

**Summary of SC92098, *Carolynne M. Kieffer v. Jennifer Icaza, Ramiro Icaza and Dianne Icaza***

Appeal from the St. Louis circuit court, Judge Michael Mullen  
Argued and submitted May 10, 2012; opinion issued July 31, 2012

**Attorneys:** Carolynne Kieffer of St. Louis represented herself. The Icazas were represented by Brice R. Sechrest, John M. Williams and Joseph A. Murray of Williams & Sechrest PC in Park Hills, (573) 431-5592; and Kenneth C. McManaman of Kenneth C. McManaman LLC in Cape Girardeau, (573) 335-8522.

*This summary is not part of the opinion of the Court. It has been prepared by the 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:** A landlord appeals a trial court's judgment in favor of her tenant. In a 7-0 decision written by Chief Justice Richard B. Teitelman, the Supreme Court of Missouri affirms the judgment. Because the judgment underlying the first appeal was declared void, this Court can reach the merits of the landlord's appeal here. The landlord has not demonstrated any error in the reassignment of the case to the deciding judge, she did not make a timely request for a jury trial under the applicable rule, the applicable local rule did not require the trial court to overrule the tenant's motion for sanctions, the trial judge did not lack jurisdiction to transfer the case to a different division of the circuit court and there was substantial evidence supporting the trial court's judgment.

Judge Cindy A. Suter, an associate circuit judge in Randolph County in the 14th circuit, sat in this case by special designation in place of Judge George W. Draper III.

**Facts:** Jennifer Icaza and her parents entered into a lease agreement with Carolynne Kieffer in July 1998 for a residence to be used by Icaza. In September 2005, Kieffer sued the Icazas for breach of contract and property damage, and the Icazas filed a counterclaim against Kieffer. Five days before the case was scheduled for a bench trial (a trial before a judge), Kieffer filed a motion for a jury trial. The court overruled her motion, finding that it was filed improperly and that she did not send a copy to both of the Icazas' attorneys. The court took the case under advisement at the conclusion of the February 2008 bench trial and, in May 2008, ruled in favor of the Icazas on Kieffer's petition and in favor of Kieffer on the Icazas' counterclaim. On appeal, the court of appeals held the judgment was void because section 517.111.2, RSMo, required it to be entered within 30 days after the case was submitted. The appeals court directed the trial court to set aside the May 2008 judgment and to treat the case as finally submitted on the day the judgment was set aside. In February 2010, the trial court set aside the judgment and entered a new judgment three weeks later denying Kieffer's request for a jury trial and again finding in the Icazas' favor on Kieffer's petition and in Kieffer's favor on the Icazas' counterclaim. Kieffer appeals.

**AFFIRMED.**

**Court en banc holds:** (1) Because the doctrine of the law of the case does not apply here, this Court will consider the merits of Kieffer's appeal. Under this doctrine, failure to raise points in a prior appeal means that a court later hearing the case need not consider them. It does not apply here, however, as when the judgment underlying the first appeal was reversed, it was void.

(2) Kieffer has not demonstrated any error in the case's reassignment to Judge Michael Mullen. Nothing in the record supports the conclusion that the original judge assigned, Judge Michael Stelzer, prevented the parties from stipulating to a new judge, and the fact that Mullen took the case indicates he consented to taking it. Further, the fact that Judge David Dowd approved the reassignment rather than Presiding Judge Thomas Frawley does not mean Dowd was not acting as the presiding judge at the time, as is allowed by local court Rule 36.8.

(3) Local Rule 6.1.1.1 did not require that the case be assigned to Division 29 instead of Division 28 because Kieffer did not request her jury trial five or more days before the scheduled trial. Under Rule 44.01(a), when the time allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays are excluded from the computation. Here, Kieffer requested the jury trial on the Friday before the case was scheduled for a bench trial on Wednesday.

(4) Kieffer's argument that the judge lacked jurisdiction to sanction her for failure to comply with a discovery order is without merit. Local Rule 32.6(2) gives the trial court discretion to overrule a motion for sanctions that does not comply with local Rule 32.6(1) but does not require the court to overrule such a motion.

(5) Although Kieffer withdrew her motion for change of judge, Judge Stelzer did not lack jurisdiction to transfer the case to another division of the circuit court. A trial judge retains discretion to recuse from a case or grant a change of judge for any number of reasons.

(6) There was substantial evidence supporting the trial court's determination that Icaza did not breach the lease agreement. By not providing an itemized list of damages, Kieffer failed to prove any damages as a result of the alleged breach, nor did she offer relevant evidence or examine the Icazas about issues relevant to the alleged breach. In contrast, the Icazas offered detailed testimony about Kieffer's repeated, unauthorized entry into the residence.