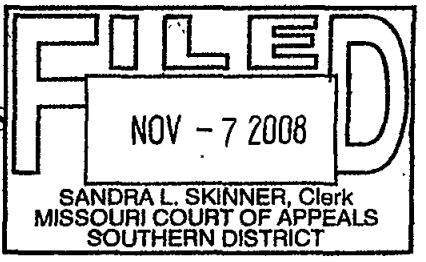
IN THE

MISSOURI COURT OF APPEALS

SOUTHERN DISTRICT



CATHY JONES,

APPELLANT,

v. Appeal No. SD29176

REBECCA JONES,

RESPONDENT.

APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

This is an appeal of a civil action filed in the Circuit Court of Carter County by plaintiff/respondent Rebecca Jones against Cathy Jones requesting declaratory relief. The case was tried to a judge on October 17, 2006, additional evidence was heard on August 17, 2007, and the matter was taken under advisement. The Honorable Randy P. Schuller entered his final judgment on May 30, 2008 in favor of Rebecca Jones and declared Rebecca Jones to be the Chief of the Amonsoquath Tribe of the Cherokee Nation and President and Chairperson of the Amonsoquath Tribe of Cherokee, a Missouri not-for-profit corporation. Additionally, the Court declared that defendant/appellant Cathy Jones holds no office, position or title in the Amonsoquath Tribe of the Cherokee Nation or the Amonsoquath Tribe of Cherokee, a Missouri non-profit corporation. The Court further declared that all acts taken by Cathy Jones on behalf of the Corporation since February 12, 2000 were null, void and of no effect. Appellant filed a timely notice of appeal and perfected the appeal to this Court.

This case does not fall within the exclusive appellate jurisdiction of the Missouri Supreme Court under Article 5, Section 3,of the Missouri Constitution and this Court has jurisdiction by virtue thereof.

STATEMENT OF FACTS

In 1993, a Missouri not-for-profit corporation was formed under the name of the Amonsoquath Tribe (herein, the "Corporation"). (Trial Tr. at 120-121; Pla. Ex. 1)[1]. The Corporation was intended to to gather individuals of a certain Native American heritage, research their lineage, and apply for and obtain federal recognition as a Native American tribe. (Trial Tr. at 16-17, 98-104, 115-117). Martin G. Wilson Jr., his wife, Billie Jo Wilson, and his mother, Virginia Furr, were the incorporators and initial board of directors for the Corporation. (Pla. Ex. 1, Trial Tr. at 195, 201). To be federally recognized by the Bureau of Indian Affairs, genealogical work must be performed to establish sufficient links between the members of the Corporation and Native Americans listed on tribal censuses and/or treaties from the 18th and 19th centuries. (Trial Tr. at 101, 104-105). The Amonsoquath Tribe is not recognized by the federal government as a Native American tribe. (Trial Tr. at 17, 115). Without federal acknowledgment, no tribal authority exists outside of the Corporation. (Trial Tr. at 115).

Cathy Jones was involved when the Corporation was organized and, by 1999, served as a member of the Board of Directors (Trial Tr. at 236-237) and Deputy-Chief or Vice-President of the Corporation (Trial Tr. at 19, 232). In late 1999, a dispute arose within the Corporation relating to the President's alleged misappropriation of corporate

[1] References to the legal file are designated "LF," references to the Transcript are designated "Trial Tr.," references to Plaintiff's Trial Exhibits are designated "Pla. Ex.," and references to Defendant's Trial Exhibits are designated "Def. Ex."

monies for the purchase of land titled to himself and his wife, Billy Jo Wilson. (Trial Tr. at 155, 195-196). Around the time that the allegations of misappropriation surfaced, the President, Martin Wilson, was sentenced to serve three years in federal prison on unrelated charges (Trial Tr. at 55, 69, 229-230).

In late 1999, during the November meeting of the Board of Directors, a motion was made and approved to suspend the President from his responsibilities or duties. (Def. Ex. R). No minutes were produced at trial relating to the board meetings from November or December of 1999. Although there was some confusion, Appellant testified that notice and an agenda had been provided to the membership and Martin Wilson of the intended action of the Board of Directors at the November board meeting. (Trial Tr. at 235-236, see also 189-190).

