

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

MARK STRINGER, DIRECTOR OF THE)	
DEPARTMENT OF MENTAL HEALTH,)	
PETITIONER)	Cause No. 16SL-PR02645
v.)	
DAWN DZIUBA,)	
Respondent)	
)	
)	

RESPONDENT'S DRAFT RESPONSE TO PETITIONER'S RESPONSE TO A MOTION FOR CHANGE OF VENUE WITH FORMAL RESPONSE FORTHCOMING

FACTUAL BACKGROUND

This is a complex case because Dawn Dziuba has lived in multiple places/residences while practicing investigative journalism and immersion journalism. Dawn Dziuba received her Masters (M.S.) in journalism from the University of Illinois, Urbana-Champaign (UIUC), in 2002, and has engaged in numerous investigative and immersion journalism projects such that domicile may be indeterminate.

Ms Dziuba resided at 6133 McPherson Ave., St. Louis, MO 63112, from 2000 to 2011. Ms. Dziuba had intentionally moved there when she started graduate school at Washington University in St. Louis with an intent to remain in St. Louis City in her own abode. She did not intend to leave but intended to stay in St. Louis City at the time.

In 2012, Washington University in St. Louis/Quadrangle Housing sued Ms. Dziuba for unlawful detainer and Ms. Dziuba filed a counterclaim for breach of warranty of habitability.

while living at 6188 McPherson Ave., Ms. Dziuba and other residents experienced several problems with crime, including multiple car break-ins, witnessing an armed robbery, and someone trying to assault Ms. Dziuba in her vehicle. Ms. Dziuba complained that Washington University Security was refusing to take police reports and was not doing enough to protect the graduate students and residents in her building. The dispute in this case and the main facts occurred in St. Louis City,

Washington University Security and several of the school's General Counsels threatened Ms. Dziuba with arrest about this and several issues,

On May 28, 2014, Ms. Dziuba was taken into custody, without a warrant, when officers came to her father's house at 12233 Creve Coeur Ridge Ct., Maryland Heights, MO 63043, and demanded that she go with them.

Ms. Dziuba was confined at the Buzz Westfall Justice Center at 100 S. Central Ave., Clayton, MO 63105 in St. Louis County from June 2014 to December 31, 2014.

From December 31, 2014 to January 8, 2015, Ms. Dziuba was involuntarily confined at the Metropolitan St. Louis Psychiatric Center at 5351 Delmar Ave., St. Louis City, MO, 63112.

From January 8, 2015, to March 17, 2015, Ms. Dziuba was held again at the Buzz Westfall Justice Center in St. Louis County.

From March 17, 2015 to October 12, 2016, Ms. Dziuba was involuntarily confined at the Metropolitan St. Louis Psychiatric Center at 5351 Delmar Ave., in St. Louis City.

From October 12, 2016 to present, Ms. Dziuba has been involuntarily confined at the St. Louis Psychiatric Rehabilitation Center at 5300 Arsenal Ave., St. Louis City, MO 63139.

ARGUMENT

Respondent is entitled to a change of venue because it would be in the best interest of the alleged ward or alleged disabled person or her estate.

Pursuant to R.S. Mo § 475.040,

"If it appears to the court . . . in the case of conservatorship of the estate that it would be for the best interest of the ward or disabled person and his estate, the court may order the proceeding with all papers, files, and a transcript of the proceedings transferred to the probate division of the circuit court of another county. The court to which the transfer is made shall take jurisdiction of the case."

In the instant case, it is in the best interest of Ms. Dziuba to have any conservatorship proceedings in St. Louis City since that is where the dispute between Ms. Dziuba and Washington University in St. Louis is centered. This probate proceeding directly relates to Ms. Dziuba's suit against Washington University in St. Louis/Quadrangle Housing for breach of warranty of habitability and Washington University Security's failure to protect.

It is important to note that since Washington University in St. Louis/Quadrangle Housing initiated a suit against Ms. Dziuba in St. Louis City for unlawful detainer, this shows the dispute is within St. Louis City. The unlawful detainer/breach of warranty of habitability case is evidence that Ms. Dziuba intended to stay in St. Louis City.

The settlement between Washington University in St. Louis/Quadrangle Housing and Ms. Dziuba was illegal and under duress (with Washington University Security and General Counsel constantly threatening to arrest Ms. Dziuba), and relates to the current case regarding the dispute with Washington University in St. Louis. The extenuating circumstance of Washington University in St. Louis refusing to take police reports and failing to protect also supports the argument that this proceeding should have venue in St. Louis City because it relates to the case in front of Judge Clark on breach of warranty of habitability.

Venue is also appropriate in St. Louis City under R.S. Mo. § 475.035.1(3) as Ms. Dziuba's domicile is indeterminate and under R.S. Mo. § 475.035.2 because Ms. Dziuba has resided in St. Louis City for more than one year.

Petitioner relies heavily on a hierarchy described in the case of In re Beyersdorfer, 59 S.W.3d 523, 526 (Mo. banc. 2001) for interpreting R.S. Mo. § 475.035.1(1-3).

