

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

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
CITY OF ST. LOUIS
ASSOCIATE DIVISION

FILED
JAN 11 2007

MARIANO V. FAVAZZA
CIRCUIT CLERK
BY DEPUTY CLERK

Field Landlord, LP)
)
Plaintiff,)
)
)
)
VS.)
)
Alison M. Graeff)
)
)
Defendant.)

Cause No. 0722-AC-17528

Division 28

*Change of
Judge*

ORDER AND JUDGMENT

The parties appeared before this court on January 3, 2008, on Defendant's Motion to Set Aside the Default Judgment. Defendant argues that she requested a timely motion for change of judge on December 3, 2007. Change of judge is governed by Rule 51.05 of the Missouri Rules of Civil Procedure.

Rule 51.05 states that "A change of judge shall be ordered in any civil action upon the timely filing of a written application, therefore by a party." There are three possible times lines to determine whether or not the written application has been timely filed.

First, whether or not the application was filed within sixty (60) days from service of process, or second, thirty (30) days from the designation of the trial judge, which ever time is longer. However, a third possibility exists. If the designation of the trial judge occurs less than thirty (30) days before trial, then the application must be filed prior to any appearance before the trial judge.


In this particular case, service of process occurred on November 21, 2007. See court file return of service. Furthermore, the trial judge was designated on December 3, 2007, when the parties agreed to transfer the case to Division 28 from Division 27 for trial on December 11, 2007. Again, see court file, Court Order dated December 3, 2007.

The very next day on December 4, 2007, the Defendant acting Pro Se filed a written motion requesting a change of judge. Again, see court file, Court Order stamped December 4, 2007. On the trial date of December 11, 2007, Defendant failed to appear in court and a default judgment was rendered against her.

This court holds that the relevant time line in the second paragraph of subparagraph (d) of Rule 51.05 which states "If the designation of the trial judge occurs less than thirty (30) days before trial, the application must be filed prior to any appearance before the trial judge." Here the December 3, 2007, court order wherein both parties agreed to transfer the case to Division 28 from Division 27 for bench trial, acted as the designation of the trial judge. Furthermore, by setting the case eight (8) days after December 3, 2007, on December 8, 2007, that designation of the trial judge clearly occurred less than thirty (30) days before the trial date. Therefore, any application for change of judge need only be filed prior to an appearance before the trial judge. The trial date was December 11, 2007, and there was no other appearance required between December 3, 2007 and December 11, 2007. Further, there is nothing to indicate that when the application for change of judge was filed on December 4, 2007, that there had been any prior appearance before the trial judge in Division 28.

The court therefore, grants the Defendant's motion for a change of judge and transfers this case to Division 1, per Local Rule for reassignment.

SO ORDERED: This 11th day of January 2008.



Michael F. Stelzer, #40716
Associate Circuit Judge
Division 28

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