In the Missouri Court of Appeals
Eastern District

BRAINCHILD HOLDINGS, LLC,	)	No. ED104122
	)	
Plaintiff/Respondent,	)	Appeal from the Circuit
	)	Court of the City of St. Louis
vs.	)	
	)	
STEPHANIE CAMERON,	)	Hon. Michael Noble
	)	
Defendant/Appellant.	)	FILED: April 25, 2017

OPINION

Appellant Stephanie Cameron appeals the trial court's judgment in favor of Respondent Brainchild Holdings, LLC, arguing that the trial court improperly denied Cameron's request for a trial by jury. We would reverse and remand. However, a Supreme Court case regarding the right to a jury trial in rent and possession actions predates the elimination of special courts in Missouri. As a result, we transfer the case to the Supreme Court under Rule 83.02 for the purpose of reexamining existing law and due to the importance of the issues presented.

Discussion

The underlying lawsuit concerns a Chapter 535 rent and possession action by Brainchild Holdings against Cameron for rent and possession of the premises. Cameron filed an answer to Brainchild Holdings' petition and made a jury demand.

The trial court heard arguments concerning Cameron's jury trial demand. Cameron asserted that she had a right to a jury trial, citing Supreme Court precedent in *Rice v. Lucas*, 560 S.W.2d 850, 857 (Mo. banc 1978), holding that legislation denying a party's right to a jury trial before a magistrate judge did not violate the constitutional right to a jury trial as long as the party was able to appeal to the circuit court and obtain a jury trial *de novo*. Cameron contended that recent amendments to Chapter 535 and other procedural statutes eliminated her ability to obtain a jury trial on appeal, so the recent amendments to Chapter 535 must be interpreted to preserve her constitutional right to a jury. Specifically, prior to 2014, §512.180 made rent and possession actions subject to appeal to the circuit court for a trial *de novo*. *See* §512.180 R.S.Mo. Supp. 2004. However, in 2014, the legislature amended the law and provided that Chapter 535 "[a]pplications or appeals shall be allowed and conducted in the manner provided as in other civil cases." §535.110. The provisions in §512.180 allowing parties to a rent and possession action to seek trial *de novo* on appeal were also removed, so rent and possession appeals were to be directed to this court. The legislature thereby effectively extinguished the possibility of a jury trial in rent and possession actions unless §535.040 is interpreted to allow a jury trial. Otherwise, Cameron argues, the legislature's amendments violated her constitutional right to a jury trial under the Constitution of the State of Missouri.

In the trial court,[1] Brainchild Holdings asserted that, in the absence of specific statutory authority, litigants do not have a right to a jury trial in rent and possession actions. In light of the legislature's amendments to Chapter 535 and other procedural statutes, Brainchild Holdings argued Cameron no longer had a right to a jury trial under

[1] Brainchild Holdings did not submit a respondent's brief or otherwise participate in this appeal.

the statute. The trial court agreed and denied Cameron's request for a jury trial. After a bench trial, the trial court entered a verdict in favor of Brainchild Holdings.

Jurisdiction

This court has the duty of examining our jurisdiction in every case. *See Sharp v. Curators of Univ. of Missouri*, 138 S.W.3d 735, 737–38 (Mo. App. E.D. 2003). We look first to the jurisdiction granted this Court under the Missouri Constitution. Article V, section 3 of the Missouri Constitution, which provides that the Court of Appeals has general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the Supreme Court. Among the cases that fall within the Supreme Court's exclusive appellate jurisdiction are those involving the validity of a state statute. Mo. Const. art. V, sec. 3. Therefore, we must first consider whether this Court has jurisdiction to decide the constitutional challenge.

Cameron presents two points on appeal. In Point I, Cameron submits that the trial court erred when it denied her request for a jury trial for a claim brought under Chapter 535 because she has a right to a jury trial under Article I, Section 22(a) of the Missouri Constitution. In Point II, Cameron asserts that §535.040 impliedly provides for a trial by jury in rent and possession actions in light of the legislature removing a previous provision in the statute explicitly barring a jury trial.

