

SC 97385

IN THE MISSOURI SUPREME COURT

DELORES HENRY

Plaintiff,

v.

PAUL PIATCHEK, et al.,

Defendants/Respondents.

DARRELL WILLIAMS, SR.,

Proposed Intervenor/Appellant.

Appeal from the Circuit Court of St. Louis City, 22nd Judicial Circuit
The Honorable Rex M. Burlison, Judge

Upon transfer from the Missouri Court of Appeals, Eastern District
Appeal No. ED105742

SUBSTITUTE REPLY BRIEF OF APPELLANT

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ARGUMENT

I. FATHER'S FILINGS MANDATE INTERVENTION AND THE FAILURE TO GRANT HIS MOTION TO INTERVENE WAS PLAIN ERROR; FATHER'S MOTION TO INTERVENE SHOULD BE GRANTED.

As set forth in Appellant's brief, Father was entitled to intervene by right pursuant to Missouri's wrongful death statute, Section 537.080.1. Respondents' protests regarding Father's motion to intervene largely amount to a single issue: a purported lack of notice. As such, their argument lies solely in procedure and form, not substance. And "[n]on-compliance [with procedural rules] is not determinative unless prejudice resulted." *Heintz v. Woodson*, 758 S.W.2d 452, 454 (Mo. 1988). Respondents are not prejudiced.

Respondents fail to acknowledge that they have (and had) *no* argument against Father's intervention. Pursuant to Section 537.080.1, Father had an absolute right to intervene in his child's wrongful death case. "When a statute confers an unconditional right of intervention, the proposed intervenor is entitled to intervene as a matter of right, the right to intervene is absolute, and the motion must be approved." *State ex rel. Nixon v. American Tobacco Co., Inc.*, 34 S.W.3d 122, 127 (Mo. 2000). Respondents had no grounds to object to Father's motion to be included in the lawsuit as it was his statutory right. To that end, formal procedure regarding hearings in this set of circumstances is moot, because a lack of hearing was in no way prejudicial to Respondents. Not only was

a hearing not necessary, it would have been a waste of judicial resources.¹ There was no argument to deny the motion.

Further, Section 537.080.1 provides that a wrongful death case can be brought by a decedent's spouse, children or parents. If no persons exist fitting that description, then the decedent's brother or sister can bring the lawsuit. *Id.* The statute does not contemplate grandparents. *Id.* Nevertheless, Respondents fully defended Grandmother's case for *years*, exchanging discovery, taking depositions and arguing motions. *See generally, LF 1-10.* During the course of that discovery, it is inconceivable that the Respondents would not have learned of Father. In fact, it was their responsibility to learn of all beneficiaries and to join them to the action given Grandmother's lack of standing.

Rule 52.04 governs when Joinder of Persons is needed for just adjudication. It provides:

A person *shall* be joined in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect that interest ..."

Rule 52.04 (a)(emphasis added). The rule further provides: "If the person has not been joined, the court *shall* order that the person be made a party." *Id.* (emphasis added).

¹ Courts grant motions without a hearing all of the time, even motions that are contestable, like a Motion to Amend a pleading.

Grandmother did not have standing to bring the case. Accordingly, not only should the court have granted Father's motion to intervene, it was bound by the rules of joinder to make Father a plaintiff. The trial court had actual written notice of Father. Grandmother and Respondents, all represented by counsel, never brought this to the Court's attention, which was their responsibility under Missouri rules of civil procedure. To now claim Father, incarcerated and acting pro se, failed to jump through procedural hoops, despite emblematically knocking down the courthouse door from prison, is dissembling.

Respondents had notice of the wrongful death case, they fully defended the wrongful death case and no evidence was lost or destroyed preventing them from preparing a fair defense of Father's claims. Father was entitled to intervene as a matter of right. The parties and the court had the duty to join Father to the action, so that Father's rights were not impaired or impeded and complete relief be accorded in the wrongful death action. No prejudice exists and this Court should affirm the Appellate Court's opinion that the trial court erred in denying Appellant's present motion to intervene.²

² It is permissible to allow intervention after the conclusion of a case upon a "strong showing". *Henry*, at p. 8, citing *F.W. Disposal, LLC v. St. Louis County Council*, 266 S.W.3d 334, 339 (Mo. App. E.D. 2008).

II. THE TRIAL COURT ERRED IN DENYING FATHER’S MOTION TO SET ASIDE JUDGMENT FOR LACK OF JURISDICTION; THE TRIAL COURT DID HAVE AUTHORITY TO GRANT FATHER’S MOTION AS THE JUDGMENT WAS VOID FOR LACK OF DUE PROCESS.

The court’s judgment violated due process from which manifest injustice resulted. “A primary goal of the judicial system is judicial impartiality and fairness to all parties.” Substitute Brief of Respondents, p. 17. Despite asserting his rights clearly and persistently, Father was denied access to the courts. Respondents can point to no reason why Father’s motion should *not* have been granted permitting him to intervene. It is wholly unobjectionable for the parent of a deceased child to request to be a part of his child’s wrongful death case – it is in fact his statutory right, a right that was violated. Due process and substantial justice entitle Father to relief from the judgment of the trial court.

A. The judgment of dismissal was inconsistent with due process and accordingly should be declared void pursuant to Rules 74.06(b)(4) and 84.13(c).

