

IN THE MISSOURI SUPREME COURT

ALVIN BROOKS, et al.,)	
)	
Plaintiffs/Respondents,)	Case No. 85674
)	
vs.)	
)	
STATE OF MISSOURI, et al.,)	
)	
Respondents/Appellants.)	

DUPLICATE
OF FILING ON
NOV 13 2003
IN OFFICE OF
CLERK SUPREME COURT

**RESPONDENTS' SUGGESTIONS IN OPPOSITION TO APPELLANTS'
MOTION FOR AN EXPEDITED BRIEFING AND ARGUMENT SCHEDULE**

Respondents oppose Appellants' motion seeking an expedited briefing and argument schedule and suggest to the Court that Appellants' motion disregards this Court's rules, is prejudicial, premature and unauthorized.

I. Disregard of Supreme Court Rules

Supreme Court Rule 75.01 provides, in part:

The trial court retains control over judgments during the thirty-day period after the entry of judgment and may - - - amend, or modify its judgment within that time.

An authorized after trial motion is a motion for which the rules expressly provide. *State, Dept. of Labor and Industrial Relations v Ron Woods Mechanical, Inc.*, 926 S.W.2d 537, 540 (Mo.App. 1966). This Court, in *Taylor v. United Parcel Service, Inc.*, 854 S.W.2d 390, 392 n.1 (Mo. banc 1993) recognized a motion to amend the judgment [under then -] Rule 73.01(a)(3), now Rule 78.04, as an authorized after trial motion.

As is their right, Respondents, as Plaintiffs in the trial court, will file a motion for new trial to amend the judgment raising several points which, in good faith, represent meritorious grounds for amending the judgment. Appellants' proposed schedule seeks

to deprive Plaintiffs of the post-trial rights codified in the Supreme Court Rules. Nonetheless, authorized post-trial matters will be brought to the attention of the trial court pursuant to Supreme Court Rule 78.01 and 78.04 and include at least the points summarized below. In bringing these matters before the trial court, Plaintiffs will address whether that court gave adequate consideration to the evidence, reached erroneous conclusions based on the evidence, overlooked evidence of record or entered a judgment that was not supported by the evidence.

(a) Hancock Amendment

The trial court denied Plaintiffs' relief based on a challenge to the conceal and carry law under Article X, Section 21 of the Missouri Constitution, commonly known as the Hancock Amendment.

Plaintiffs will ask the trial court to reconsider its finding that "there is no evidence to support the proposition that the law will result in increased costs to Sheriff's Offices of State," in light of the testimony of several county sheriffs regarding numerous additional activities and services that will result in increased costs. Further, Plaintiffs will ask the trial court to review the law because, contrary to the finding of the trial court, there is no requirement of a finding of new activities or services, but only an increase in the present level of activities or services.

(b) Plaintiffs will seek leave of the trial court to amend their verified petition to conform to the evidence after judgment, pursuant to Missouri Civil Rule

55.33(b).¹ These proposed amendments pertain to alleged constitutional violations under the Hancock Amendment, Article X, Sections 16, 18 and 22. It is Plaintiffs' position that these amendments are necessary to conform the pleadings to the evidence adduced at trial.

- (c) This Court's rules and the statutes and case law of this state support the proposition that the granting of a permanent injunction obviates the need for a bond. The trial court, in its judgment in favor of Plaintiffs, nevertheless ordered that the existing bond remain in full force and effect. Plaintiffs will seek an amendment of the judgment to dissolve the cash bond of \$250,000.00.

While Plaintiffs have the right under this Court's rules to present these issues to the trial court within thirty days of the entry of judgment, it is expected that post-trial motions will be filed with the trial court within the next week. These motions require additional research and preparation which was not part of the earlier proceedings in the trial court. For example, the Hancock Amendment testimony requires analysis of the testimony in the trial court of 4 county sheriffs. The issue regarding dissolution of the bond following judgment in favor of Plaintiffs was never considered in prior proceedings in the trial court.

ii. Prejudice

Appellants do not allege or assert in this Court that any prejudice will accrue in the event their proposed expedited schedule is not adopted. On the other hand, Respondents assert that prejudice will result should the

¹ The trial court denied Plaintiffs' motion to amend their verified petition prior to entry of judgment.

schedule proposed by Appellants be adopted by this Court.

