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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

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**Ex parte Wal-Mart Associates, Inc.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Tim L. Martin**

**v.**

**Wal-Mart Associates, Inc.)**

**(Mobile Circuit Court, CV-19-903205)**

EDWARDS, Judge.

Wal-Mart Associates, Inc. ("Wal-Mart"), seeks a writ of mandamus directing the Mobile Circuit Court ("the trial court") to vacate its order denying Wal-Mart's motion to transfer a workers' compensation action commenced by Tim L.

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Martin against Wal-Mart to the Baldwin Circuit Court and to enter an order granting that motion. We grant the petition and issue the writ.

On December 5, 2019, Martin, who is a resident of Mobile County, filed a complaint in the trial court seeking workers' compensation benefits for an alleged on-the-job injury that occurred on September 26, 2017, during his employment at a Wal-Mart store in Baldwin County. According to Martin, he tripped over a pallet and hurt his right leg. Wal-Mart filed an answer denying the allegations of Martin's complaint, asserting various affirmative defenses, and challenging venue on the grounds of forum non conveniens.

Contemporaneously with the filing of its answer, Wal-Mart filed a motion to transfer Martin's action to the Baldwin Circuit Court based on § 6-3-21.1(a), Ala. Code 1975, the forum non conveniens statute. In the motion to transfer, Wal-Mart noted that Martin had alleged that he was a resident of Mobile County and acknowledged that it had operated stores in Mobile County when the accident occurred. Wal-Mart further alleged, however, that it was a Delaware corporation with its principal place of business in Bentonville, Arkansas; that

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Martin's alleged accident occurred at Wal-Mart's store in Baldwin County, where Martin was employed; that Martin's personnel files and all documentation relating to his employment by Wal-Mart were located in Baldwin County; that "all documentation regarding [Martin's] accident was prepared and ... maintained in Baldwin County"; that the witnesses for Wal-Mart worked in Baldwin County; and that, after the alleged accident, Martin was treated by the following physicians whose offices and records are located in Baldwin County: Dr. Terry P. Bell, Dr. Gordon Spafford, Dr. William A. Roberts, Dr. Thomas Gregory Terral, Dr. Nicole Kersh, and Dr. Joey F. Carter. According to Wal-Mart's motion to transfer, Mobile County had "no connection whatsoever to [Martin's] accident ... or employment."

In support of its motion, Wal-Mart submitted a brief discussing its legal argument regarding why the transfer was required under pertinent Alabama statutes and precedents, a copy of the injury report it had filed with the State regarding Martin's alleged injury, and medical records from the physicians referenced above. Wal-Mart argued that both prongs of § 6-3-21.1(a) required the trial court to transfer

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Martin's action to Baldwin County, i.e., transfer was required both for the convenience of the parties and the witnesses and in the interest of justice.

On January 22, 2020, Martin filed a response opposing Wal-Mart's motion to transfer. Martin argued that the action should not be transferred because he resides in Mobile County and is the main witness regarding the alleged accident and because the store at issue is located closer to the Mobile County courthouse than to the Baldwin County courthouse. In support of his response, Martin included his affidavit averring that he had resided in Mobile County since 2015 and that he was the only eyewitness, and the primary witness, to the alleged accident. Martin conceded that the physicians that had treated him are located in Baldwin County, but he alleged that Wal-Mart was unlikely to call such witnesses at trial because deposition testimony was normally used for medical testimony in workers' compensation cases.

A few minutes after Martin filed his response, Wal-Mart filed an affidavit from Brian Wilson, who was the store manager of the store where Martin's alleged accident occurred, in support of its motion to transfer. The next day, Wal-Mart

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submitted a supplemental evidentiary filing in support of its motion; attached to the supplemental evidentiary filing were a duplicate copy of Wilson's affidavit that had been filed the day before and additional documents indicating that Wilson resided in Baldwin County and that other potential witnesses who worked for Wal-Mart resided in Baldwin County.

On January 29, 2020, the trial court entered an order that states:

"This case came before the Court on January 24, 2020, on [Wal-Mart's] motion to transfer venue. ... [Wal-Mart] argues that the interest of justice requires the transfer to Baldwin County because it is the most convenient forum. However, such factors as the proximity of the Mobile County Circuit Court to [the] Wal-Mart Store where the witnesses are employed as compared with their proximity to the Baldwin County Circuit Court in Bay Minette, Alabama; the ease with which medical and corporate records can be electronically transferred; and the likelihood that all medical providers will appear only through depositions which diminishes the importance of their location in Baldwin County, do not support the contention that Baldwin County is the more convenient forum. It is, therefore, ORDERED that Defendant's motion to transfer venue be and is hereby DENIED."

(Capitalization in original.)

Wal-Mart timely filed a petition for a writ of mandamus with this court requesting that we direct the trial court to vacate the January 29, 2020, order and to enter an order

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transferring Martin's action to the Baldwin Circuit Court. Because we agree with Wal-Mart's argument that the interest of justice requires the trial court to transfer Martin's action to the Baldwin Circuit Court, we pretermitt any discussion of whether the trial court exceeded its discretion by not transferring the action on the ground of the convenience of the parties and the witnesses.

