

Spring 1995

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### Recommended Citation

Joseph H. Knittig, *Severing Venue and Personal Jurisdiction in Missouri*, 60 Mo. L. REV. (1995)  
Available at: <https://scholarship.law.missouri.edu/mlr/vol60/iss2/7>

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# Severing Venue and Personal Jurisdiction In Missouri

*State ex rel. DePaul Health Center v. Mummert*<sup>1</sup>

## I. INTRODUCTION

The concepts of venue and jurisdiction carry independent and severable meanings. "Venue" means the place where a case is to be tried,<sup>2</sup> while "jurisdiction" speaks to the power of the court to hear and determine a case.<sup>3</sup> In Missouri, a "unique melding"<sup>4</sup> of the concepts developed. A line of cases commingling venue and personal jurisdiction yielded strange and often unduly harsh results.<sup>5</sup> In *State ex rel. DePaul Health Center v. Mummert*,<sup>6</sup> the Missouri Supreme Court attempted to sever venue and jurisdiction,<sup>7</sup> and finally restore some common sense and predictability to sixty plus years of confusion.

## II. FACTS AND HOLDING

A medical malpractice suit filed in the Circuit Court of the City of St. Louis named DePaul Health Center ("DePaul") as a codefendant.<sup>8</sup> The cause of action accrued in St. Louis County and all named defendants, including

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1. 870 S.W.2d 820 (Mo. 1994).

2. *Oney v. Pattison*, 747 S.W.2d 137, 140 (Mo. 1988), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994).

3. *Oney*, 747 S.W.2d at 140.

4. *Sullenger v. Cooke Sales & Serv. Co.*, 646 S.W.2d 85, 88 (Mo. 1983), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994).

5. *See, e.g.*, the line of cases overruled by *State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994): *Yates v. Casteel*, 49 S.W.2d 68 (Mo. 1932); *Hankins v. Smarr*, 137 S.W.2d 499 (Mo. 1940); *State ex rel. Minihan v. Aronson*, 165 S.W.2d 404 (Mo. 1942); *State ex rel. O'Keefe v. Brown*, 235 S.W.2d 304 (Mo. 1951); *State ex rel. Bartlett v. McQueen*, 238 S.W.2d 393 (Mo. 1951); *State ex rel. Boll v. Weinstein*, 295 S.W.2d 62 (Mo. 1956); *Sullenger v. Cooke Sales & Serv. Co.*, 646 S.W.2d 85 (Mo. 1983); *State ex rel. Wasson v. Schroeder*, 646 S.W.2d 105 (Mo. 1983); *State ex rel. Coca Cola Bottling Co. v. Gaertner*, 681 S.W.2d 445 (Mo. 1984); *Oney v. Pattison*, 747 S.W.2d 137 (Mo. 1988).

6. 870 S.W.2d 820 (Mo. 1994).

7. *Id.* at 821.

8. *Id.* The other codefendants were Dr. Joseph Hazen and Group Health Plan. *Id.*

DePaul, resided in St. Louis County.<sup>9</sup> The city court issued service of summons on all of the defendants in the county.<sup>10</sup> Subsequently, DePaul entered a special appearance<sup>11</sup> in the city court and moved to quash the service.<sup>12</sup>

DePaul contended that, under Missouri Revised Statutes section 508.010,<sup>13</sup> venue was improper in the malpractice action.<sup>14</sup> After noting that filing within a proper venue is a prerequisite to valid service of process in Missouri,<sup>15</sup> DePaul argued the city court should quash the service.<sup>16</sup> Plaintiffs in the underlying action argued that venue was in fact proper, so the city court could not quash the service of summons.<sup>17</sup> The trial court overruled DePaul's motion, and DePaul brought a mandamus action to the Missouri Supreme Court.<sup>18</sup>

The Missouri Supreme Court, although finding venue to be improper, refused to quash the service, holding that a valid summons may issue from a court in which venue is improper.<sup>19</sup>

9. *Id.*

10. *Id.*

11. "A special appearance is for the purpose of testing or objecting to the sufficiency of service or the jurisdiction of the court over defendant without submitting to such jurisdiction." BLACK'S LAW DICTIONARY 97 (6th ed. 1990).