Though Cameron's points on appeal seem to present a constitutional challenge to the validity of the rent and possession statute, she does not. Rather, Cameron expressly argues that §535.040 should be interpreted in a way that avoids an unconstitutional result. Simply put, Cameron challenges the trial court's interpretation of a statute. Statutory interpretation and construction in light of the Constitution is well within the jurisdiction

of this court. *See, e.g. State ex rel. Neville v. Grate*, 443 S.W.3d 688, 693 (Mo. App. W.D. 2014) ("As a principle of statutory construction, this court should reject an interpretation of a statute that would render it unconstitutional, when the statute is open to another plausible interpretation by which it would be valid."). Therefore, we have jurisdiction over this case.

Standard of Review

In a court-tried case, this court will affirm the judgment of the trial court unless there is no substantial evidence to support it, it is against the weight of the evidence, it erroneously declares the law, or it erroneously applies the law. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). In addition, statutory interpretation is an issue of law that this Court reviews *de novo. Finnegan v. Old Republic Title Co. of St. Louis*, 246 S.W.3d 928, 930 (Mo. 2008).

Discussion

Cameron presents two points on appeal. In Point I, Cameron argues that the trial court erred when it interpreted §535.040 to deny her a trial by jury. In Point II, Cameron contends that §535.040 impliedly provides for a trial by jury in rent and possession actions in light of the legislature removing a previous provision in the statute explicitly barring a jury trial.

The statutory language at issue states:

> Upon the return of the summons executed, the judge shall set the case on the first available court date and shall proceed to hear the cause, and if it shall appear that the rent which is due has been demanded of the tenant, lessee or persons occupying the property, and that payment has not been made, and if the payment of such rent, with all costs, shall not be tendered before the judge, on the hearing of the cause, the judge shall render judgment that the landlord recover the possession of the premises so rented or leased, and also the debt for the amount of the rent then due,

> with all court costs and shall issue an execution upon such judgment, commanding the officer to put the landlord into immediate possession of the property leased or rented, and to make the debt and costs of the goods and chattels of the defendant…

§535.040.1. The Missouri Constitution provides that "the right of trial by jury as heretofore enjoyed shall remain inviolate…" Mo. Const. art. I, § 22(a). "Quite simply, the words of the provision is [sic] intended to guarantee a right, not to restrict a right." *State ex rel. Diehl v. O'Malley*, 95 S.W.3d 82, 84 (Mo. 2003). The question here is whether, in light of Article I, § 22(a), the language contained in §535.040 as interpreted by the trial court denies litigants their constitutional right to a jury trial.

As an initial matter, nothing in the language of the statute specifically precludes a jury trial. Instead, it sets forth procedures for the court to hear rent and possession actions in an expeditious manner. "[I]f it is at all feasible to do so, statutes must be interpreted to be consistent with the constitutions." *State v. Vaughn*, 366 S.W.3d 513, 517 (Mo. 2012) (citing *State v. Stokely,* 842 S.W.2d 77, 79 (Mo. 1992). "If a statutory provision can be interpreted in two ways, one constitutional and the other not constitutional, the constitutional construction shall be adopted." *Id.* (citing *Murrell v. State*, 215 S.W.3d 96, 102 (Mo. 2007)). Therefore, we find the plain language of the statute does not, without more, deny a litigant the right to a jury trial.

The history of the right to a jury trial in rent and possession actions assists our analysis. In *State ex rel. Kansas City Auditorium Co. v. Allen*, the Kansas City Court of Appeals grappled with the issue of whether the statute of landlord tenant, construed with the constitution, authorized a jury trial in possessory actions. 45 Mo. App. 551 (1891). The court concluded that it did not because, at that time, landlord-tenant actions were heard before justice of the peace courts, which were courts of special jurisdiction. *Id.* at

564-65. The court opined that "notwithstanding [that] the statute in question does not provide for a jury trial … it does provide, without unreasonable restriction, for an appeal to a court where a jury trial may be had." *Id.* 567. As a result, the court concluded that the constitutional right to a jury trial was not violated because a mode and manner of securing the constitutional right was provided on appeal. *Id.*

The Missouri Supreme Court applied the same reasoning in *Rice v. Lucas*, 560 S.W.2d 850, 857 (Mo. banc 1978), holding that "the provision of sec. 535.040, RSMo 1969, which requires the action to be tried in magistrate court without a jury is not unconstitutional." *Id.* It held that, although the legislature denied a trial by jury in rent and possession actions at the first stage of litigation, the right to a jury trial was preserved by providing the parties with the opportunity of an appeal *de novo* before the circuit court. *Id.* at 857.

