WD85561

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

KYLE ODERMANN and AUDREY ODERMANN,

Petitioners - Respondents,

vs.

GERALD MANCUSO,
DESARAE G. HARRAH, and HARRAH LAW, LLC,

Respondents - Appellants.

On Appeal from the Circuit Court of Jackson County
Honorable Justine E. Del Muro, Circuit Judge
Case No. 2216-CV08060

BRIEF OF THE APPELLANTS

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Jurisdictional Statement

This is an appeal from a judgment of the Circuit Court of Jackson County on a claim under § 570.095, R.S.Mo. to invalidate a notice of *lis pendens* as false or fraudulent.

This case does not involve the validity of a Missouri statute or constitutional provision or a federal statute or treaty, the construction of Missouri's revenue laws, the title to statewide office, or the death penalty. So, under Mo. Const. art. V, § 3, this case does not fall within the Supreme Court's exclusive appellate jurisdiction and jurisdiction of this appeal lies in the Missouri Court of Appeals. This case arose in Jackson County. Under § 477.070, R.S.Mo., venue lies in the Western District.

Statement of Facts

A. Overview

An attorney filed a petition for her client, alleging the client had a contract to purchase real property from two sellers and stating alternative claims against the sellers for either breach of or specific performance of that contract (D30; App. A18). The attorney also recorded for the client a notice of *lis pendens* on the property at issue under § 527.260, R.S.Mo., stating that the case had been filed concerning the property (D9; App. A15).

Before filing an answer in the case, the sellers filed a separate petition against the client, the attorney, and her firm under § 570.095, R.S.Mo., alleging the notice of *lis pendens* was a "false document" or "fraudulent document" because they disputed the allegations in the petition, and requesting the notice of *lis pendens* be stricken (D2; D3). In the original case, they then filed a counterclaim seeking an award of attorney fees incurred in prosecuting the § 570.095 action (D32 pp. 10-11, 13-14; App. A34-35, A36-37).

The § 570.095 action proceeded to an evidentiary hearing less than three weeks after the sellers' petition was filed, at which the attorney could not appear due to a previously scheduled all-day mediation (Tr. 3-4; D5). The client was never served, nor did an attorney appear for him (D25 pp. 2-3, 6; App. A8-9, A12). At the hearing, two witnesses disputed the allegations in the client's petition against the sellers (Tr. 13-40).

The trial court entered a judgment for the sellers, holding the notice of *lis pendens* invalid (D6; App. A1). The attorney, her firm, and her client now appeal (D27; D29).

B. Underlying case

On March 30, 2022, attorney Desarae Harrah of the law firm of Harrah Law, LLC, filed a petition on behalf of Gerald Mancuso against Kyle Odermann, Audrey Odermann, and Dustin Delaney in the Circuit Court of Jackson County, No. 2216-CV07864 ("the Underlying Case") (D30; App. A18).

In the Underlying Case, Mr. Mancuso alleged he and the Odermanns had an agreement under which they would sell him real property in Kansas City, Missouri ("the Property"), with Mr. Delaney as the Odermanns' real estate broker, which he alleged the Odermanns had breached (D30 pp. 2-3; App. A19-20). He stated claims against the Odermanns for damages for breach of contract or alternatively for specific performance of the real estate contract (D30 pp. 3-4; App. A21-22) and against Mr. Delaney for damages for negligent and fraudulent misrepresentation (D30 pp. 4-5; App. A22-23).

The same day as filing the Underlying Case, Ms. Harrah recorded for Mr. Mancuso a notice of *lis pendens* on the Property under § 527.260, R.S.Mo., with the Jackson County Recorder of Deeds (D9; App. A15). Besides giving the legal description of the Property, the notice of *lis pendens* stated:

> This notice of *Lis Pendens* is made and recorded pursuant to Mo. Rev. Stat. section 527.260 for the purpose of giving notice to and warning all interested persons that there is pending, with respect to the following-described real estate, a dispute as to the status of title to said realty and that a lawsuit has been filed in the Circuit Court of Jackson County, Missouri, at Kansas City by Gerald Mancuso, against Kyle Odermann, Audrey Odermann, and that any interests acquired in said real estate during the pendency of this litigation is subject to its outcome ….

(D9 p. 2; App. A16).

C. Proceedings below

1. Initial proceedings

On April 4, 2022, without having yet filed an answer in the Underlying Case, the Odermanns then filed a petition in the Circuit Court of Jackson County against Mr. Mancuso, Ms. Harrah personally, and Ms. Harrah's law firm (D3). They filed it separately from the Underlying Case, it was assigned a new case number, and it was assigned to a different judge than the Underlying Case (D1 pp. 5, 15).

The Odermanns' petition stated it was for "a judicial review for false document filings by Gerland [*sic*] Mancuso, Harrah Law, LLC and Desarae Harrah under Mo. Rev. Stat. § 570.095" (D3 p. 1). It requested the court to declare both the notice of *lis pendens* Ms. Harrah had recorded for Mr. Mancuso, as well as Mr. Mancuso's petition in the Underlying Case, "invalid" and strike them (D3 p. 1). It also requested the trial court order Mr. Mancuso, Ms. Harrah, and Harrah Law, LLC "to pay restitution to Petitioners equal to Petitioners' actual attorneys fees and costs of mitigating the effects of Respondent's improper conduct" (D3 p. 1).

In a "Statement of Probable Cause" attached to and incorporated in their petition, the Odermanns accused Mr. Mancuso and Ms. Harrah of "fil[ing] false documents in violation Mo. Rev. Stat. § 570.095" by recording the notice of *lis pendens*, because they argued Mr. Mancuso's petition in the Underlying Case was legally insufficient and they disputed the allegations in it (D2 pp. 1-8). They also accused Ms. Harrah and her firm of misconduct in filing the notice of *lis pendens*:

Respondent LLC and Harrah, being a law firm and an attorney

> licensed in this state, and having a duty to inform themselves prior to signing the Petition or the Notice under Missouri Rule of Procedure Rule 53.03, knew or had a duty to determine when they filed the Petition and Notice that they were materially false, invalid, and unenforceable, and knew the filing of the false documents would interfere with Petitioners' sale of the property and benefit their client.

(D2 p. 8). Because § 570.095 also makes filing a false or fraudulent document a crime, they argued Ms. Harrah, her firm, and Mr. Mancuso had "committed a Class D felony" (D2 p. 8).