""The proper method for obtaining review of a denial of a motion for a change of venue in a civil action is to petition for the writ of mandamus. Lawler Mobile Homes, Inc. v. Tarver, 492 So. 2d 297, 302 (Ala. 1986). 'Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court.' Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). 'When we consider a mandamus petition relating to a venue ruling, our scope of review is to determine if the trial court [exceeded] its discretion, i.e., whether it exercised its discretion in an arbitrary and capricious manner.' Id. Our review is further limited to those facts that were before the trial court. Ex parte American Resources Ins. Co., 663 So. 2d 932, 936 (Ala. 1995).""

"Ex parte Southeast Alabama Timber Harvesting, LLC, 94 So. 3d 371, 373 (Ala. 2012) (quoting Ex parte

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National Sec. Ins. Co., 727 So. 2d 788, 789 (Ala. 1998))."

Ex parte Mercedes-Benz U.S. Int'l, Inc., 290 So. 3d 402, \_\_\_\_ (Ala. 2019).

Section 25-5-81(a)(1), Ala. Code 1975, a part of the Alabama Workers' Compensation Act, § 25-5-1 et seq., Ala. Code 1975, states that a workers' compensation action may be filed in "the circuit court of the county which would have jurisdiction of a civil action in tort between the parties." Section 6-3-7(a), Ala. Code 1975, governs venue for a civil action against domestic and foreign corporations. That Code section states, in pertinent part:

"(a) All civil actions against corporations may be brought in any of the following counties:

"(1) In the county in which a substantial part of the events or omissions giving rise to the claim occurred ...; or

". . . .

"(3) In the county in which the plaintiff resided, or if the plaintiff is an entity other than an individual, where the plaintiff had its principal office in this state, at the time of the accrual of the cause of action, if such corporation does business by agent in the county of the plaintiff's residence."

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It is undisputed that venue is proper in either Mobile County or Baldwin County.

Section 6-3-21.1(a), Ala. Code 1975, states, in pertinent part:

"With respect to civil actions filed in an appropriate venue, any court of general jurisdiction shall, for the convenience of parties and witnesses, or in the interest of justice, transfer any civil action or any claim in any civil action to any court of general jurisdiction in which the action might have been properly filed and the case shall proceed as though originally filed therein."

The supreme court has stated that, "[w]hen venue is appropriate in more than one county, the plaintiff's choice of venue is generally given great deference." Ex parte Perfection Siding, Inc., 882 So. 2d 307, 312 (Ala. 2003). That deference is not without limit, however, and a defendant may prove that the interest of justice requires the action to be adjudicated in a proper venue other than the venue chosen by the plaintiff. See Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d 536, 542 (Ala. 2008) (Stating "'that the Legislature used the word 'shall' instead of the word 'may' in § 6-3-21.1.'" [Ex parte First Family Fin. Servs., Inc.,] 718 So. 2d [658,] 660 [(Ala. 1998)] (emphasis added)."). The supreme court has stated that, generally, "litigation should be



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handled in the forum where the injury occurred," Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006), although that is not the sole consideration. See Ex parte J & W Enters., LLC, 150 So. 3d 190, 196 (Ala. 2014).

Application of the interest-of-justice prong of § 6-3-21.1(a) requires a court to "focus[] on whether the 'nexus' or 'connection' between the plaintiff's action and the original forum is strong enough to warrant burdening the plaintiff's forum with the action." Ex parte First Tennessee Bank Nat'l Ass'n, 994 So. 2d 906, 911 (Ala. 2008). As this court stated in Ex parte West Fraser, Inc., 129 So. 3d 286 (Ala. Civ. App. 2013):

"Under the forum non conveniens statute, a trial court must transfer an action when a party seeking the transfer proves either (1) that the convenience of the parties or witnesses would be significantly aided by transfer, see Ex parte Nichols, 757 So. 2d 374, 378 (Ala. 1999) ("[T]he burden is on the party moving for the transfer to prove that the transferee forum is significantly more convenient than the plaintiff's chosen forum."), or (2) that the "interests of justice" necessitate a transfer. Ex parte National Sec. Ins. Co., 727 So. 2d 788, 790 (Ala. 1998) ("[T]he 'interest of justice' [prong] require[s] the transfer of [an] action from a county with little, if any, connection to the action, to the county with a strong connection to the action.")'.

"Ex parte Veolia Env'tl. SVC, 122 So. 3d 839, 842 (Ala. Civ. App. 2013).

