

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

WRIT DIVISION SIX

STATE OF MISSOURI, EX REL.)	No. ED95280
DAVID M. NOTHUM AND)	Circuit Court of St. Louis County
GLENETTE NOTHUM, Relators,)	Cause No. 09SL-CC02805
v.)	Writ of Prohibition
HONORABLE JOHN F. KINTZ,)	
Respondent.)	FILED: February 2, 2011

OPINION SUMMARY

David Nothum and Glenette Nothum (“Relators”) filed a Petition for Writ of Prohibition, seeking to prohibit the Honorable John Kintz, of the Circuit Court of St. Louis County (“Respondent”) from holding them in contempt for their refusal to testify regarding their ability to satisfy a debtor judgment against them, despite a grant of use immunity pursuant to Section 513.380 (RSMo. 2000). Relators have asserted their privilege against self-incrimination as secured by the Fifth Amendment to the United States Constitution and by Article I, Section 19 of the Missouri Constitution. They contend that Respondent failed to make the required findings as a matter of law, that a response of either Relator could not incriminate them and exceeded his jurisdiction in holding them in contempt.

PRELIMINARY ORDER IN PROHIBITION IS MADE ABSOLUTE.

WRIT DIVISION VII HOLDS: After Relators asserted their privilege against self-incrimination, Respondent failed to make required findings as a matter of law, that a response of either Relator could not incriminate them. Thus, Respondent exceeded his jurisdiction in ordering Relators to give testimony at the judgment debtors’ examination over assertions of their privilege against self-incrimination. We make our preliminary writ absolute.

Opinion by: Nanette A. Baker, P.J. Roy L. Richter, C.J. and Patricia A. Cohen, J. concur.

Attorneys for Relators: Michael Gross, Benjamin Westbrook, Norman Pressman, John Hilton, Donald Carmody, Kathryn Koch

Attorneys for Respondent: Jeffrey McPherson, Christopher Larose

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IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
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