After the statement of probable cause's first 29 paragraphs, the Odermanns stated:

> 30. The foregoing facts establish that each of Respondents has violated Mo, Rev. Stat. § 570.095.
>
> 31. Because Petitioners do not meet the enhancement criteria of Mo. Rev. Stat. § 570.095.2, Petitioners have probable cause to believe that Defendants committed a Class D felony.
>
> 32. Pursuant to Mo. Rev. Stat. § 570.095.7, Petitioners have the right to file this statement of probable cause.
>
> 33. Pursuant to Mo. Rev. Stat. § 570.095.8, Petitioners are entitled to a hearing within 20 business days of the date the petition is filed with the Court.
>
> 34. Pursuant to Mo. Rev. Stat. §570.095.9, because the Petition and Notice are invalid, court costs and fees are the responsibility of Respondents.
>
> 35. Pursuant to Mo. Rev. Stat. § 570.095.4, upon a finding or plea of guilty of the Respondents, the Court must order full restitution to all persons, including Petitioners and any parties with whom Petitioners have contracted, with respect to the actual losses or costs incurred as a result of the Respondents' actions.

(D2 pp. 8-9) (emphasis added).

The Odermanns then again repeated their requested relief from the petition, including that the trial court declare the notice of *lis pendens* and Mr. Mancuso's petition "invalid" and they be stricken (D2 p. 9 ¶ 1), and order Mr. Mancuso, Ms. Harrah, and Harrah Law, LLC "to pay restitution to Petitioners equal to Petitioners' actual attorneys fees and costs of mitigating the effects of Respondent's improper conduct" (D2 p. 9 ¶ 2).

On April 15, 2022, the Odermanns then filed their answer in the Underlying Case, plus counterclaims against Mr. Mancuso (D32; App. A25). Counterclaim Count IV stated a claim for "slander of title" due to the notice of *lis pendens*, and sought actual and punitive damages against Mr. Mancuso, as well as an award of the Odermanns' attorney fees (D32 pp. 10-11; App. A34-35). Counterclaim Count VII stated a claim for violation of § 570.095, R.S.Mo. in filing the notice of *lis pendens*, and requested restitution for the Odermanns' actual losses incurred in challenging that filing (D32 pp. 13-14; App. A37-38). Mr. Mancuso answered and denied the counterclaims (D33).

On April 21, 2022, summonses were issued in the Odermanns' § 570.095 case for Mr. Mancuso, Ms. Harrah, and Harrah Law (D1 p. 7). At the same time, the Court set a hearing for only four days later, April 25, at 9:00 a.m. (D1 p. 7). Ms. Harrah and Harrah Law were served the next day, April 22 (D20 p. 3). As the trial court later acknowledged, Mr. Mancuso was never served (D25 pp. 2-3, 6; App. A8-9, A12), nor did any attorney ever appear for Mr. Mancuso until after judgment, when undersigned counsel entered a limited appearance for him (D1 pp. 6-14).

2. Arguments and hearing

On April 22, 2022, the same day they were served, Ms. Harrah and her firm defended against the Odermanns' § 570.095 petition, moving to strike or dismiss it or consolidate the action with the Underlying Case (D7; D14). They argued there was nothing false about the notice of *lis pendens* because all it did was state an action had been filed affecting the subject property, which was true and statutorily required under § 527.260 (D7 pp. 4-6). They argued the absolute privilege for *lis pendens* notices filed in conjunction with an action affecting real estate foreclosed the Odermanns' action against them (D7 pp. 5-6). They argued any arguments against Mr. Mancuso's petition had to be addressed in the Underlying Case, not this separate action (D7 pp. 5-8).

Ms. Harrah also provided an affidavit recounting that Mr. Mancuso had hired her, she investigated the claims in the Underlying Case, attaching the petition in the Underlying Case and documents obtained in that investigation supporting the claims in the Underlying Case, and then filed the petition in the Underlying Case based on that investigation and recorded the notice of *lis pendens* against the Property (D12 pp. 1-3, 19-23). She stated, "Neither I or Harrah Law [*sic*] filed the Petition and recorded the Lis Pendens with the intent to defraud, deceive, harass, alarm, or negatively impact Plaintiffs financially, or in such manner reasonably calculated to deceive, defraud, harass, alarm, or negatively impact Plaintiffs financially" (D12 p. 3).

At the same time, Ms. Harrah provided notice that she was engaged at the date and time of the hearing set three days later at an all-day mediation

and requested a continuance (D5). The court denied the motion the day of the hearing, April 25 (D1 p. 9).

The case proceeded to a hearing on April 25, with Ms. Harrah absent but she and her firm represented by another of the firm's attorneys (Tr. 4). When her counsel brought up that Mr. Mancuso had not been served, the trial court stated nothing in § 570.095 required service, analogizing this to issuing an arrest warrant based on probable cause (Tr. 4-5).

The Odermanns then presented the testimony of Mr. Odermann and Mr. Delaney (Tr. 2).

Mr. Odermann denied that Mr. Delaney ever had authority to enter into a contract, denied ever meeting or entering into any agreement with Mr. Mancuso, and stated he later had sold the Property to someone else (Tr. 13-15, 18-19, 21-22). He said the statements in the petition in the Underlying Case that the Property was under contract with Mr. Mancuso were false and misleading (Tr. 24-25). He said Mr. Delaney told him Mr. Mancuso yelled at Mr. Delaney and told Mr. Delaney he would sue the Odermanns and everyone else involved, did not care if he won, but would tie up the property in court with a *lis pendens* for six months (Tr. 26-27). He said he was worried Mr. Mancuso was trying to harm him financially (Tr. 27).

Mr. Delaney testified he was the Odermanns' agent but had no authority to enter into an agreement to enter into a contract on their behalf (Tr. 31-32). He denied knowing anything about Mr. Mancuso except his first name was "Gerry" (Tr. 32-33). He said he received an offer to purchase the property from Mr. Mancuso, but Mr. Odermann declined, so no contract was

formed (Tr. 33). He went through what he said were e-mails between himself, Mr. Mancuso, and the Property's manager, Mr. Anderson, and said they show there was no contract, only preparation of an offer (Tr. 35-38). He said the Property later was sold to someone else (Tr. 38). But he admitted he never told Mr. Mancuso he had no authority to sell the property until after e-mailing him in response to an offer, "Perfect, can you be here today? I can swing by and get everything signed" (Tr. 39-40).

3. Judgment and post-judgment proceedings

The same day as the hearing, the trial court issued a judgment recounting the petition in the Underlying Case, the filing of the notice of *lis pendens*, and finding "probable cause exists to invalidate the Lis Pendens filed on March 30, 2022 with the Jackson County Recorder of Deeds," and "the Lis Pendens filed on March 30, 2022, filed with the Jackson County Recorder of Deeds, as document no. 2022E0030273, is rendered INVALID with respect to" the Property (D6 p. 3; App. A3). It also ordered, "costs and fees are assessed against Respondents, Gerald Mancuso, Desarae G. Harrah, and Harrah Law, LLC" (p. 3). It did not state an amount of either the costs or fees awarded (p. 3).

On May 23, 2022, the petitioners filed an "Application for Costs and Fees" (D15; App. A5). In it, they stated they would only seek costs in this case, not attorney fees, but they would use the judgment in this case to seek those fees as damages against Mr. Mancuso in the Underlying Case:

> Petitioners note that attorney fees were incurred by Petitioners charged by the law firm Stranger Creek Advisors in totaling $11,160.00. A redacted record of such fees is attached hereto as Exhibit 3. However, because the Courts' award of fees, as well

> the statutory authorization for costs and fees was not clear respecting attorney fees, Petitioners make no application for those attorney fees under this matter. Petitioners notify the Court and Respondents that they reserve the right to make application for and collect such fees as special damages under their counterclaims in the underlying action, *Mancuso v. Odermann*, 2016-CV07864.

(D15 pp. 1-2; App. A5-6). Therefore, the petitioners only requested costs totaling $348.89 (D15 p. 2; App. A6). The court then entered an order for the appellants to pay those costs (D18).

On June 10, 2022, undersigned counsel entered a limited appearance for Mr. Mancuso (D1 p. 10) and filed a motion for Mr. Mancuso under Rule 74.06(b) to set aside the judgment, arguing he had never been served process in the action, so the judgment was void (D19). He also appeared for Ms. Harrah and Harrah Law, LLC, and filed a motion for them to amend the judgment, reiterating their arguments that the notice of *lis pendens* could not be a "false document" under § 570.095 because all it did was state an action had been filed affecting the Property, which was true and statutorily proper under § 527.260 (D20 pp. 6-11). They also argued the absolute privilege for *lis pendens* notices filed in conjunction with an action affecting real estate foreclosed the petitioners' action under § 570.095 (D20 pp. 11-13).

Both Mr. Mancuso's and Ms. Harrah's and Harrah Law's post-judgment motions argued they were timely because the April 25 judgment granted the petitioners' request for attorney fees but did not state an amount, and therefore was not final (D19 pp. 4-6; D20 pp. 4-6). Both argued the judgment did not become final until May 23, 2022, when the petitioners abandoned their claim for attorney fees (D19 pp. 4-6; D20 pp. 4-6).

On July 15, 2022, the trial court denied both post-judgment motions (D25; D26; App. A7, A13). The court held both were untimely because the judgment had been issued April 25 (D25 p. 1; D26 pp. 1-2; App. A7, A13-14).

The court did not address the substance of Ms. Harrah's and Harrah Law's motion, and instead struck it as untimely (D26 pp. 1-2; App. A13-14). But it did address the substance of Mr. Mancuso's motion, holding no service was required on him because § 570.095 did not require service of process and Ms. Harrah, his counsel in the Underlying Case, was served, likening this process to receiving a probable cause statement in a criminal case to issue an arrest warrant (D25 pp. 1-4; App. A7-11). In its order denying Mr. Mancuso's motion, the court also stated its judgment "could lead to criminal charges, could affect [Mr. Mancuso]'s suit in [the Underlying Case] and could lead to further litigation" (D25 p. 3; App. A10). It stated criminal charges "is a matter for the prosecution. Any further civil litigation against [Mr. Mancuso] is left to [the Odermanns]" (D25 p. 3; App. A10).

On July 25, 2022, Mr. Mancuso, Ms. Harrah, and Harrah Law filed a notice of appeal to this Court (D27). When the Court asked for suggestions whether the appeal was timely, in addition to providing those suggestions and arguing the April 25 judgment did not become final until May 23 when the petitioners abandoned their claim for attorney fees, Mr. Mancuso, Ms. Harrah, and Harrah Law also asked alternatively for leave to appeal out of time, which the Court then granted. They then filed another notice of appeal (D29), which was consolidated with the original appeal, which the Court notified the parties also would proceed.

Points Relied On

I. The trial court erred in holding the notice of *lis pendens* recorded against the Property invalid as a false or fraudulent document under § 570.095, R.S.Mo. *because* § 527.260, R.S.Mo., requires recording a notice of *lis pendens* in any action that affects real estate, which survives until that underlying action is fully disposed of, a notice of *lis pendens* that complies with § 527.260 is subject to absolute privilege, and there was no substantial evidence supporting anything other than that the notice of *lis pendens* here complied with § 527.260 *in that* the only evidence was that the petition in the Underlying Case stated a claim for breach of or specific performance of a contract for the sale of specific real estate, and the notice of *lis pendens* was recorded against that specific real estate and correctly identified that action.

Houska v. Frederick, 447 S.W.2d 514 (Mo. 1969)

Arbors at Sugar Creek Homeowners' Ass'n v. Jefferson Bank & Tr. Co., 464 S.W.3d 177 (Mo. banc 2015)

State ex rel. Lemley v. Reno, 436 S.W.3d 232 (Mo. App. 2013)

Cnty. Inv., LP v. Royal West Inv., LLC, 513 S.W.3d 575 (Tex. App. 2016)

II. The trial court erred in holding the notice of *lis pendens* recorded against the Property invalid as a false or fraudulent document under § 570.095, R.S.Mo. *because* § 570.095 only gives a trial court authority to deem documents invalid when they are "fraudulent, false, misleading, forged, or contain[n] materially false information," and there was no substantial evidence that anything in the notice of *lis pendens* was fraudulent, false, misleading, forged, or contained materially false information *in that* the only evidence was that the notice of *lis pendens* truthfully stated Mr. Mancuso had filed the Underlying Case affecting the Property.

Serafine v. Blunt, 466 S.W.3d 352 (Tex. App. 2015)

McMillan v. Little City Invs., LLC, No. 03-19-00430-CV, 2020 WL 5884291 (Tex. App. Sept. 30, 2020)

In re Dist. at City Center, LLC, 462 P.3d 181 (Kan. App. 2020)

III. The trial court erred in entering a final judgment despite acknowledging Mr. Mancuso was never served process *because* this misapplied the law, as a judgment in a civil case that affects a party's property rights cannot be entered against a party unless that party first has been validly served process, and otherwise the judgment is irregular and void, service of process in a civil case is required even when the statute creating the cause of action is silent as to service, service on a party's attorney in a separate case is insufficient to serve that party, and § 570.095's requirement of a hearing within 20 days of a petition does not change any of this *in that* Mr. Mancuso was never served process in this case, and the only service was on Ms. Harrah, who was his attorney only in the separate Underlying Case but was his co-party in this case.

