

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

JAMES McWORTHEY,)
)
Plaintiff,)
) Cause No. 1422-CC00253
vs.)
) Division No. 16
OMEGA DEMOLITION)
CORPORATION,)
)
Defendant.)

ORDER

The Court has before it Technology Insurance Company's Motion to Intervene. The Court now rules as follows.

Plaintiff James McWorthey was seriously injured on July 24, 2013, on the Ohio River during a bridge demolition. The matter was tried to the Court on July 24, 2015, and Judgment in favor of Plaintiff was entered on July 27, 2015. On August 25, 2015, Technology Insurance Company (TIC) filed the instant motion to intervene and the matter was heard on September 3, 2015.

In its motion, TIC asserts that it issued a Workers Compensation and Employer's Liability Policy to Defendant Omega that was effective on the day Plaintiff was injured. There is a dispute between Plaintiff and Omega on the one hand, and TIC on the other, as to whether the TIC policy covers, or should be held

to cover, Plaintiff's injuries. The crux of TIC's argument is that Plaintiff and Omega have, through the use of a Section 537.065 agreement, colluded to prevent TIC from being involved in this lawsuit, to prevent TIC from participation in a scheduled mediation, and to attempt to set up TIC for a vexatious refusal to pay claim. TIC argues that under Rule 52.12(a) it is entitled to intervention as a matter of right.

The Court need not specify here the exact sequence of events of which TIC complains. The salient dates and events are those stated in the first paragraph above: this case was tried to the Court on July 24, 2015; Judgment was entered on July 27, 2015; TIC filed its motion to intervene on August 25, 2015; and TIC's motion was heard on September 3, 2015.

When a motion to intervene is timely filed and complies with the procedural requisites of Rule 52.12(c) then, normally at least, a trial court, in evaluating whether the motion has merit and should be granted, should begin by considering whether or not the applicant's motion satisfies all three of the key requirements for intervening as a matter of right. See In re Clarkson Kehrs Mill Transportation Development Dist., 308 S.W.3d 748, 752-753 (Mo.App. E.D. 2010). Those requirements are: (1) a direct and immediate interest in the subject matter of the litigation; (2) that disposition of the action may impede the applicant's ability

to protect that interest; and (3) the applicant's interest is not adequately represented by any of the existing parties. Id.

In the context of cases in which a plaintiff and a defendant have reached a § 537.065 agreement, but then defendant's insurer seeks to intervene because (as here) the insurer contends such agreement is legally unjustified and will adversely affect the insurer if the insurer is not allowed to intervene in the action to protect its claimed interest, to a large degree the legal merit of such a motion hinges on whether or not the insurer has acted in a manner that is found by the court to be fair and reasonable towards the insured, consistent with the basic underlying purpose and principles of sec. 537.065. Thus, in some such cases it is conceivable that intervention as a matter of right might be warranted; while in other cases our courts have found an insurer's conduct to be such that intervention is not warranted. See Whitehead v. Lakeside v. Hospital Ass'n, 844 S.W.2d 475, 480-481 (Mo.App. W.D. 1992). Here, however, the Court must forego any such analysis if the Court finds that it no longer has jurisdiction over the cause. Indeed, for the reasons discussed below the Court concludes that under Rule 75.01 it no longer has jurisdiction over the case.

Rule 75.01 states in pertinent part: "The trial court retains control over judgments during the thirty-day period after entry of