“Father is an ‘aggrieved party’ for purposes of his motion to intervene, even though he was denied party status in the underlying case.” *Henry v. Piatcheck*, 2018 WL 3352912, FN 4, (Mo. App. E.D. 2018) citing *State ex. rel. Koster v. ConocoPhillips Company*, 493 S.W.3d 397, 401-402 (Mo. 2016). As discussed in Appellant’s Brief, and as ultimately decided by the Court of Appeals, Father’s motion to intervene should be granted, making him a party. *Id.* The next issue at hand is Father’s motion to set aside Grandmother’s dismissal.

The dismissal without prejudice filed by Grandmother at issue on this appeal was effectively a judgement. See *Chromalloy Am. Corp. v. Elyria Foundry Co.*, 955 S.W.2d

1, 3 (Mo. 1997), *accord Eckel v. Eckel*, 540 S.W.3d 476, 489 at FN 16 (Mo. App. W.D. 2018) (holding that an appeal can be taken from a dismissal when the dismissal has the practical effect of terminating the litigation for a party). Rule 74.06 governs when relief is appropriate from a judgment, and states (in part) that the court may vacate a judgment when “the judgment is void.” Rule 74.06(b)(4). “A judgment rendered by a court acting in a manner inconsistent with due process can and should be declared void.” *Henry v. Piatcheck*, 2018 WL 3352912, p. 7 citing *Kerth v. Polestar Entertainment*, 325 S.W.3d 373, 389 (Mo. App. E.D. 2010). The question of whether a judgment is void is a question of law – imposing a *de novo* review. *Henry v. Piatcheck*, 2018 WL 3352912, p. 7 citing *Unifund CCR Partners v. Kinnamon*, 384 S.W.3d 703, 705 (Mo. App. W.D. 2012). There is no “reasonable time requirement” when contemplating whether a judgment is void. *Henry v. Piatcheck*, 2018 WL 3352912, p. 7 citing *Kerth v. Polestar Entertainment*, 325 S.W.3d 373 (Mo. App. E.D. 2010). The Court can even determine a judgment to be void for unpreserved errors when “the court finds that manifest injustice or miscarriage of justice has resulted therefrom.” Rule 84.13(c).

A lawsuit for damages is a property right protected by the Fourteenth Amendment. *Henry v. Piatcheck*, 2018 WL 3352912, p. 7 citing *Kerth*, 325 S.W.3d at 379 FN 5. Central to the principles of due process is the “opportunity to be heard.” *Id.* At 378-379. Here, the dismissal without prejudice effectuated by Grandmother was inconsistent with due process. Father was denied the opportunity to be heard and his cause of action was a property right protected by principles of due process.

The lower court's docket sheet contains 13 entries revealing Father's legal interest in and desire to join the suit. On no less than four occasions he declared himself as the father of the deceased. He also repeatedly asked the Clerk for instructions on how to file a lawsuit. He asked: "Please send me the local court rule for filing a lawsuit." *LF* 43. He requested the "procedures for filing a petition." *LF* 39. And when those pleas went unanswered, he filed a motion requesting to become a plaintiff – stating he was the father. *LF* 41.

In wrongful death cases it is the parties' responsibility to locate the beneficiaries. That is even more true when the plaintiff to the wrongful death lawsuit is not even an eligible plaintiff, such as Grandmother. Here, the parties did not have to look far. All they had to do to recognize Father was alive and interested in his son's case was to pick up the court file. Father's letters stick out like a sore thumb. Grandmother's dismissal was entered in violation of Father's due process rights, and accordingly is void.

B. Due process requires equal access, which was not afforded to Father as an inmate.

Under the Due Process Clause, inmates are entitled to be free from deprivation of their personal property. They are also entitled to equal access to the courts. In the case at hand, Father was deprived of these rights. His requests for help were ignored. While the Clerk sent requested documents, Father's procedural questions were left unanswered. Had he not been behind bars, and "had Father walked into the clerk's office unrepresented, he would have received procedural assistance with his motion to intervene." *Henry v. Piatcheck*, 2018 WL 3352912, p. 8. Instead, his many pleas for

answers to his questions were ignored. *See generally, LF*. It is a fundamental principle of our judiciary that the courthouse should be open to all. That was not the case for Father. As such, Grandmother's dismissal is void.

CONCLUSION

If Father would have been afforded his due process rights as required by law, he would be a rightful Plaintiff and Grandmother's dismissal would have had no effect on his case. Grandmother was not the rightful plaintiff; Father had the statutory rights to his son's wrongful death case. And he made incessant supplications for information on how to proceed – which were ignored. Supplications that had he been able to walk into the clerk's office, could not have been ignored. All one must do is pick up and peruse the court file to see the manifest injustice that happened upon him. His letters are conspicuous. Their intent clear. The motion to intervene should be granted and the judgment should be declared void as it violated his due process rights and violated a founding principle of our judicial branch of government that all individuals should have equal access to the courts.

For the foregoing reasons, Appellants respectfully request this Court reverse and remand this matter.

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1. The foregoing brief was electronically filed on behalf of the Appellant Darrell Williams, Sr. with the Clerk of the Court by use this Court’s electronic filing system on this 18th day of February, 2019.
2. Copies of the foregoing were delivered by first class mail and by electronic mail on this 18th day of February, 2019.
3. This brief complies with Rule 55.03 and the limitations contained in Rule 84.06(b) limiting Appellants’ reply brief to 7,750 words. This brief contains 1833 words, as determined by the word count feature of MS Word (not including the cover, certifications, signature blocks, and appendix).

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