Worley v. Worley, 19 S.W.3d 127 (Mo. banc 2000)
Breckenridge Material Co. v. Enloe, 194 S.W.3d 915 (Mo. App. 2006)
New LLC v. Bauer, 586 S.W.3d 889 (Mo. App. 2019)
Holly v. Holly, 151 S.W.3d 148 (Mo. App. 2004)
Rule 54.13

Argument

Standard of Review as to All Points

As this case was tried by a court, this Court "will affirm the trial court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *Ivie v. Smith*, 439 S.W.3d 189, 198-99 (Mo. banc 2014) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)).

This Court "views the evidence and permissible inferences drawn from the evidence in the light most favorable to the judgment." *Id.* at 732. "A trial court is free to disbelieve any, all, or none of th[e] evidence," and "this Court defers to the trial court's determination of credibility." *White v. Dir. of Revenue*, 321 S.W.3d 298, 308 (Mo. banc 2010).

"When determining the sufficiency of the evidence" under the *Murphy v. Carron* standard, this Court "will accept as true the evidence and inferences from the evidence that are favorable to the trial court's [judgment] and disregard all contrary evidence." *Watson v. Mense*, 298 S.W.3d 521, 526 (Mo. banc 2009). "Whether evidence is substantial … is a question of law" reviewed *de novo*. *Love v. Hardee's Food Sys., Inc.*, 16 S.W.3d 739, 742 (Mo. App. 2000).

"A claim that the trial court erroneously declared or applied the law is reviewed *de novo*." *Est. of Briggs*, 449 S.W.3d 421, 425 (Mo. App. 2014).

I. The trial court erred in holding the notice of *lis pendens* recorded against the Property invalid as a false or fraudulent document under § 570.095, R.S.Mo. *because* § 527.260, R.S.Mo., requires recording a notice of *lis pendens* in any action that affects real estate, which survives until that underlying action is fully disposed of, a notice of *lis pendens* that complies with § 527.260 is subject to absolute privilege, and there was no substantial evidence supporting anything other than that the notice of *lis pendens* here complied with § 527.260 *in that* the only evidence was that the petition in the Underlying Case stated a claim for breach of or specific performance of a contract for the sale of specific real estate, and the notice of *lis pendens* was recorded against that specific real estate and correctly identified that action.

Preservation Statement

This point is preserved for appellate review. *See* Rule 78.07(b)-(c). Ms. Harrah and Harrah Law raised this argument in their motion to dismiss or strike (D7 pp. 5-6) and their motion to amend the judgment (D20 pp. 11-13).

* * *

The law of Missouri is that § 527.260, R.S.Mo., requires recording a notice of *lis pendens* on a real property when any action is filed that affects that real property, which survives until that action is fully disposed of. A notice of *lis pendens* that complies with § 527.260 is subject to absolute privilege, and no cause of action of any kind may arise against its filer for filing it. Here, the only evidence was that the Underlying Case was an action affecting the Property, so the notice of *lis pendens* they recorded on the

Property was statutorily required under § 527.260. Mr. Mancuso, Ms. Harrah, and Harrah Law therefore have absolute privilege against any suit for doing so. Nonetheless, the trial court allowed the Odermanns' suit against them under § 570.095, R.S.Mo. to declare the notice of *lis pendens* a false or fraudulent document. This was error.

A. A notice of *lis pendens* filed as § 527.260 requires in any action affecting real estate survives until that underlying action is fully disposed of and gives the filer an absolute privilege from any suit for filing that notice.

Section 527.260 provides in relevant part:

> In any civil action, based on any equitable right, claim or lien, affecting or designed to affect real estate, the plaintiff ***shall*** file for record, with the recorder of deeds of the county in which any such real estate is situated, a written notice of the pendency of the suit, stating the names of the parties, the style of the action and the term of the court to which such suit is brought, and a description of the real estate liable to be affected thereby; and the pendency of such suit shall be constructive notice to purchasers or encumbrancers, only from the time of filing such notice.

(App. A40) (emphasis added).

This statute therefore *requires* a plaintiff to file a notice of *lis pendens* in any action affecting real estate. *Arbors at Sugar Creek Homeowners' Ass'n v. Jefferson Bank & Tr. Co.*, 464 S.W.3d 177, 189 (Mo. banc 2015). This makes sense, as the word "shall" means the action it directs is "mandatory." *Christensen v. Am. Food & Vending Servs.*, 191 S.W.3d 88, 91 (Mo. App. 2006). "Filing a *lis pendens* provides notice to potential purchasers of a pending suit, which may affect title to property, and its purpose is to preserve

rights pending the outcome of litigation." *State ex rel. Lemley v. Reno*, 436 S.W.3d 232, 234 (Mo. App. 2013).

Because of this, "[w]here *lis pendens* have a reasonable relation to the action filed, absolute privilege attaches to their recordation." *Id.* at 235 (citing *Houska v. Frederick*, 447 S.W.2d 514, 519 (Mo. 1969)). "Missouri law places no limitations or qualifications on the absolute privilege it accords *lis pendens* notices." *Id.* (citing *Birdsong v. Bydalek*, 953 S.W.2d 103, 114 (Mo. App. 1997)).

This means when a plaintiff files a notice of *lis pendens* as § 527.260 requires against property that his suit affects, no cause of action may arise from the filing of that notice. *Birdsong*, 953 S.W.2d at 114-15. Moreover, because the law of Missouri "extends an absolute and unqualified privilege to *lis pendens* notices, Plaintiffs' motive for filing the notices is not relevant; likewise, the evidence on that issue is not relevant." *Id.* at 114.

Accordingly, the Supreme Court of Missouri and this Court uniformly and without exception have ordered dismissed all causes of action arising from a notice of *lis pendens* filed as required when a lawsuit affects the subject property. *See Arbors*, 464 S.W.3d at 188-89 (no abuse of process suit lay from notice of *lis pendens*); *Lippman v. Bridgecrest Ests. I Unit Owners Ass'n, Inc.*, 991 S.W.2d 145, 152-53 (Mo. App. 1998) (same re: action for clouding title); *Birdsong*, 953 S.W.2d at 114-15 (same re: action for tortious interference with property purchase agreement); *Kopp v. Franks*, 792 S.W.2d 413, 425 (Mo. App. 1990) (same re: action for abuse of process); *Sharpton v. Lofton*, 721 S.W.2d 770, 777 (Mo. App. 1986) (same re: action for slander of

title); *Houska*, 447 S.W.2d at 519 (same re: action for malicious prosecution). And in *Lemley*, the Court held a trial court had no power to release a notice of *lis pendens* during a case at all. 436 S.W.3d at 234-35. This was so even though the underlying action did not call into question the right to ownership of the real property in question, as it affected the property. *Id.* The Court issued a writ prohibiting the trial court's order. 436 S.W.3d at 234-35.

