Summary of SC98222, *State ex rel. Janssen Pharmaceuticals Inc., Johnson & Johnson, and Janssen Research & Development LLC v. The Honorable Michael Noble*
Proceeding originating in the St. Louis circuit court, Judge Michael Noble
Argued and submitted September 1, 2020; opinion issued December 22, 2020

Attorneys: Janssen Pharmaceuticals Inc., Johnson & Johnson, and Janssen Research & Development LLC were represented by Dan H. Ball, Bettina J. Strauss, Richard P. Cassetta and Stefani L. Wittenauer of Bryan Cave Leighton Paisner LLP in St. Louis, (314) 259-2000. The plaintiffs were represented by W. Wylie Blair, James G. Onder, Craig W. Richards and Stephanie L. Rados of OnderLaw LLC in St. Louis, (314) 963-9000.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Pharmaceutical companies seek a permanent writ requiring the circuit court to transfer the claims of the plaintiffs injured outside St. Louis city to a proper venue. In a 5-2 decision written by Judge Mary R. Russell, the Supreme Court of Missouri makes permanent its preliminary writ of prohibition. Judge Paul C. Wilson dissents. Chief Justice George W. Draper III dissents without opinion.

Facts: A group of plaintiffs sued Janssen Pharmaceuticals Inc., Johnson & Johnson, and Janssen Research & Development LLC (collectively, the pharmaceutical companies) in the St. Louis city circuit court for alleged physical and economic injuries resulting from the medication Risperdal. Of the three Missouri plaintiffs, only one –Treyvon Johnson – alleged he was injured in St. Louis city. The pharmaceutical companies moved to dismiss the plaintiffs' claims for improper venue or, alternatively, to transfer venue. The circuit court overruled the motion, holding Johnson's claims rendered the city a proper venue for all the plaintiffs. After this Court issued its opinion in *State ex rel. Johnson & Johnson v. Burlison*, addressing venue under section 508.010, RSMo, and Rule 51.01, the pharmaceutical companies asked the circuit court to reconsider its venue ruling. The circuit court overruled the motion to reconsider. The pharmaceutical companies now seek to make permanent this Court's preliminary writ prohibiting the circuit court from taking any action other than transferring the claims of those injured outside the city to proper venues.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: Transfer of venue is required for the plaintiffs whose injuries occurred outside of St. Louis city. Under this Court's ruling in *Johnson & Johnson* and Rule 51.01, permissive joinder cannot be used to create venue that is otherwise improper. Even if this Court assumes the recently enacted section 508.013.1, RSMo, governs, its requirements are not satisfied because a trial date, as contemplated by the statute, has not been set. The circuit court's local practices indicate civil cases are set on an ambitious, initial trial docket such that the trial date was a placeholder, not an actual trial setting, under the facts and circumstances of this case.

Dissenting opinion by Judge Wilson: The author would find the safe harbor provision of section 508.013.1 applies in that the statute's plain language requires only that the action have

had a trial date beginning on or before August 28, 2019. This Court cannot add language so as to construe the statute to require the trial date be "practical," "reasonable," or "likely." Accordingly the author would quash the preliminary writ.