The *Rice* court focused on the fact that rent and possession actions proceeded before magistrate courts, which were distinct from common-law courts. *Id.* As a result, it held that the legislature had the ability to curb the right to a jury trial in special courts but not common-law. *Id.; see also State ex rel. Burlison Investments, Inc. v. Conklin*, 741 S.W.2d 825, 827 (Mo. App. S.D. 1987). When *Rice* was decided, magistrate courts were limited to the jurisdiction and powers set forth by the legislature in statutes. *Rice*, 560 S.W.2d at 856. However, in 1978, magistrate courts were abolished and their duties assigned to associate circuit judges. *See* Mo. Const. art. V, § 17; *see also Farinella v. Croft*, 922 S.W.2d 755, 757 (Mo. 1996). After the reorganization in 1978, associate circuit judges did not sit in special courts as did their predecessor justices of the peace, magistrate judges, and probate judges. Now, "[c]ircuit judges and associate circuit judges

may hear and determine all cases and matters within the jurisdiction of their circuit courts, [subject to certain limited restrictions.]." §478.220; *see also State ex rel. M.D.K. v. Dolan*, 968 S.W.2d 740, 743 (Mo. App. E.D. 1998) ("respondent, as an associate circuit judge, has jurisdiction to hear and determine all cases within the jurisdiction of the St. Louis County Circuit Court, including both tort and domestic relations").[2]

Any jurisdictional differences between circuit judges and associate circuit judges were abolished by the legislature in 1989.[3] *State ex rel. Drienik v. Clifford*, 944 S.W.2d 266, 268 (Mo. App. E.D. 1997). Therefore, any argument that a rent and possession action falls outside the realm of the common law because such cases were previously heard by justices of the peace and magistrate judges has no merit.

Since the restructuring of the Missouri courts, *Rice* is no longer controlling. Instead, the Supreme Court decision in *State ex. rel. Diehl v. O'Malley* guides our conclusion that Cameron is entitled to a jury trial. 95 S.W.3d 82 (Mo. 2003). The issue in *Diehl* concerned whether the plaintiff had a right to have her Missouri Human Rights Act civil action tried to a jury. *Id.* at 84. Counsel for the defendant employer argued that the right of a jury trial only applied to specific claims recognized by the law in 1820 and not to actions that came into existence after 1820. *Id.* The Supreme Court disagreed, stating:

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[2] Associate circuit judges now hear rent and possession actions, and Cameron's action was in fact heard before an associate circuit judge.

[3] The court in *Drienik* summarized the changes as follows:

> In 1989, the General Assembly repealed § 478.225 RSMo 1986. 1989 Mo.Laws 1049. In addition, it amended the introductory clause of § 478.220 RSMo 1978 to read, "Circuit judges and associate circuit judges may hear and determine all cases and matters within the jurisdiction of their circuit courts." Thus, any jurisdictional difference between the two categories of judges was abolished. Although other statutes or local court rules may place limitations on what judge is assigned to hear a particular case or class of cases, it is clear that both circuit and associate circuit judges now have statutory jurisdiction to hear and determine all cases within the jurisdiction of their circuit court. § 478.220.

944 S.W.2d at 268.

> [a] review of the cases since the state's Constitution of 1820 makes clear that the exceptions recognized for the right of jury trial are cases under the courts' equitable jurisdiction, and those claims that are adjudicated in administrative proceedings. The right to trial by jury exists in actions at law but not in actions in equity. An action that is equitable in nature, as viewed in historical perspective and with respect to the equitable remedy sought, does not come within the jury trial guarantee.

