

STATE OF MICHIGAN
COURT OF APPEALS

RUSSELL D. RING, Personal Representative of
the Estate of BEVERLY A. RING, Deceased,

UNPUBLISHED
April 15, 2004

Plaintiff-Appellee,

v

BAYBERRY GROUP, INC., d/b/a HOMESTEAD
RESORT,

No. 243925
Wayne Circuit Court
LC No. 02-208846-NO

Defendant-Appellant,

and

HAWK'S NEST CONDOMINIUM
ASSOCIATION, JAMES MORICAL, and
JOANNE MORICAL,

Defendants.

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Defendant Bayberry appeals by leave granted from a circuit court order denying its motion for change of venue. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

According to the complaint, the Moricals owned a Hawk's Nest condominium unit located at the Homestead Resort in Leelanau County. In February 2001, plaintiff's wife, Beverly Ring, made arrangements to lease a condominium unit for a week in July. She requested a unit with no interior steps and was assured that one would be provided. She signed a contract and paid the rental fee. When the Ring family arrived for their stay, they were assigned the unit owned by the Moricals. That unit had an interior stairway leading to and from the first floor bedroom. Beverly Ring tripped and fell at the base of the steps, incurring fatal injuries.

Plaintiff filed this action for damages, alleging claims for breach of contract, premises liability, misrepresentation, innocent misrepresentation, and violation of the Michigan Consumer Protection Act. He alleged that he resided in Wayne County and that all defendants conducted business in Leelanau County.

Bayberry contended that for purposes of the wrongful death action, the original injury occurred in Leelanau County and because all defendants conducted business there, venue was proper in that county. Plaintiff contended that for purposes of the misrepresentation claims, the original injury occurred in Wayne County where his wife received and relied on the misrepresentation. The trial court agreed and denied defendant's motion.

"This Court reviews a trial court's ruling in response to a motion to change improper venue under the clearly erroneous standard. Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000) (citations omitted).

Ordinarily, in cases involving several causes of action, venue is proper in any county in which any one cause of action sued upon separately could be brought. MCL 600.1641(1). If, however, any one of the causes of action "is based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, venue shall be determined under the rules applicable to actions in tort as provided in section 1629." MCL 600.1641(2).

MCL 600.1629 provides in part:

(1) Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:

(a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:

(i) The defendant resides, has a place of business, or conducts business in that county.

(ii) The corporate registered office of a defendant is located in that county.

Plaintiff's complaint includes a wrongful death claim on behalf of his wife. The original injury in such an action is the injury leading to death, *Karpinski v St John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 547; 606 NW2d 45 (1999), which occurred in Leelanau County. Although defendants Morical reside in Wayne County, plaintiff alleged in his complaint that all defendants conduct business in Leelanau County. Therefore, the requirements of § 1629(1)(a)(i) are satisfied. *Massey, supra* at 382. In addition, the requirements of § 1629(1)(a)(ii) are satisfied because defendant Bayberry is a corporation and its registered office is located in Leelanau County. *Id.* at 383. Therefore, venue is properly laid in Leelanau County, not Wayne County.

We reject plaintiff's argument that Wayne County was the situs of the original injury for purposes of his misrepresentation claims. Although part of the cause of action may have arisen in Wayne County because that was where plaintiff's wife received and relied on defendants' representation, cf. *Anthony v Forgrave*, 126 Mich App 489, 495; 337 NW2d 546 (1983), under the current venue statute, the place where the original injury occurred, i.e. "the place where the injury transpires," is determinative. *Karpinski, supra* at 546. The injury suffered in a fraud action is that the plaintiff does not receive what he expected to receive, i.e., the frustration of the plaintiff's expectations. *Mayhall v A H Pond Co, Inc*, 129 Mich App 178, 185; 341 NW2d 268

(1983). Plaintiff's wife's expectations were frustrated when she arrived in Leelanau County and was assigned a condominium unit with interior stairs. Because the original injury occurred in Leelanau County, all defendants conduct business there, and defendant Bayberry maintains its corporate office there, venue is properly laid in Leelanau County, not Wayne County.

Because venue is properly laid in Leelanau County, the trial court clearly erred in denying defendant's motion for change of venue. Because venue in this action is improper, the court must order a change of venue at plaintiff's cost. MCR 2.223(A)(1), (B)(1).

Reversed and remanded for transfer of the action to Leelanau County at plaintiff's expense. Jurisdiction is not retained.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski