

SC97429

**In The
SUPREME COURT OF MISSOURI**

**STATE OF MISSOURI *ex rel.* RONALD PRATER,
GWENDOLYN GONZALES, DEANN THOMPSON,
AND LUCILLE CURTMAN
Relators**

v.

**THE HONORABLE JASON R. BROWN
Respondent**

**Missouri Court of Appeals
Southern District No. SD35345**

**Original Proceeding
Circuit Court of Greene County, Missouri
Case No. 1731-CC01453**

**BRIEF OF RELATORS IN SUPPORT OF WRIT OF MANDAMUS
OR IN THE ALTERNATIVE WRIT OF PROHIBITION**

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JURISDICTIONAL STATEMENT

Mo. Const. Art. V, § 4.1 provides this Court with the authority to issue original remedial writs. Upon application of Relators Ronald Prater, Gwendolyn Gonzales, Deann Thompson, and Lucille Curtman, this Court issued a Preliminary Writ of Mandamus on October 30, 2018. Relators seek a Permanent Order of Mandamus requiring the Honorable Jason R. Brown to transfer Greene County Circuit Court Case No. 1731-CC01453 to Pulaski or Miller counties, thereby vacating Judge Brown's order dated April 5, 2018, denying Ronald Prater's Motion To Transfer for Improper Venue.

Relators first sought relief in the Missouri Court of Appeals, Southern District, No. SD35345. The Court of Appeals denied the request.

This Court issued a preliminary writ on October 30, 2018. At the Court's direction, Relators submit this brief and request that this Court make its Preliminary Writ absolute.

POINT RELIED ON WITH AUTHORITIES

POINT I

Relators are entitled to a permanent Writ of Mandamus requiring Respondent, the Honorable Jason R. Brown, to transfer Greene County Circuit Court Case No. 1731-CC01453 to Pulaski County, because venue is improper in Greene County, in that Ronald Prater and his wife were first injured where the subject motor vehicle wreck occurred in Pulaski County, none of the Defendants to this Declaratory Judgment Action reside, were found or were served in Greene County, and Judge Brown abused his discretion by refusing to transfer venue to Pulaski County because he did not deny Ronald Prater's Motion to Transfer for Improper Venue within 90 days as required by Missouri Revised Statute §508.010.10 and as such Ronald Prater's motion to transfer for improper venue was granted by the passage of more than 90 days.

Furlong Cos. Inc. V. City of Kansas City, 189 S.W.3d 157 (Mo. banc 2006)

State ex rel. City of Jennings v. Riley, 236 S.W.3d 630 (Mo. banc 2007)

State ex rel. Mertens v. Brown, 198 S.W.3d 616 (Mo. banc 2006)

State ex rel. Young v. Wood, 254 S.W.3d 871 (Mo. banc 2008)

Mo. Const. Art. V, § 4.1

Missouri Revised Statute §508.010.2

Missouri Revised Statute §508.010.4

Missouri Revised Statute §508.010.10

STATEMENT OF FACTS

On February 6, 2011, Defendant Dakota Ball, while driving a 2004 Mitsubishi Eclipse owned by his father Stacy Ball, was involved in a motor vehicle collision in Pulaski County, Missouri, with Ronald Prater, where Ronald Prater was severely injured and his wife Juanita Prater was killed¹. (*Petition for Writ of Mandamus, Exhibit B, page 005, A5*). Ronald Prater, Deann Thompson, Gwendolyn Gonzales-Wonder, and Lucille Curtman are the wrongful death claimants for Juanita Prater's death, and they filed a wrongful death action against Defendant Dakota Ball in Pulaski County Circuit Court, Case No. 12PU-CV02009. (*Petition for Writ of Mandamus, Exhibit B, page 004, A4. Petition for Writ of Mandamus, Exhibit K, pages 057-058, A57-58*). Ronald Prater filed a separate suit against Defendant Dakota Ball for his own personal injuries in Pulaski County Circuit Court, Case No. 12PU-CV2013. (*Petition for Writ of Mandamus, Exhibit B, page 005, A5. Petition for Writ of Mandamus, Exhibit D, page 016, A16*).