12. *DePaul*, 820 S.W.2d at 821.

13. "When there are several defendants, and they reside in different counties, the suit may be brought in any such county." MO. REV. STAT. § 508.010(2) (1994).

14. *DePaul*, 820 S.W.2d at 821. DePaul argued that since all of the defendants resided in St. Louis County, under MO. REV. STAT. § 508.010(2), *supra* note 13, the plaintiff could not bring suit in the circuit court of the City of St. Louis. *DePaul*, 820 S.W.2d at 821.

15. *DePaul*, 820 S.W.2d at 821. Cases preceding *DePaul* clearly held that filing in the proper venue is a prerequisite to valid service of process. *See, e.g., Oney*, 747 S.W.2d at 141.

16. *DePaul*, 820 S.W.2d at 821.

17. *Id.* The plaintiffs argued that Group Health Plan, one of the defendants, transacted business in the city of St. Louis; therefore, venue was proper in the city court under MO. REV. STAT. § 508.010(2), *supra* note 13. *DePaul*, 820 S.W.2d at 821.

18. *DePaul*, 820 S.W.2d at 821.

19. *Id.* at 822. As a corollary issue, the court also held that "venue is determined as the case stands when brought, not when a motion challenging venue is decided." *Id.* at 823.

### III. LEGAL BACKGROUND

Missouri courts derived the unique jurisdictional venue rule from a collusive reading of the Missouri service of summons and venue statutes.<sup>20</sup> Before 1989, the service statute read, in part, that "[s]uits may be instituted in courts of record . . . [b]y filing in the office of the clerk of the *proper* court."<sup>21</sup> The Missouri general venue statute prescribed where parties could bring suits instituted by summons.<sup>22</sup> When read together, courts interpreted "proper" in the service statute to mean proper venue, pursuant to Missouri Revised Statutes section 508.010.<sup>23</sup> Such an interpretation links venue with personal jurisdiction in the following manner:

Personal jurisdiction, which follows from proper service of process on a defendant, is therefore dependent upon the court which issues the summons having authority to do so, *ab initio*, under the statute. A summons served on a defendant as the result of an action filed in a court in which venue is improper provides no jurisdiction over the defendant, because the court has no authority under the statute to issue the summons.<sup>24</sup>

En route to making the above analysis the court in *Oney v. Pattison* did not precisely trace the development of the unique Missouri rule through Missouri's case law.<sup>25</sup> In fact, the *Oney* analysis demonstrates only a partial connection with the case that truly catalyzed the link between jurisdiction and venue.<sup>26</sup> This strange quirk in the law can be traced back to *Yates v. Casteel*.<sup>27</sup> In *Yates*, the plaintiff filed a breach of contract action in Jasper County, where the defendant resided.<sup>28</sup> The clerk of the Circuit Court of

20. *Oney v. Pattison*, 747 S.W.2d 137, 140 (Mo. 1988), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994). Another less meritorious theory concerning the origin of this rule contends that the jurisdictional venue rule stems from cases in the late 1800's which misanalyzed the separate and distinct roles of venue and personal jurisdiction. See Dennis J. Tuchler, *Discretionary Interlocutory Review in Missouri: Judicial Abuse of the Writ?* 40 MO. L. REV. 577, 599-605 (1975) (citing *Lindell Real Estate Co. v. Lindell*, 133 Mo. 386 (1895)).

21. MO. REV. STAT. § 506.110 (1986) (emphasis added).

22. See MO. REV. STAT. § 508.010 (1994).

23. See *Oney*, 747 S.W.2d at 141, for a thorough explanation of the word "proper" in the Missouri service of summons statute.

24. *Id.*

25. *Id.* at 140.

26. See *Yates v. Casteel*, 49 S.W.2d 68 (Mo. 1932), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994).

27. *Id.*

28. *Id.* at 69-70.

