Rel: June 5, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1190276

Ex parte Sean Michael Allen, One Bonehead Trucking, Inc., and FedEx Ground Package System, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: Dionne Drisker

v.

Sean Michael Allen, One Bonehead Trucking, Inc., and FedEx Ground Package System, Inc.)

(Macon Circuit Court, CV-19-900134)

PARKER, Chief Justice.

Following an automobile accident in Lee County between Dionne Drisker and Sean Michael Allen, Drisker sued Allen, One Bonehead Trucking, Inc. ("Bonehead"), and FedEx Ground Package System, Inc. ("FedEx"), in Macon County, where Drisker resides. The defendants seek a writ of mandamus directing the Macon Circuit Court to transfer this case to the Lee Circuit Court under the interest-of-justice prong of the forum non conveniens statute, § 6-3-21.1, Ala. Code 1975. We grant the petition.

I. Facts

On August 7, 2019, Drisker and Allen were involved in a car accident in Lee County. Drisker sued Allen alleging negligence and wantonness and sued Allen's employer, FedEx, and the owner of the vehicle that Allen was driving, Bonehead, under theories of vicarious liability. Drisker filed the action in Macon County, where she resides. Allen is a resident of Russell County, and FedEx and Bonehead are foreign corporations.

The defendants filed a motion to transfer the action to Lee County on the basis of forum non conveniens. They

supported their motion with the Alabama Uniform Traffic Crash Report, which stated that the Auburn Police Department in Lee County conducted the investigation; that Drisker's vehicle was towed to a facility in Lee County; and that Drisker was employed in Auburn. The defendants also filed an affidavit of Randy Jensen, the only nonparty eyewitness noted on the crash report, stating that he resides in Lee County and that it would be inconvenient for him to travel to Macon County for court proceedings.

Drisker responded to the motion for a change of venue, attaching her own affidavit stating that "[t]ravel to Lee County to pursue this case would be significantly inconvenient for [her]." She stated that she no longer traveled to Lee County for work and that she was dependent on relatives for transportation. She also stated that she was receiving treatment from two doctors who had offices in Montgomery and that one of them also had an office in Tuskegee, in Macon County.

After a hearing, the Macon Circuit Court denied the motion for a change of venue. The defendants petition this Court for mandamus review.

II. Standard of Review

"'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.'" Ex parte Kane, 989 So. 2d 509, 511 (Ala. 2008) (quoting Ex parte National Sec. Ins. Co., 727 So. 2d 788, 789 (Ala. 1998)). A petitioner is entitled to a writ of mandamus upon a showing of "(1) a clear legal right 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) the properly invoked jurisdiction of the court." Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001). In determining whether a petitioner challenging venue has a clear legal right to the order sought, "this Court reviews ... a ruling on venue on the basis of forum non conveniens by asking whether the trial court exceeded its discretion." Kane, 989 So. 2d at 511. The discretion of the trial court has been bounded by the Legislature, which, in enacting the forum non conveniens statute, mandated that the court "transfer a cause when 'the interest of justice' requires a transfer." Ex parte First Family Fin. Servs., Inc., 718 So. 2d 658, 660 (Ala. 1998).

III. Analysis

The doctrine of forum non conveniens is codified at § 6-3-21.1(a), Ala. Code 1975:

> "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. ..."

A party seeking a transfer under this statute has the initial burden of showing either "(1) that the transfer is justified based on the convenience of either the parties or the witnesses, or (2) that the transfer is justified 'in the interest of justice.'" Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d 536, 539 (Ala. 2008).

Here, the defendants primarily argue the interest-of-justice prong. This prong looks at the connection between the case and the forum county and asks whether that connection 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).

An important factor in this strength-of-connection analysis is the location of the injury. "'Although it is not a talisman, the fact that the injury occurred in the proposed

transferee county is often assigned considerable weight in an interest-of-justice analysis,'" Ex parte Southeast Alabama Timber Harvesting, LLC, 94 So. 3d 371, 375 (Ala. 2012) (quoting Ex parte Wachovia Bank, N.A., 77 So. 3d 570, 573-74 (Ala. 2011)), because "litigation should be handled in the forum where the injury occurred," Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006). Specific reasons for focusing on the location of the injury include "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). Here, the accident occurred and Drisker's injuries were sustained in Lee County.