United Services Automobile Association ("USAA") issued an auto policy to Stacy Ball, on the accident vehicle that covered Dakota Ball. (*Petition for Writ of Mandamus, Exhibit B, page 006, A6*). That policy is not at issue here. (*Petition for Writ of Mandamus, Exhibit B, page 006, A6*). USAA General Indemnity Company issued an auto policy to Dakota Ball's step-mother, Christina Gruendler, for which coverage remains in dispute. (*Petition for Writ of Mandamus, Exhibit B, page 006, A6*). USAA

¹ Others were killed and injured in this crash, none whom lived in Greene County. (*Petition for Writ of Mandamus, Exhibit D, pages 022-026*).

General Indemnity Company filed its Declaratory Judgment action in Greene County, Missouri, originally against Ronald Prater, Dakota Ball, and Christina Gruendler alleging there was no coverage under Christina Gruendler's auto policy for Dakota Ball related to the aforementioned motor vehicle wreck and the resulting civil suits and seeking a declaration of no coverage and no duty to defend Dakota Ball in the Praters' suits. (*Petition for Writ of Mandamus, Exhibit B, pages 004-009, A4-9*). None of the named Defendants to USAA General Indemnity Company's original Declaratory Judgment action were residents of Greene County, Missouri, and none were found or served in Greene County. (*Petition for Writ of Mandamus, Exhibit E, pages 027-032, A27-32*).

On December 8, 2017, Ronald Prater filed a Motion to Dismiss and Motion to Transfer for Improper Venue in USAA General Indemnity Company's Declaratory Judgment action asking that the case be transferred to Pulaski County. (*Petition for Writ of Mandamus, Exhibit C, page 014, A14. Petition for Writ of Mandamus, Exhibit F, pages 033-036, A33-36*). Judge Brown did not deny Ronald Prater's Motion to Transfer for Improper Venue within 90 days of its filing. (*Petition for Writ of Mandamus, Exhibit C, pages 012-014, A12-14*). Judge Brown's Order and Judgment of April 5, 2018, denying Ronald Prater's Motion to Transfer for Improper Venue was well past the 90 day deadline imposed by Missouri Revised Statute §508.010.10 that started on December 8, 2017. (*Petition for Writ of Mandamus, Exhibit C, page 014, A14. Petition for Writ of Mandamus, Exhibit A, page 001, A1*).

On April 10, 2018, Ronald Prater filed a Motion for Rehearing and/or Reconsideration of the court's April 5, 2018, Order and Judgment pointing out the provision of Missouri Revised Statute §508.010.² (*Petition for Writ of Mandamus, Exhibit H, A45*). Judge Brown's Order and Judgment of April 19, 2018, denied Ronald Prater's Motion for Rehearing and/or Reconsideration. (*Petition for Writ of Mandamus, Exhibit A, page 002, A2. Petition for Writ of Mandamus, Exhibit C, page 014, A14*). The time period set forth in paragraph ten (10) of Missouri Revised Statute §508.010 was not waived in writing by all parties. (*Petition for Writ of Mandamus, Exhibit H, page 045, A45*).

In his April 5, 2018, Order and Judgment Judge Brown ordered USAA General Indemnity Company to add all of the wrongful death claimants to its Declaratory Judgment action which included Gwendalyn Gonzales, Deann Thompson, and Lucille Curtman. (*Petition for Writ of Mandamus, Exhibit A, page 001, A1*). USAA General Indemnity Company amended its Declaratory Judgment Petition in that regard and in May of 2018, Gwendalyn Gonzales, Deann Rae Thompson, and Lucille Curtman were all served USAA General Indemnity Company's Amended Declaratory Judgment Petition in Miller and Pulaski Counties. (*Petition for Writ of Mandamus, Exhibit C, page 011, A11. Petition for Writ of Mandamus, Exhibit E, pages 027-032, A27-32*). Gwendalyn Gonzales, Deann Rae Thompson, and Lucille Curtman filed their Motion to Transfer for

² This provision provides that all motions to dismiss or transfer based upon a claim of improper venue shall be deemed granted if not denied within ninety (90) days of filing of the motion unless such time is waived in writing by all parties.

