

STATE OF MICHIGAN
COURT OF APPEALS

BARRY SCHANNAULT,

Plaintiff-Appellee,

v

HARPER HOSPITAL, THE DETROIT
MEDICAL CENTER and DR. JEAN SINKOFF,

Defendants-Appellants.

UNPUBLISHED

March 16, 1999

No. 200902

Wayne Circuit Court

LC No. 96-644870 NH

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

Defendants appeal by leave granted an interlocutory order of the Wayne Circuit Court denying defendants' motion for change of venue to Macomb County in this medical malpractice action. We reverse and remand for entry of an order transferring this case to the Macomb Circuit Court.

This Court reviews a trial court's decision regarding proper venue to determine whether it is clearly erroneous. *Shock Bros, Inc v Morbark Industries, Inc*, 411 Mich 696, 698-699; 311 NW2d 722 (1981); *Huhn v DMI, Inc (On Remand)*, 215 Mich App 17, 18; 544 NW2d 719 (1996).

It is unnecessary for us to decide whether the trial court correctly reasoned that MCL 600.1641; MSA 27A.1641 allows plaintiff's lawsuit to be brought in any county where plaintiff's claims against any one of the defendants could have been commenced and tried if that defendant were sued separately. Even assuming that MCL 600.1641; MSA 27A.1641 applies in this case, the trial court's reliance upon that statute is clearly erroneous because Wayne County is not the proper venue for any of plaintiff's claims against any of the defendants in this case.

For plaintiff's claims against each one of the defendants, Macomb County is the proper venue because, according to the allegations of plaintiff's own complaint, that is where plaintiff's injuries occurred and where each one of the defendants has a place of business or conducts business. MCL 600.1629(1)(a)(i); MSA 27A.1629(1)(a)(i). With regard to The Detroit Medical Center (DMC), the

complaint alleges that Harper Hospital operated the chemical dependency program in Macomb County where plaintiff was treated, and that DMC “owned and/or operated” Harper Hospital.

Plaintiff’s reliance upon the “affidavit of non-involvement” prepared in the prior, unrelated litigation involving DMC is unavailing. That affidavit was prepared in March of 1994, several years before this lawsuit was filed, as well as several months prior to the events at issue in this case. Therefore the affidavit provides no indication as to whether DMC conducted business in Macomb County through ownership and operation of Harper Hospital at any time period relevant to establishing venue in this case. Moreover, we note that if plaintiff were allowed to succeed in establishing venue in Wayne County based upon the claim that DMC has never owned or operated any hospitals or medical provider or otherwise conducted business in Macomb County, plaintiff would be thereafter judicially estopped from asserting that DMC is vicariously liable for the Macomb County detoxification treatment at issue in this case. See *Driver v Hanley (After Remand)*, 226 Mich App 558, 562-563; 575 NW2d 31 (1997).

Reversed and remanded for entry of an order transferring this case to the Macomb Circuit Court. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Barbara B. MacKenzie
/s/ Michael J. Talbot