Respondents are 9 individuals who are entitled to and must be kept informed of the progress of this litigation by their counsel. Moreover, under the Rules of Professional Conduct governing the conduct of attorneys before this Court, the attorneys for Respondents cannot meet their client/lawyer obligations of competence if required to adhere to a schedule which places Respondents at a distinct disadvantage in the presentation of briefs and arguments on the constitutional issues which will be before this Court. Rule 4-1.1. Competence provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, **thoroughness and preparation reasonably necessary for the representation.** (emphasis added)

The comment to that Rule states as follows, in part:

The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence. (emphasis added)

With the constitutionality of a newly enacted state statute at stake, Respondents seek a scheduling order that will allow for development of a complete trial court record and sufficient time to thoroughly prepare briefs and arguments. Counsel for Respondents state to this Court that they cannot meet their ethical responsibilities and obligations to their clients under the proposed schedule of Appellants, or any schedule calling for argument near the time proposed by Appellants.

At least 12 lawyers appeared on the pleadings or at trial for the Defendants, whereas the Plaintiffs are and were only represented by 2 attorneys on a *pro bono* basis. The State of Missouri, the intervenor and the National Rifle Association as *amicus curiae* have the resources of 3 of the largest law firms in the State of Missouri and the apparent manpower to comply with the short schedule Appellants seek to impose. Respondents are without the wherewithal available to Appellants.

III. Appellants' Motion is Unauthorized and Premature

(a) Unauthorized Motion

There is no authority or reason advanced by Appellants to authorize urgency in expediting this appeal. Appellants' only ground for seeking its expedited schedule is that this is a matter of "statewide importance." Respondents agree that the several constitutional issues before this Court are of importance throughout the state. Accordingly, Respondents urge the Court to adopt a schedule calling for deliberation and thoroughness, rather than haste, as advocated by Appellants.

(b) Premature Filing

The notices of appeal filed by Appellants are premature because these were filed before the trial court's judgment was final under Supreme Court Rule 81.05(b). The trial court's judgment becomes final 30 days after its entry if no timely authorized after-trial motion is filed. Supreme Court Rule 81.05(a)(1). Where, as here, notices of

appeal have been filed prematurely, these notices are considered as filed immediately after the time the judgment becomes final for the purpose of appeal.

Moreover, because the trial court denied relief to Respondents on four (4) separate constitutional grounds, cross appeals on each of those grounds will be filed pursuant to Supreme Court Rule 81.04(b). Notice of these cross appeals must be filed within ten days of the first notice of appeal which, as indicated above, would be considered as filed immediately after the time the judgment becomes final for the purpose of appeal. Supreme Court Rule 81.05(b).

CONCLUSION

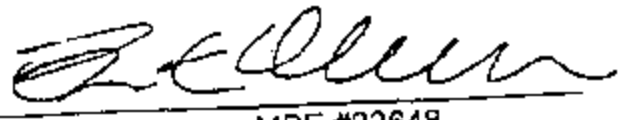
In its 182 year history, the State of Missouri has never had a conceal and carry law. Appellants are proposing that a review of the constitutionality of this year's enactment of such a law be undertaken with arguments and briefing before this Court in less than one-tenth (1/10) the time prescribed by this Court's rules for briefing alone. While Respondents acknowledge and recognize the state-wide importance of these issues, it is their desire to represent all their clients to the fullest in each stage of the proceedings before this Court. This is not a one issue case. In total, there are as many as seven issues which will likely be presented to this Court, most of them by cross-appeal. Five of these are constitutional issues. While Appellants' proposed schedule may allow them sufficient time to focus on the issue with which they are concerned, that schedule or any schedule similar to it deprives counsel for Respondents of the time necessary to focus on all the issues in the case in order to meet their responsibilities of thoroughness and preparation in a matter of

constitutional significance before the highest Court of this State.

Accordingly, it is proposed that after rulings by the trial court on Plaintiffs' motion for new trial to amend judgment. this Court enter its Order calling for a briefing schedule to culminate with arguments before this Court during or after the week beginning February 9, 2004, which is still over a two-thirds (2/3) reduction of time for processing the appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The above signature(s) hereby certify that a copy of the foregoing was mailed, postage prepaid, this 13th day of November, 2003, to:

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Message From: Burton Newman

File Name: Brooks, et al. v. State of Missouri, et al.

Date: 11-13-03

Number of Pages: 2

Comments:

*Copy of Respondents' Suggestions
faxed to Paul Wilson,
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this 13th day of Nov. 2003
at 573-751-2203* *BT*

IF YOU HAVE ANY PROBLEMS, PLEASE CALL

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11/13/2003