Jasper County issued a summons directed to "the sheriff of any county."<sup>29</sup> Subsequently, the sheriff of the City of St. Louis found and served the defendant in the City of St. Louis.<sup>30</sup> The defendant moved to quash the service of summons, arguing that the Circuit Court of Jasper County had no authority to issue a summons directed to the sheriff of any county outside of Jasper County.<sup>31</sup>

The *Yates* court determined that Jasper County was, in fact, the proper venue,<sup>32</sup> but quashed the service of summons.<sup>33</sup> The court held that without statutory authorization, the appropriate court of venue had no power to issue or serve the summons outside the county of venue.<sup>34</sup> Thus, the *Yates* court fused venue and service of summons in two ways: (1) it implicitly made *filing* within the proper venue a condition precedent to valid service of summons (the *Yates* filing requirement); and (2) it explicitly made the issuance and actual *service* of process within the county of venue a condition precedent to valid service of summons (the *Yates* service requirement).<sup>35</sup>

Two subsequent Missouri Supreme Court cases correctly applied *Yates*' second rule of law. In *State ex rel. Minihan v. Aronson*,<sup>36</sup> the plaintiff filed suit in the proper venue but served the defendant outside of that venue.<sup>37</sup> Following *Yates*, the *Minihan* court quashed the service, holding that "in personam is confined to persons within the territorial jurisdiction of the court" and "it follows that service of process made beyond such limits is entirely ineffective to confer jurisdiction over the persons . . . on whom it is so made."<sup>38</sup>

29. *Id.* at 69.

30. *Id.*

31. *Id.*

32. *Id.* at 70. In the case of a sole defendant residing in Missouri, venue is proper "in the county within which the defendant resides." MO. REV. STAT. § 508.010(1) (1994). Venue was appropriate in *Yates* because the sole defendant resided in Jasper County. *Yates*, 49 S.W.2d at 70.

33. *Yates*, 49 S.W.2d at 71.

34. *Id.* at 70-71. *Yates* read venue and service statutes together and determined they "must be held to contemplate and require the issuance of summons to, and service thereof in, Jasper county." *Id.* at 70.

35. *See id.* *Yates* did recognize that the legislature can satisfy the service requirement via a statutory allowance of service beyond the county of venue. *Id.*

36. 165 S.W.2d 404 (Mo. 1942), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994).

37. *Id.* at 406.

38. *Id.* at 407 (citing *Hankins v. Smarr*, 137 S.W.2d 499 (Mo. 1940) *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994)); *Yates*, 49 S.W.2d 68 (Mo. 1932)). After applying the *Yates*' service requirement, the *Minihan* court stated: "This is not an immutable rule, however, but any change in the

In *Hankins v. Smarr*,<sup>39</sup> the Missouri Supreme Court correctly applied, but smudged the *Yates* principles in its analysis. In *Hankins*, the plaintiff, a resident of Boone County, filed suit in Boone County against two defendants, both residents of Gasconade County.<sup>40</sup> By statute, venue in such an action can be proper in the plaintiff's county of residence if "the defendant may be found" in that county.<sup>41</sup> However, the plaintiff in *Hankins* did not "find" the defendants in Boone County, but found and served them in Gasconade County.<sup>42</sup>

The court quashed the service pursuant to *Yates*,<sup>43</sup> but its analysis did not distinguish the two distinct prerequisites to valid service of summons instituted by *Yates*.<sup>44</sup> The *Hankins* court pointed out the impropriety of venue in Boone County at the time of service in applying *Yates*,<sup>45</sup> but also professed that even if venue in Boone County were proper, it would quash the service because the plaintiff actually served the defendants outside of Boone County.<sup>46</sup> Despite the court's clear intention to base its decision on the *Yates* service requirement,<sup>47</sup> a cursory reading of *Hankins* elevates the implied filing requirement of *Yates* and downplays the service requirement.<sup>48</sup>

In *State ex rel. O'Keefe v. Brown*,<sup>49</sup> the Missouri Supreme Court rendered an unexplained decision regarding the fusion of venue and personal jurisdiction. The plaintiff in *O'Keefe* filed a personal injury action in an improper venue.<sup>50</sup> Without citing supporting authority, the Missouri Supreme Court stated matter-of-factly that because the plaintiff filed in an improper venue, the court failed to gain personal jurisdiction over the

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rule depends upon valid legislative action." *Id.*

39. 137 S.W.2d 499 (Mo. 1940).

40. *Id.* at 500.

41. MO. REV. STAT. § 508.010(1) (1994).

42. *Hankins*, 137 S.W.2d at 500.