B. The only evidence was the notice of *lis pendens* Ms. Harrah filed for Mr. Mancuso was filed as § 527.260 required for the Underlying Case, which affects the Property, giving Ms. Harrah, her firm, and Mr. Mancuso absolute privilege from the Odermanns' action under § 570.095.

The privilege in § 527.260 equally must supersede any action to declare the notice of *lis pendens* Ms. Harrah filed for Mr. Mancuso invalid under § 570.095, because that privilege is "absolute and unqualified …." *Birdsong*, 953 S.W.2d at 114.

While this is addressed more in Point II below, § 570.095 (App. A41), enacted in 2018 and not yet interpreted by any case law, is Missouri's addition to a growing number of statutes nationwide aimed at preventing the recording of false or fraudulent deeds, liens, and similar property documents by providing an expedited process to invalidate them. *See, e.g.*, Colo. Rev. Stat. Ann. § 38-35-204; Fla. Stat. Ann. § 817.535; Kan. Stat. Ann. § 58-4301; Penn. Cons. Stat. Ann. § 9518; Tex. Gov't Code Ann. §§ 51.901 through 51.903. Like these statutes, § 570.095.7 provides a civil cause of action for "judicial review of a filing or record that is believed to be fraudulent, false, misleading, forged, or contains materially false information" by "fil[ing] a

probable cause statement … in the associate or circuit court of the county in which the original filing or record was transferred, received, or recorded."

Texas was one of the first states to enact such a statute, doing so in 1997. *See* Tex. Gov't Code Ann. §§ 51.901 through 51.903. Like § 570.095.7, Texas's § 51.903 provides in relevant part that "[a] person who is the purported … obligor … and who has reason to believe that the document purporting to create a lien or claim against … real … property … previously filed … is fraudulent may complete and file with the district clerk a motion" alleging so, upon which the court can rule whether it is.

Because Texas's statute was one of the first, unlike Missouri, Texas has a well-developed "fraudulent lien" jurisprudence, including whether and how it applies to *lis pendens* notices. (This is addressed more in Point II, below).

In *Cnty. Inv., LP v. Royal West Inv., LLC*, 513 S.W.3d 575, 581-82 (Tex. App. 2016), the Texas Court of Appeals held the same absolute privilege for notices of *lis pendens*, which the law of Texas also recognizes, defeated any challenge under Texas's fraudulent lien statute to a notice of *lis pendens* filed concerning an lawsuit affecting the subject property. This is because, just as in Missouri, "the privilege [i]s not limited to the claims asserted in the suit or contingent on the motives of the party placing the lis pendens," and "availability of the privilege does not turn on whether the party placing the lis pendens acted in good faith and even malice would not dissolve the privilege." *Id.* at 581.

The same is and must be true here. The privilege for a compliant notice of *lis pendens* is absolute and unlimited, regardless of motive. *Lemley*,

436 S.W.3d at 235; *Birdsong*, 953 S.W.2d at 114-15. And while § 570.095.7 pertains to recordings generally, § 527.260 deals with notices of *lis pendens* specifically, and provides it *shall* be recorded on real estate for any action affecting that real estate. That means § 527.260 controls over § 570.095.7. "When the same subject matter is addressed in general terms in one statute and in specific terms in another, the more specific controls over the more general." *Greenbriar Hills Country Club v. Dir. of Revenue*, 935 S.W.2d 36, 38 (Mo. banc 1996).

Mr. Mancuso's lawsuit in the Underlying Case plainly affects the Property. It alleged he and the Odermanns had an agreement under which they would sell him the Property and stated claims against them for damages for breach of that contract or alternatively for specific performance, which if successful would result in him having title (D30 pp. 2-4; App. A19-21).

Therefore, § 527.260 required Mr. Mancuso to record a notice of *lis pendens* on the Property. *Arbors*, 464 S.W.3d at 188-89. Ms. Harrah and Harrah Law recorded the notice of *lis pendens* as required. That gave the notice an absolute an unqualified privilege from suit. The privilege extends to the Odermanns' lawsuit seeking invalidation of the notice of *lis pendens* under § 570.095 and, ultimately, damages against Mr. Mancuso for it.

The only evidence was that the Underlying Case affected the Property, so notice of *lis pendens* was statutorily required under § 527.260 and gave Mr. Mancuso, Ms. Harrah, and Harrah Law an absolute privilege against any suit for recording it. The trial court erred in holding otherwise. This Court should reverse the trial court's judgment outright, without remand.

II. The trial court erred in holding the notice of *lis pendens* recorded against the Property invalid as a false or fraudulent document under § 570.095, R.S.Mo. *because* § 570.095 only gives a trial court authority to deem documents invalid when they are "fraudulent, false, misleading, forged, or contai[n] materially false information," and there was no substantial evidence that anything in the notice of *lis pendens* was fraudulent, false, misleading, forged, or contained materially false information *in that* the only evidence was that the notice of *lis pendens* truthfully stated Mr. Mancuso had filed the Underlying Case affecting the Property.

Preservation Statement

This point is preserved for appellate review. *See* Rule 78.07(b)-(c). Ms. Harrah and Harrah Law raised it in their motion to dismiss or strike (D7 pp. 4-6) and their motion to amend the judgment (D7 pp. 7-11).

* * *

Section 570.095 only gives a trial court authority to deem documents invalid that are "fraudulent, false, misleading, forged, or contai[n] materially false information." Here, the only evidence was that the notice of *lis pendens* Ms. Harrah filed for Mr. Mancuso truthfully stated the Underlying Case affecting the Property had been filed against the Odermanns in the Circuit Court of Jackson County. Nonetheless, the trial court deemed it invalid under § 570.095. This was error.

A. Section 570.095 only gives a trial court authority to deem documents invalid when they are fraudulent, false, misleading, forged, or contain materially false information.

Section 570.095.7, R.S.Mo., the statutory provision under which the petitioners proceeded in this case, is part of a criminal statute enacted in 2018 making it a Class D felony to file or record various documents "[w]ith the intent to defraud, deceive, harass, alarm, or negatively impact financially …." (App. A41). To date, no case law or secondary sources address this statute.