Improper Venue on June 4, 2018, pointing out that no Defendant resided in Greene County, Missouri, and none were found or served in Greene County, Missouri, and that the action should be transferred to Pulaski County. (*Petition for Writ of Mandamus, Exhibit E, pages 027-032, A27-32. Petition for Writ of Mandamus, Exhibit I, A49*). Judge Brown denied their motion in his July 31, 2018, Order and Judgment. (*Petition for Writ of Mandamus, Exhibit A, page 003, A3*).

On September 4, 2018, the Prater family filed for a Writ of Mandamus, or in the alternative Writ of Prohibition in the Missouri Court of Appeals, Southern District, which was denied on September 18, 2018. (*Petition for Writ of Mandamus, Exhibit L, page 071, A71*). On September 25, 2018, Relators filed their Writ of Mandamus, or in the alternative Writ of Prohibition in this Court. (*Docket Entry, SC97429*). On October 30, 2018, this Court issued a Preliminary Writ of Mandamus in favor of Relators. (*Docket Entry, SC97429, A72*).

ARGUMENT

POINT I

Relators are entitled to a permanent Writ of Mandamus requiring Respondent, the Honorable Jason R. Brown, to transfer Greene County Circuit Court Case No. 1731-CC01453 to Pulaski County, because venue is improper in Greene County, in that Ronald Prater and his wife were first injured where the subject motor vehicle wreck occurred in Pulaski County, none of the Defendants to this Declaratory Judgment Action reside, were found or were served in Greene County, and Judge Brown abused his discretion by refusing to transfer venue to Pulaski County because he did not deny Ronald Prater's Motion to Transfer for Improper Venue within 90 days as required by Missouri Revised Statute §508.010.10 and as such Ronald Prater's motion to transfer for improper venue was granted by the passage of more than 90 days.

STANDARD OF REVIEW

This Court reviews a writ of mandamus for an abuse of discretion. *State ex rel. City of Jennings v. Riley*, 236 S.W.3d 630, 631 (Mo. banc 2007). A litigant seeking mandamus must "allege and prove that he has a clear, unequivocal, specific right to a thing claimed." *State ex rel. Young v. Wood*, 254 S.W.3d 871, 872 (Mo. banc 2008) (quoting *Furlong Cos. Inc. V. City of Kansas City*, 189 S.W.3d 157, 166 (Mo. banc 2006)). "Ordinarily, mandamus is the proper remedy to compel the discharge of ministerial functions, but not to control the exercise of discretionary powers." *State ex rel. Mertens v. Brown*, 198 S.W.3d 616, 618 (Mo. banc 2006). However, if the

respondent's actions are wrong as a matter of law, then he or she has abused any discretion he or she may have had, and mandamus is appropriate. *Id.*

A. Ronald Prater And His Wife Were First Injured Where The Subject Motor Vehicle Wreck Occurred In Pulaski County, Missouri.

Missouri Revised Statute §508.010.4 states that “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.” As shown in the Statement of Facts, the Prater family filed both of their lawsuits, for the death of Juanita Prater and the injury claim for Ronald Prater, in the proper venue of Pulaski County, Missouri, where the subject motor vehicle wreck occurred and where they were first injured. (*Petition for Writ of Mandamus, Exhibit B, pages 004-005, A4-5. Petition for Writ of Mandamus, Exhibit K, pages 057-058, A57-58. Petition for Writ of Mandamus, Exhibit D, page 016, A16*). The mere fact that Dakota Ball through numerous procedural filings ultimately got a change of venue as a matter of right does not rewrite the venue rules and statutes as to USAA General's newly filed Declaratory Judgment action and Relators' Motions to Transfer for Improper Venue. Since this wreck occurred in Pulaski County, Missouri, and that is where Ronald Prater and his wife were first injured by the negligent conduct of Dakota Ball, venue is and was proper in Pulaski County, not Greene County. (*Petition for Writ of Mandamus, Exhibit B, page 005, A5*).

B. None Of The Defendants To This Declaratory Judgment Action Reside In Greene County, Missouri, And None Were Found Or Served In Greene County, Missouri.

Missouri Revised Statute §508.010.2 states in relevant part:

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. . .

None of the Defendants to this Declaratory Judgment action at any relevant time resided in Greene County, and none were found there when served with USAA's Declaratory Judgment action, so venue cannot be proper in Greene County, MO. (*Petition for Writ of Mandamus, Exhibit E, pages 027-032, A27-32*). Therefore, venue is proper in Pulaski or Miller counties, Missouri, where Relators reside and were served.