Id. (internal citations omitted). Based on these principles, the *Diehl* court held that the central inquiry was whether the claim before it was analogous to actions at law triable to juries had the claim been brought at the time of the state's original 1820 Constitution. *Id.* at 87. The Supreme Court concluded that a claimant in an action for damages under the Missouri Human Rights Act seeks redress for an intentional wrong done to a person. *Id.* "The statutorily based claims by Diehl are conceptually indistinguishable from other statutory actions for damages that traditionally have carried the right to a jury trial because they seek redress for wrongs to a person." *Id.* at 88. Therefore, Diehl had the right to a jury trial on those claims.

Similarly, we find that the trial court should have interpreted the statute to provide Cameron with the right to a trial by jury in the instant action. Using the framework set forth in *Diehl*, we find that a rent and possession action is analogous to an action at law in which the claimant would have been entitled to a jury trial had it been brought at the time of the 1820 Constitution. "An action for a money rent is a purely personal action as contradistinguished from real and mixed actions, differing in nothing from an action for any other money demand arising out of contract." *Cooper v. Ratley*, 916 S.W.2d 868, 870 (Mo. App. S.D. 1996) (internal citations omitted). Missouri courts "adopt the view that a lease is not only a conveyance but also gives rise to a contractual relationship between the landlord and tenant" and "[u]nder contract principles a tenant's obligation to pay rent

is dependent upon the landlord's performance of his obligation to provide a habitable dwelling during the tenancy." *King v. Moorehead*, 495 S.W.2d 65, 75 (Mo. Ct. App. 1973).

A rent and possession action under Chapter 535 is essentially a breach of contract claim seeking monetary damages. *See, e.g. Lee v. Armour Bldg. Co.*, 18 S.W.2d 102, 105 (Mo. Ct. App. 1929). More specifically, when a claimant in a rent and possession action seeks monetary damages resulting from a tenant's alleged breach of the lease, such as failure to pay rent, either party is entitled to a jury trial regarding the breach of contract claim.

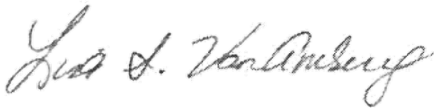
We acknowledge that an action for possession allows no award of legal damages and is, therefore, in the nature of a suit in equity. *See Diehl*, 95 S.W.3d at 85. Actions in equity are not tried by juries. *Id*. Here, Brainchild Holdings sought a judgment "for rent and restitution" of the premises, as well as the amount of the rent "due and owing up to the time [the] matter is heard." In short, Brainchild Holdings sought both legal and equitable relief. However, seeking both does not preclude the right to a jury trial. *Diehl*, 95 S.W.3d at 88–89 ("…that the statute authorizes equitable relief…does not, however, make the civil action for damages an action in equity"). Missouri trial courts have authority to try cases seeking equitable relief and damages in one proceeding. *State ex rel. Leonardi v. Sherry*, 137 S.W.3d 462, 473 (Mo. banc 2004). The trial court has discretion to try such cases in the most practical and efficient manner possible, consistent with Missouri's historical preference for a litigant's right to a jury trial on claims at law. *Id.* Unless circumstances clearly demand otherwise, trials should be conducted to allow claims at law to be tried to a jury, with the court reserving for its own determination only

equitable claims and defenses, which it should decide consistently with the factual findings made by the jury. *Id.* Because Brainchild Holdings in its petition alleges claims in law and equity, Cameron should have been allowed a jury trial on the legal remedy being sought against her.

Conclusion

In keeping with the holding in *Diehl* and because we would find a rent and possession action akin to a breach of contract claim—a traditional legal cause of action—we would: (1) hold that the trial court erred when it failed to grant Cameron's jury trial demand; (2) reverse the trial court's judgment in favor of Brainchild Holdings, LLC; and (3) remand the matter for a jury trial as to the monetary damages claimed by Brainchild Holdings.