Besides the criminal provisions in subsections 1-6 of that statute, subsection 7 provides a civil cause of action for "judicial review of a filing or record that is believed to be fraudulent, false, misleading, forged, or contains materially false information" by "fil[ing] a probable cause statement … in the associate or circuit court of the county in which the original filing or record was transferred, received, or recorded." (App. A44). Subsection 8 provides for a hearing within 20 days of the petition, and if the court finds the record was indeed fraudulent, false, misleading, forged, or contains materially false information, allows the court to deem the record "invalid." (App. A45).

B. A notice of *lis pendens* that truthfully states there is litigation pending affecting a property is not fraudulent, false, misleading, forged, or containing materially false information under § 570.095.

While no case law addresses or discusses § 570.095, as mentioned above in Point I this statute plainly is part of a growing number of statutes nationwide aimed at preventing the recording of false or fraudulent deeds, liens, and similar property documents by providing an expedited process to invalidate them. *See, e.g.*, Colo. Rev. Stat. Ann. § 38-35-204; Fla. Stat. Ann. §

817.535; Kan. Stat. Ann. § 58-4301; Penn. Cons. Stat. Ann. § 9518; Tex. Gov't Code Ann. §§ 51.901 through 51.903.

These statutes were "promulgated in response to the activities of militias and common-law type groups such as the Freeman and the Christian Court. The members of these anti-government groups had been wreaking havoc by writing bogus and fraudulent checks and filing (or attempting to file) frivolous liens against property owners and government officials." *In re Dist. at City Center, LLC*, 462 P.3d 181, 187 (Kan. App. 2020) (internal citations and quotation marks omitted). These statutes "provide a quick and efficient method to remove facially bogus liens meant to intimidate and harass property owners." *Id.* (citation and quotation marks omitted).

Texas was one of the first states to enact such a statute, doing so in 1997. *See* Tex. Gov't Code Ann. §§ 51.901 through 51.903. Like § 570.095.7, Texas's § 51.903 provides in relevant part that "[a] person who is the purported … obligor … and who has reason to believe that the document purporting to create a lien or claim against … real … property … previously filed … is fraudulent may complete and file with the district clerk a motion" alleging so, upon which the court can rule whether it is.

Because Texas's statute was one of the first, unlike Missouri, Texas has a well-developed "fraudulent lien" jurisprudence, including how it affects notices of *lis pendens*.

The Texas courts hold a notice of *lis pendens* is subject to this statute and if a notice of *lis pendens* is fraudulent, it can be addressed and removed using this quick method. *See Serafine v. Blunt*, 466 S.W.3d 352, 357 (Tex.

App. 2015). But this means the notice of *lis pendens* itself must be false – that is, it must give notice of litigation over the property when in fact there is no such litigation. *Id.* at 363-64.

In *Serafine*, the Texas Court of Appeals reversed the denial of a motion to dismiss an action against a *lis pendens* under Texas's fraudulent lien statute and ordered the action dismissed. *Id.* Serafine sued the Blunts for trespass to title and various other claims stemming from a construction of a fence she believed encroached on her property. As part of that, she placed a notice of *lis pendens* on the Blunts' property. The Blunts counterclaimed the notice of *lis pendens* was a fraudulent lien, and the trial court denied Serafine's motion to dismiss that counterclaim. The Texas Court of Appeals reversed, holding Serafine had filed a lawsuit affecting the Blunts' property, and therefore her notice of *lis pendens* was truthful and therefore not fraudulent. *Id.*; *see also McMillan v. Little City Invs., LLC*, No. 03-19-00430-CV, 2020 WL 5884291 at *6 (Tex. App. Sept. 30, 2020) (reversing judgment finding notice of *lis pendens* fraudulent when it truthfully gave notice of wrongful foreclosure action on property).

This makes sense. "Filing a *lis pendens* provides notice to potential purchasers of a pending suit, which may affect title to property, and its purpose is to preserve rights pending the outcome of litigation." *Lemley*, 436 S.W.3d at 234. It is grounded in § 527.260, R.S.Mo. (App. A40), a statute requiring filing a notice of *lis pendens* whenever such a suit is filed. *Arbors*, 464 S.W.3d at 189.

So, as the Texas courts pointed out in *Serafine* and *McMillian*, when a lawsuit is filed affecting real property and a notice of *lis pendens* is recorded notifying the public of that lawsuit, by definition the notice of lis pendens is not false or fraudulent. Indeed, such a notice is required by the plain language of § 527.260.

C. As the only evidence was the notice of *lis pendens* Ms. Harrah filed for Mr. Mancuso truthfully stated the Underlying Case had been filed affecting the Property, the trial court lacked authority to enter judgment invalidating the notice under § 570.095.

Here, the notice of *lis pendens* Ms. Harrah and Harrah Law recorded for Mr. Mancuso was equally truthful. The only evidence on this, which the petitioners conceded in their petition and affidavit (D2; D3), was that Mr. Mancuso *did* file the Underlying Case, which *did* affect the Property by seeking damages for breach of contract or alternatively specific performance of the real estate contract to purchase the Property. The notice of *lis pendens* then truthfully stated this lawsuit was filed (D9; App. A16-17).

There is no evidence that a single statement in the notice of *lis pendens* was in any way fraudulent, false, misleading, or forged:

- It stated it was filed by Ms. Harrah of Harrah Law, on behalf of Mr. Mancuso (D9 pp. 1, 3; App. A15, A17), which the Odermanns conceded was true (D2 p. 2 ¶ 2).
- It stated there was "pending, with respect to the [Property], a dispute as to the status of title to said realty and that a lawsuit has been filed in the Circuit Court of Jackson County, Missouri, at Kansas City by Gerald Mancuso, against Kyle Odermann, Audrey Odermann, and that

any interests acquired in said real estate during the pendency of this litigation is subject to its outcome ...." (D9 p. 2; App. A16). The Odermanns conceded this was true and attached a copy of the petition in the Underlying Case (D2 p. 2 ¶ 3). And it plainly was true, as Mr. Mancuso's petition in the underlying case shows (D30; App. A18D).

- It correctly described the Property (D9 p. 2; App. A16), as the trial court found in its judgment (D6 pp. 1-2; App. A1-2).

As in *Serafine* and *McMillian*, that simply ends the inquiry into whether the notice of *lis pendens* is false or fraudulent under § 570.095. Beyond that, the Odermanns' only contentions were that the allegations *in the Underlying Case* are untrue or otherwise insufficient.