C. Judge Brown Abused His Discretion By Refusing To Transfer Venue To Pulaski County, Missouri, Where Venue Is Proper And Because He Did Not Deny Ronald Prater's Motion To Transfer For Improper Venue Within 90 Days As Required By Missouri Revised Statute §508.010.10 And As Such Ronald Prater's Motion To Transfer For Improper Venue Was Granted By The Passage Of More Than 90 Days.

Relator, Ronald Prater, filed a Motion to Transfer for Improper Venue in Greene County on December 8, 2017. (*Petition for Writ of Mandamus, Exhibit C, page 014*,

A14. *Petition for Writ of Mandamus, Exhibit F, A33*). Missouri Revised Statute §508.010.10 provides that all Motions to Dismiss or to Transfer for Improper Venue **SHALL** be deemed granted if not denied within 90 days of the filing of the motion. The relevant part of §508.010.10 provides:

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 the motions unless such time period is waived in writing by all parties.

Judge Brown did not deny Defendant Prater's Motion to Transfer for Improper Venue within 90 days of its filing and pursuant to §508.010.10, Ronald Prater's motion was deemed granted by the passage of 90 days after December 8, 2017. (*Petition for Writ of Mandamus, Exhibit C, page 014, A14. Petition for Writ of Mandamus, Exhibit A, page 001, A1*). The Court's Order and Judgment of April 5, 2018, is well past the 90 day deadline and the time period set forth in paragraph 10 and was not waived in writing by any party, let alone all parties. (*Petition for Writ of Mandamus, Exhibit C, page 014, A14. Petition for Writ of Mandamus, Exhibit A, page 001, A1. Petition for Writ of Mandamus, Exhibit H, page 045, A45*). As such, the Court's Orders and Judgments of April 5, 2018, April 19, 2018, and July 31, 2018, are nullities and exceed the Court's jurisdiction in that Ronald Prater's motion was deemed granted on or about March 8, 2018.

The Court is specifically required by statute to transfer this case to Pulaski County where Juanita Prater was killed and Ron Prater was injured, all caused by the negligence of Dakota Ball, and where Defendants resided and were served USAA's Declaratory

Judgment Petition and Amended Petition. (*Petition for Writ of Mandamus, Exhibit E, pages 027-032, A27-32. Petition for Writ of Mandamus, Exhibit B, page 005, A5*). In the alternative, venue is also proper in Miller County pursuant to Missouri Revised Statute §508.010.2 because there are Defendants who reside in Pulaski and Miller counties. (*Petition for Writ of Mandamus, Exhibit E, pages 027-032, A27-32*). The first injuries of Relators did not occur in Greene County, and none reside or were served there, thus Greene County cannot be the proper venue for this Declaratory Judgment action. (*Petition for Writ of Mandamus, Exhibit E, pages 027-032, A27-32. Petition for Writ of Mandamus, Exhibit B, page 005, A5*).

CONCLUSION

For all of the reasons set forth above, Relators respectfully request the Court to issue a permanent Writ of Mandamus requiring Respondent, the Honorable Jason R. Brown, to transfer Greene County Circuit Court Case No. 1731-CC01453 to Pulaski County, because venue is improper in Greene County, Missouri. Or in the alternative, Relators respectfully request the Court to issue a permanent Writ of Prohibition prohibiting Respondent, the Honorable Jason R. Brown, from taking any further action in Greene County Circuit Court Case No. 1731-CC01453.

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RULE 84.06(c) CERTIFICATION

Pursuant to Supreme Court Rule 84.06(c), the undersigned hereby certifies that:

(1) this brief was served pursuant to Rule 103.08; (2) this brief complies with the limitations contained in Rule 84.06(b); and (3) this brief contains 3,165 words, as calculated by the Microsoft Word software used to prepare this brief.

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CERTIFICATE OF SERVICE

I hereby certify that, in conformity with Rule 55.03(a), the original of this electronic filing was signed by me and will be maintained in my file. I further certify that, on this 31st day of December, 2018, I electronically filed the foregoing using the Missouri Courts eFiling System, which will send notice of electronic filing.

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and sent a true and accurate copy of the forgoing by U.S. Mail, postage pre-paid, to:

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