of the U.S. Constitution. Mo. Const. art. I, § 10 (stating “no person shall be deprived of life, liberty or property without due process of law.”).

Missouri courts apply a two-step process to determine whether an individual was denied her constitutionally-protected right to procedural due process: (1) whether the individual has a protected liberty or property interest and, if so; (2) was she provided with notice and an opportunity to be heard at a meaningful time and in a meaningful manner? *See Belton v. Bd. of Police Comm'rs*, 708 S.W.2d 131, 137 (Mo. banc 1986); *Jamison v. Dep't of Soc. Servs., Div. of Family Servs.*, 218 S.W.3d 399, 406 (Mo. 2007). If a court finds the process was inadequate, then the court “must determine what alternative or additional protections are necessary to satisfy due process.” *Jamison*, 218 S.W.3d at 406.

Similar to the U.S. Supreme Court, in expanding on the definition of meaningful time and meaningful manner, Missouri courts have stated that prior to depriving someone of a protected interest, the government must provide an opportunity that is appropriate “**to the nature of the case.**” *Stiens v. Dir. of Revenue*, 19 S.W.3d 695, 697 (Mo. App. E.D. 2000) (emphasis added); *See also Moore v. Board of Educ.*, 836 S.W.2d 943, 948 (Mo. banc 1992).

B. Leasehold as Tenant’s Property Interest

Missouri tenants, such as Ms. Cameron in the instant case, have a protected property interest under the 14th Amendment of the United States Constitution because a leasehold is “undoubtedly” a property right. *Gentry v. Lee’s Summit*, 10 F. 3d 1340, 1343 (8th Cir. 1993). *See e.g. Green v. Lindsey*, 456 U.S. 444, 451 (1982) (tenants facing deprivation of their home have a significant interest in the property) ; *Dep’t of Hous. v. Rucker*, 535 U.S. 125, 135 (2002). Today, modern housing leaseholds in the landlord-tenant relationship have evolved from traditional conveyances for property to modern contractual

relationships. *King v. Moorehead*, 495 S.W.2d 65, 71 (Mo. App. 1973) (recognizing that modern housing leases are bilateral contracts as well as conveyances of a property interest). "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Belton*, 708 S.W.2d at 136 citing *Board of Regents v. Roth*, 408 U.S. 564, 569-70, (1972)

Missouri tenants have a legitimate claim of entitlement to possession of property through their leaseholds. The Constitution does not create a property interest, but is rather there to protect those interests. *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998). In *Roth*, 408 U.S. at 578, the Court found that a property interest could be created by the terms and agreements in a contract. Similar to *Roth*, because Missouri leases are bilateral contracts, the property interests are created by the contract. As such, tenants have a property interest in their right to possession of the property that is formed through the lease.

C. Jury Trial Rights under the U.S. and Missouri Constitutions

Parties in Missouri and throughout the United States generally have a right to a jury trial in civil cases under the United States and Missouri Constitutions. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." U.S. Const. amend. VII. While the Seventh Amendment right to a jury trial in civil cases does not automatically extend to the state, Mo. Const. art. I, § 22(a) guarantees this right stating that the right to a jury trial is an "inviolable" right.

The Supreme Court of the United States stated in *Pernell v. Southall Realty*, 416 U.S. 363, 370 (1974), a case concerning a demand for a jury trial in Washington D.C.’s housing court, “[t]he Seventh Amendment provides: ‘in suits at common law, whether the value in controversy exceed twenty dollars, the right of trial by jury shall be preserved....’” While the Seventh Amendment does not extend to the states, Missouri courts equally acknowledge that there is a civil right to a jury trial when the case is an action at law rather than an equity action. *See* CoA Op., J. Van Amburg. *Amicus* agree with the Court of Appeals that the trial court should have determined that a rent and possession action is an action at law and there is a right to a jury trial. *See* CoA Op. 8, J. Van Amburg.

