Missouri Court of Appeals
Southern District

In Division

STATE OF MISSOURI ex rel.
VIVA ROBERTS,

Relator,

v.

THE HONORABLE JOSEPH
HENSLEY,

Respondent.

No. SD39073

Filed: January 16, 2026

ORIGINAL PROCEEDING IN MANDAMUS

PRELIMINARY WRIT OF MANDAMUS QUASHED

This case stems from a lawsuit filed by Viva A. Roberts ("Relator") on May 17, 2024, in Jasper County, Missouri, against one defendant, whom Relator named in three different petitions as G&W Two, LLC, G.W. Foods, Inc., and GW Foods, Inc.

("Defendant"), respectively.[1] Relator's suit sought damages for personal injuries that Relator claims she sustained when she fell at the Apple Market grocery store in Columbus, Kansas, owned by Defendant, on August 22, 2022.

On June 20, 2025, the Honorable Joseph L. Hensley ("Respondent") entered an Order granting Defendant's Motion to Transfer Venue ("Motion"), agreeing with Defendant that venue was improper in Jasper County because Relator did not live in Missouri at the time of the occurrence,[2] was injured in Kansas not the state of Missouri, and because Defendant "does not have an office or agent for its 'usual and customary business' in Jasper County." Respondent further found that "Defendant is not located in Jasper County in any capacity, but rather its registered agent is located in Howell County, Missouri." Respondent also noted in his Order that "Plaintiff admirably concedes that if the case was filed originally on April 17, 2025, the date Plaintiff filed her *Second*

[1] All three of these names refer to the corporate defendant that owned the grocery store where Relator fell. Relator misnamed the corporate defendant in her initial lawsuit and amended the corporate defendant's name twice in her first and second amended petitions. As such, we will simply refer to "Defendant," unless it is necessary to discuss one particular iteration of Defendant's name.

[2] While Respondent's Order makes a reference to Relator's residence in Jasper County (stating that "[Relator] lives in Jasper County and consequently sought treatment here[,]" Relator alleges in all three of her petitions that she was a resident of Cherokee County, Kansas, at the time of the events described in her petitions. Thus, we take Relator's own allegations regarding her residence at face value for the purposes of this opinion. Therefore, as "plaintiff in this tort action alleges residence and first injury outside the state of Missouri and because [Defendant] is a defendant corporation, venue lies only 'in any county where a defendant corporation's registered agent **is** located[.]'" ***State ex rel. Monsanto Co. v. Mullen***, 672 S.W.3d 235, 241 (Mo. banc 2023) (quoting section 508.010.5(1)). All references to section 508.010 are to RSMo Cum.Supp. 2019, including changes effective August 28, 2019.

Amended Petition, and if Defendant filed this [*Motion*] at that time, the Motion would be well taken." At Defendant's request, Respondent transferred the case to Howell County, where Defendant's registered agent is located.

Relator then filed a Petition for Writ of Mandamus in this Court, arguing that Defendant's Motion was outside of the 60-day time limit to transfer venue pursuant to Rule 51.045,[3] and asked this Court to direct Respondent to withdraw his Order that transferred the case to Howell County, and to enter an order denying Defendant's Motion. This Court entered a Preliminary Writ of Mandamus. However, because venue is improper in Jasper County, and Relator's amendments to her initial petition abandoned any prior pleadings, Defendant timely moved to transfer venue after Relator filed her Second Amended Petition for Damages and Respondent correctly transferred venue to Howell County. For those reasons, we now quash this Court's Preliminary Writ of Mandamus.

Background and Procedural History

Relator filed her initial Petition for Damages ("Initial Petition") on May 17, 2024, in Jasper County, and named G&W Two, LLC, as the defendant. Defendant was served with the Initial Petition when Defendant entered its general appearance and filed its Answer on May 23, 2024, and the parties engaged in discovery until November 15, 2024, when Relator filed her First Amended Petition for Damages ("First Amended Petition").

[3] All rule references are to Missouri Court Rules (2025).

