

IN THE CIRCUIT COURT OF CHRISTIAN COUNTY, MISSOURI

KEVIN A. ELMER,)
)
 Plaintiff,)
)
 vs.) Case No. 14CT-CC00532
)
 KAY BROWN,)
)
 Defendant.)

**SUGGESTIONS IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION TO SET ASIDE AND VACATE
COURT'S ORDER OF JUNE 10, 2014**

COMES NOW plaintiff, by and through his attorney of record, Kent Hyde, and for his Suggestions in Support of Plaintiff's Amended Motion to Set Aside and Vacate Court's Order of June 10, 2014, states as follows:

The trial court retains control over its judgment during a thirty (30) day period after entry of judgment and may vacate, amend or modify its judgment within that time. Supreme Court Rule 75.01. Further, Supreme Court Rule 74.06(b) provides that on motion and such terms as are just, the court may relieve a party from a judgment or order, including that a prior judgment upon which it is based, "is no longer equitable that the judgment remain in force."

The trial court has broad discretion to set aside its prior judgment for good cause and to prevent a manifest injustice. "The term 'good cause' is coined to serve a remedial purpose in a matter addressed primarily to the

conscience of the court and it should therefore be interpreted with commensurate liberality, not only to prevent a manifest injustice.” . . . *Brueggemann v. Elbert*, 948 S.W.2d 212 (Mo.App.). “Rule 75.01 contains the least stringent standard because it inheres while the trial retains jurisdiction of the case.” *Cowger v. Livingston*, 182 S.W.3d 783 (Mo.App. 2006).

In the instant case, plaintiff’s previous Petition and court Order of June 10, 2014, relied upon beliefs as set forth in plaintiff’s Amended Motion to Set Aside Court’s Order and further, that the ballot for the primary election would be sent to the printer on June 11, 2014. Circumstances have changed and the ballot has not been sent for printing. Therefore, plaintiff relied to his detriment on circumstances which no longer exist. This change in circumstance should compel the Court to vacate and set aside its previous Order of June 10, 2014, to allow plaintiff’s name to remain on the ballot for the primary election, and allow the registered voters of Christian County, Missouri, to elect an Associate Circuit Judge on the merits.

WHEREFORE, plaintiff prays his Amended Motion to Set Aside Court’s Order of June 10, 2014, be sustained, that the previous Order be vacated, and for such further and additional relief as the Court may deem just and proper.

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By: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon all interested parties herein on this 19th day of June, 2014, by:

_____ Personal Service (hand delivered).

_____ U.S. Mail, postage prepaid.

_____ Facsimile transmission.

Interested parties:

Kay Brown

County Clerk

100 West Church Street, Room 206

Ozark, MO 65721


Kent O. Hyde