

NOT DESIGNATED FOR PUBLICATION

MYRELL BERGERON
VERSUS
ARTHUR A. MORRELL AND ABC
INSURANCE COMPANY

COURT OF APPEAL;
FIFTH CIRCUIT

NO. 02-CA-325
FIFTH CIRCUIT
COURT OF APPEAL
STATE OF LOUISIANA

FILED OCT 29 2002

Robert M. Murphy

ON APPEAL FROM THE 24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 566-893, DIVISION "D"
HONORABLE ROBERT M. MURPHY, JUDGE PRESIDING

OCTOBER 29, 2002

**WALTER J. ROTHSCHILD
JUDGE**

Panel composed of Judges Edward A. Dufresne, Jr., Clarence E. McManus
and Walter J. Rothschild

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EDWARD JENKINS, JR.
ARTHUR A. MORRELL
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REVERSED AND REMANDED;
CASE TRANSFERRED.

WJR
EDM
CEM

This legal malpractice action was brought in Jefferson Parish against an attorney domiciled and practicing in Orleans Parish. The trial court denied the attorney's exception of improper venue, and this appeal followed.¹ For the reasons that follow, we reverse the trial court's ruling and transfer and remand the case to Orleans Parish.

Myrell Bergeron filed the present suit for damages against Arthur A. Morrell and his liability insurer alleging legal malpractice. Plaintiff alleges that in April of 2000 she engaged Mr. Morrell to provide legal services in connection with a personal injury claim which she wanted to bring against several individuals. Plaintiff contends that Mr. Morrell provided legal advice to her on May 10, 2000, and he drafted a petition for her signature to file in proper person. The petition requested that service be withheld and was filed by Ms. Bergeron in the 24th Judicial District Court on the same date, May 10, 2001. Plaintiff contends that Mr. Morrell failed to advise her of the provisions of La. C.C.P. art. 1201(C) which requires suit to be served within 90 days of filing. Plaintiff states that her suit was

¹ Although the denial of the declinatory exception is not a final judgment, it is properly appealed under La. C.C.P. art. 2083 because it would cause irreparable injury to try the case in the wrong venue. See: Chambers v. LeBlanc, 598 So.2d 337 (La. 1992).

not timely served, and the trial court granted the defendants' motion for involuntary dismissal. Plaintiff contends that she is now precluded from recovering from the original tortfeasors in her personal injury suit.

Arthur Morrell responded to this petition with an exception of improper venue on the basis that he is domiciled and practices law in Orleans Parish, and that the alleged wrongful conduct also occurred in Orleans Parish. Finding that plaintiff sustained damages in Jefferson Parish and venue was proper in that parish, the trial court denied the exception.

The general rules of venue provide that suit against an individual who is domiciled in the state shall be brought in the parish of his domicile. La.C.C.P. art. 42. Plaintiff relies on an exception to this general rule, which provides in part as follows:

An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained....

LSA-C.C.P. art. 74 permits a claimant who filed suit in tort for the recovery of damages to prosecute his action in the parish where the wrongful conduct occurred or in the parish where damages were sustained. However, when damage is caused to the plaintiff in the parish where the wrongful conduct occurred, then that parish is the parish of proper venue under Article 74. Chambers v. Leblanc, 598 So.2d 337 (La. 1992). Where no damages are caused to the plaintiff in the parish where the wrongful conduct occurred, a parish where the damages were sustained is a proper venue under article 74. Belser v. St. Paul Fire & Marine Ins. Co., 509 So.2d 12 (La. App. 1 Cir. 1987). Damages are sustained as the result of wrongful conduct in that parish where they first arose or, in the case of bodily injury, where the conditions have been set in motion within the body which will eventually evolve into the injury or damage complained of. Williams v. Ochsner

Clinic, 97-2275 (La. Ap.. 4 Cir. 10/29/97), 701 So.2d 744, 745, writ denied, 97-2903 (La. 2/20/98), 709 So.2d 774.

The alleged wrongful conduct in this case occurred in Mr. Morrell's law office in Orleans Parish where plaintiff contends Mr. Morrell breached his duty of care to give her full and proper legal advice. The question this court must determine is whether Jefferson Parish is the "parish where the damages were sustained" for purposes of La. C.C.P. art. 74 venue.

Plaintiff contends the damage was sustained in Jefferson Parish when the suit she filed on her own behalf was dismissed for lack of timely service. Conversely, defendant contends that any damage was sustained in his law office when he allegedly failed to convey information to plaintiff regarding necessity of service within ninety days of filing. Defendant argues that he did not represent plaintiff in the suit filed in Jefferson Parish, and that he specifically informed plaintiff that he was not able to provide legal representation to her. As a result, the petition in this case was filed in Jefferson Parish by plaintiff in proper person.

The substance of plaintiff's claims against defendant is that she obtained incomplete legal advice from defendant. Although the determination of where plaintiff sustained damages is a close call, we find that plaintiff's damages were sustained where her cause of action first arose, i.e., in Mr. Morrell's law office. Although her lawsuit was eventually dismissed in Jefferson Parish allegedly due to what she alleges is incomplete legal advice, we nevertheless find that her damages were initially sustained when the attorney allegedly failed to notify plaintiff of service provisions. We agree with the reasoning of the Supreme Court in Yarnell v. Crews, 01-2523 (La. 12/14/01), 803 So.2d 979, that although plaintiff's damage may have later progressed to another parish, plaintiff's cause of action arose in the parish where the wrongful conduct occurred, citing, Chambers v. LeBlanc, supra, 598 So.2d 337 (La. 1992). Thus, as damage was caused to the plaintiff in the

parish where the wrongful conduct occurred, we conclude that the only parish of proper venue under La. C.C.P. art. 74 is Orleans Parish.

Accordingly, we conclude the judgment of the trial court which overruled the declinatory exception raising the objection of improper venue is erroneous and must be reversed. We hereby render judgment sustaining defendant's exception of improper venue.

When an action is brought in a court of improper venue, an appellate court has the discretion to dismiss the action or, in the interest of justice, transfer it to a court of proper venue. La.C.C.P. art. 121; Marler v. Petty, 94-1851 (La. 4/10/95), 653 So.2d 1167. In the interest of justice, we elect to transfer this case to a proper venue.

For the foregoing reasons, the judgment of the trial court overruling the declinatory exception is reversed, and judgment is entered herein sustaining the exception and remanding this action to the Civil District Court for the Parish of Orleans for further proceedings. The clerk of this court is ordered to transfer the record of these proceedings to the Clerk of Court for the Parish of Orleans for filing. Appellee is cast for the cost of this appeal.

REVERSED AND REMANDED;
CASE TRANSFERRED.



EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

SOL GOTHARD
JAMES L. CANNELLA
THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. MCMANUS
WALTER J. ROTHSCHILD

JUDGES

Court of Appeal

FIFTH CIRCUIT
STATE OF LOUISIANA

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GLYN RAE WAGUESPACK
FIRST DEPUTY CLERK

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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY OCTOBER 29, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

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