



DIVISION ONE
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 RUTH A. WILLINGHAM,
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 BY: sls

**IN THE COURT OF APPEALS
 STATE OF ARIZONA
 DIVISION ONE**

GARY B. SMITH, and CANDACE SMITH,)	No. 1 CA-SA 12-0084
husband and wife,)	
)	DEPARTMENT D
)	
Petitioner,)	
)	Coconino County
v.)	Superior Court
)	No. CV2011-00866
)	
THE HONORABLE DAN SLAYTON, Judge)	
of the SUPERIOR COURT OF THE)	DECISION ORDER
STATE OF ARIZONA, in and for the)	
County of COCONINO,)	
)	
)	
Respondent Judge,)	
)	
NORTHERN ARIZONA HEALTHCARE)	
CORPORATION; HEART and VASCULAR)	
CENTER OF NORTHERN ARIZONA;)	
KENNETH JOHN BESCAK, M.D., and)	
JANE DOE BESCAK, husband and)	
wife,)	
)	
)	
Real Parties in Interest.)	
_____)	

JURISDICTION ACCEPTED; RELIEF DENIED

The court (Judges John C. Gemmill, Peter B. Swann, and Andrew W. Gould, participating) has received the special action filed by Gary B. Smith and Candace Smith ("Petitioners"), husband and wife; the response to the petition for special action filed by Real Parties in Interest Northern Arizona Healthcare Corporation ("NAHC"), Kenneth J. Bescak, M.D., and Jane Doe Bescak, husband and wife (collectively "Respondents"); the Petitioners' reply; and the Petitioners' appendix. After

consideration and in our discretion, the court will exercise its special action jurisdiction in this matter, but we deny relief because we conclude that the trial court did not abuse its discretion in granting the change of venue.

This special action challenges the granting of a motion changing venue from Coconino County to Yavapai County under Arizona Revised Statutes ("A.R.S.") section 12-406 (2003). Petitioners seek damages for alleged medical negligence committed in Yavapai County by Dr. Bescak. Petitioners' filed suit against Dr. Bescak, his wife, and his employer, NAHC, in Coconino County. The corporate office of NAHC is located in Flagstaff, Coconino County. Respondents moved to change venue from Coconino County to Yavapai County.

The trial court, after hearing argument from both parties concerning change of venue, explained its ruling as follows:

I agree that change of venue should not be something that is treated cavalierly by review in court, but must be considered in light of numerous circumstances.

First of all, the Court makes note of the fact that the tort complained of occurred in Yavapai County; that the doctor has his practice in Yavapai County; that the witnesses to the tort, at least at this point, and I know it is somewhat soon, reside in Yavapai County. The records reside in Yavapai County. While there may be one or two expert witnesses or current care providers who may need to be -- who reside here, have their practices here, that alone does not overcome that the -- just

from the cost of the trial, should be considered in terms of the witnesses, the doctors and records.

But the Court puts greater weight on the fact that, I think, in looking at the policy underlying the venue, the community in which a tort or a breach of any action, whether it be a criminal action or a civil action, should be the community that decides it, should be the community that judges the actions of their doctors, of their nurses, of their law enforcement, of the plaintiffs, of the defendants, they should be the ones to decide the harm to their community. And on that basis, the Court finds in favor of defendant's Motion to Change of Venue.

We accept jurisdiction because the Petitioners do not have a plain, adequate, or speedy remedy by appeal, see Ariz. R.P. Spec. Act. 1(a), and because special actions are appropriate to address change of venue rulings made by the trial court. See *Dunn v. Carruth*, 162 Ariz. 478, 479, 784 P.2d 684, 685 (1989); *Nielson v. Hicks*, 225 Ariz. 451, 452, ¶ 6, 240 P.3d 276, 277 (App. 2010).

We have considered the arguments of the parties and the comments of the court at the hearing on February 23, 2012. We review the granting of a motion for change of venue under A.R.S. § 12-406 under an abuse of discretion standard. See *Curtis v. Richardson*, 212 Ariz. 308, 311, ¶ 8, 131 P.3d 480, 483 (App. 2006); *Rutledge v. Ariz. Bd. of Regents*, 147 Ariz. 534, 553, 711 P.2d 1207, 1226 (App. 1985). The trial court is accorded considerable discretion in weighing and balancing all of the

factors encompassed within A.R.S. § 12-406(B)(2) and (3). And our supreme court has reminded appellate courts that, when we are reviewing a trial court's exercise of discretion:

[T]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason. We cannot substitute our discretion for that of the trial judge.

Associated Indem. Corp. v. Warner, 143 Ariz. 567, 571, 694 P.2d 1181, 1185 (1985) (citation omitted).

Petitioners argue that the trial court abused its discretion by basing its decision solely on the location of the alleged tort and the interest of the local community in resolving the dispute. We do not agree with this characterization, because we interpret the court's comments as summarizing the court's weighing of several factors presented by the parties and considered by the court. Furthermore, we note that our supreme court has expressly endorsed the consideration, when making venue decisions, of the local community's interest in resolving local disputes: "Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation." *Dunn*, 162 Ariz. at 481, 784 P.2d at 687 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947)).

Because of the broad discretion accorded the trial court

under A.R.S. § 12-406(B)(2) and (3), we conclude that the court did not abuse its discretion in granting the change of venue from Coconino County to Yavapai County.

Accordingly,

IT IS ORDERED that the court, in the exercise of its discretion, accepts special action jurisdiction but denies relief and affirms the trial court's order changing the venue from Coconino County to Yavapai County.

/s/

JOHN C. GEMMILL, Presiding Judge