

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, EX REL., PALMER NEVILLE, JAMES W. NEVILLE, JR., AND
JENNIFER NEVILLE,
RELATORS**

vs.

**THE HONORABLE JACK R. GRATE,
RESPONDENT**

DOCKET NUMBER WD77342

DATE: AUGUST 5, 2014

ORIGINAL PROCEEDING FOR WRIT OF PROHIBITION

Appellate Judges:

Writ Division: Joseph M. Ellis, P.J., Victor C. Howard, J. and Lisa White Hardwick, J.

Attorneys:

David C. DeGreef, for Relators Palmer Neville, James W. Neville, Jr., and Jennifer Neville

Charles H. Stitt, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, ex rel., PALMER NEVILLE, JAMES W. NEVILLE, JR., and
JENNIFER NEVILLE, RELATORS**

v.

**THE HONORABLE JACK R. GRATE AND JAMES KELSO JOURNEY,
RESPONDENTS**

WD77342 (Consolidated with WD77384)

Jackson County, Missouri,

Before Writ Division Judges: Joseph M. Ellis, P.J., Victor C. Howard, J. and Lisa White Hardwick, J.

Palmer Neville, James W. Neville, Jr., and Jennifer Neville (collectively, “Relators”) have petitioned this Court for a writ of prohibition to prohibit the Honorable Jack R. Grate (“Respondent”) from transferring Relators’ underlying tort action from the Circuit Court of Jackson County to the Circuit Court of Bates County. The underlying action alleged that Michael and Ava Christie and Midland Land and Cattle Company (collectively, “Defendants”) negligently entrusted Relator Palmer Neville with an ATV and failed to adequately instruct and train him on or supervise his use of the ATV. The petition further alleges that, as a result of such conduct, Relator Neville sustained injuries in an ATV accident that occurred on property owned and operated by Defendants.

Relators filed the underlying suit in Jackson County, Missouri. The alleged negligent entrustment, supervision, and instruction is said to have occurred on Defendants’ property in Bates County, Missouri. However, the ATV accident and Relator Neville’s injuries resulting therefrom occurred on Defendants’ property in Linn County, Kansas, and all parties are Kansas residents. Additionally, Defendant Midland Land and Cattle Company is a Kansas corporation that does not have a registered agent in the state of Missouri.

Defendants filed a motion to dismiss the underlying action or, in the alternative, a motion to transfer venue to Bates County, Missouri. In their motion, Defendants contended that the underlying action must be dismissed, without prejudice, because no Missouri county constitutes a proper venue under the general venue statute, § 508.010. Alternatively, Defendants averred that the case must be transferred to Bates County because Bates County has the only logical nexus to the case in that the alleged negligent entrustment, supervision, and instruction occurred on Defendants’ Bates County property. Relators opposed the motion, asserting that venue is proper in any Missouri county because § 508.010.5 does not prescribe a venue under the particular facts and circumstances of this case. Ultimately, Respondent granted Defendants’

motion to transfer venue on the basis that Bates County had a more logical nexus to the case. The underlying case was then transferred to Bates County.

Relators subsequently filed a petition for a writ of prohibition with this Court. After receiving suggestions in opposition, we issued a preliminary writ and ordered that the case be transferred back to Jackson County. Relators now request we make the preliminary writ permanent.

PRELIMINARY WRIT MADE PERMANENT

Writ division holds:

(1) Transfer of venue from one Missouri county to another Missouri county on the basis that another county had a more “logical nexus” to the facts of the case constitutes an impermissible intrastate application of the doctrine of *forum non conveniens*.

(2) Although § 508.010.5, the general venue statute pertaining to out-of-state tort injuries, does not prescribe a particular venue under the facts and circumstances of a case, that does not reflect the legislature’s intent to prevent certain plaintiffs with out-of-state injuries from asserting or attaining venue in the state of Missouri. Instead, we must conclude that the legislature did not intend to prescribe a particular venue under such circumstances and, thus, venue is proper in any Missouri county.

(3) Interpreting § 508.010.5 to mean that no Missouri venue is available when the statute does not prescribe a venue under the facts and circumstances of a case has possible constitutional implications in that it would produce an arbitrary and unreasonable procedural bar that would prevent some, but not all, plaintiffs from accessing Missouri courts to assert otherwise viable causes of action for out-of-state injuries that result from negligent conduct committed in Missouri.

(4) Because venue was proper in any Missouri county, including Jackson, Respondent was without discretion to disturb Relators’ choice of proper venue and, therefore, lacked the authority to transfer the underlying action to Bates County.

(5) Relators did not waive their argument that Respondent lacked the authority to transfer venue to Bates County by arguing that venue was proper in any Missouri county because Relators made their argument that venue was proper in any Missouri county in order to establish Jackson County as a proper venue and, thus, defeat Defendants’ motion to transfer venue. At no point did Relators acquiesce in Respondent’s transfer of this case to Bates County. Thus, no waiver occurred.

Opinion by Joseph M. Ellis, Judge

Date: August 5, 2014

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