D. Summary Proceedings

Summary proceedings in rent and possession actions evolved because landlords viewed common law ejectment actions “as cumbersome, expensive, and time-consuming.”¹ Mary B. Spector, *Tenants’ Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 Wayne L. Rev. 135, 154 (2000). The summary rent and possession action was created as an “efficient” alternative to return property to the landlord quickly. *Id.* Today, rent and possession or equivalent summary proceedings exist

¹ “Studies of the eviction **process** have found, however, that eviction-related costs amount to less than one percent of the average landlord’s gross revenues.” Randy G. Gerchick, *Comment: No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. Rev. 759, 785 (1994).

in every state. *Id.* at 35. A large number of states also recognize and provide for a jury trial in those proceedings.²

In *Lindsey*, 405 U.S. at 56, the U.S. Supreme Court found that summary proceedings in landlord-tenant actions did comply with due process and equal protection requirements under the law. In doing so, the Court declared that the summary proceeding was proper because the tenant had a full and fair opportunity to be heard prior to the deprivation of the property, even if that opportunity was on an expedited schedule. *Id.* at 74.

As discussed above, meaningful time and manner for due process purposes means a movant receives the process necessary to prevent erroneous deprivation of a property interest based on the specific nature of the case. Here, Missouri tenants have a right to a jury trial, but the law also directs the courts to summarily decide rent and possession actions. § 535 *et seq.* RSMo. The specific nature of the case here, however, would require that constitutional rights not be infringed upon in order to ensure due process of law. While the court may have to conduct an expedited jury trial, the protections of the Missouri Constitution guarantee this right to the tenant. A summary proceeding that does not allow

² Many states provide for trial by jury in summary eviction proceedings. *See, e.g.*, ARIZ. REV. STAT. ANN. § 12-1176(A) (West Supp. 1993); CAL. CIV. PROC. CODE § 1171 (West 1982); COLO. R. CIV. P. 38(a); CONN. GEN. STAT. ANN. § 47a-44 (West Supp. 1993); ILL. ANN. STAT. ch. 735, para. 5/2-1105 (Smith-Hurd 1992); KAN. STAT. ANN. § 61-2309 (1983); OHIO REV. CODE ANN. § 1923.10 (Baldwin 1993). Randy G. Gerchick, 41 UCLA L. Rev. at 827.

a tenant a meaningful opportunity to adequately defend a case is not in line with the due process reasoning behind *Lindsey*. See Gerchick, 41 UCLA L. Rev. at 769. In this particular case, due process would require that the tenant be granted her constitutional right to have a jury determine if she is liable to her landlord in a rent and possession action.

E. Judicial Economy Should Not Trump Due Process

What is unclear about the trial court's interpretation of the summary proceeding here, compared to that in *Lindsey*, is why a landlord's right to recover physical possession of the property is supreme to the tenant's property interest in retaining physical possession of a property in which they have a lawful and constitutionally-protected interest.³ The trial court's decision to deny a tenant her constitutional right to a jury trial, and the below Court of Appeals' concerns of judicial efficiency and economy where jury trials occur in these actions, both reinforce the principle that the tenant's possessory interest is somehow less

³ “[The Court] failed to consider whether the procedural scheme might limit important tenants' rights, by requiring the tenant to litigate them after possession has been returned to the landlord. As a result, the Court elevated the property rules designed to restore an income stream to the owner over the fairness concerns involved in resolving disputes regarding parties' rights under a lease. The property rules validated in *Lindsey* arose in the context of conflicting claims of ownership, and were designed to protect persons with possession and status (i.e., owners of land) against hostile claims.” Spector, 46 Wayne L. Rev. at 202.

important by stripping her of constitutional rights to defending a liability action in the courts.

In *Pernell*, the U.S. Supreme Court analyzed concerns similar to those raised by the Appellant in this case regarding judicial economy and efficiency. In its analysis, the Court stated:

The Court of Appeals appeared troubled by the burden jury trials might place on the District's court system and by the possibility that a right to jury trial would conflict with efforts to expedite judicial disposition of landlord-tenant controversies. We think it doubtful, however, that the right to a jury trial would significantly impair these important interests. As indicated earlier, the right to trial by jury was recognized by statute for over a century from 1864 to 1970, and it does not appear to have posed any unmanageable problems during that period.