Defendant was served through the electronic filing system on that date.[4] In her First Amended Petition, Relator changed the name of Defendant from G&W Two, LLC, to G.W. Foods, Inc. Defendant answered the First Amended Petition on November 18, 2024, and the parties engaged in additional discovery. Both Relator's Initial Petition and First Amended Petition claimed damages of "not to exceed $75,000[.]" Additionally, up to that point in time, Relator's petitions had both stated:

> Venue is proper in Jasper County pursuant to RSMo. § 347.069.2,[5] in that Plaintiff was first injured outside the State of Missouri and Defendant … has an office or agent for the transaction of its usual and customary business in Joplin, Jasper County, Missouri.

Defendant did not challenge venue in response to Relator's Initial Petition and First Amended Petition, but it denied that venue was proper in Jasper County in its answers.

On April 22, 2025, Relator filed a Second Amended Petition for Damages ("Second Amended Petition"). Defendant was again served with the Second Amended Petition through the electronic filing system on that date. Rule 103.08(a). In the Second Amended Petition, Relator now alleged, without referring to section 347.069.2, that "[v]enue is proper in that Plaintiff was first injured outside the State of Missouri and Defendant [] is a Missouri corporation with its registered agent in the State of Missouri." Relator further alleged the registered agent could be served in Willow Springs, Missouri. The Second Amended Petition also removed its $75,000 limitation on damages she was

[4] Service of the Second Amended Petition was in accordance with Rule 103.08, in that service was accomplished on the attorneys in the case through the electronic filing system, and therefore complete upon transmission. Rule 103.08(a).

[5] All references to section 347.069 are to RSMo 2016.

seeking to recover from Defendant. Defendant answered Relator's Second Amended Petition on April 30, 2025, in part, by denying that venue was proper in Jasper County. Additionally, it asserted as an affirmative defense: "Defendant states that venue is improper in [Jasper County] because [Relator] was first injured in the State of Kansas; her lawsuit alleges a tort; and Defendant's registered agent is located in Howell County, Missouri. Accordingly, venue must be transferred to Howell County pursuant to § 508.010.5(1)." Defendant then filed its Motion on May 9, 2025, citing to section 508.010.5(1). Relator filed its Opposition by Plaintiff to Defendant's Motion for Transfer of Venue on May 23, 2025. Respondent held a hearing on the Motion on June 2, 2025, took the matter under advisement, and entered his Order on June 20, 2025, granting Defendant's Motion. Relator filed her Petition for Writ of Mandamus, asking this Court to direct Respondent to withdraw his Order transferring the case to Howell County, and to enter an order denying Defendant's Motion. This Court entered a Preliminary Writ of Mandamus, which we now quash.

Standard of Review

The standard of review for writs of mandamus, including those pertaining to motions to transfer venue, is abuse of discretion. ***State ex rel. Mo. Pub. Serv. Com'n v. Joyce***, 258 S.W.3d 58, 61 (Mo. banc 2008). A court abuses its discretion when it fails to follow statutes. ***Id.***

Analysis and Decision

In her sole point on appeal, Relator argues that she is entitled to a permanent writ of mandamus ordering Respondent to withdraw the Order which transferred venue from

Jasper County to Howell County, for the reason that Defendant's Motion was untimely, in part that:

> Supreme Court Rule 51.045 governs when a Motion for Transfer of Venue When Venue Improper and requires that a motion to transfer venue be filed within 60 days of "service" upon the party seeking transfer of venue, and further that "If a motion to transfer venue is not timely filed, the issue of improper venue is waived."
>
> ….
>
> Service upon [] Defendant occurred on May 23, 2024, when Defendant G&W2, LLC entered its general appearance and filed its Answer; alternatively, service upon Defendant occurred when the misnomer of Defendant was corrected and the Defendant's name was corrected to G&W Foods, Inc. on November 14, 2024.
>
> The Defendant's Motion … filed on May 9, 2025, was untimely and therefore the issue of improper venue was waived.

We disagree.