43. *Id.* at 501.

44. *See supra* note 35 and accompanying text.

45. *Hankins*, 137 S.W.2d at 501. The defendants were not "found" in Boone County at the time of service of process, as required by MO. REV. STAT. § 508.010(1) (1994).

46. *Hankins*, 137 S.W.2d at 501.

47. *See id.* In fact, *Hankins* discussed the cruelty of a rule that precludes service of process outside of the county of venue, in that defendants could dodge personal jurisdiction by staying out of the county of venue. *See id.*

48. *See id.*

49. 235 S.W.2d 304 (Mo. 1951), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994).

50. *Id.* at 307.

defendant.<sup>51</sup> Whether the *O'Keefe* court derived its ruling from an interpretation of *Hankins*<sup>52</sup> or applied the filing requirement of *Yates*,<sup>53</sup> one point is for certain: *O'Keefe* squarely represents the proposition that filing in a proper venue is a condition precedent to personal jurisdiction.<sup>54</sup>

After *O'Keefe*, the venue-personal jurisdiction cases focused solely on the filing requirement of *Yates*,<sup>55</sup> and blindly abandoned the service requirement.<sup>56</sup> Just weeks after *O'Keefe*, the Missouri Supreme Court decided *State ex rel. Bartlett v. McQueen*.<sup>57</sup> *Bartlett* cemented the rule that filing in the proper venue is a prerequisite to personal jurisdiction. In *Bartlett*, the plaintiff, a resident of Jackson County, filed suit in Jackson County against two defendants, both residents of Platte County.<sup>58</sup> The plaintiff served one defendant in Jackson County and the other in Platte County.<sup>59</sup> The defendants moved to quash the service, arguing that venue was improper in Jackson County, and, therefore, the Jackson County Court could not gain personal jurisdiction.<sup>60</sup> The court held that, by statute, venue was proper for an action against the defendant served in Jackson County, so the court obtained personal jurisdiction over that defendant upon the service of summons in Jackson County.<sup>61</sup> However, the court concurrently held venue was improper as to the defendant served in Platte County.<sup>62</sup> Therefore, under *Yates* and *O'Keefe*, the service of summons was invalid because a prerequisite to valid service, serving in the proper venue, was not satisfied.<sup>63</sup>

Interestingly, *Bartlett* justified its decision by citing *Yates* and

51. *Id.*

52. *See supra* notes 45-50 and accompanying text.

53. *See supra* note 36 and accompanying text.

54. *O'Keefe*, 235 S.W.2d at 307. Again, this ruling contains no references to *Yates* or its progeny. In fact, the sole analysis in *O'Keefe* pertains to the propriety of venue. *See id.*

55. *See supra* note 36 and accompanying text.

56. *See supra* note 36 and accompanying text.

57. 238 S.W.2d 393 (Mo. 1951), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994).

58. *Id.* at 394.

59. *Id.*

60. *Id.*

61. *Id.* at 395. The court stated that pursuant to § 508.010(1), this defendant was "found" in the county of venue when served in Jackson County; therefore, venue was proper as to this defendant. *Id.*

62. *Id.*

63. *Id.* (citing *Yates*, 49 S.W.2d at 70; *Hankins*, 137 S.W.2d at 501; *Minihan*, 165 S.W.2d at 407; *O'Keefe*, 235 S.W.2d at 307).

*O'Keefe*.<sup>64</sup> The genesis of the rule applied in *Bartlett*<sup>65</sup> definitely can be traced to the forceful, but unsupported *O'Keefe* decision.<sup>66</sup> *Yates*, though, dealt only impliedly with how the impropriety of venue relates to jurisdiction, but dealt explicitly with territorial boundaries of courts of proper venue.<sup>67</sup> For years after *Bartlett*, Missouri courts mechanically applied the rule that filing in the proper venue acts as a condition precedent to valid service of summons and ultimately personal jurisdiction.<sup>68</sup> Finally, in 1988, the Missouri Supreme Court questioned the rule in *Oney v. Pattison*.<sup>69</sup>

In *Oney*, the plaintiff filed suit in the east side of Jackson County instead of the west side<sup>70</sup> where venue was proper.<sup>71</sup> The court rigidly opined that because "Oney filed her action in the improper venue; the service accepted by Pattison issued from a court which had no authority to issue such summons," and therefore, the lower court failed to gain personal jurisdiction.<sup>72</sup> *Oney*, however, recognized the harshness in deciding that this action could not be

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64. *Id.*

65. *Id.*

66. See *O'Keefe*, 235 S.W.2d at 307.

67. See *Yates*, 49 S.W.2d at 70. For a more detailed analysis of this issue, see *supra* notes 28-35 and accompanying text.