In the average landlord-tenant dispute, where the failure to pay rent is established and no substantial defenses exist, it is unlikely that a defendant would request a jury trial. And, of course, the trial court's power to grant summary judgment where no genuine issues of material fact are in dispute provides a substantial bulwark against any possibility that a defendant will demand a jury trial simply as a means of delaying an eviction. More importantly, however, we reject the notion that there is some necessary inconsistency between the desire for speedy justice and the right to jury trial. We note, for example, that the Oregon landlord-tenant procedure at issue in *Lindsey v. Normet*, 405 U.S. 56 (1972), although providing for a trial no later than six days after service of the complaint unless the defendant provided security for accruing rent, nevertheless guaranteed a right to jury trial. Many other States similarly provide for trial by jury in summary eviction proceedings.

Some delay, of course, is inherent in any fair-minded system of justice. A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had a fair opportunity to present their cases. Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.

416 U.S. at 383.

As the court held in *Pernell*, this Court should also find that protecting a Missouri resident's constitutional rights is of paramount importance over prospective fears of occasional burdens on trial courts. As the Court of Appeals below aptly pointed out, the trial court still has discretion "to try such cases in the most practical and efficient manner possible, consistent with Missouri's historical preference for a litigant's right to a jury trial on claims at law." CoA Op. 9. This discretion still allows trial courts to adapt and adjust their dockets to prevent a large burden on them when a jury trial is requested in a rent and possession action.

Because a tenant has a constitutionally-protected property interest under the Missouri Constitution to a jury trial in civil cases, she should be able to demand and receive one without jeopardizing the judicial efficiency and effectiveness of rent and possession cases that are tried by the bench. Not only should tenants be able to exercise this constitutional right pursuant to due process protections, but the realities facing courts where

landlord-tenant cases are tried and the imbalance of power between landlords and tenants⁴ make the jury trial right important from a judicial policy perspective.⁵

Jury trials play an important role in ensuring justice in the courts.⁶ Generally, the jury trial acts as a separation of powers within the judicial system similar to that of the three branches of government:

⁴ The Iowa Supreme Court, in a recent survey of other jurisdictions, found the majority acknowledged an “inability of most tenants to effectively bargain with their landlords.” *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 177 (Iowa 2016). Tenants are rarely represented by counsel and frequently lack the sophistication to assert their rights on their own. David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 Cal. L. Rev. 389, 435–36 (2011). Landlords, by contrast, are frequently represented or have access to form complaints that will guide them through the allegations necessary to make out a legal claim. *Id.*

⁵ “The nature of the proceeding not only places the tenant at a disadvantage as her relationship terminates, but also weakens her position from the time the relationship commences. Because the summary procedure for eviction enables the landlord to enforce the terms of the leasehold within a framework designed for speed rather than fairness, the relationship largely avoids judicial scrutiny.” Spector, 46 Wayne L. Rev. at 137.

⁶ “We entrust to our juries the fortunes and futures of all who come before them. This Court has consistently deferred to and placed great confidence in the verdicts of juries, realizing

In its role in civil proceedings, the jury performs a comparable function by rendering the legislators who make the controlling law doubly accountable to the people, who first elect their lawmakers and are then called to administer the laws those representatives make. Law departing too far from the common understanding, from common sense, or from commonly shared moral values tends to be modified in its enforcement by civil juries to fit common habits of mind.

Paul D. Carrington, *The Civil Jury and American Democracy*, 13 Duke J. Comp. & Int'l L. 79, 85 (2003).

As a Florida circuit court judge recently wrote, the jury trial also provides an opportunity for the community to be involved and ensure transparency throughout the system.