However, we acknowledge that rent and possession actions are supposed to be summary proceedings intended for expeditious resolution of disputes within its scope and that jury trials might present a challenge to judicial economy and efficiency throughout the state. *See Stough v. Bregg*, 506 S.W.3d 400 (Mo. App. E.D. 2016). The law requires clarification regarding the applicability of *Rice* and *Diehl* to rent and possession matters in light of the reorganization of Missouri courts and the aforementioned legislative amendments removing the express right to a jury trial on appeal in rent and possession actions. Therefore, due to the general importance of the issues presented and for the purpose of reexamining existing law, we transfer the case to the Supreme Court under Rule 83.02.



Lisa S. Van Amburg, Judge

Angela T. Quigless, P.J., and
Robert G. Dowd, Jr., J., concur in result in separate opinions.

In the Missouri Court of Appeals
Eastern District
DIVISION THREE

BRAINCHILD HOLDINGS, LLC,	)	No. ED104122
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Hon. Michael W. Noble
STEPHANIE CAMERON,	)	
	)	Filed: April 25, 2017
Appellant.	)	

OPINION CONCURRING IN RESULT

Appellant Stephanie Cameron ("Appellant") appeals the trial court's judgment in favor of Respondent Brainchild Holdings, LLC, arguing that the trial court improperly denied her request for a trial by jury. I would affirm. However, due to certain legislative changes, we transfer to the Supreme Court under Rule 83.02 due to the importance of the issue presented and for the purpose of reexamining existing law. Concurring in result, I note the following:

This case involves a Chapter 535 rent and possession claim by Brainchild Holdings against Appellant for rent and possession of the premises. Appellant filed an answer to Brainchild Holdings' petition and made a jury demand.

The trial court heard arguments concerning Appellant's jury demand. Appellant argued she had a right to a jury trial, citing *Rice v. Lucas*, 560 S.W.2d 850, 857 (Mo. banc 1978), which held that legislation denying a party's right to a jury trial before a magistrate judge did not violate the constitutional right to a jury trial as long as the party was able to appeal to the circuit court and

obtain a jury trial de novo. Appellant argued that recent amendments to Chapter 535 and other procedural statutes eliminated her ability to obtain a jury trial on appeal, thereby violating her constitutional right. Specifically, prior to 2014, Section 512.180 made rent and possession actions subject to appeal to the circuit court for trial de novo. See Section 512.180 R.S.Mo. Supp. 2004. However, in 2014, the legislature amended the law and provided that Chapter 535 "[a]pplications or appeals shall be allowed and conducted in the manner provided as in other civil cases." Section 535.110. The provisions of Section 512.180 allowing parties to a rent and possession action to seek trial de novo appeal were also removed so rent and possession appeals were to be directed to this Court. The legislature thereby effectively extinguished the possibility of a jury trial in rent and possession actions. This bar to a jury trial, Appellant argued, violated her constitutional right to a jury trial under the Constitution of the State of Missouri.

In the trial court, Brainchild Holdings argued that in the absence of specific statutory authority, litigants do not have a right to a jury trial in rent and possession actions. The trial court denied Appellant's request for a jury trial. After a bench trial, the trial court entered a rent and possession judgment in favor of Brainchild Holdings. This appeal follows.

Because this is an appeal from an judgment in a court-tried case, our review is governed by Rule 84.13(d) and the principles articulated in *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). *Investors Alliance, LLC v. Bordeaux*, 428 S.W.3d 693, 695 (Mo. App. E.D. 2014). "Accordingly, we must affirm the judgment unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law." *Id.* In addition, statutory interpretation is a question of law, which we review de novo. *Pavlica v. Director of Revenue*, 71 S.W.3d 186, 189 (Mo. App. W.D. 2002).

Appellant argues two points on appeal. In Point I, Appellant argues that she had a right to trial by jury under Article I, Section 22(a) of the Missouri Constitution. In Point II, Appellant argues that Section 535.040 impliedly provides for a trial by jury in rent and possession actions in light of the legislature removing a previous provision in the statute explicitly barring a jury trial.