There are other factors as well, including the location of witnesses and evidence. Here, the nonparty eyewitness, the responding police officers, and the towing company are all located in Lee County. This Court has often held that the connection to a county in which a party merely resides is weak in comparison with the connection to a county where the accident occurred and was investigated and where witnesses

work or reside. See, e.g., Ex parte Reed, [Ms. 1180564, September 13, 2019] ___ So. 3d ___ (Ala. 2019); Ex parte Tier 1 Trucking, LLC, 222 So. 3d 1107 (Ala. 2016); Ex parte Autauga Heating & Cooling, LLC, 58 So. 3d 745 (Ala. 2010); Ex parte Kane, 989 So. 2d 509 (Ala. 2008).

For example, in Indiana Mills, supra, an automobile accident occurred in Lee County, but the plaintiff brought suit in Macon County, where one of the defendants resided and another defendant conducted business. This Court observed:

> "The accident made the basis of this case occurred in Lee County, and the accident was investigated by Lee County authorities. We see no need for Macon County, with its weak connection with this case, to be burdened with an action that arose in Lee County simply because one of several defendants resides there."

10 So. 3d at 542. Similarly, in Alabama Timber, an automobile accident occurred in Lee County, but the plaintiff filed the action in Chambers County, where one of the defendants resided. The emergency personnel who responded to the accident worked in Lee County, the only nonparty eyewitness lived and worked in Lee County, and the plaintiff herself, at the time of the accident, lived and worked in Lee County. In the interest of justice, this Court held that the case was required to be transferred to Lee County. 94 So. 3d at 377.

Likewise, here the investigation was conducted by the Auburn Police Department, the vehicle was towed to a Lee County facility, and the only nonparty eyewitness lives and works in Lee County. Furthermore, at the time of the accident, Drisker also worked in Lee County. Although one of Drisker's doctors has an office in Macon County, there is no indication that witnesses, medical records, documents, or other evidence are located there. The only connection Macon County has to this case is that Drisker resides there. Thus, Macon County has a weak connection to the case, and Lee County has a strong one. Therefore, transfer of the case from Macon County to Lee County is in the interest of justice.

Drisker argues that Alabama courts at times "have refused to transfer an action to the forum in which the accident occurred." In support, she cites Ex parte Yocum, 963 So. 2d 600 (Ala. 2007), Ex parte Johnson, 638 So. 2d 772 (Ala. 1994), and Ex parte Siemag, Inc., 53 So. 3d 974 (Ala. Civ. App. 2010).[1] We find those cases distinguishable.

[1]Drisker also cites Ex parte Suzuki Mobile, Inc., 940 So. 2d 1007, 1009 (Ala. 2006), and Ex parte Thomasville Feed & Seed, Inc., 74 So. 3d 940, 943 (Ala. 2011). Those cases addressed improper venue under § 6-3-7, not forum non conveniens under § 6-3-21.1, and are therefore inapposite.

We distinguished Yocum in Alabama Timber, on a basis that bears repeating here:

> "In Yocum, the plaintiff, a resident of Dallas County, filed her action in Jefferson County, the residence or principal place of business of two of the defendants. Several defendants who resided in Dallas County filed a motion to transfer the action to Dallas County on the basis of the doctrine of forum non conveniens. The Jefferson Circuit Court denied the motion to transfer, and this Court denied the defendants' subsequent petition for a writ of mandamus. Unlike this case, Yocum involved a contract dispute in which the claims against the Jefferson County defendants included fraud, suppression, conversion, and interference with business relations. This Court concluded that the Jefferson Circuit Court did not exceed its discretion in denying the motion to transfer '[b]ecause of the nexus between Jefferson County and the alleged participation of the two Jefferson County defendants in the alleged scheme to overcharge Cahaba Timber so as to deflate its profits and hence the amount due [the plaintiff].' Ex parte Yocum, 963 So. 2d at 603. Thus, this Court denied the petition for a writ of mandamus seeking a transfer of the case from Jefferson County not simply because two of the defendants resided or had a principal place of business in Jefferson County, but because Jefferson County had a substantial connection to the matters giving rise to the action."