It is not extraordinary or unique for a defendant in a lawsuit to dispute the plaintiff's allegations. If the Odermanns and the trial court were correct, then any time a defendant disputed the allegations in a lawsuit affecting real property, a separate case would lie under § 570.095, turning § 570.095 into a vehicle for a separate suit and damages whenever a defendant in a case involving real property and on which a truthful notice of *lis pendens* was recorded as § 527.260 disputed the plaintiff's allegations. That was not the General Assembly's intent behind § 570.095, and it would countermand the plain language of § 527.260 requiring a notice of *lis pendens* in any such suit. It also must be presumed the General Assembly did not intend that result because the General Assembly "is presumed to know the existing law when enacting a new piece of legislation." *Greenbriar*, 47 S.W.3d at 352.

Rather, the Odermanns' remedy is to litigate their dispute in the Underlying Case. But by § 527.260, the notice of *lis pendens* remains throughout that proceeding, and even in any appeal. *Lemley*, 436 S.W.3d at 235 ("a plaintiff bringing an action purporting to affect a legal interest in real property has an absolute right to retain a recorded *lis pendens* during the pendency of appellate review").

Section 570.095 does not provide the Odermanns an alternative route around the Rules of Civil Procedure. In *Dist. at City Center*, for example, the Kansas Court of Appeals held Kansas's similar "fraudulent lien" statute could not be used to adjudicate the validity of an otherwise properly recorded mechanic's lien as a route around standard civil procedure, as "[t]o hold otherwise would allow a party, such as the contractor here, to circumvent the specific statutory provisions governing mechanic's liens and well-established contract law in favor of a summary, ex parte procedure." 462 P.3d at 893.

The same is true here. The Odermanns may well ultimately prevail in the Underlying Case. But they still have to litigate it first. Until it is disposed of, under § 527.260 there is an absolute right for the notice of *lis pendens* to remain. Section 570.095 does not provide them a separate summary procedure to avoid this.

The only evidence was that the notice of *lis pendens* here truthfully gave notice of the Underlying Case. Therefore, the trial court erred in holding it was in any way "fraudulent, false, misleading, forged, or contains materially false information" per § 570.095. This Court should reverse the trial court's judgment, without remand.

III. The trial court erred in entering a final judgment despite acknowledging Mr. Mancuso was never served process *because* this misapplied the law, as a judgment in a civil case that affects a party's property rights cannot be entered against a party unless that party first has been validly served process, and otherwise the judgment is irregular and void, service of process in a civil case is required even when the statute creating the cause of action is silent as to service, service on a party's attorney in a separate case is insufficient to serve that party, and § 570.095's requirement of a hearing within 20 days of a petition does not change any of this *in that* Mr. Mancuso was never served process in this case, and the only service was on Ms. Harrah, who was his attorney only in the separate Underlying Case but was his co-party in this case.

Preservation Statement

This issue is preserved for appellate review. *See* Rule 78.07(b)-(c). The trial court itself brought up the lack of service on Mr. Mancuso and held service was unnecessary (Tr. 4-5). Mr. Mancuso then raised the issue again in his post-judgment motion (D19).

* * *

The law of Missouri is that valid, lawful service of process is required as a matter of due process in all civil actions that may result in deprivation of a party's property rights so as to provide that party notice and the opportunity to be heard. This is true regardless of whether a statute creating a cause of action mentions service. And any judgment entered against a

party without service on him is void and irregular, and must be reversed. Moreover, service on a party's attorney in a separate case is ineffective to constitute service on that party unless the attorney has express authority to accept it for that party and consents to do so. Here, the trial court acknowledged Mr. Mancuso was never served process and Ms. Harrah did not consent to accept it for him. Nonetheless, it held service was unnecessary because the statute creating the cause of action, § 570.095, R.S.Mo., did not require service of process. It then entered judgment against Mr. Mancuso invalidating his notice of *lis pendens* in the Underlying Case, ordering him to pay the petitioners costs and giving the petitioners a claim for damages for their attorney fees against him in the Underlying Case. This was error.

A. Service of process on a party per Rule 54 is required in any civil action in which that party may be deprived of property rights, and is a prerequisite to personal jurisdiction.

"[A]t a minimum," due process "require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mulland v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). Any civil action that may result in an award of fees and expenses against a person therefore "is one in which they may be deprived of property rights and hence notice and hearing must measure up to the standards of due process." *Id.* "'The fundamental requisite of due process of law is the opportunity to be heard,'" which "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Id.* (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)).

Accordingly, in Missouri, "Proper service of process is a prerequisite to personal jurisdiction." *Scott v. Borden*, 648 S.W.3d 68, 73 (Mo. App. 2022) (citations omitted). This is because

> [o]nly by service of process authorized by statute or rule (or by appearance) can a court obtain jurisdiction to adjudicate the rights of a defendant. When the requirements for manner of service are not met, a court lacks power to adjudicate. Actual notice is insufficient. Satisfying minimum standards of due process ... does not obviate the necessity of serving process in the manner prescribed in our statutes and rules.

Worley v. Worley, 19 S.W.3d 127, 129 (Mo. banc 2000) (internal citations and quotation marks omitted).

To this end, the Supreme Court of Missouri "promulgated Rule 54 pursuant to article V, section 5 of the Constitution. This rule supercedes [*sic*] all statutes inconsistent therewith. Rule 41.02. Moreover, if a statute authorizes a method of service, service may be made pursuant to the provisions of the statute or as provided by Rule 54. Rule 54.18." *Id.*

Rule 54.13 requires "[s]ervice of process within the state, except as otherwise provided by law, shall be made by the sheriff or a person over the age of 18 years who is not a party," and on an individual must be made

> by delivering a copy of the summons and petition personally to the individual or by leaving a copy of the summons and petition at the individual's dwelling house or usual place of abode with some person at least 18 years of age residing therein, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process.

Rule 54.21 then requires the server to make a return of service in court promptly.

B. A judgment entered against a party without service on him is irregular and void, and must be reversed.

"A judgment procured without complying with the notice and service requirements of the rules of civil procedure is irregular by definition," which means "one rendered contrary to a proper result, i.e., it is materially contrary to established forms and modes of procedure for the orderly administration of justice." *Breckenridge Material Co. v. Enloe*, 194 S.W.3d 915, 920 (Mo. App. 2006). Therefore, when a judgment states a defendant was given notice of the proceeding, but in fact he was not served process in accordance with the Rules of Civil Procedure, the judgment is irregular and cannot stand. *Id.* (requiring judgment entered without valid service be set aside as irregular).

The lack of valid service also makes a judgment "void," as the trial court lacks personal jurisdiction over that party. *New LLC v. Bauer*, 586 S.W.3d 889, 895-99 (Mo. App. 2019) (requiring judgment entered without valid service to be set aside as void); *Holly v. Holly*, 151 S.W.3d 148, 150 (Mo. App. 2004) (same).

C. The trial court's judgment entered against Mr. Mancuso under § 570.095 depriving him of property rights without any service of process on him must be reversed as void and irregular.