Shortly after the November board meeting, the Corporation split into two groups. (Trial Tr. at 22-23, 60). As a result, the funds in a local bank account in the Corporation's name were interpled by Southern Missouri Bank. (Trial Tr. at 23-24, 60-61). A dispute followed between the parties' respective groups over ownership of the funds. (Trial Tr. at 6, 23-24, 60-61). Appellant Cathy Jones and Martin Wilson, both individually and as President and Chairman of the Corporation, were named as parties to the prior action. (Trial Tr. at 6, 23-24, Judgment in CV100-24CC). In its judgment dated May 15, 2001, the Circuit Court of Carter County determined that the funds in the Corporation's account belonged to Defendant Cathy Jones as acting President of the

Corporation. (Trial Tr. at 60-61, 176-177, see Judgment in CV100-24CC). Although Respondent was not named as a party to the prior action, she was aware of the suit, she was Secretary of the Corporation, and the Corporation was a party. (Trial Tr. at 6, 23-24, 25, 60-61, see Judgment in CV100-24CC).

After the interpleader was final, Appellant requested that Respondent turn over all corporate records, including meetings of all prior minutes. (Trial Tr. at 153-154). The request was ignored. (Trial Tr. at 154). In any event, Appellant continued to file annual reports for the Corporation, pay annual dues, file taxes if appropriate, call and conduct meetings, host tribal powwows, apply for and received grants, sends newsletters to members, maintain a website, and oversee the annual election of board members. (Trial Tr. at 122-124, 128-131, 135-138, 140-142, 145, 149-152). Respondent, as "Secretary" or "Chief pro tem" has never filed taxes on behalf of the Corporation, does not file annual reports or pay annual dues on behalf of the Corporation, and has not attended or conducted annual meetings in order to elect board members. (Trial Tr. at 64-66, 72-73). Whether he was suspended, removed or stepped down, Martin Wilson did not return to his office within the Corporation after serving his prison sentence. (Trial Tr. at 69).

In early 2000, Respondent Rebecca Jones was present at parallel "board meetings" being held by her group of supporters. Those included a meeting conducted on February 12, 2000 where a number of board members and officers (including Appellant) purportedly were removed from their positions. (Trial Tr. at 28-29, Pla. Ex. 7). Agendas

were not prepared or distributed at any time prior to any of the meetings where Appellant and other officers or board members were allegedly removed. (Trial Tr. at 189-190). There was no evidence that any special meetings were conducted or notices provided to members prior to the actions being taken by Respondent's group to remove members from the board of directors. (See generally Trial Tr.). Respondent's group of supporters were not paying property taxes or filing income tax returns on behalf of the Corporation, nor were they filing annual reports or paying annual corporate dues for the Corporation. (Trial Tr. at 65-66, 81-82, 123-124). Also, they did not have access to or use of the Corporate bank account pursuant to a previous judgment. (Trial Tr. at 61, see also Judgment in CV100-24CC).

ARGUMENT

STANDARD OF REVIEW

The standard of review for a declaratory judgment is the same as that established for court-tried cases: the trial court's decision should be affirmed unless there is no substantial evidence to support it, unless it is against the weight of the evidence or unless it erroneously declares or applies the law. Guyer v. City of Kirkwood, 38 S.W.3d 412, 413 (Mo. banc 2001); Laclede County v. Douglass, 43 S.W.3d 826, 827 (Mo. banc 2001) (citing Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1979)). However, where the issue on appeal is not the sufficiency of the evidence, the Court is not bound by and need not defer to the trial court's conclusions. Shelter Mutual Ins. Co. v. Crunk, 102 S.W.3d 560, 561 (Mo. App. S. D. 2003). Moreover, where the evidence is not controverted, no deference is due the trial court's judgment. Id at 561-562.

Questions of jurisdiction may be raised at any time, even for the first time on appeal. Rule 55.27(g)(2); Heitz v. Kunkel, 879 S.W.2d 770, 772 (Mo. App. S.D. 1994). Failure to join an indispensable party is so fundamental and jurisdictional, the Court must consider it even if none of the parties raises the issue. Id.

POINT I

I. THE TRIAL COURT ERRED IN RENDERING JUDGMENT, BECAUSE IT LACKED JURISDICTION IN THAT NECESSARY AND INDISPENSABLE PARTIES WERE ABSENT FROM THE ACTION.