The parties seemingly agree that venue has never been proper and is not proper in Jasper County, Missouri, pursuant to section 508.010.5(1). In Missouri, venue is determined by statute. ***Joyce***, 258 S.W.3d at 61. The applicable parts of section 508.010 state as follows:

> [I]n all actions in which there is any count alleging a tort and in which the plaintiff was first injured outside the state of Missouri, venue as to that individual plaintiff shall be determined as follows:
>
> (1) If the defendant is a corporation, then venue shall be in any county where a defendant corporation's registered agent is located …[.]

Section 508.010.5(1). "The purpose of the venue statutes is to provide a convenient, logical and orderly forum for litigation." ***State ex rel. Rothermich v. Gallagher***, 816 S.W.2d 194, 196 (Mo. banc 1991).

Rule 51.045 provides for the transfer of venue when venue is improper. Any motion to transfer venue alleging improper venue must be brought "within 60 days of service on the party seeking transfer." Rule 51.045(a).

The parties agree that Relator was injured outside of the State of Missouri, and that Relator did not live in the State of Missouri. Therefore, venue lies in any county where Defendant's registered agent is located. Section 508.010.5(1). That county is Howell County. Thus, we first note that Relator, by not making any argument in his briefing that venue is proper in Jasper County (or improper in Howell), apparently concedes that venue is improper there.

However, Relator argues that "the issue of improper venue is waived." Relator claims that she instituted this action by filing the Initial Petition on May 17, 2024, and that Defendant was served on May 23, 2024, when Defendant entered its general appearance and filed its Answer. Alternatively, Relator argues that Defendant was served on November 14, 2024, when it filed its First Amended Petition when Defendant's name was corrected to G&W Foods, Inc.[6] Relator argues that Defendant did not move to transfer venue until May 9, 2025, which is 351 days after it was served with the Initial Petition, and 175 days after it was served with the First Amended Petition, and well out of the 60-day window to file her Motion established by Rule 51.045.

[6] Relator only seems to argue it is possible that the 60-day window to file a motion to transfer venue ran from this date because Defendant's name was amended, not because the filing of an amended petition reset the 60-day timeline for filing the motion.

Contrary to Relator's argument, however, we agree with Respondent that the clock on Defendant's 60-day window to move to transfer venue pursuant to Rule 51.045 did not begin to run until April 22, 2025, the date on which Defendant was served with Relator's Second Amended Petition. Rule 103.08(a). While our rules and statutes do not explicitly answer the question of whether the filing of an amended petition renews the time for filing a motion to transfer venue under Rule 51.045, our review of the rules, statutes, and case law related to venue – and the changes thereto – leads us to believe that, under these circumstances, it does.

For one, our courts have amended the venue statutes over the years to reflect a more flexible approach to evaluating venue so that venue remains correct, and they have consistently rejected the notion that venue is only to be considered at the time of the initial filing. In the case of ***State ex rel. Tapia v. Ankrom***, this Court recently addressed the history of our rules for transferring venue when venue is improper. We restate the analysis herein:

> In the 1980s, the remedy for improper venue was to dismiss the case without prejudice to the refiling of the action in the proper forum. *See, e.g.*, *State ex rel. Bohannon v. Adolf*, 724 S.W.2d 248, 249 n.1 (Mo. App. [E.D.]1987). That changed in 1989 when the legislature enacted § 476.410 RSMo Cum. Supp. (1989), which authorized the transfer of a case filed in an improper venue to any circuit in which it could have been brought. *Id.* This transfer process was further refined when our Supreme Court adopted Rule 51.045, effective January 1, 2001. *Id.*

713 S.W.3d 633, 639 (Mo. App. S.D. 2025). Section 476.410 mandates that "[t]he division of a circuit court in which a case is filed laying venue in the wrong division or

wrong circuit shall transfer the case to any division or circuit in which it could have been brought."

> In conjunction with § 476.410, "questions concerning venue are to be raised by motion to transfer to a correct venue under Rule 51.045." *State ex rel. Bugg v. Roper*, 179 S.W.3d 893, 894 (Mo. banc 2005). An action brought in a court where venue is improper shall be transferred to a court where venue is proper pursuant to Rule 51.045, if a motion for such transfer is timely filed. *United Pharmacal Co. of Missouri Inc. v. Missouri Bd. of Pharmacy*, 159 S.W.3d 361, 367 (Mo. banc 2005).