Under this law, the trial court's judgment must be reversed as void and irregular, because, as the trial court openly acknowledged, Mr. Mancuso was never served any process.

Though a summons was issued for Mr. Mancuso (D1 p. 7), he was never served (D25 pp. 2-3, 6; Tr. 4-5; App. A8-9, A12). The judgment states he "does not appear" (D6 p. 1; App. A1). Accordingly, the trial court's judgment against Mr. Mancuso is both irregular and void, and must be reversed.

1. Service on Ms. Harrah, who was named a co-party, was ineffective to serve Mr. Mancuso.

The trial court advanced two arguments why service on Mr. Mancuso was unnecessary. Both arguments are in error.

First, the trial court suggested service was unnecessary because Ms. Harrah was served. In the judgment, the full statement the court made was, "Respondent, Gerald Mancuso does not appear although notice was provided to his attorney, Desarae G. Harrah" (D6 p. 1; App. A1).

This was in error. Serving Ms. Harrah, Mr. Mancuso's attorney in the Underlying Case, was insufficient for valid service of process in this separate case.

It is well-established that "[a]n attorney has no authority to accept service of process for his or her client in a suit other than that for which the attorney is employed …." 7A C.J.S. *Attorney & Client* § 291 (Nov. 2022). So, "Service of initial process cannot ordinarily be made upon an attorney." *Gothard v. Spradling*, 586 S.W.2d 443, 446 (Mo. App. 1979) (S.D. en banc) (citing *McPike Drug Co. v. Wilson*, 237 S.W. 1044 (Mo. App. 1922); *Bradley v. Welch*, 12 S.W. 911 (1890)). This is because under "a general retainer," an "attorney is not authorized to waive service for his client of original process by which the court acquires jurisdiction for the first time of the person of his client." *McPike*, 237 S.W. at 1046. Rather, this requires "express authority" authorizing the attorney to accept that new service. *Id.*

While at the time the Odermanns filed their action below Ms. Harrah represented Mr. Mancuso in the Underlying Case, she had no authority to represent him or receive service for him in this separate case. This is

compounded by the fact that the Odermanns named Ms. Harrah a co-party *with* Mr. Mancuso in this case. As the trial court acknowledged, she did not agree to accept service for him (D25 pp. 2, 6; App. A8, A12). The trial court therefore was incorrect to equate service on Ms. Harrah with service on Mr. Mancuso.

2. That § 570.095 does not itself mention service of process and requires a hearing within 20 days of the petition is immaterial, as Rule 54 applies to all civil actions and supersedes all statutes to the contrary, and nothing prevented the trial court from continuing the hearing until Mr. Mancuso was served.

Second, the trial court suggested several times, both at the hearing (Tr. 4-5) and again in its order denying Mr. Mancuso's post-judgment motion (D25 pp. 1-4; App. A7-11), that service was unnecessary on Mr. Mancuso because § 570.095 did not require service of process and instead required a hearing within 20 days, likening this to receiving a probable cause statement in a criminal case to issue an arrest warrant.

This was in error. At the outset, that § 570.095 itself did not mention service of process is of no consequence. Because the Odermanns' action against Mr. Mancuso could (and did) result in a deprivation of his property – an award of fees and costs, *Mulland*, 339 U.S. at 313, and his right to have a notice of *lis pendens* protect the Property during the Underlying Case, *Lemley*, 436 S.W.3d at 234-35 – then as a matter of due process service on him was required. *Mulland*, 339 U.S. at 313. Rule 54 therefore automatically applied to the Odermanns' action, as it does to all civil causes

of action, superseding any statutory provisions to the contrary. *Worley*, 19 S.W.3d at 129.

Indeed, many statutory causes of action are silent on service, including notably the Missouri Human Rights Act, § 213.085, R.S.Mo., and the Missouri Merchandising Practices Act, § 407.025, R.S.Mo. That does not mean no service of process on defendants in those actions is required. Rather, as always, proper service is a prerequisite to personal jurisdiction, *Scott*, 648 S.W.3d at 73, and a judgment entered without complying with Rule 54 is irregular and void, and must be reversed. *Breckenridge*, 194 S.W.3d at 920; *New LLC*, 586 S.W.3d at 895-99.

The trial court's likening of this to issuing an arrest warrant is inapposite. An arrest warrant is the beginning of a criminal case, in which a defendant is brought to court and given the full right to defend himself. Here, the trial court entered a final judgment depriving Mr. Mancuso of property interests without any notice or opportunity to be heard. There is no comparison.

That § 570.095 requires a hearing within 20 days of the petition does not change this. First, again, to the extent this may be in conflict with Rule 54's requirement of service, it must yield to Rule 54. *Worley*, 19 S.W.3d at 129. But there is no conflict.

Many statutes require a hearing within a certain number of days of filing a petition. Under § 455.040.1, R.S.Mo., for example, a hearing on an application for an order of protection under the Adult Abuse Act must be held within 15 days of the petitioner filing the petition. But if at that hearing the

respondent still has not been served, all that happens is the hearing is continued until there is service. The petitioner does not simply win by default. *Cf. Jenkins v. Croft*, 63 S.W.3d 710, 713 (Mo. App. 2002) (word "shall" in § 455.040.1 did not mean trial court lost authority to decide case without hearing in 15 days). Similarly, § 115.537, R.S.Mo., requires a hearing on any election contest within five days of filing the petition. Again, though, without valid service of process, the hearing would have to be continued. The contestant would not simply win by default.

The trial court's decision otherwise was error. As it acknowledged, Mr. Mancuso was never served process as Rule 54 required. It therefore lacked authority to proceed against him at all, let alone invalidate his notice of *lis pendens* and require him to pay the Odermanns fees and costs. This Court should reverse the trial court's judgment outright, without remand.

Conclusion

The Court should reverse the trial court's summary judgment outright, without remand.

Respectfully submitted,

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Certificate of Compliance

I certify that I prepared this brief using Microsoft Word for Office 365 in 13-point, Century Schoolbook font, which is not smaller than 13-point, Times New Roman font. I further certify that this brief complies with the word limitations of Supreme Court Rule 84.06(b) and this Court's Rule 41, as this brief contains 9,535 words.

/s/Jonathan Sternberg
Attorney

Certificate of Service

I certify that I signed the original of this brief of the appellant, which is being maintained by Jonathan Sternberg, Attorney, P.C. per Rule 55.03(a), and that on December 27, 2022, I filed a true and accurate Adobe PDF copy of this brief of the appellant and its appendix via the Court's electronic filing system, which notified the following of that filing:

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