Both Section 527.110 R.S.Mo. and Rule 87.04 provide, in pertinent part, that "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings." See Section 527.110 R.S.Mo.; see also Mo Rules of Civ. Pro. 87.04. This reflects Missouri law generally, which requires that all persons who have an interest–either legal or beneficial–in the subject matter of the litigation are necessary parties and must be included. Schaeffer v. Moore, 262 S.W.2d 854, 858 (Mo. 1953). Rule 52.04 provides that a party is necessary if: (1) complete relief cannot be afforded in the entity's absence; or (2) the entity has an interest in the proceedings and is so situation that disposition of the action may: (i) impair or impede its ability to protect that interest; or (ii) leave the persons already parties to the action subject to risk of inconsistent verdicts. In determining whether an omitted necessary party is indispensable, the Court must consider several additional factors.[2] The

[2] These factors are: (i) the extent a judgment rendered in that entity's absence might be prejudicial to that entity; (ii) the extent to which the prejudice might lessened by modifying the judgment or other measures; (iii) whether a judgment without the entity would be adequate; and (iv) whether the plaintiff will have an adequate remedy if the matter is dismissed for nonjoinder. See Mo Rules of Civ. Pro. 52.04.

determination of whether an indispensable party has been omitted is a jurisdictional issue that may be raised on appeal. See Mo. Rule of Civ. Pro. 55.27(g)(2); Obaidullah v. Kabir, 882 S.W.2d 229, 230-231 (Mo. App. E.D. 1994); Yellow Freight System, Inc. v. Mayor's Comm'n on Human Rights, 737 S.W.2d 250, 251 (Mo. App. S.D. 1987).

When determining what parties must be before the court, Missouri courts do not look to the name of the action, but instead to the nature of the relief requested and the interests adjudicated. Kingsley v. Burack, 536 S.W.2d 7, 10-13 (Mo. banc 1976). In this case, the relief afforded by the trial court fell primarily within three categories: (1) declaring Rebecca Jones "the Chief, President and Chairman of the Amonsoquath Tribe of the Cherokee Nation and of the Amonsoquath Tribe of Cherokee, a not-for-profit corporation"; (2) declaring that Cathy Jones "holds no office, position or title in the Amonsoquath Tribe of the Cherokee Nation or the Amonsoquath Tribe of Cherokee, a not-for-profit corporation; and (3) declaring that "any and all acts done or purported to have been done by Cathy Jones, since on or about February 12, 2000, in any capacity purporting to represent the Amonsoquath Tribe of the Cherokee nation or of the Amonsoquath Tribe of Cherokee, a not-for-profit corporation organized and existing under the laws of the State of Missouri, are void and of no effect." See LF at 56.

A. The Corporation is a necessary party.

Chapter 355 is clear. A corporation "shall" be made a party to any action to remove a director. See Section 355.356.1 & 355.356.3 R.S.Mo. It is undisputed that the

Corporation was never added to this case–which purports to order the removal of director Cathy Jones.

Even if Section 355.356 did not apply, the Corporation nonetheless would be a necessary party under Rule 52.04(a). It not only meets one of the several independent bases for being a necessary party under Rule 52.04(a), it meets all of them. Rule 52.04(a) states that a party whose presence is required to afford "complete relief" to the existing parties is a necessary party. Here, the judgment purports to say who serves as officers and directors of the Corporation. In the absence of the Corporation, neither party can be appointed an officer or director, thereby making it impossible to obtain "complete relief" within the meaning of Rule 52.04(a).

The second prong of Rule 52.04(a) references whether the missing party has an interest that could be affected by the judgment. Here, the Corporation clearly has an interest in who serves as its officers and directors and whether the Corporation's past actions might be rendered void. This interest is clearly impaired by the existing judgment. The judgment also places all of the parties (as well as the Corporation) in direct conflict with the 2001 judgment declaring that Cathy Jones had authority over the Corporation's funds.

B. Third parties to corporate actions declared "void" by the judgment are also necessary parties.

The Judgment purports to render all past actions taken by Cathy Jones on behalf of

the Corporation "void and of no effect." See LF at 56. At trial, Ms. Jones testified that she applied for and received federal grants, operated a thrift store, requested and obtained a right of way from the State of Missouri to real estate owned by the Corporation, filed federal income taxes, filed annual reports with the State of Missouri, took out a one or more loans and purchased/sold real estate all on behalf of the Corporation from 2000 through trial. See Trial Tr. at 123-124, 128-131, 132-134, 140-142, 149-157. The judgment purports to invalidate all of these transactions, which will have an unknown effect on the many individuals or entities who contracted with the apparent agent of the Corporation. Before the Court may render a transaction null and void, the Court must ensure that the parties to those transactions are afforded an opportunity to participate in the litigation.