"The "interest of justice" prong of [Ala. Code 1975,] § 6-3-21.1[, ] requires "the transfer of the action from a county with little, if any, connection to the action, to the county with a strong connection to the action." Ex parte National Sec. Ins. Co., 727 So. 2d [788,] 790 [(Ala. 1998)]. Therefore, "in analyzing the interest-of-justice prong of § 6-3-21.1, this Court focuses on whether the 'nexus' or 'connection' between the plaintiff's action and the original forum is strong enough to warrant burdening the plaintiff's forum with the action." Ex parte First Tennessee Bank Nat'l Ass'n, 994 So. 2d 906, 911 (Ala. 2008). Additionally, this Court has held that "litigation should be handled in the forum where the injury occurred." Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006). Further, in examining whether it is in the interest of justice to transfer a case, we consider "the burden of piling court services and resources upon the people of a county that is not affected by the case and ... the interest of the people of a county to have a case that arises in their county tried close to public view in their county." Ex parte Smiths Water & Sewer Auth., 982 So. 2d 484, 490 (Ala. 2007). The petitioners in this case are thus required to demonstrate "'that having the case heard in [Lee] County would more serve the interest of justice'" than having the case heard in [Chambers] County. Ex parte First Tennessee Bank, 994 So. 2d at 909 (quoting Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006)).'

"Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d 536, 540 (Ala. 2008).

"In Indiana Mills, our supreme court granted the defendants' mandamus petition and ordered the trial court to transfer the case from Macon County to Lee County based on the 'interest of justice' prong of § 6-3-21.1. In doing so, the court cited evidence indicating that the accident giving rise to the action occurred in Lee County, that the law-enforcement and emergency personnel who had responded to the accident were based out of Lee County, that the chief deputy coroner who had investigated the decedent's death did his work in Lee County, and that the records and documents of the fire department that had responded to the accident were located in Lee County. Our supreme court noted that the only matters connecting the case to Macon County were the facts that one of the individual defendants resided in Macon County and that the employer of the person killed in the accident conducted business in Macon County. Our supreme court held that the nexus between Lee County and the case was strong, that the nexus between Macon County and the case was weak, and that the trial court had abused its discretion in refusing to transfer the case to Lee County. Indiana Mills, 10 So. 3d at 542.

"Similarly, in Ex parte Autauga Heating & Cooling, LLC, 58 So. 3d 745, 750 (Ala. 2010), our supreme court granted a petition for a writ of mandamus and directed the Montgomery Circuit Court to transfer that case from Montgomery County to Elmore County, pursuant to the doctrine of forum non conveniens. After comparing the strong connection between the civil action and Elmore County, where the events giving rise to the case occurred, and the weak connection between the action and Montgomery County, where the action had been filed, our supreme court stated:

"This Court sees no need to burden Montgomery County, with its weak connection to the case, with an action that arose in Elmore County simply because the individual defendant resides in Montgomery County and the corporate defendant does some business there. We thus conclude that the trial court exceeded its discretion in denying the petitioners' motion for a change of venue.'

"Id. at 750-51.

"In this case, there is a strong connection between Hunt's retaliatory-discharge action and Lee County. As discussed, all the conduct made the basis of the action occurred in Lee County, and Hunt's 'injury' in this case occurred in Lee County. His underlying physical injury -- the subject of his workers' compensation action -- occurred at West Fraser's facility in Lee County. Hunt was treated for that injury in Lee County. The workers' compensation case, which is related to this case, is being heard in the Lee Circuit Court.

"On the other hand, the connection between the retaliatory-discharge action and Chambers County is virtually nonexistent. Hunt lives in Chambers County. The business that West Fraser conducted in Chambers County and that serves as the basis for venue in that county has no material connection with this case. There are no relevant facts in this case involving Chambers County. To echo our supreme court in Autauga Heating & Cooling, we see no need to burden Chambers County with an action that arose in Lee County simply because Hunt lives there and because West Fraser conducted business unrelated to this case there. Accordingly, we conclude that the trial court abused its discretion in denying West Fraser's motion for a change of venue. The Chambers Circuit Court is hereby directed to transfer this action to the Lee Circuit Court."

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129 So. 3d at 292-94; see also Ex parte Interstate Freight USA, Inc., 213 So. 3d 560, 573 (Ala. 2016); Ex parte State Farm Mut. Auto. Ins. Co., 149 So. 3d 1082, 1087 (Ala. 2014); and Ex parte Wachovia Bank, N.A., 77 So. 3d 570, 575 (Ala. 2011).

We find the present case to be analogous to Ex parte West Fraser, Inc., and the cases discussed therein, as quoted above. The connections between Martin's action and Mobile County -- Martin's residency and Wal-Mart's operation of stores in Mobile County that have no relation to Martin's alleged accident -- are weak. In contrast, the connections between Martin's action and Baldwin County, as described above, clearly are strong. Because Wal-Mart offered evidence indicating that Baldwin County has a strong connection to Martin's action and the evidence likewise would support only the conclusion that Mobile County has a weak connection to Martin's action, Mobile County must not be burdened with Martin's action. Accordingly, the trial court exceeded its discretion by denying Wal-Mart's motion to transfer; the interest of justice requires the transfer of Martin's action to Baldwin County.

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Based on the foregoing, we grant the petition for the writ of mandamus and direct the trial court to vacate the January 29, 2020, order and, in the interest of justice, to enter an order transferring the case to the Baldwin Circuit Court.

PETITION GRANTED; WRIT ISSUED.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ., concur.