68. See, e.g., several cases overruled by State *ex rel.* DePaul Health Ctr v. Mummert, 870 S.W.2d 820 (Mo. 1994): *Boll v. Weinstein*, 295 S.W.2d 62, 66 (Mo. 1956) (holding that "proper venue is necessary, before the service of process will confer jurisdiction over the person of a defendant," and that due to its jurisdictional nature, improper venue can only be waived by "some overt act constituting a general appearance."); *Sullenger*, 646 S.W.2d at 88 ("Missouri case law has provided a unique melding of venue and jurisdiction and by a long line of cases has held that proper venue is a condition precedent to valid service of process and jurisdiction."); *Wasson v. Schroeder*, 646 S.W.2d 105, 106 (Mo. 1983) ("[i]mproper venue is a fundamental defect; a court which acts when venue is not proper has acted in excess of its jurisdiction."); State *ex rel.* Coca Cola Bottling Co. v. Gaertner, 681 S.W.2d 445, 448 (Mo. 1984) ("[b]ecause venue was improper, the court acquired no jurisdiction over relator and was powerless to proceed.").

69. 747 S.W.2d 137 (Mo. 1988), overruled by State *ex rel.* DePaul Health Ctr. v. Mummert, 870 S.W.2d 820 (Mo. 1994).

70. Jackson County is divided into eastern and western portions for venue purposes. MO. REV. STAT. § 478.461 (1994).

71. *Oney*, 747 S.W.2d at 138.

72. *Id.* at 141.



transferred from one side of Jackson County to the other,<sup>73</sup> and tried to make sense of the rule it applied.

*Oney* attempted to excavate the foundation of the rule it applied in Missouri case law,<sup>74</sup> but failed to accurately unearth its roots;<sup>75</sup> however, *Oney* did provide a logical statutory construction argument supporting its ruling.<sup>76</sup> *Oney* reasoned since the Missouri service statute required the commencement of a lawsuit in the "proper" court,<sup>77</sup> the Missouri legislature necessarily intended that filing in a proper venue act as a condition precedent to valid service of summons and consequently, personal jurisdiction.<sup>78</sup> *Oney* then issued a challenge to the legislature to statutorily remedy this nonsensical rule.<sup>79</sup>

The legislature responded. Shortly after *Oney*, the legislature enacted a statute permitting the transfer of cases within the two sections of Jackson County if the parties so agreed, or if a caseload imbalance necessitated such transfers.<sup>80</sup> *State ex rel. Edu-Dyne Systems, Inc. v. Trout*<sup>81</sup> held the new statute severed the venue-jurisdiction link within Jackson County.<sup>82</sup> Thus,

73. *Id.* *Oney* stated that the "requirement that actions be dismissed for improper venue may be unduly harsh, may result—as in this case—in injustice, and may create unnecessary impediments to the expeditious and orderly resolution of controversies on the merits." *Id.*

74. *Id.* at 140-41.

75. *Oney* traced the rule back to *Yates v. Casteel*, 49 S.W.2d 68 (Mo. 1932), overruled by *State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994). The *Yates* court specifically held that the appropriate court of venue had no power to issue or serve the summons outside of the county of venue. Nowhere in the *Yates* opinion did the supreme court explicitly state that filing in the proper venue is a prerequisite to valid service of summons. See *Yates*, 49 S.W.2d at 70. The *Oney* court's analysis simply is not as clear cut as it appears at first glance.

76. See *Oney*, 747 S.W.2d at 141.

77. MO. REV. STAT. § 506.110 (Supp. 1989).

78. See *Oney*, 747 S.W.2d at 141. For a more detailed analysis of this issue see *supra* notes 20-24 and accompanying text.