C. The Corporation is an indispensable party.

After first determining that a party is necessary and that it is not feasible to join them to the action, the Court is then to determine if a party is also indispensable. "When an indispensable party to a declaratory judgment action is not joined in the case, any judgment rendered in that party's absence is a nullity." Automobile Club Inter-Insur. Exch. v. Nygren, 975 S.W.2d 235, 239 (Mo. App. S.D. 1998); see also Bauer v. Board of Election Comm's, 198 S.W.3d 161, 164 (Mo. App. E.D. 2006). The Court in Automobile Club Inter-Insur. Exch. noted that "Rule 87.04 contains no exceptions to the requirement that any person be made a party who has or claims any interest which would be affected

by the declaration." Automobile Club Inter-Insur. Exch., 975 S.W.2d at 240. Missouri cases in other areas of the law have similarly held that a statutory necessary party is indispensable. See In re Estate of Pilla v. Pilla, 735 S.W.2d 103, 105 (Mo. App. E.D. 1987) (involving probate issues).

Even without the statutory party requirements, the judgment is inadequate in the absence of the Corporation and prejudicial to the Corporation's health and very existence. In determining whether an omitted necessary party is indispensable under Rule 52.04(b), the Court must consider several factors, including: (1) the extent a judgment rendered in that Corporation's absence might be prejudicial to the Corporation; and (2) whether a judgment without the Corporation would be adequate. See Mo Rules Civ. Pro. 52.04. The remedies requested, and the relief afforded by the trial court all require some action on the part of the Corporation. However, the Corporation is not a party to or bound by the judgment; it need not recognize the authority bestowed on Rebecca Jones by Judge Schuller. It is apparent from the record that the only members of the Corporation making efforts to administer the Corporation are aligned with Cathy Jones. Appellant's group has held annual meetings to elect directors, paid taxes, filed annual reports and paid the annual fees, and Appellant is the only person who has ever filed federal tax returns on behalf of the Corporation. See Trial Tr. at 122-124, 128-131, 135-138, 140-142, 145, 149-152. From the record, it does not appear that Respondent's group has held an election since 1999 (when Appellant was still associated with them). See Trial Tr. at 64-

66, 72-73. It seems clear from the record that the Corporation's involvement in the case is required for the relief set forth in the judgment. In the absence of an indispensable party, this Court has no jurisdiction and no option except to reverse the judgment and remand the cause for dismissal. Bauer, 198 S.W.3d at 164.

POINT II

II. THE TRIAL COURT ERRED BY RENDERING AN INCONSISTENT JUDGMENT, BECAUSE ISSUE PRECLUSION BARRED REBECCA JONES FROM SEEKING RELIEF IN THAT A PRIOR PROCEEDING HAD ALREADY ADJUDGED CATHY JONES TO BE AN OFFICER AND DIRECTOR OF THE CORPORATION.

Appellant argued at trial that Respondent's claims are barred by collateral estoppel. See Trial Tr. at 23-24. Missouri law holds that collateral estoppel applies to both parties and those in privity with parties as a bar against relitigating issues which have been previously litigated. Moore v. Swayne-Hunter Farms, Inc., 841 S.W.2d 308, 315 (Mo. App. S.D. 1992); Woods v. Mehlville Chrysler-Plymouth, Inc., 198 S.W.3d 165, 168 (Mo. App. 2006).

> Under the doctrine of issue preclusion, a party is barred from raising an issue in a subsequent proceeding if: (1) the issue decided in the prior proceeding was identical to the issues presented in the current action; (2) the prior judgment resulted in a judgment on the merits; (3) the party against whom issue preclusion is asserted was a party or in privity with the party in the prior proceeding; and (4) the party [in the first case] had a full and fair opportunity to litigate the issues in the prior proceeding. Woods, 198 S.W.3d at 168.

A non-party to the previous litigation is said to be in privity with a party if "they are so closely related to the interests of a party, that the nonparty can fairly be considered to have had his day in court." Moore, 841 S.W.2d at 315.