The Missouri Constitution provides that "the right of trial by jury as heretofore enjoyed shall remain inviolate . . ." Mo. Const. art. I, § 22(a). "Quite simply, the words of the provision is [sic] intended to guarantee a right, not to restrict a right." *State ex rel. Diehl v. O'Malley*, 95 S.W.3d 82, 84 (Mo. banc 2003). The statutory language at issue provides:

> Upon the return of the summons executed, the judge shall set the case on the first available court date and shall proceed to hear the cause, and if it shall appear that the rent which is due has been demanded of the tenant, lessee or persons occupying the property, and that payment has not been made, and if the payment of such rent, with all costs, shall not be tendered before the judge, on the hearing of the cause, the judge shall render judgment that the landlord recover the possession of the premises so rented or leased, and also the debt for the amount of the rent then due, with all court costs and shall issue an execution upon such judgment, commanding the officer to put the landlord into immediate possession of the property leased or rented, and to make the debt and costs of the goods and chattels of the defendant. No money judgment shall be granted to the plaintiff if the defendant is in default and service was by the posting procedure provided in section 535.030 unless the defendant otherwise enters an appearance. The officer shall deliver possession of the property to the landlord within five days from the time of receiving the execution, and the officer shall proceed upon the execution to collect the debt and costs, and return the writ, as in the case of other executions. If the plaintiff so elects, the plaintiff may sue for possession alone, without asking for recovery of the rent due.

Section 535.040.1. The previous version of Section required that "the judge shall proceed to hear the cause, and if such is being heard by an associate circuit judge who has not been specially assigned to hear the cause on the record such hearing shall be *without a jury*. . . ." Section 535.040 Supp. 1986 (emphasis added).

The current version of the statute neither provides for nor precludes a jury trial. Instead, it sets forth procedures for the court to hear rent and possession actions in an expeditious manner. The statute requires the judge to set such a case on the *first available* court date upon the return of an executed summons, to hear the case at that time, and in certain situations, put the landlord into *immediate* possession of the property. Section 535.040.1. The officer is also required to deliver possession of the property within just *five days* from the receipt of the execution. *Id*. All of these elements of the statute indicate the legislature originally intended these actions to be addressed expeditiously. Should these cases be tried before juries, it would be nearly impossible for trial courts to meet the demands of the statute. The timing requirements in the statute are much more workable in judge-tried cases, which suggests that the legislature intended these cases to be tried by judges.

In addition, unlawful detainer actions, which are similar to rent and possession actions, are covered under Chapter 534, which explicitly states that "[e]ither party shall have the right to a jury trial if a timely request therefor is made as in other civil cases." Section 534.160. No similar provision is found in Chapter 535. If we read Chapters 534 and 535 together since they appear next to each other sequentially in our statutes and cover related property claims, we can interpret the lack of a similar provision in Chapter 535 to mean that the legislature did not intend for jury trials in rent and possession cases.

Moreover, in addressing whether an action under what is now Chapter 535 was entitled to a jury trial in a magistrate court, the Kansas City Court of Appeals noted:

> In courts of the class to which justices of the peace belong, and which do not exercise jurisdiction according to the course of the common law, it is safe to say that a jury will not be authorized for the trial of causes, unless it is required by legislative enactment. In summary proceedings, in such courts, there is no doubt in our minds

> that, unless the intention to provide a jury for the trial of such causes is gleaned from the statutes, none can be had.

State ex. rel. Kansas City Auditorium Co. v. Allen, 45 Mo. App. 551, 564 (Mo. App. 1891); *see also Rice*, 560 S.W.2d at 855 (discussing Allen). The Court went on to quote the Supreme Court of Minnesota:

> The proceedings provided for in landlord and tenant acts are ordinarily summary, not only under our statute, but in other jurisdictions. There are obvious reasons why they should be summary, and we perceive nothing to lead us to suppose that our legislature intended to depart from the policy which has been here, as well as elsewhere, sanctioned and adopted.