Tapia, 713 S.W.3d at 639.

Our case law reflects the changes to the venue statutes. For example, in ***State ex rel. Kansas City Southern Ry. Co. v. Nixon***, 282 S.W.3d 363 (Mo. banc 2009), our high Court rejected a bright-line reading of the venue transfer rule which "would restrict the circuit court's ability to re-determine venue based upon amendments to the original petition[,]" finding such a position was inconsistent with the venue statutes, which "mandate[] re-determination of venue in cases where the addition or removal of a party renders venue improper and provides for transfer to a proper venue." ***Id.*** at 366; *see also* ***State ex rel. Budd Co. v. O'Malley***, 114 S.W.3d 266, 268-69 (Mo. App. W.D. 2002) (holding that, under the Supreme Court of Missouri's analysis in ***State ex rel. Linthicum v. Calvin***, 57 S.W.3d 855 (Mo. banc 2001), the court is required, as a matter of law, to make the venue analysis on the basis of the amended petition that was filed as a matter of course, after a new defendant was added).

Thus, we must reject Relator's argument that the time to transfer venue began to run *only* at the filing of the Initial Petition (or the First Amended Petition) in this case. As Respondent points out, and the case law has long-established, "[w]hen an amended

petition is filed, a former petition becomes an abandoned pleading that receives no further consideration in the case." ***Rice v. Midland States Bank***, 692 S.W.3d 76, 79 (Mo. App. E.D. 2024) (quoting ***McDonald v. City of Kansas City***, 285 S.W.3d 773, 774 (Mo. App. W.D. 2009)). This is true even if the amended petition does not differ significantly from the original petition. ***Rice***, 692 S.W.3d at 79. This principle is demonstrated with respect to venue in ***Roper***, 179 S.W.3d at 894, where our high Court held that, when an amended pleading does not incorporate or refer to any other pleading, all prior pleadings are abandoned, and the issue of venue is to be determined on the basis of the amended petition. Therefore, at least under the facts of this case, the time for filing a motion to transfer venue renewed with each successive amended petition that the plaintiff filed, as the pleading before had been abandoned.[7]

The result we reach in this case will prevent the situation cautioned against in ***Linthicum***,[8] where "a plaintiff could sue a Missouri resident in any of over one hundred venues by simply suing a non-resident under section 508.010(4), and then amending the

[7] We reject Relator's argument that her amendments to the petition merely "relate back" to the filing date of the Initial Petition. The relation back doctrine set forth in Rule 55.33(c), and the discussion in Missouri case law regarding "misnomers" and "additions" or "changes to" parties are specific to circumstances where the statute of limitations is at issue. In those circumstances, the relation back doctrine allows certain amendments to a subsequent pleading to "relate back" to the time of filing of the original petition if certain conditions are met to avoid statute of limitations issues. *See* Rule 55.33(c). The statute of limitations is not at issue in this case and Relator's arguments injecting the relation back doctrine into this case are not well taken.

[8] ***Linthicum*** addressed a different subsection of the general venue statute than what we discuss here, namely section 508.010(3), which provides that: "[w]hen there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides[.]" 57 S.W.3d at 858.

original petition to include the Missouri resident." 57 S.W.3d at 857. Respondent's Order speaks to such an unwelcome outcome, wherein he notes that, to allow Relator to continue to amend her petition, but to fail to allow Defendant to challenge venue set out in those amended petitions, is akin to allowing Relator to "have [her] cake and eat it too[.]" On the facts of this case, Relator's prior petitions were abandoned with each successive pleading she filed, and were no longer operative in the case. ***Rice***, 692 S.W.3d at 79.

For the reasons set out herein, Defendant's Motion was timely filed, Respondent properly granted the Motion, and then properly transferred venue to Howell County. This Court's preliminary writ of mandamus is hereby quashed.

JENNIFER R. GROWCOCK, C.J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

DON E. BURRELL, J. – CONCURS