In early 2000, the Defendant, the Corporation and other members of the

Corporation were named as parties in an interpleader action filed in Carter County, Missouri by Southern Missouri Bank – Case No. CV100-24CC. See Trial Tr. at 6, 23-24. After hearing evidence, the previous trial court ruled that the funds in the Corporation's account belonged to Appellant Cathy Jones as President of the Corporation. See Judgment of Case No. CV100-24CC. While the previous court's ruling did not directly affect control of the Corporation, the sole effort of each party would have been to substantiate their claim to the fund. The determination of which group controlled the corporate funds necessarily required a determination of which group controlled the corporate entity. Judge Heller concluded that "Defendant Cathy Jones is the President and Chairman of the Board of the Amonsoquath Tribe" and that the monies "should be delivered over to Cathy Jones as and for the benefit of the Amonsoquath Tribe of Cherokee." See Judgment in Case No. CV100-24CC.

As applied to these facts, the analysis in cases such as Moore prevents any of the dissident corporate group (including Respondent) from once again litigating the issue of which of these two groups controls the Corporation. Moore, 841 S.W.2d at 312-315. While Respondent was not named individually as a party in the previous case, the Corporation was named, Respondent was Secretary of the Corporation at the time, and she was personally aware of the litigation. See Trial Tr. at 6, 23-24, 25, 60-61. Respondent's interests would have been adequately represented in the previous suit by the Corporation and/or Martin Wilson, the "Chief" of the Amonsoquath Tribe from whom

Respondent claims her authority. See Trial Tr. at 68-70. By agreement of the parties, the trial court took judicial notice of the previous litigation. See Trial Tr. at 22-24.

POINT III

III. THE TRIAL COURT ERRED IN RENDERING JUDGMENT IN FAVOR OF RESPONDENT, BECAUSE THE CORPORATION LACKED AUTHORITY TO REMOVE CATHY JONES AS A DIRECTOR IN THAT THE PROVISIONS OF CHAPTER 355 R.S.Mo. WERE NOT MET.

Chapter 355 creates two vehicles for removing an *elected* director of a non-profit corporation: (1) by vote of the members at a special meeting called for that purpose; or (2) by proceeding in the Circuit Court. See Sections 355.346 and 355.356 R.S.Mo. A third method for removing *appointed* directors exists under Section 355.351 R.S.Mo. Missouri courts have long held that officers of a private corporation are entitled to a presumption that they are duly elected and entitled to hold office until the contrary is shown. State ex. rel Bornefeld v. Kupferle, 44 Mo. 154 (Mo. 1869). The by-laws of the Corporation are silent as to the methods for removal of a director. See Pla. Ex. 1. The original by-laws actually suggest that service on the Board of Directors is "perpetual." Id. While later revisions to the by-laws allow for directors to be removed for certain enumerated offenses, the revisions do not create a method for removal separate from standing Missouri law. Id. As set forth above in Point I, a effort by members to remove a director by proceeding in Circuit Court under Section 355.356 requires that the members bringing suit represent no fewer than ten percent (10%) of the voting power of any class. See Section 355.356(1) R.S.Mo. To remove a director in a court proceeding, the plaintiff

must prove that the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation and that removal is in the best interest of the corporation. Id.

While there was evidence that she was appointed to her position as Vice-President of the Corporation, there was no evidence that Cathy Jones was appointed to the board of directors. Further, nothing in the record suggests that Cathy Jones was not entitled to her position of authority or that Rebecca Jones represents ten percent of any voting class of the Corporation. No special meeting was called, noticed or held of the membership with the special purpose of removing Appellant as a director. Instead, those directors friendly to Respondent and Martin Wilson simply made motion at a "regular meeting" for the removal Cathy Jones from "any and all applied, real and imagined authority, positions, powers and duties." See Pla. Ex. 7. On this record, there is insufficient evidence to support the removal of Cathy Jones as a director under any of the methods created by Missouri law.

CONCLUSION

Lacking jurisdiction, the Court should reverse the judgment and remand the cause for dismissal. To the extent that the trial court had jurisdiction, its judgment is in direct conflict with a prior judgment and should be set aside under the doctrine of collateral estoppel or because Respondent failed to establish sufficient grounds for the removal of Cathy Jones as a director of the Corporation. In either case, the trial court's judgment should be set aside.

Respectfully Submitted,

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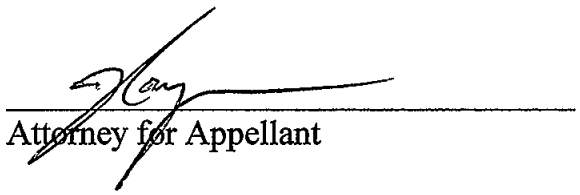
RULE 84.06 CERTIFICATION

The undersigned certifies that the foregoing brief complies with Supreme Court Rule 84.06, contains 4,079 words (according to the word count function of WordPerfect 8.0) exclusive of cover, Certificate of Service, the Certification and signature block.

