

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER NIEDJELSKI,

Plaintiff-Appellee,

v

DANIEL GENE BURD, JR. and UNITED
WASTE SYSTEMS OF ONAWAY, INC.,

Defendants-Appellants.

UNPUBLISHED

April 20, 2004

No. 244293

Oakland Circuit Court

LC No. 02-039542-NI

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

PER CURIAM.

Defendants appeal by leave granted the trial court's order denying their motion for change of venue improperly laid. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when her vehicle collided with a garbage truck owned by defendant United Waste. The accident occurred in Otsego County. Defendant Burd, a resident of Presque Isle County, was driving the truck during the course of his employment for United Waste. Plaintiff filed suit in Oakland Circuit Court. Defendants moved for a change of venue pursuant to MCR 2.223, arguing that pursuant to MCL 600.1629(1)(a) venue was proper in Otsego County because the accident occurred and they conducted business in that county. Plaintiff argued that because she resided in and United Waste's resident agent was located in Oakland County, that location was the more convenient forum for trial. The trial court denied the motion without prejudice.

We review a trial court's ruling on a motion to change venue for clear error. *Colucci v McMillin*, 256 Mich App 88, 93; 662 NW2d 87 (2003). In a tort action, venue lies in the county in which the injury occurred and in which either (i) the defendant resides, has a place of business, or conducts business, or (ii) the defendant corporation has its registered office. MCL 600.1629(1)(a).¹ If no county satisfies these criteria, venue lies in a county in which the injury

¹ The use of the definite article "the" in MCL 600.1629(1)(a)(i) indicates that the Legislature intended the phrase "the defendant" to refer to a single defendant. *Massey v Mandell*, 462 Mich (continued...)

occurred and in which either (i) the plaintiff resides, has a place of business, or conducts business, or (ii) the plaintiff corporation has its registered office. MCL 600.1629(1)(b). If no county satisfies these criteria, venue lies in a county in which (i) the plaintiff resides, has a place of business, conducts business, or has its registered corporate office, and (ii) the defendant resides, has a place of business, conducts business, or has its registered corporate office. MCL 600.1629(1)(c). MCL 600.1629(1)(d) provides that if no county satisfies the criteria in MCL 600.1629(1)(a), (b), or (c), a county that satisfies the criteria under MCL 600.1621 or MCL 600.1627 is a proper county in which to file and try an action.

The Legislature intended to make the place where the injury occurred paramount for venue purposes. *Karpinski v St John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 546; 606 NW2d 45 (1999). But the criteria for application of MCL 600.1629(1)(a) are not satisfied because although the accident occurred in Otsego County and United Waste conducted business in that county, Burd's employment was an insufficient nexus to conclude that he conducted business in Otsego County. *Farwell v May*, 437 Mich 953; 467 NW2d 593 (1991). The criteria for application of MCL 600.1629(1)(b) are not satisfied because while the accident occurred in Otsego County, plaintiff does not reside, have a place of business, conduct business, or have a registered agent in that county. And the criteria for application of MCL 600.1629(1)(c) are not satisfied because, while plaintiff resides in and United Waste has a registered agent in Oakland County, Burd neither resides in nor conducts business in Oakland County.

Thus, we turn to MCL 600.1621 or MCL 600.1627 in order to determine the proper county in which this action should have been filed. MCL 600.1629(d). MCL 600.1621 provides that except in actions in which venue is determined pursuant to other sections, which are not applicable in this case, venue is proper in a county in which *a* defendant² resides, has a place of business, conducts business, or has its registered corporate office. If *none of the defendants* meet one or more of these criteria, the county in which a plaintiff resides, has a place of business, or has its corporate office is a proper county in which to try the action. MCL 600.1621(b). Because United Waste has a registered agent in Oakland County, venue was properly laid in Oakland County under MCL 600.1621(a). *Massey v Mandell*, 462 Mich 375, 384-385; 614 NW2d 70 (2000).

Venue would also be properly laid in Otsego County under MCL 600.1627 because the accident occurred there.³ *Karpinski, supra*. However, because venue was properly laid in

(...continued)

375, 382 n 5; 614 NW2d 70 (2000). Thus, MCL 600.1629(1)(a) is applicable only in a case in which there is a single defendant, or in a case in which each defendant meets all the criteria set out in that section.

² The use of the indefinite article "a" in MCL 600.1621(a) indicates that the Legislature intended that the phrase "a defendant" need not refer to a single defendant. *Massey, supra*.

³ MCL 600.1627 provides in pertinent part that "the county in which all or a part of the cause of action arose is a proper county in which to commence and try the action."

Oakland County under MCL 600.1621, the trial court's order denying defendants' motion for change of venue cannot be said to have been clearly erroneous. *Colucci, supra*.

Affirmed.

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