79. *Oney*, 747 S.W.2d at 141 ("Until such time as the legislature chooses to alter the language of Section 506.110, the ability of trial courts to transfer actions filed in the wrong venue to a proper venue in the interest of justice cannot be judicially imposed.").

80. MO. REV. STAT. § 478.461.2(4) (Supp. 1989).

81. 781 S.W.2d 84 (Mo. 1989), overruled by *State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994).

82. *Id.* at 86 ("The General Assembly is presumed familiar with the construction placed upon the original act, and the new statute must be construed in the light of the problem it seeks to remedy and of the usages, circumstances, and conditions existing at the time the change was made. . . . Thus, in enacting a new statute on the same

the legislature dealt the first significant blow to the rule. In 1989, the legislature unabashedly hammered the rule again. The legislature dropped the word "proper" from the service statute<sup>83</sup> and affirmatively authorized the transfer of cases filed in an improper venue to a proper venue.<sup>84</sup> Both the Southern District and Eastern District opined the 1989 statutory amendments and additions did away with the "unique melding"<sup>85</sup> of jurisdiction and venue in Missouri.<sup>86</sup>

The filing requirement articulated in *Yates* seemed destroyed almost immediately after the statutory changes of 1989, but the Missouri Supreme Court had not delivered its stamp of finality on the issue. The supreme court, in an action in mandamus, grappled with that very issue in *State ex rel. DePaul Health Center v. Mummert*.<sup>87</sup>

#### IV. INSTANT DECISION

In *DePaul*, the Missouri Supreme Court placed great emphasis in its analysis of the fusion of venue and jurisdiction on *Oney v. Pattison*<sup>88</sup> and the ordinary meanings of venue and jurisdiction.<sup>89</sup> The general purpose of venue, the court stated, "is to provide a convenient, logical, and orderly forum for the resolution of disputes,"<sup>90</sup> whereas personal jurisdiction simply cloaks a court with the authority to judge a defendant.<sup>91</sup>

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subject as that of an existing statute, it is ordinarily the intent of the legislature to effect some change in the existing law.").

83. MO. REV. STAT. § 506.110 (Supp. 1989).

84. MO. REV. STAT. § 476.410 (Supp. 1989).

85. *Sullenger*, 646 S.W.2d at 88.

86. *See, e.g., Abney v. Niswonger*, 823 S.W.2d 31, 33 (Mo. Ct. App. 1991), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994) ("This statute was enacted to enable a circuit court to transfer an improperly venued action and reflects a clear legislative intent that cases are not to be dismissed when filed in the wrong county."); *State ex rel. Missouri Highway and Transp. Comm'n v. Hedspeith*, 788 S.W.2d 342, 344 (Mo. Ct. App. 1990), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994) ("It thus appears that the General Assembly undertook to accept Oney's invitation to enact legislation enabling a circuit court to transfer an action in which venue is improper to a circuit court where the action could have properly been brought.").

87. 870 S.W.2d 820 (Mo. 1994).

88. 747 S.W.2d 137 (Mo. 1988), *overruled by State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994).

89. *See DePaul*, 870 S.W.2d at 821-22.

90. *Id.* (quoting *State ex rel. Elson v. Koehr*, 856 S.W.2d 57, 59 (Mo. 1993)).

91. *Id.* at 822.

While relying on *Oney*, the *DePaul* court attempted to pinpoint the source of the concepts' fusion in Missouri. The court reasoned that the word "proper" in the old Missouri service statute<sup>92</sup> meant that "[a] summons served on a defendant as the result of an action filed in a court in which venue is improper provides no jurisdiction over the defendant."<sup>93</sup> But, the legislature in 1989 dropped "proper" from the Missouri service statute,<sup>94</sup> and authorized courts to transfer actions filed in an improper venue to a circuit court having proper venue.<sup>95</sup>

After untangling the concepts of venue and jurisdiction the court briefly summarized its position:

Venue and personal jurisdiction address entirely different concerns, the coupling of which was the product of the use of the word "proper" in Section 506.110.1. By removing "proper" from Section 506.110.1(1), the legislature severed the two concepts.<sup>96</sup>