The undersigned further certifies that the diskette filed herewith containing this brief in electronic form has been scanned for viruses and is virus-free.



Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing brief and the attached appendix thereto and one diskette were served by U.P.S. Next Day Air, postage prepaid, to William B. Gresham, 619 Vine Street, Poplar Bluff, MO 63902, this 6th day of November, 2008.

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APPENDIX TO APPELLANT'S BRIEF

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STATE OF MISSOURI)
) SS.
COUNTY OF CARTER)

IN THE CIRCUIT COURT OF CARTER COUNTY, MISSOURI

Rebecca Jones)
)
Petitioner,)
)
vs.) Case No. 02CV782639
)
Cathy Jones,)
)
Respondent.)

JUDGMENT

On the 17th day of October, 2006, the Court called this case for hearing on Petitioner's First Amended Petition for Declaratory Judgment. The Petitioner appeared in person and with counsel, William B. Gresham. The Defendant appeared in person and with counsel, Jacob Y. Garrett. The parties announced ready for trial.

Whereupon, evidence was adduced. At the conclusion of the evidence, both parties requested that the record be held open for the presentation of additional evidence, which request was granted.

And, later, on the 17th day of August, 2007, the court again took up this matter for the presentation of additional evidence. The Petitioner appeared in person and with counsel. The Defendant appeared in person and with counsel. Evidence was adduced and concluded and the cause was submitted.

After considering the pleadings, the evidence and the testimony, the Court finds the allegations of the Petitioner's First Amended Petition for Declaratory Judgment are true and that Petitioner is entitled to the relief sought.

IT IS THEREFORE ORDERED AND ADJUDGED that the Petitioner, Rebecca Jones, is entitled to occupy the position of, and is hereby declared to be the Chief, President and Chairman of the Amonsoquath Tribe of the Cherokee Nation and of the Amonsoquath Tribe of Cherokee, a not-for-profit corporation organized and existing under the laws of the State of Missouri.

IT IS FURTHER ORDERED AND ADJUDGED that the Respondent, Cathy Jones, holds no office, position or title in the Amonsoquath Tribe of the Cherokee Nation or the Amonsoquath Tribe of Cherokee, a not-for-profit corporation organized and existing under the laws of the State of Missouri, and that any and all acts done or purported to have been done by Cathy Jones, since on or about February 12, 2000, in any capacity purporting to represent the Amonsoquath Tribe of the Cherokee Nation or of the Amonsoquath Tribe of Cherokee, a not-for-profit corporation organized and existing under the laws of the State of Missouri, are void and of no effect.

IT IS FURTHER ORDERED AND ADJUDGED that the Respondent, Cathy Jones, is hereby ordered to turn over to Petitioner, Rebecca Jones, all records of the Amonsoquath Tribe of the Cherokee Nation and the Amonsoquath Tribe of Cherokee, a not-for-profit corporation organized and existing under the laws of the State of Missouri, including financial records and membership rolls.

Costs are taxed to Respondent.

Honorable Randy P. Schuller
Associate Circuit Judge
Carter County, Missouri

Date: 10-15-07

C
Vernon's Annotated Missouri Statutes Currentness
Title XXIII. Corporations, Associations and Partnerships
Chapter 355. Nonprofit Corporation Law (Refs & Annos)

→ 355.346. Removal of directors

1. The members may, without cause, remove one or more directors elected by them.

2. If a director is elected by a class, chapter or other organizational unit, or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit or grouping.

3. Except as provided in subsection 9 of this section, a director may be removed under subsection 1 of this section or subsection 2 of this section only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

4. If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

5. A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

6. In computing whether a director is protected from removal under subsection 2, 3 or 4 of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

7. An entire board of directors may be removed under the provisions of subsections 1 to 5 of this section.

8. A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws; but a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

9. If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office

vote for the removal.

CREDIT(S)

(L.1994, H.B. No. 1095, § A, eff. July 1, 1995.)

Statutes are current through the end of the 2008 Second Regular Session of the 94th General Assembly, pending corrections received from the Missouri Revisor of Statutes. Constitution is current through the November 7, 2006 General Election.

END OF DOCUMENT

Westlaw.

V.A.M.S. 355.351

Vernon's Annotated Missouri Statutes Currentness
Title XXIII. Corporations, Associations and Partnerships
Chapter 355. Nonprofit Corporation Law (Refs & Annos)

➡ 355.351. Removal of director by amendment to articles or bylaws--removal of appointed direct- ors

1. A director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

2. Appointed directors:

(1) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;

(2) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary;

(3) A removal is effective when the notice is delivered unless the notice specifies a future effective date.

CREDIT(S)

(L.1994, H.B. No. 1095, § A, eff. July 1, 1995.)

Statutes are current through the end of the 2008 Second Regular Session of the 94th General Assembly, pending corrections received from the Missouri Revisor of Statutes. Constitution is current through the November 7, 2006 General Election.

END OF DOCUMENT

C
Vernon's Annotated Missouri Statutes Currentness
Title XXIII. Corporations, Associations and Partnerships
Chapter 355. Nonprofit Corporation Law (Refs & Annos)

➡ 355.356. Removal of director by circuit court

1. The circuit court of the county where a corporation's principal office is located may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent of the voting power of any class, or the attorney general in the case of a public benefit corporation if the court finds that:

(1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or a final judgment has been entered finding that the director has violated a duty set forth in sections 355.416 to 355.426; and

(2) Removal is in the best interest of the corporation.

2. The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

3. If members or the attorney general commence a proceeding under subsection 1 of this section, the corporation shall be made a party defendant.

4. If a public benefit corporation or its members commence a proceeding under subsection 1 of this section, they shall give the attorney general written notice of the proceeding.

CREDIT(S)

(L.1994, H.B. No. 1095, § A, eff. July 1, 1995.)

Statutes are current through the end of the 2008 Second Regular Session of the 94th General Assembly, pending corrections received from the Missouri Revisor of Statutes. Constitution is current through the November 7, 2006 General Election.

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C
Vernon's Annotated Missouri Statutes Currentness
Title XXXVI. Statutory Actions and Torts
Chapter 527. Declaratory Judgments; Actions Involving Land Titles; Lis Pendens; Change of Name (Refs & Annos)

→ 527.110. Parties

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

CREDIT(S)

(R.S.1939, § 1136.)

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Supreme Court Rule **52.04**

C
VERNON'S ANNOTATED MISSOURI RULES
SUPREME COURT RULES
RULES OF CIVIL PROCEDURE
PART I. RULES GOVERNING CIVIL PROCEDURE IN THE CIRCUIT COURTS
➡RULE 52. PARTIES

52.04. Joinder of Persons Needed for Just Adjudication

(a) Persons to Be Joined if Feasible. A person shall be joined in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in Rule **52.04**(a)(1) or Rule **52.04**(a)(2) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it or should be dismissed, the absent party being thus regarded as indispensable. The factors to be considered by the court include: (i) to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; (ii) the extent to which by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (iii) whether a judgment rendered in the person's absence will be adequate; and (iv) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivisions (a) (1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 52.08.

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Supreme Court Rule 55.27

C
VERNON'S ANNOTATED MISSOURI RULES
SUPREME COURT RULES
RULES OF CIVIL PROCEDURE
PART I. RULES GOVERNING CIVIL PROCEDURE IN THE CIRCUIT COURTS
→RULE 55. PLEADINGS AND MOTIONS

55.27. Defenses and Objections--How Presented--By Pleading or Motion--Motion for Judgment on the Pleadings

(a) How Presented. Every defense, in law or fact, to a claim in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) Lack of jurisdiction over the subject matter,

(2) Lack of jurisdiction over the person,

(3) That plaintiff does not have legal capacity to sue,

(4) Insufficiency of process,

(5) Insufficiency of service of process,

(6) Failure to state a claim upon which relief can be granted,

(7) Failure to join a party under Rule 52.04,

(8) That plaintiff should furnish security for costs,

(9) That there is another action pending between the same parties for the same cause in this state,

(10) That several claims have been improperly united,

(11) That the counterclaim or cross-claim is one which cannot be properly interposed in this action.

A motion making any of these defenses shall be made:

(A) Within the time allowed for responding to the opposing party's pleading, or

(B) If no responsive pleading is permitted, within thirty days after the service of the last pleading.

Motions and pleadings may be filed simultaneously without waiver of the matters contained in either.

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive plead-

ing, the adverse party may assert at the trial any defense in law or fact to the claim for relief.

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 74.04. All parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 74.04.

(b) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 74.04, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 74.04.

