

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

FILED

DEC 17 2019

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

Joanne Puetz-Anderson and
Jim Puetz

Plaintiffs,

v.

Gerald B. Puetz,
David Michael Puetz, and
Jeannette M. Puetz

Defendants.

Case No.: 16SL-CC03837

Division 2

ORDER

On August 27, 2019, Defendants filed their Motion to Dismiss or to Transfer Venue. On October 17, the parties, through their attorneys, appeared before the Court and argued the motion. At that time, the Court granted the parties leave until October 24 to file supplemental briefs on the issues. On October 25, Defendants' attorney filed a "Continuance by Consent" memorandum, memorializing the parties' agreement to extend the deadline for briefs on this issue to November 1. The parties ultimately filed said briefs on November 14, and filed supplemental briefs on December 3 and 4.

The Court, having heard argument and considered the briefs of the parties, rules as follows:

1. Motion to Dismiss

On August 2, 2019, this Court denied Defendants' Motion to Dismiss Plaintiffs' Third Amended Petition for lack of subject matter jurisdiction pursuant to Section 528.040 RSMo. Defendants' have recycled this argument for their motion regarding Plaintiffs' Fourth Amended Petition. The Court is still disinclined to find to Section 528.040 RSMo determinative of

subject matter jurisdiction. The Court's prior ruling on this issue is the law of the case. *Abt v. Mississippi Lime Co.*, 420 S.W.3d 689, 698 (Mo. Ct. App. 2014). Accordingly, Defendants' Motion to Dismiss is denied.

2. Motion to Transfer Venue

Defendants contend that Plaintiffs' Fourth Amended Petition fails to plead facts establishing venue in St. Louis County pursuant to Section 528.040 RSMo., which sets out the venue where a partition action shall be "brought". However, the Court finds that Defendants have waived venue. A motion alleging improper venue shall be filed within sixty days of service on the party seeking transfer. See Supreme Court Rule 51.045.(a). The Missouri Supreme Court, in *Linthicum vs. Calvin*, 57 S.W. 3d 855 (Mo.2001), held "venue is determined as the case stands when brought". *Id.* at 857 (*emphasis added*). The *Linthicum* Court further explained that a suit is "brought" whenever a plaintiff first brings a defendant into a lawsuit, whether by an original or amended petition. *Id.* at 858.

In this case, Plaintiffs' originally filed their action on October 13, 2016. Defendants' counsel entered his appearance on their behalf, effectively accepting service of process, on December 2, 2016. Defendants filed their Answer on March 14, 2017, and did not contest venue. Since Defendants filed their Answer, the parties have engaged in significant litigation, including, but not limited to, the following: (1) they have attended multiple case management conferences, (2) exchanged written discovery, (3) argued various motions, (4) entered a consent order agreeing to sell some of the subject property, (5) Defendants sought and were granted leave to file their own counterclaim, and (6) attempted to disqualify Plaintiffs' attorney.

Defendants first brought the venue issue before the Court on March 22, 2019, nearly 27 months after service. That motion was not called up for hearing, however, a second Motion to

Dismiss or Transfer Venue was filed on April 16, but the Motion to Transfer Venue was withdrawn on July 9.

Defendants have clearly waived their venue argument.


Defendants also assert this Court should transfer venue as it has not denied their motion within ninety days of filing, as required by Section 508.010.10 RSMo. However, the time period can be, and was, waived by Defendants in writing. *Id.*

As set out above, Defendants filed their Motion on August 27, 2019. The parties appeared in Court and argued the motion on October 17, within 30 days. At that time, the parties requested time to brief the issue. Further, Defendants filed a consent memorandum expanding the time to file said briefs until November 1, and subsequently filed briefs on November 14 and December 3. The Court finds that Defendants' request for time to brief, written agreement to extend the time for filing same, and filing of briefs at an even later time than requested, constitute a waiver of the statutory time period.

Accordingly, the Motion to Transfer Venue is denied.

Finally, this matter is set for a bench trial on January 31, 2020 at 11:00 a.m.

SO ORDERED:


Richard M. Stewart
Judge, Div. 2

DATE:

