**Summary of SC98650, *State ex rel. COUNTRY Mutual Insurance Co. v. The Honorable Brian H. May***

Proceeding originating in the St. Louis County circuit court, Judge Brian H. May
Argued and submitted November 10, 2020; opinion issued April 6, 2021

**Attorneys:** The insurance company was represented by Richard I. Woolf and Lisa A. Larkin of Baker Sterchi Cowden & Rice LLC in St. Louis, (314) 345-5000. Woodson was represented by Michael Rene Durham, Richard K. Dowd, Doublas P. Dowd and Alex R. Lumaghi of Dowd & Dowd PC in St. Louis, (314) 621-2500.

*This summary is not part of the opinion of the Court. It is provided 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:** An insurance company seeks a writ prohibiting the circuit court from taking any action in the underlying wrongful death lawsuit other than granting its timely application for a change of judge. In a decision written by Judge Patricia Breckenridge and joined by four judges, the Supreme Court of Missouri makes its preliminary writ permanent. Because, as an intervenor, the insurance company had the right to request a change of judge under this Court's rules, the circuit court exceeded its authority when it denied the insurance company a change of judge and ruled on other motions pending in the underlying suit.

Judge Paul C. Wilson concurs in a separate opinion. He would find the insurance company's motion to intervene was plainly defective under this Court's rules; however, because the propriety of the motion was never challenged, he agrees that the circuit court was required to grant the insurance company's application for a change of judge.

**Facts:** In 2015, an altercation occurred at a St. Louis County convenience store between Donte Woodson and Silver Franklin in which Woodson was shot and killed. Woodson's parents filed a wrongful death lawsuit against Franklin. The parties executed an agreement pursuant to section 537.065, RSMo, that any judgment entered against Franklin would be satisfied by his insurance company, COUNTRY Mutual Insurance Company. The insurance company then was granted intervention in the wrongful death action and applied for a change of judge. The circuit court denied the insurance company's application, finding section 537.065 permitted intervention as a matter of right but did not abrogate prior case law regarding an insurer's lack of a right to otherwise participate in or control the litigation. The circuit court also quashed the insurance company's notice to depose Franklin. The insurance company now seeks a permanent writ of prohibition from this Court requiring the circuit court to grant its application for a change of judge and permitting it to participate substantively in the underlying action, including discovery.

**PRELIMINARY WRIT MADE PERMANENT.**

**Court en banc holds:** (1) The circuit court exceeded its jurisdiction by denying the insurance company's application for change of judge. Rule 51.05(d) expressly provides that intervenors may file an application for a change of judge. The precedent on which the circuit court relied predated the provision in section 537.065 permitting insurance companies to intervene as a

matter of right or otherwise did not address an intervenor's right to request a change of judge. Under the rule's plain language, the insurance company's application for change of judge was timely; therefore, the circuit court was without authority to do anything other than grant it.

(2) Because the circuit court lost its authority to do anything other than grant the application for a change of judge, it had no authority to quash the insurance company's notice of deposition. Accordingly, the circuit court also must vacate its order quashing the notice of deposition. The judge to whom the matter is transferred will have the responsibility to rule on motions on which the circuit court previously ruled in excess of its authority.

**Concurring opinion by Judge Wilson:** The author believes the circuit court erred in sustaining the insurance company's motion to intervene because, despite Rule 52.12(c) requiring it, the insurance company failed to include a pleading setting forth the claim or defense for which it sought intervention. Nevertheless, because the propriety of the motion to intervene was not challenged in the underlying action nor in this writ proceeding, the author concurs that, as an intervenor, the insurance company had a right to a change of judge.