The *DePaul* court held that valid service of summons can issue from a court of improper venue. Filing in a proper venue, therefore, no longer is a condition precedent to personal jurisdiction.<sup>97</sup> "To the extent they hold otherwise,"<sup>98</sup> *DePaul* overruled a long line of cases.<sup>99</sup>

## V. COMMENT

The Missouri Supreme Court clearly believed the legislature, via the 1989 statutory changes and amendments,<sup>100</sup> intended to completely sever *all*

92. See MO. REV. STAT. § 506.110.1(1) (1994).

93. *DePaul*, 870 S.W.2d at 821 (citing *Oney*, 747 S.W.2d at 141). For a more thorough explication of *Oney*, see *supra* notes 20-24 and accompanying text.

94. *DePaul*, 820 S.W.2d at 821 (citing MO. REV. STAT. § 506.110.1(1) (Supp. 1989)).

95. *Id.* (citing MO. REV. STAT. § 476.410 (Supp. 1989)).

96. *Id.*

97. *Id.*

98. *Id.*

99. The line of cases overruled by *State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994) includes: *Oney v. Pattison*, 747 S.W.2d 137 (Mo. 1988); *State ex rel. Coca-Cola Bottling Co. v. Gaertner*, 681 S.W.2d 445 (Mo. 1984); *Sullenger v. Cooke Sales & Serv. Co.*, 646 S.W.2d 85 (Mo. 1983); *State ex rel. Wasson v. Schroeder*, 646 S.W.2d 105 (Mo. 1983); *State ex rel. Bartlett v. Queen*, 238 S.W.2d 393 (Mo. 1951); *State ex rel. O'Keefe v. Brown*, 235 S.W.2d 304 (Mo. 1951); *State ex rel. Minihan v. Aronson*, 165 S.W.2d 404 (Mo. 1942); *Hankins v. Smarr*, 137 S.W.2d 499 (Mo. 1940); *Yates v. Casteel*, 49 S.W.2d 68 (Mo. 1932).

100. See MO. REV. STAT. §§ 476.410, 506.110 (Supp. 1989).

connections between venue and personal jurisdiction. Accordingly, it attempted to carry out such legislative intent in *DePaul*.<sup>101</sup> Although *DePaul* provides sound law in its attempt to sever venue and personal jurisdiction, its scope is underinclusive.

Historically, the link between venue and service of summons had a logical nexus.<sup>102</sup> Courts' judgments only bound those who submitted to their judgments.<sup>103</sup> In order to ensure that a party submitted to their judgments, courts issued writs of summons that authorized the seizure and arrest of persons and property pending judgment.<sup>104</sup> Because of their coercive nature, courts' authority to issue such writs was territorially limited.<sup>105</sup>

However, jurisdictional concepts evolved and the need to force a party's submission to authority dissipated. "Today, the connection between authority to bind by judgments and authority to arrest or seize is gone, but the formality of service of process as a kind of symbolic arrest remains."<sup>106</sup> A summons today "symbolically arrests" by notifying its recipient of a given court's proceedings against her or him.<sup>107</sup> Gone is the logical nexus between venue and power. Today, the concepts are independent and severable, and at long last the *DePaul* court attempted to update Missouri's position regarding this issue.<sup>108</sup>

The court, however, in its haste to forge good law failed to identify and destroy all links between venue and personal jurisdiction. *Yates v. Casteel* catalyzed the awareness of the venue-personal jurisdiction connection, and identified not one, but two distinct links.<sup>109</sup> First, a party must file a lawsuit in the proper venue for service of process to be valid.<sup>110</sup> Second, even if venue is proper, for service to be valid, the defendant must actually be served

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101. See *DePaul*, 870 S.W.2d at 822 ("By removing 'proper' from Section 506.110.1(1), the legislature severed the two concepts.").

102. See Tuchler, *supra* note 20, at 600.

103. Tuchler, *supra* note 20, at 600.

104. Tuchler, *supra* note 20, at 600.

105. Tuchler, *supra* note 20, at 600.

106. Tuchler, *supra* note 20, at 600.

107. Tuchler, *supra* note 20, at 600. See JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE §§ 3.20-3.24 (1993), for a sweeping overview of the purposes and means of service of process today.

