STATE OF MICHIGAN

COURT OF APPEALS

BRANDON BRIGHTWELL,

Plaintiff-Appellee,

v

FIFTH THIRD BANK OF MICHIGAN,

Defendant-Appellant.

UNPUBLISHED
April 9, 2009

No. 280820
Wayne Circuit Court
LC No. 07-718889-CZ

SHARON CHAMPION,

Plaintiff-Appellee,

v

FIFTH THIRD BANK OF MICHIGAN,

Defendant-Appellant.

No. 281005
Wayne Circuit Court
LC No. 07-718890-CZ

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

In these consolidated appeals arising from race discrimination claims brought under the Elliott-Larsen civil rights act (CRA), MCL 37.2101 *et seq*., defendant appeals by leave granted two circuit court orders denying its motions to change venue from Wayne County to Oakland County. We reverse, deciding this appeal without oral argument pursuant to MCR 7.214(E).

Plaintiffs worked for defendant at different locations in Wayne County. Defendant terminated plaintiffs' employment on May 16, 2007. Both plaintiffs retained the same counsel, who filed separate lawsuits on their behalf in the Wayne Circuit Court. Plaintiffs' complaints allege that defendant fired them in violation of the CRA. Defendant filed change of venue motions in both cases, alleging that proper venue existed only in Oakland County. Different circuit court judges denied the motions, finding that plaintiffs had properly laid venue in Wayne County. This Court granted defendants' applications for leave to appeal, and consolidated the appeals.

If the venue of a civil action is improper, the court must order a change of venue at the plaintiff's cost upon the timely motion of a defendant. MCR 2.223(A)(1) and (B)(1). Where a defendant challenges venue as improperly laid, "the plaintiff has the burden to establish that the county he chose is a proper venue." *Johnson v Simongton*, 184 Mich App 186, 188; 457 NW2d 129 (1990). The plaintiff must present some credible factual evidence showing that the venue chosen is proper because the choice of venue must be based on fact, not mere speculation. *Marsh v Walter L Couse & Co*, 179 Mich App 204, 208; 445 NW2d 204 (1989).

This Court reviews for clear error a circuit court's ruling regarding a motion to change venue. *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* The Court considers de novo questions involving construction of Michigan's venue statutes. *Id*.

An action under the CRA "may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has his principal place of business." MCL 37.2801(2). Defendant's principal place of business is in Kent County, but it maintains a regional office for southeast Michigan in Oakland County. Because defendant's principal place of business is not in Wayne County, venue is proper in that county only if the alleged violation occurred there.

This Court has held that the alleged violation of the CRA is the action which gives rise to liability under the act, i.e., the corporate decision affecting the plaintiff's employment. Thus, "the place of corporate decision making is an appropriate venue," not the place where the effects of the alleged violation are felt or where damages accrue. *Barnes v Int'l Business Machines Corp*, 212 Mich App 223, 226; 537 NW2d 265 (1995). Defendant presented evidence to show that the decision to terminate plaintiffs' employment was made at its regional office in Oakland County. Although plaintiffs worked in bank branches in Wayne County, they have not provided any credible factual evidence to show that the allegedly discriminatory decision to terminate their employment was made in Wayne County. In that regard, this case is different from *Keuhn v Michigan State Police*, 225 Mich App 152; 570 NW2d 151 (1997), upon which our dissenting colleague relies. There, "final approval" of the allegedly discriminatory promotional decision was made by the defendant in the county where the plaintiff brought suit. *Id*. at 155.

We note that our dissenting colleague's opinion rests on *Dimmitt*, *supra*, which construed MCL 600.1629. In contrast to MCL 37.2801(2), which is at issue here, MCL 600.1629 provides that venue can be properly laid in the county in which "the original injury occurred." MCL 600.1629(1)(b). This is significantly different than the county "where the alleged violation occurred," the language in the statute at issue here. According to *Random House Webster's College Dictionary* (1992), a "violation" is: "1. the act of violating or the state of being violated. 2. a breach or infringement, as of a law or promise." In contrast, an "injury" is defined as: "1. harm or damage done or sustained, esp. bodily harm . . . . 2. a particular form or instance of harm . . . ." *Id*. Plaintiffs may well have experienced an injury in Wayne County when they were discharged. But that does not change the fact that defendant's alleged violation occurred in Oakland County where it made the decision to terminate plaintiffs' employment.

This is not to say, of course, that a CRA cause of action can arise from a mere "violation" by a defendant, without any resulting "injury" to a plaintiff. As the dissent points out and as is

unremarkable, both are necessary. Nonetheless, the appropriate venue for a CRA cause of action, assuming both a defendant's violation of the statute and a plaintiff's resultant injury, depends on where the defendant's violation occurred, not where the plaintiff was injured. That is what the clear language of the statute applicable here requires.

The trial courts clearly erred in denying defendants' motions to change venue to Oakland County. Venue was improperly laid in Wayne County. We reverse.

/s/ Richard A. Bandstra