

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI**

WALTER WINSTON, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1822-CC00515
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

**MONSANTO COMPANY’S RESPONSE TO PLAINTIFFS’ WITHDRAWAL OF THEIR  
OPPOSITION TO MONSANTO’S RENEWED MOTION TO TRANSFER**

COMES NOW, Monsanto Company (“Monsanto”) and submits its Response to Plaintiffs’ Withdrawal of Their Opposition to Monsanto Company’s Renewed Motion to Transfer (“Plfs.’ Withdrawal”), filed on September 4, 2019. In support thereof, Monsanto states as follows:

Plaintiffs’ Withdrawal asks this Court to order the transfer of all the *Winston* plaintiffs to the Circuit Court for the County of St. Louis (“St. Louis County Court”) and to assign himself as trial judge to preside over the *Winston* case in the St. Louis County Court. Plaintiffs’ request must be denied for two reasons. **First**, this Court lacks jurisdiction to take any action in this case at this time. **Second**, this Court will never have authority to unilaterally transfer himself to preside over a case in a different circuit.

Plaintiffs’ request fails for the initial reason that this Court has no authority to do anything at this time related to the *Winston* plaintiffs (excluding Walter Winston) except to file a response to the preliminary writ issued by the Missouri Supreme Court on September 3, 2019 (attached hereto as Exhibit A). Beyond that, this Court has no jurisdiction to act.

The issuance of the temporary writ freezes the action below. The trial court has no jurisdiction to take further action in the underlying case and any action taken in

violation of the writ is void. The trial court may not reassume jurisdiction until the writ court has relinquished jurisdiction either by quashing the writ or by making it permanent and returning the case to the trial court.

*State ex rel. Consumer Programs Inc. v. Dowd*, 941 S.W.2d 716, 717 (Mo. App.1997).

Plaintiffs' consent to transfer venue does not allow this Court to reassume jurisdiction until the Missouri Supreme Court has expressly relinquished jurisdiction. *See id.* Whether or not it may ultimately moot the writ proceedings, the Supreme Court's preliminary writ order remains in place, and any action taken by this Court in violation of that order is void *ab initio*.

In fact, Plaintiffs' request for this Court to willfully ignore the preliminary writ puts this Court at risk of a contempt order. *See Hansen v. State*, 226 S.W.3d 137, 140 n.2 (Mo. banc 2007). In that case, the Missouri Supreme Court issued an order for the respondent to show cause why it should not be held in contempt, and why attorney's fees and costs should not be assessed against it, when the respondent set a hearing date in violation of the Court's preliminary writ of prohibition staying all proceedings in the case. The Missouri Supreme Court ultimately denied the contempt motion because, in response to the show cause order, the respondent took immediate action to rescind the hearing notice and to apologize to the relator. *Id.*

Even if this Court had jurisdiction to act, the judge does not have authority to assign himself to go with the case. The Missouri Supreme Court has definitively held that a judge lacks authority to assign himself or herself to preside over a case in a different circuit. *State ex rel. Baumruk v. Seigel*, 150 S.W. 3d 286 (Mo. banc 2004). In that case, after the Missouri Supreme Court reversed and remanded for change of venue, the trial judge announced that he would go with the case to the new circuit. The Missouri Supreme Court issued a permanent writ to prevent this exercise of extra-judicial power, stating:

Respondent points to no statute, court rule, or other authority that allows a judge to follow a case out of circuit on change of venue absent special appointment by this Court under article V, section 6, of the Missouri Constitution. Instead, a

**circuit judge's authority is limited by sec. 478.220, which provides that 'Circuit judges ... may hear and determine all cases and matters within the jurisdiction of their circuit courts....'** When the case is finally transferred to the Circuit Court of St. Charles County, it is to be assigned to a regular judge of that circuit, and the assignment is to be made by the presiding judge under section 478.240 or pursuant to local court rule under section 478.245.

*Id.* (emphasis added). Like the Respondent in *Baumruk*, Plaintiffs cite nothing to support their argument that this Court unilaterally could decide to follow the *Winston* case after the Missouri Supreme Court orders transfer. Monsanto is aware of no such authority in Missouri.

Finally, while Plaintiffs' concerns about loss of their trial date could never justify this Court's exercise of extra-judicial power, their protestations fall particularly flat under these circumstances. Rule 51.01 is crystal clear, yet Plaintiffs fought venue at every opportunity, instead of agreeing to transfer their claims to St. Louis County and seeking a trial setting in that Court long ago. Rewarding the *Winston* Plaintiffs for this choice will only encourage further gamesmanship. Even if Respondent has jurisdiction to transfer the cases at this time, judges in St. Louis County are more than capable of handling this and other, related cases on their own and according to their own schedule.

Accordingly, this Court must deny Plaintiffs' request and refrain from taking any action other than that proscribed by the Missouri Supreme Court in its preliminary writ.

DATED: September 5, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 2019, the foregoing was electronically filed with the Clerk of the Court for St. Louis City, Missouri using Missouri Case.Net which sent notification of such filing to all persons listed in the Court's electronic notification system.

By: /s/ Erik L. Hansell  
*Attorney for Defendant Monsanto Company*