108. See *DePaul*, 870 S.W.2d at 821.

109. See *Yates*, 49 S.W.2d at 69-70.

110. *Yates*, 49 S.W.2d at 70. This is the filing requirement of *Yates*. See *supra* note 35 and accompanying text.

within the proper venue.<sup>111</sup> Since *Yates*, Missouri courts allowed the service requirement to slip into anonymity.<sup>112</sup>

Not surprisingly, in *DePaul* the Missouri Supreme Court ignored *Yates*' service requirement when it specifically limited<sup>113</sup> its holding that "[a] summons can now issue from a court in which venue is not proper."<sup>114</sup> The holding clearly obliterated the filing requirement of *Yates*, but does not directly affect the service requirement. *DePaul* provides no explicit direction for future validity of service conflicts that will arise when summons is validly issued under *DePaul*, but is actually served in an improper venue. Under the authority of *Yates*' service requirement<sup>115</sup> and a host of other cases sneaking the long lost service requirement into Missouri courts,<sup>116</sup> such a connection would render service of process invalid.

Surely the supreme court did not intend to leave behind a single connection between venue and personal jurisdiction if "the legislature severed the two concepts."<sup>117</sup> Such a result would clash with the spirit of *DePaul*. Perhaps the *DePaul* court indirectly and unintentionally overruled the service requirement articulated by *Yates*.

The *DePaul* court explicitly held a valid summons can issue from a court without proper venue. In making its ruling, the court necessarily recognized that a summons issued from an improper venue frequently would be served within that improper venue.<sup>118</sup> In other words, the court had to assume, contrary to the service requirement of *Yates*,<sup>119</sup> that valid service of process would sometimes occur outside of the proper venue. Because the *DePaul*

111. *Yates*, 49 S.W.2d at 70. This is the service requirement of *Yates*. See *supra* note 35 and accompanying text.

112. See, e.g., the following cases overruled by State *ex rel.* DePaul Health Ctr. v. Mummert, 870 S.W.2d 820 (Mo. 1994): State *ex rel.* Bartlett v. McQueen, 238 S.W.2d 393 (Mo. 1951); State *ex rel.* O'Keefe v. Brown, 235 S.W.2d 304 (Mo. 1951); State *ex rel.* Minihan v. Aronson, 165 S.W.2d 404 (Mo. 1942); Hankins v. Smarr, 137 S.W.2d 499 (Mo. 1940).

113. See *DePaul*, 870 S.W.2d at 822 ("To the extent they hold otherwise . . .").

114. *Id.*

115. See *Yates*, 49 S.W.2d at 70.

116. See, e.g., DeMarinis v. Smith, 449 S.W.2d 380, 382 (Mo. Ct. App. 1969); State *ex rel.* Mercantile Nat'l Bank v. Rooney, 402 S.W.2d 354, 357 (Mo. 1966); State *ex rel.* Public Serv. Comm'n v. Thompson, 379 S.W.2d 824, 826 (Mo. Ct. App. 1964); State *ex rel.* Kissinger v. Allison, 328 S.W.2d 952, 958 (Mo. Ct. App. 1959); Aronson, 165 S.W.2d at 407; Hankins, 137 S.W.2d at 501.

117. *DePaul*, 870 S.W.2d at 822.

118. After all, why would a court issue a summons without intending that it be served?

119. See *Yates*, 49 S.W.2d at 70. For a more concise explanation of both requirements in *Yates*, see *supra* notes 27-35 and accompanying text.

court intended to completely sever venue and jurisdiction, actual service of a defendant in a county other than the county of venue should not render the issuing court completely powerless.

Thus, the Missouri Supreme Court might have haphazardly accomplished its desired goal: the destruction of *all* territorial limitations venue placed upon personal jurisdiction.

## VI. CONCLUSION

In *State ex rel. DePaul Health Center v. Mummert*, the Missouri Supreme Court attempted to completely sever venue and personal jurisdiction in holding that valid service of process can issue from an improper venue. Due to the underinclusive scope of the opinion, however, future litigation regarding the validity of a summons actually served outside of the proper venue likely will occur. In substance, the court rendered a wise and long overdue opinion. Unfortunately, the form of the opinion fails to precisely reflect its substance.

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