

**IN THE SUPREME COURT OF MISSOURI
EN BANC**

STATE ex rel. MONSANTO COMPANY,

Relator,

v.

HON. MICHAEL K. MULLEN,

Respondent.

No. SC98009

RESPONDENTS' RETURN TO PETITION FOR WRIT OF PROHIBITION

Respondent and Real Party in Interests (“Plaintiffs”) file this Return to Petition for Writ of Prohibition, and respectfully show the Court as follows:

I. INTRODUCTION

In the Circuit Court action underlying this Writ petition, Defendant Monsanto Company (Relator here) filed a Renewed Motion to Transfer on March 5, 2019. Plaintiffs filed their opposition to the motion on March 13, 2019. After supplemental briefing and oral argument, the Circuit Court denied Defendant Monsanto’s motion on May 28, 2019. Plaintiffs have recently withdrawn their opposition to Defendant/Relator’s Renewed Motion to Transfer and have consented to the relief sought by Defendant/Relators (See Exhibit A). Accordingly, because there remains no case or controversy over venue of the underlying *Winston*¹ Plaintiffs, this Court should deny Monsanto’s Writ Petition as moot,

¹ The underlying action is *Winston v. Monsanto Company*, Cause No. 1822-CC00515, 22nd Judicial Circuit of Missouri.

allowing transfer of the plaintiffs in accordance with the relief sought by Monsanto in its Writ petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed the initial *Winston* petition on March 12, 2018. The Circuit Court entered a Case Management Order (CMO) in this case on June 25, 2018, setting a trial for the *Winston* Plaintiffs in October 2019.

On March 5, 2019, Monsanto filed a Renewed Motion to Transfer the *Winston* Plaintiffs primarily to the Circuit Court for the County of St. Louis (County). On March 13, 2019, Plaintiffs filed their opposition to Monsanto's renewed motion.

For more than a year, the parties have been tirelessly preparing the *Winston* case, and the 14 plaintiffs therein, for trial, to begin on October 15, 2019. Monsanto has deposed the 14 *Winston* Plaintiffs and their spouses, as well as their treating physicians. Monsanto has completed the depositions of Plaintiffs' expert witnesses. Plaintiffs have taken the depositions of most, but not all, of Monsanto's expert witnesses.

Defendant/Relator Monsanto engaged in writ practice regarding venue issues beginning in November of 2018. While the writ practice was ongoing, this Court issued its decision in *State ex rel. Johnson & Johnson v. Burlison*, 567 S.W.3d 168 (Mo. 2019) (*J & J*). The parties submitted supplemental briefing in the Supreme Court that specifically addressed the *J & J* ruling. This Court then ultimately denied Monsanto's writ petition on April 2, 2019. On May 28, 2019, the Circuit Court denied Monsanto's Renewed Motion to Transfer.

On June 7, 2019, Monsanto filed another writ petition before the Court of Appeals for the Eastern District of Missouri, challenging the Circuit Court's interpretation and application of the *J & J* decision. The Court of Appeals denied Monsanto's writ petition on July 8, 2019. On July 16, 2019, Monsanto filed its Writ petition in this Court.

On September 3, 2019, this Court issued a Preliminary Writ of Prohibition and ordered the Honorable Michael Mullen to file a written return to the petition on or before September 18, 2019. This Court also set a briefing schedule that would conclude on October 31, 2019, after the *Winston* trial date.

On September 4, 2019, the Plaintiffs withdrew their March 13, 2019 Opposition to Defendant Monsanto Company's Renewed Motion to Transfer the *Winston* Plaintiffs to the Circuit Court for the County of St. Louis and consenting to the transfer of the *Winston* Plaintiffs to St. Louis County as requested by Monsanto. By their withdrawal, Plaintiffs seek to remove any uncertainty in going forward, including seeking to hold the trial date all parties have been working toward.

III. DISCUSSION

A writ of prohibition is an extraordinary remedy available only where necessary (1) to prevent a usurpation of judicial power; (2) to remedy an excess of authority, jurisdiction, or abuse of discretion where the lower court lacks to the power to act as intended; or (3) to prevent some absolute or irreparable harm to a party if relief is not granted. *State ex rel. Missouri Public Defender Comm'n v. Waters*, 370 S.W.3d 592, 603 (Mo. 2012). Monsanto, as the petitioning party, bears the burden of showing that Respondent exceeded his authority, and that burden includes overcoming the presumption that Respondent acted

properly. *See State ex rel. Vanderpool Feed & Supply Co. v. Sloan*, 628 S.W.2d 414, 416-17 (Mo. Ct. App. W.D. 1982).

With the withdrawal of their opposition to Monsanto's motion, Plaintiffs have consented to the very relief that Monsanto requests of this Court – transfer of the *Winston* plaintiffs to St. Louis County. As a result, there is no remaining dispute and, accordingly, the writ can be denied. By the withdrawal of their opposition to transfer, the Plaintiffs concede to the very remedy Monsanto seeks in its writ – transfer of the *Winston* plaintiffs to St. Louis County forthwith. That renders the instant writ moot. “Where a respondent in a mandamus or prohibition case complies with the relator's demands prior to the court's determination of the case, no justiciable controversy remains” *State ex rel. St. Louis County v. Enright*, 729 S.W.2d 537, 540 (Mo.App. E.D.1987). See also *State ex rel. Chastain v. City of Kansas City*, 968 S.W.2d 232, 237 (Mo.App. W.D. 1998) (When an event occurs that makes a court's decision unnecessary or makes it impossible for the court to grant effectual relief, the case is moot and generally should be dismissed”). Thus, in *State ex rel. Cty. of Jackson v. Missouri Pub. Serv. Comm'n*, 985 S.W.2d 400, 403 (Mo. Ct. App. 1999), when the Public Service Commission (PSC) granted full intervention to Jackson County's in a case in which it sought intervention, no case or controversy remained between Jackson County and the PSC, rendering the case moot. In accordance with the above cases, Plaintiffs' withdrawal of their opposition to the very relief Monsanto requests here –transfer to St. Louis County – renders the instant writ moot.

Thus, there is no need for further briefing as there are no issues in dispute. The *Winston* Plaintiffs that are the subject of Monsanto's motion should be allowed to be transferred to St. Louis County.

The *Winston* plaintiffs' case is trial ready. If the case is transferred to St. Louis County in short order, the Plaintiffs can begin trial on or close to the schedule currently in place. Judges in St. Louis County and St. Louis City (as well as the parties) have spent considerable time setting trial schedules, and judges have cleared their calendars for the remainder of this year and the majority of 2020.

IV. CONCLUSION

Because the Plaintiffs have withdrawn their opposition to Monsanto's Company's Renewed Motion to Transfer the *Winston* plaintiffs in the Circuit Court, there is no remaining case or controversy presented in Monsanto's writ petition, and it should be denied as moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

COMES NOW Plaintiffs and hereby certifies that *RESPONDENTS' RETURN TO PETITION FOR WRIT OF PROHIBITION* was filed electronically with the Supreme Court of Missouri by operation of the Court's electronic filing system with copies served by U.S. Mail, on the 9th day of September 2019, to the following:

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Hon. Michael K. Mullen
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