

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSOURI
FIFTEENTH JUDICIAL CIRCUIT

In Re the Matter of:)	
WILLIAM MICHAEL WINDSOR,)	
Plaintiff,)	
)	
v.)	Case No. 13LF-CV00461
)	
ALLIE L. OVERSTREET, et al.)	
Defendants.)	

MOTION TO DISMISS
AND INCORPORATED SUGGESTIONS IN SUPPORT

COMES NOW, Defendant Allie L. Overstreet, by and through her attorney of record, and, pursuant to Rule 55.27(a)(6) of the Missouri Rules of Civil Procedure, moves this court to dismiss the above action due to improper venue and failure to state a claim upon which relief can be granted. In support of this motion, Defendant states the following:

1. Pursuant to 508.010 Revised Statutes of Missouri Plaintiff must bring an action where the tort or injury has occurred. Plaintiff in his Original Verified Complaint states Plaintiff “was damaged in Georgia”, thus this Court has no jurisdiction.

2. Pursuant to Rule 55.05 of the Missouri Rules of Civil Procedure, pleading must set forth the facts giving rise to the action and relief requested. However, negligence must be pled with some specificity. A negligence claim must plead the ultimate facts showing liability arising from the defendant's own acts. *Oberkramer v. Ellisville*, 706 S.W.2d 440 (Mo.banc 1986). Elements of a negligence claim require a plaintiff to show: (1) the defendant had a duty to protect plaintiff from injury; (2) the defendant failed to protect plaintiff from injury; and (3) the plaintiff was injured as a result of such failure. *Behrenhausen v. All About Travel, Inc.*, 967 S.W.2d 213, 217 (Mo.App.1998).

3. Plaintiff has not pled any elements of negligence with any specificity, and thus, his claim for negligence must fail as a matter of law. Essential to the claim of negligence is the duty Defendant owed to Plaintiff. Here, such a pleading is absent. The plaintiff failed to plead the defendant's duty to protect the plaintiff from injury and that the defendant failed to protect plaintiff from injury. The Plaintiff failed to plead the facts in which the Defendant's own acts bring liability. The Plaintiff does plead an injury; however, injury is not pled as caused by Defendant's failure. Thus, plaintiff's claim for negligence must fail.

WHEREFORE, Plaintiff this Court is a court of improper jurisdiction or in the alternative the Plaintiff has alleged no set of facts in support of his claims that would entitle him to relief, and therefore, Defendant prays that this court enter an order dismissing the action for failure to state a claim upon which relief can be granted and for such other and further relief as the court deems just and equitable under the circumstances.

Respectfully Submitted,

THE O'CONNOR LAW FIRM, P.C.

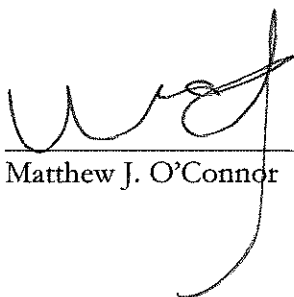
by: 

Matthew J. O'Connor, #41834
521 Walnut Street
Kansas City, Missouri 64106
Telephone: (816) 842-1111
Facsimile: (816) 842-3322
mjoc@workingforjustice.com
ATTORNEY FOR DEFENDANT

Certificate of Mailing

The undersigned does hereby certify that a copy of the above and foregoing was mailed via United States Mail, postage prepaid this 30th day of May 2013 to:

William M. Windsor
3924 Lower Roswell Road
Marietta, Georgia 30068



Matthew J. O'Connor