(c) Preliminary Hearings. The defenses specifically enumerated (1)-(11) in subdivision (a) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (b) of this Rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(d) Motion for More Definite Statement. A party may move for a more definite statement of any matter contained in a pleading that is not averred with sufficient definiteness or particularity to enable the party properly to prepare responsive pleadings or to prepare generally for trial when a responsive pleading is not required. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order, or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within thirty days after the service of the pleading upon any party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(f) Consolidation of Defenses in Motion. A party who makes a motion under this Rule **55.27** may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this Rule **55.27** but omits therefrom any defense or objection then available that this Rule **55.27** permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Rule **55.27**(g)(2) on any of the grounds there stated.

(g) Waiver or Preservation of Certain Defenses.

(1) A defense of:

(A) Lack of jurisdiction over the person,

(B) Insufficiency of process,

(C) Insufficiency of service of process,

(D) That plaintiff should furnish security for costs,

(E) That plaintiff does not have legal capacity to sue,

(F) That there is another action pending between the same parties for the same cause in this state,

(G) That several claims have been improperly united, or

(H) That the counterclaim or cross-claim is one which cannot be properly interposed in this action,

is waived if it is:

(A) Omitted from a motion in the circumstances described in Rule 55.27(f), or

(B) Neither made by motion under this Rule 55.27 nor included in a responsive pleading.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 52.04, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 55.01, or by motion for judgment on the pleadings, or at the trial on the merits, or on appeal.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Statutes are current through the end of 2008 Second Regular Session of the 94th General Assembly, pending corrections received from the Missouri Revisor of Statutes. Constitution is current through the November 7, 2006 General Election.

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Supreme Court Rule **87.04**

C
VERNON'S ANNOTATED MISSOURI RULES
SUPREME COURT RULES
RULES OF CIVIL PROCEDURE
PART III. RULES RELATING TO SPECIAL ACTIONS
→RULE 87. DECLARATORY JUDGMENTS
87.04. Joinder of Parties--Municipalities--Attorney General

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and, if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.

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IN THE CIRCUIT COURT OF CARTER COUNTY, MISSOURI
DIVISION ONE

SOUTHERN MISSOURI BANK & TRUST COMPANY, Plaintiff,	)	
vs.	)	Case No. CV100-24CC
MARTIN WILSON, Chairman and Chief of the Amonsoquath Tribe of Cherokee, a Missouri corporation, and MARTIN WILSON, Individually, and MARTIN WILSON and CATHY JONES, d/b/a The Amonsoquath Tribe of Cherokee, Defendants.	)	

JUDGMENT

ON this 15th day of May, 2001, the Defendant Cathy Jones appears in person and with her Attorney Jacob Y. Garrett. The Defendant Martin Wilson does not appear although having filed responsive pleadings.

The Defendant Cathy Jones announces ready and evidence is heard, and the Court having considered the issues does now find as follows:

1. A Petitioner for Interpleader was filed herein on the 2nd day of March, 2000, by the Plaintiff Southern Missouri Bank & Trust Company.

2. The subject of the interpleader was funds being held in a bank account for the Amonsoquath Tribe of Cherokee which contains the sum of $2,600.08.

3. A dispute had arisen between the Defendants as to who was entitled to the funds and the $2,600.08 was deposited into the registry of the Court pursuant to the Judgment filed on the 22nd day of May, 2000.

4. Pursuant to said judgment the Plaintiff was awarded attorney fees in the amount of

$500.00 leaving a balance in the registry of the Court of $2,100.08.

5. It is found that the Amonsoquath Tribe of Cherokee, formerly the Amonsoquath Tribe, is a not-for-profit corporation currently in good standing in the State of Missouri.

6. It is further found that the Amonsoquath Tribe of Cherokee did on the 13th day of November, 1999, remove from office as Chairman of the Board, Martin Wilson.

7. It is further found that the Defendant Cathy Jones is the President and Chairman of the Board of the Amonsoquath Tribe of Cherokee, a Missouri not-for-profit corporation.

8. It is further found that the sum of $2,100.08 belongs to the Amonsoquath Tribe of Cherokee and should be delivered over to Cathy Jones as and for the benefit of the Amonsoquath Tribe of Cherokee.

IT IS THEREFORE ORDERED that the Circuit Clerk of Carter County, Missouri, deliver to the Amonsoquath Tribe of Cherokee in care of Cathy Jones the sum of $2,100.08.

Costs taxed equally against the Defendants.

SO ORDERED.

Honorable Robert M. Heller