

SUPREME COURT OF MISSOURI

State ex rel. Traci Stubblefield v. The Honorable Carol Kennedy Bader

66 S.W.3d 741 (Mo. banc 2002) · No. SC 83858 · Decided February 13, 2002

SUMMARY

The Supreme Court of Missouri held that Traci Stubblefield timely filed an application for change of judge on the same day the case was set for trial on the merits. The court made its preliminary writ of prohibition absolute and overruled contrary authority to the extent it held that rescheduling a trial date does not affect the filing period for disqualification.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Missouri
DECIDED	February 13, 2002
DOCKET	SC 83858
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Stubblefield petitioned the Supreme Court of Missouri for a writ of prohibition after the juvenile judge denied her application for change of judge in a child-custody proceeding.
STANDARD OF REVIEW	The court reviewed whether the application for change of judge was timely and whether prohibition was warranted; the opinion applied the governing procedural rules and construed them liberally in favor of the right to disqualify a judge.
PRECEDENTIAL VALUE	Published Missouri Supreme Court en banc opinion; precedential.
PARTIES	Traci Stubblefield, relator v. The Honorable Carol Kennedy Bader, respondent

TOPICS

- civil procedure
- appellate procedure
- family law
- writ of certiorari
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an application for change of judge filed on the same day that a trial on the merits is set is timely under Rule 126.01b.
2. Whether prohibition should issue when the trial judge denies a timely application for change of judge.

HOLDINGS

1. An application for change of judge filed on the same day that the case is set for trial on the merits is timely under Rule 126.01b.
2. When a judge fails to disqualify upon a proper and timely application for disqualification, the judge lacks jurisdiction and prohibition lies.
3. To the extent *In the Interest of A.H.* holds that rescheduling a trial date does not affect the time for filing an application for change of judge, it is overruled.

KEY QUOTATIONS

“An application for change of judge filed on the same day the case is set for trial on the merits is timely.” (66 S.W.3d at 742)

“The right of a party to disqualify the judge is one of the keystones of our legal administrative edifice, and our courts, therefore, adhere to a rule of liberal construction in favor of the right to disqualify.” (66 S.W.3d at 742)

FACTUAL BACKGROUND

The Division of Family Services sought custody of Stubblefield's children, and a temporary custody order was entered on February 15, 2001. Following a February 22 protective-custody hearing, the juvenile court held an April 30 hearing at which Stubblefield denied the petition's allegations and requested a trial setting. The judge set the trial on the merits for August 20 and, on the same day, denied Stubblefield's application for change of judge.

PROCEDURAL HISTORY

The Division of Family Services sought custody of Stubblefield's children. After a protective-custody hearing and a subsequent hearing at which Stubblefield denied the allegations and requested a trial setting, the judge set the trial for August 20 and denied Stubblefield's same-day application for change of judge. Stubblefield then sought prohibition in the Supreme Court of Missouri, which made its preliminary writ absolute.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The preliminary writ of prohibition was made absolute, requiring the respondent judge to honor the timely application for change of judge.

CASES CITED

- State ex rel. Horton v. House, 646 S.W.2d 91, 93 (Mo. banc 1983)
- State ex rel. Raack v. Kohn, 720 S.W.2d 941, 943 (Mo. banc 1986)
- State ex rel. Cohen v. Riley, 994 S.W.2d 546, 548 (Mo. banc 1999)
- State v. Stovall, 784 S.W.2d 852, 853 (Mo. App. 1990)
- In the Interest of M.S.M., 666 S.W.2d 800, 804 (Mo. App. 1984)
- In the Interest of A.H., 963 S.W.2d 374, 382-83 (Mo. App. 1998)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/missouri-supreme-court-of-missouri/2002/state-ex-rel-traci-stubblefield-v-the-honorable-carol-nh6052io>