Id. (quoting Whittaker v. McClung, 14 Minn. 170, 173 (1869)) (internal quotations omitted). The Court also quoted the Supreme Court of Louisiana:

> The first question is presented by a bill of exceptions, taken to the ruling of the district judge in refusing the defendant a trial by jury. The judge did not err. The [act in question] makes this a very summary proceeding, and requires it to be tried at all times by preference after three days' notice. In summary proceedings, jury trials are not had unless expressly allowed.

Id. (quoting Peasant v. Heartt, 22 La. Ann. 292, 293 (1870)) (internal citations omitted). We recognize that magistrate courts were the successors to justices of the peace in Missouri and that the *Allen* case applies to situations where courts, with jurisdictions and powers delineated by statute prior to reorganization, heard cases under what is now Chapter 535. *See Rice*, 560 S.W.2d at 856. Nevertheless, this language reinforces the conclusion that these cases were intended to be summary and not intended to be tried before juries without a statutory provision for same.

This Court has also recently noted that "[r]ent and possession is a summary proceeding, intended for expeditious resolution of disputes within its scope." *Stough v. Bregg*, 506 S.W.3d 400, 404 (Mo. App. E.D. 2016). Especially where possession is at issue, as in this case, "Chapter 535 gives the landlord the ability to reclaim property in a prompt manner when the tenant has

stopped paying rent." *Id.* We have also previously described a rent and possession action as a summary possession proceeding and noted that "summary proceedings are entirely statutory, sui generis, summary in character or nature, and the remedy is speedy." *Ellsworth Breihan Bldg. Co. v. Teha Inc.*, 48 S.W.3d 80, 83 (Mo. App. E.D. 2001). We have noted that rent and possession cases under Chapter 535 "provide a very simple and expeditious method of forfeiture for nonpayment of rent, fair to both the landlord and tenant." *Duchek v. Carlisle*, 735 S.W2d 791, 793 (Mo. App. E.D. 1987). "Compared with its stricter common law counterpart of forfeiture the statutes under [Chapter] 535 provide a summary, speedy and inexpensive disposition of otherwise minor cases." *Id.* Allowing jury trials in these cases would make very simple and expeditious methods of forfeiture with speedy and inexpensive dispositions significantly less simple and expeditious with dispositions that would be significantly less speedy and inexpensive. Given the language of the statute and the description of these matters in the case law, we would find that the legislature did not intend for trials by jury in these actions.

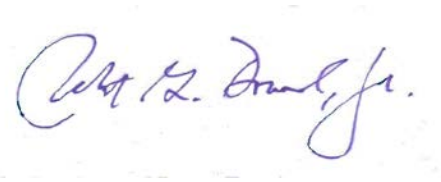
In addition, in determining whether a valid arbitration agreement existed, the Missouri Supreme Court adopted a legal definition of "summary proceedings." *Nitro Distributing, Inc. v. Dunn*, 194 S.W.3d 339, 35 (Mo. banc 2006). The Court held that "summary proceedings are those that are conducted without the usual formalities and without a jury." *Id.* (internal quotations omitted) (quoting BLACK'S LAW DICTIONARY 1476 (8th ed. 1999)). The provision of the Missouri Uniform Arbitration Act at issue in that case specifically indicated that "the court shall proceed summarily" in determining the existence of an arbitration agreement. *Id.* While there is no similar specific language in the statute at issue in the present case, the repeated reference in our jurisprudence to rent and possession actions being "summary" indicates that they, too, are intended to be "conducted without the usual formalities and without a jury."

While we fully acknowledge the importance of the right to a jury trial in Missouri law, there is good reason for cases like this to be treated in summary fashion. Should they proceed to jury trial instead of bench trial, it is foreseeable that landlords may require exceedingly large deposits to cover the time that would necessarily pass between a tenant default and getting the case before a jury. Renters may be unable to absorb the additional cost of these potentially large deposits. We further appreciate the possibility that landlords may require tenants to be responsible for attorney fees as part of standard lease provisions, just as Brainchild Holdings did in the present case. In such situations, if rent and possession cases go from being handled in summary fashion before a judge to being tried before juries, the attorney fees could drastically increase and become a source of significant damages owed by tenants, potentially exceeding the value of these oftentimes minor cases. Moreover, our existing court systems and jury pools may not be able to absorb the influx of cases that could result from jury trials in these frequent matters.