94 So. 3d at 376. The same distinction is present in this case: Unlike in Yocum, here the forum county's only connection to the case is the fact that the plaintiff resides there.

Likewise, Johnson is distinguishable. The plaintiff in Johnson, an automobile-accident case, filed an action in a

defendant's county of residence. The defendants moved to transfer the case to the county where the accident occurred, which was also the plaintiff's county of residence. The trial court granted the motion to transfer on the basis that the county where the accident occurred was more convenient for the parties and witnesses. This Court granted mandamus relief, explaining:

> "[T]he [order] to transfer was issued on a motion that was not verified and to which the defendants attached no supporting evidentiary material. The burden of proof was on the movants. The unverified allegations presented by the defendants were insufficient to prove that the defendants' inconvenience and expense in defending the action in the venue selected by the plaintiff are so great as to overcome the plaintiff's right to choose the forum."

638 So. 2d at 774. Thus, although Drisker cites Johnson in support of her argument regarding the interest-of-justice prong of § 6-3-21.1, that case addressed only the convenience prong. Furthermore, unlike the defendants in Johnson, the defendants here did not rely on unsupported assertions but rather submitted the crash report and Jensen's affidavit.

Siemag is also inapposite. The suit in Siemag stemmed from the plaintiff's workplace injury -- amputation of both arms -- while he was working in a coal mine. Although the

mine was in Tuscaloosa County, the plaintiff filed his complaint in Walker County, where he resided. The plaintiff's doctor testified that, because of the plaintiff's numerous medical conditions, it would be far more appropriate for him to attend court in Walker County than in Tuscaloosa County. The Court of Civil Appeals noted that both Tuscaloosa and Walker Counties were coal-mining communities. For those reasons, the Court of Civil Appeals held that the interest of justice did not require transferring the case to Tuscaloosa County. Although we have never addressed the validity of the Court of Civil Appeals' reasons in Siemag, neither of them would apply in this case. There was no evidence that requiring Drisker to travel to Lee County would be medically inappropriate. And Drisker's alleged injury occurred in a car accident, not a type of accident particular to a locale.

Next, Drisker argues that venue is proper in Macon County because all the defendants were properly joined under Rule 82(c), Ala. R. Civ. P. However, Drisker conflates the issue of improper venue with the doctrine forum non conveniens. There is no question that venue is proper in Macon County. Rather, the issue is whether, despite proper venue in Macon County, the case must be transferred to Lee County based on

forum non conveniens. Indeed, the forum non conveniens statute applies only to actions filed "in an appropriate venue." § 6-3-21.1(a).

Finally, Drisker argues that, "as the plaintiff, [she] has a right to choose the forum for her litigation, and that choice is deserving of deference." Although Drisker is correct, her choice will not stand if "the defendant demonstrates ... that the action should be transferred to another county under the doctrine of forum non conveniens." Ex parte Jet Pep, Inc., 106 So. 3d 413, 415 (Ala. Civ. App. 2012). Because the defendants have demonstrated that it is in the interest of justice to transfer this case to Lee County, the forum non conveniens statute overrides Drisker's choice.

IV. Conclusion

Because the defendants have demonstrated that the connection between this case and Macon County is weak and that the connection between this case and Lee County is strong, the trial court exceeded its discretion by denying the defendants' motion to transfer the case to Lee County. We therefore direct the trial court to transfer this case to Lee County.

PETITION GRANTED; WRIT ISSUED.

Bolin, Shaw, Wise, Bryan, Mendheim, and Mitchell, JJ., concur.

Sellers and Stewart, JJ., concur in the result.