Jury trials provide an opportunity for citizens to participate in the process of governing. Serving on a jury is the most direct and impactful way for citizens to connect to the constitution. It is more active and participatory than voting. Jury service remains one of the truest forms of democracy, citizens judging citizens. A healthy jury trial system is critical to fair and efficient administration of justice and equal application of the law.

Christopher N. Patterson, *Guest Column: The Importance of Jury Duty*, Jackson County Floridian (Apr. 28, 2017) [http://www\[.\]dothaneagle.com/jcfloridan/news/editorials/guest-column-the-importance-of-jury-duty/article_52b41a11-dedf-5e3a-91d3-dd8a35e31185.html](http://www[.]dothaneagle.com/jcfloridan/news/editorials/guest-column-the-importance-of-jury-duty/article_52b41a11-dedf-5e3a-91d3-dd8a35e31185.html).

Given their relative lack of power, tenants must depend upon courts to protect their due process and constitutional rights in landlord-tenant actions. The Supreme Court of

that the jury system remains our brightest hope for achieving justice between litigants.”

Williams v. Barnes Hosp., 736 S.W.2d 33, 38 (Mo. 1987).

Michigan aptly described the obstacles to just outcomes in these courts: (1) an “incredible” case load; (2) court facilities that are “just a little better than tolerable”; (3) judges, litigants and personnel who are “harassed and depressed,” and (4) tenants (and sometimes landlords) who “do not understand their rights at all.” *Fed. Nat. Mortg. Assn v. Wingate*, 273 N.W.2d 456, 460–61 (Mich. 1979). The Michigan high court lamented that such an atmosphere “does not encourage deliberate, reasoned and compassionate justice, although it deals with one of the basic material essentials of life, a roof over one’s head.” *Id.*

The right to a jury trial is not a cure-all for these problems. As Appellant demonstrated on brief, the evidence shows that, even where a jury trial is available, tenants infrequently demand one. App. Sub. Br. 34-37. In the 2,000-plus unlawful detainer (landlord-tenant) cases analyzed from the 16th, 21st, and 22nd Judicial Circuits in the year 2016, only 21 jury trials were requested and only *one* jury was empaneled. *Id.*

Protecting constitutional rights in Missouri is of the highest priority to this Court. *Wheeler v. Briggs*, 941 S.W.2d 512, 518 (Mo. 1997) (Holstein, C.J., dissenting in part and concurring in part) (“[H]istory and the constitution teach that it is the courts which must be vigilant to protect the individual rights of those who are least capable of taking care of themselves.”). The possibility of a jury trial serves as a meaningful check on landlords. It ensures that the most egregious cases will get a full and complete airing in front of members of the community who are likely to understand the realities facing both landlords and tenants. For meaningful justice to be done, rather than rubber stamping of rent and possession cases, Missouri tenants should be allowed to exercise their constitutional right to a jury trial.

CONCLUSION

For the foregoing reasons, this Court should recognize the inviolate right to a jury trial in rent and possession actions, as actions at law, and reverse the decision of the trial court below. Or, in the alternative, this Court should give direction to trial courts on how to properly resolve requests for jury trials in rent and possession actions.

CERTIFICATION OF COMPLIANCE

Comes now counsel for Appellant and certifies that:

1. This brief complies with Rule 55.03 in that it is signed, not filed for an improper purpose, the claims are warranted by existing law, and the allegations are supported by evidentiary support.
2. The brief complies with Rule 84.06(b),
3. The number of words contained in the brief is approximately 4,276, excluding the cover, certificate of service, this certification, the signature block, and the appendix, as listed by the word processor the document was prepared on, Microsoft Word.

/s/ Lee R. Camp
Lee R. Camp, Mo. Bar No. 67072

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amicus Curiae Brief was filed electronically through the Missouri Courts eFiling System, and was served on July 10, 2017 to counsel for the parties via the Court's electronic filing system on and by First Class U.S. Mail to Brainchild Holdings, 401 North Newstead, St. Louis, MO 63108.

/s/ Lee R. Camp
Lee R. Camp, Mo. Bar No. 67072