But Petitioner failed to read the fine print.

Footnote 4 in In re Beyersdorfer 59 S.W.3d 523, 526, clearly states:

"No issue is raised in this case as to subsections 475.035.2 or 475.040."

In the instant case, Respondent is relying on R.S. Mo. § 475.035.2 and R.S. Mo. § 475.040 to argue that:

First, under 475.035.2, that Ms. Dziuba has an indeterminate domicile, and has resided in a county other than his or her indeterminate domicile for more than one year, namely St. Louis City, so that the probate court of St. Louis City may assume venue for the purpose of appointment of an alleged ward's guardian or conservator.

Second, under 475.040, that it is in Respondent's best interest for the venue to be changed to St. Louis City, given the nature and location of the dispute and the facts of the case.

The hierarchy referred to in In re Beyersdorfer for 475.035.1(1-3) does not trump these other provisions. In re Beyersdorfer clearly provides, in Footnote 4, that 475.035.2 and 475.040 are not affected by the hierarchy of 475.035.1(1-3). Also, the best interests of Respondent as described in 475.040 would trump Petitioner's hierarchical argument.

Petitioner assumes that Respondent's domicile is in the State of Missouri when in fact Respondent has an indeterminate domicile. Petitioner incorrectly assumes that Respondent is domiciled at her father's home for years, but Respondent has an indeterminate domicile as she has been in multiple locations as she has been practicing investigative and immersion journalism over the years, Ms. Dziuba had intended to stay in St. Louis City when she obtained her abode at 6188 McPherson Ave., so 475.035.1 is not controlling because of an indeterminate domicile in Missouri.

Next in the hierarchy would be the county of actual residence, which is currently St. Louis City. Petitioner incorrectly states there is no evidence that Respondent has an intent to remain in St. Louis City indefinitely and to make it her permanent residence. But this is incorrect, as there is evidence Ms. Dziuba has an intent to remain in the city of St. Louis indefinitely and to make it her permanent residence contained in Washington University in St. Louis/Quadrangle Housing's suit against Ms. Dziuba and Ms. Dziuba's counterclaim against Washington University in St. Louis/Quadrangle Housing for breach of warranty of habitability and failure to protect. Clearly the unlawful detainer case is evidence of Ms. Dziuba's intent to stay in St. Louis City as residence.

Given the indeterminate domicile, if the Court does not consider St. Louis City to be the actual residence, then third in the hierarchy is any county where the person or his or her property "is found." As applying this third element to the instant case, the Respondent or her property "is found" in St. Louis City at 5300 Arsenal Ave. So the application of the hierarchy referred to by petitioner would still result in venue in St. Louis City since this is where Respondent "is found."

Since Footnote 4 in *In re Beyersdorfer* clearly indicates that the hierarchy for 475.035.1(1-3) is not affecting 475.035.2, the court could rely on the 475.035.2 provision to find that the Respondent Ms. Dziuba resided in St. Louis City with intent to stay for more than a year in at least two separate instances.

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First, Respondent resided in St. Louis City for more than a year when she lived at 6188 McPherson Ave in St. Louis City from 2006 to 2011. Respondent did not want to leave the City of St. Louis as evidenced by the unlawful detainer/breach of warranty of habitability suit.

Second, Respondent resided in St. Louis City for more than a year at 5351 Delmar Ave., since she was there from March 2015 to October 2016; If Respondent had not been involuntarily confined at that particular address in St. Louis City, she may still have continued to live within the City of St. Louis at another address.

Finally, the best interests of Respondent referred to in R.S.Mo. §475.040 take precedence over any hierarchical argument made by Petitioner. In the instant case, Respondent has indicated that the circumstances of this case, facts of the dispute with Washington University in St. Louis, and other factors make it in Respondent's best interest to have venue changed to St. Louis City. The unlawful detainer/breach of warranty of habitability counterclaim and failure to protect issues are related to this probate matter. These occurred in St. Louis City. The underlying nature of the original cause of the dispute between Respondent and Washington University in St. Louis was in St. Louis City as well. Respondent evidenced an intent to live and remain in St. Louis City. Respondent may obtain a more favorable outcome if venue is changed. It is in Respondent's best interests for financial recovery if venue is in St. Louis City where she resided for more than one year.

CONCLUSION

The best interests of Respondent warrant a change of venue to St. Louis City. Additional support may be drawn from Respondent's related interests and length of stay in St. Louis City.

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Wherefore, Respondent requests:

1. That the Court grant Respondent a change of venue from St. Louis County to St. Louis City,
2. That the Court dismiss the guardianship petition for lack of jurisdiction or for any other reason.
3. That the Respondent be discharged or released on her own recognizance,
4. That Respondent be given adequate access to internet based legal resources, word processing, and time to supplement her response,
5. Any other relief deemed proper.

Respectfully Submitted,



DAWN DZIEWBA MO Bar # 54174