judgment and may, after giving the parties an opportunity to be heard and for good cause, vacate, reopen, correct, amend or modify its judgment within that time." A judgment thus becomes final—after which the trial court is without jurisdiction to amend the judgment or make substantive new rulings in the cause—if no timely "authorized after-trial motion" is filed within that 30-day period. See Burton v. Klaus, 455 S.W.3d 9, 12 (Mo.App. E.D. 2014); Payne v. Markeson, 414 S.W.3d 530, 536 (Mo.App. W.D. 2013); State ex rel. Toth v. Dildine, 196 S.W.3d 663, 664 (Mo.App. E.D. 2006). If an authorized after-trial motion is timely filed, then the trial court's authority to exercise control over the judgment is extended for a period of up to 90 days after the filing of such motion or motions. Rule 81.05(a); Burton, 455 S.W.3d at 12; Payne, 414 S.W.3d at 536; Toth, 196 S.W.3d at 664. "After the expiration of the 30 days provided by Rule 75.01, the trial court is divested of jurisdiction, unless a party timely files an authorized after-trial motion." Spicer v. Donald N. Spicer Revocable Living Trust, 336 S.W.3d 466, 468-469 (Mo. banc 2011). "Following divestiture, any attempt by the trial court to continue to exhibit authority over the case, whether by amending the judgment or by entering subsequent judgments, is void." Id., at 469 (emphasis added, footnote omitted).

Generally speaking, Missouri higher courts have recognized only six "authorized after-trial motions," that is, motions that are expressly authorized by our civil rules and which, if timely filed within the 30-day period after judgment, will extend the time for up to 90 days during which the trial court may still exercise some control over the judgment. Those motions are: (1) a motion to dismiss without prejudice after the introduction of evidence at trial, pursuant to Rule 67.01; (2) motion for directed verdict under Rule 72.01(a); (3) motion for judgment notwithstanding the verdict under Rule 72.01(b); (4) motion to amend the judgment pursuant to Rule 78.04; (5) motion for relief from a judgment or order pursuant to Rule 74.06(a) and (b); and (6) motion for a new trial under Rule 78.04. Burton v. Klaus, 455 S.W.3d at 12.

Rule 75.01 limits the Court's control over a judgment to 30 days after the judgment is entered, absent filing of an authorized after-trial motion. Because no party here filed any authorized after-trial motion, this Court's judgment in this cause became final thirty days after its entry, which was August 26, 2015. This Court, therefore, is without authority to issue any ruling on TIC's Motion to Intervene other than to deny the motion because the 30 days within which the Court retained control over its judgment has long since expired. "Following divestiture [of the

circuit court's jurisdiction], any attempt by the trial court to continue to exhibit authority over the case . . . is void." Spicer, 336 S.W.3d at 469.

Thus, "[s]ince the judgment was final and the [trial court] no longer had jurisdiction, the [trial court] no longer had the power to grant the . . . motion to intervene." State ex rel. Abdullah v. Roldan, 207 S.W.3d 642, 647 n.6 (Mo.App. W.D. 2006); see also Pius v. Boyd, 857 S.W.2d 238, 242 (Mo.App. W.D. 1993) ("Once judgment is final, the trial court loses jurisdiction and an application for intervention is precluded because no pending action exists into which the applicant could intervene."). See also Model Housing & Dev. v. Collector of Revenue, *supra*, 583 S.W.2d at 576 (holding same).

Although TIC filed its motion to intervene within thirty days of the July 27, 2015 Judgment, the thirty-day time limit expired the next day; and upon its expiration this Court lost jurisdiction to grant the motion. Moreover, while the instant motion contemplates certain additional motions that in other circumstances might qualify as an authorized after-trial motion (e.g., motion for remittur, and motion for a new trial), that is not the case here. "Pursuant to Rule 81.05(a)(2), 'the timely filing of either a motion for a new trial or an authorized after-trial motion extends a trial court's jurisdiction for up to ninety

days after the filing of the motion.'" Spicer, 336 S.W.3d at 470. But as our Supreme Court went on to explain in Spicer, "only a **party** may trigger the extension of the trial court's jurisdiction permitted under Rule 81.05(a)(2)." Id. (emphasis added). Here, just as in Spicer, because no **party** filed an authorized after-trial motion, the judgment became final after 30 days following its entry. Id. TIC is not a party to this case; and TIC's motion to intervene is not an authorized-after trial motion.

THEREFORE, it is Ordered and Decreed that Technology Insurance Company's Motion to Intervene is hereby DENIED.

SO ORDERED:

Michael K. Mullen, Judge

Dated: _____