Despite the statutory language at issue, Appellant contends that the denial of a jury trial would deprive her of her constitutional right to a trial by jury. However, we find this argument to mischaracterize the nature of rent and possession actions. We find rent and possession actions primarily designed to compel specific performance of the terms of the lease, a contract between a landlord and tenant. While we acknowledge the right to a jury trial in actions for which damages may be awarded, Brainchild Holdings seeks both monetary damages and possession of the property in this case, and both are explicitly sought pursuant to the lease, making this action akin to an action for specific performance, an equitable remedy. *See Nitro Distributing, Inc.*, 194 S.W.3d at 351 (finding a motion to compel arbitration to be "an equitable remedy designed to compel specific performance of a term in a contract"). Because the right to trial by jury does not attach to suits in equity, we find no deprivation of Appellant's constitutional right to a jury trial in

this case. *See id.* at 352 (noting that, in civil actions, "the right to trial by jury attaches only to actions at law for which damages may be awarded, not to suits in equity").[1]

Finding neither of Appellant's points to have merit, I would affirm. However, I agree with Judge Van Amburg's conclusion that the law requires clarification regarding *Rice*'s applicability to rent and possession cases in light of the reorganization of Missouri courts and the aforementioned legislative changes. Due to the importance of the issue presented and for the purpose of reexamining existing law, I concur in transferring the case to the Supreme Court under Rule 83.02.



ROBERT G. DOWD, JR., Judge

[1]Appellant relies on *Rice v. Lewis*, 560 S.W.2d 850 (Mo. banc 1978), to indicate the existence of a right to a jury trial in Chapter 535 actions. Not only is *Rice* no longer controlling since the restructuring of the Missouri courts, but in *Rice*, the parties *agreed* that if the case were to reach the circuit court, they both would be entitled to a trial by jury. *Id.* at 853. There was no such agreement in the present action, and the basic question of whether there is a right to a jury trial in Chapter 535 actions brought in circuit court, as in the present case, was not at issue in *Rice*. *Id.* at 853.

In the Missouri Court of Appeals
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DIVISION THREE

BRAINCHILD HOLDINGS LLC,	)	No. ED104122
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Plaintiff/Respondent,	)	Appeal from the Circuit Court of
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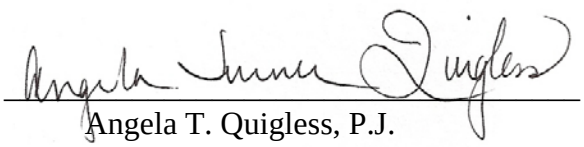
vs.	)	
	)	
STEPHANIE CAMERON,	)	Hon. Michael Noble
	)	
Defendant/Appellant.	)	Filed: April 25, 2017

CONCURRING OPINION

I concur in the opinion of Judge Van Amburg. However, I also agree with the concerns expressed by Judge Dowd. Under the old provision of section 512.180 R.S.Mo. Supp. 2004,[1] a party had the right to file an application for trial *de novo*. The case was then heard by a different judge anew. The trial *de novo* was not an appeal. Instead, it was a second trial heard by a judge except that by agreement of the parties the case "may be" tried before a jury of six persons. Section 512.310. The amended version of section 512.180, however, eliminated the provision for a trial *de novo* in rent and possession cases, thus removing the parties' ability to "agree to" their constitutional right to a jury trial of six persons. A right that the Missouri Constitution indicates "shall remain inviolate." MO. CONST. art. I, § 22(a).

[1] All further statutory references are to RSMo 2000, unless otherwise indicated.

Recognizing that right, I share in the practical concerns expressed by my colleague in his opinion. However, balancing the rights of the landlord to claim his property expeditiously, while affording the right of any party to a trial by jury, is an issue that requires clarification under the current legislative changes.



Angela T. Quigless, P.J.