Rel: June 30, 2022

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1210104

Ex parte Alabama Power Company, B&N Clearing and Environmental, LLC, and Jettison Environmental, LLC

PETITION FOR WRIT OF MANDAMUS

(In re: Rachel Curtis, as administrator of the Estate of Zane Yates Curtis, deceased

v.

B&N Clearing and Environmental, LLC, et al.)

(Montgomery Circuit Court, CV-19-901739)

PER CURIAM.

Alabama Power Company ("Alabama Power"), B&N Clearing and Environmental, LLC ("B&N"), and Jettison Environmental, LLC ("Jettison")(collectively referred to as "the petitioners"), petition this Court for a writ of mandamus directing the Montgomery Circuit Court to vacate its order denying their motions to transfer this action to the Autauga Circuit Court and to enter an order granting the motions. We grant the petition and issue the writ.

Facts and Procedural History

On April 12, 2019, Zane Yates Curtis, a North Carolina resident who was employed by B&N, was killed when a portion of his tractor-trailer made contact with an energized overhead power line in Autauga County. At the time, Zane was dumping mulch at a landfill in Prattville that was operated by JB Waste Connection, LLC ("JB Waste"). His widow, Rachel Curtis, was appointed as the administrator of his estate.

On September 16, 2019, Rachel Curtis, as the administrator of Zane's estate, filed a complaint for worker's compensation benefits against B&N in the Montgomery Circuit Court ("the trial court"). B&N is a Delaware limited-liability company that has its principal address in Houston, Texas. It does not have a physical office in the State of

Alabama, it does not have a principal office in Montgomery County or any other Alabama county, and none of its members are residents of Montgomery County or any other Alabama county.

On October 4, 2019, Rachel filed a first amended complaint in which she stated a worker's compensation claim against B&N and negligence and wantonness claims against Alabama Power, Jettison, and JB Waste. Alabama Power is an Alabama corporation that has its principal place of business in Birmingham. Jettison is an Alabama limited-liability company that has its principal place of business in Autauga County. JB Waste is an Alabama limited-liability company with an office in Montgomery County and does business in Montgomery County and Autauga County.

On October 18, 2019, B&N filed answers to both complaints. In both answers, it specifically included the defense of improper venue. On November 8, 2019, B&N filed a motion to transfer the action to Autauga County. The other defendants also filed motions to transfer the action to Autauga County. On September 3, 2021, Rachel filed a response in opposition to the defendants' motions to transfer.

After the parties had conducted discovery and filed additional motions, the trial court conducted a hearing on the motions to transfer. On October 4, 2021, it denied the motions to transfer the action to Autauga County. This petition followed.

Standard of Review

> "'"'The question of proper venue for an action is determined at the commencement of the action.'" Ex parte Pike Fabrication, Inc., 859 So. 2d 1089, 1091 (Ala. 2002) (quoting Ex parte Pratt, 815 So. 2d 532, 534 (Ala. 2001)). If venue is improper at the outset, then upon motion of the defendant, the court must transfer the case to a court where venue is proper. Ex parte Pike Fabrication, 859 So. 2d at 1091. If the defendant's motion is denied, then the defendant is entitled to seek review of this decision by petitioning for a writ of mandamus. Ex parte Alabama Great Southern R.R., 788 So. 2d 886, 888 (Ala. 2000).
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> > "'"'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). This Court reviews mandamus petitions seeking review of a venue determination by asking whether the trial court exceeded its discretion in granting or denying the motion for a change of venue. Ex parte Scott Bridge Co., 834 So. 2d 79, 81 (Ala. 2002). Also, in considering such a mandamus petition, this Court is limited to those

> facts that were before the trial court. Ex parte Pike Fabrication, 859 So. 2d at 1091.'
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> "Ex parte Perfection Siding, Inc., 882 So. 2d [307,] 309-10 [(Ala. 2003)]."

Ex parte Hampton Ins. Agency, 85 So. 3d 347, 350 (Ala. 2011).

Discussion

The petitioners argue that the trial court exceeded its discretion in refusing to transfer this case to Autauga County. Specifically, they contend that venue was improper in Montgomery County at the time the underlying litigation commenced. The petitioners also assert that venue was not cured by the filing of the first amended complaint that added Alabama Power, Jettison, and JB Waste as defendants. "As this Court has frequently held, proper venue for an action is determined at the commencement of the action. Ex parte Mitchell, 690 So. 2d 356 (Ala. 1997); Ex parte Parker, 413 So. 2d 1105 (Ala. 1982); Ex parte Wilson, 408 So. 2d 94 (Ala. 1981) ...." Ex parte Overstreet, 748 So. 2d 194, 196 (Ala. 1999). "A civil action is commenced by filing a complaint with the court." Rule 3(a), Ala. R. Civ. P. Finally, "[w]hen an action is commenced laying venue in the wrong county, the court, on timely motion of any defendant, shall transfer the action to the court in which the action might have been

properly filed and the case shall proceed as though originally filed therein." Rule 82(d)(1), Ala. R. Civ. P.

The action was commenced on September 16, 2019, when Rachel filed the complaint for worker's compensation benefits against B&N, which is a Delaware limited-liability company, in the trial court. "Under § 25-5-81(a)(1), Ala. Code 1975, a worker's 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.'" Ex parte Mercedes-Benz U.S. Int'l, Inc., 290 So. 3d 402, 404 (Ala. 2019).

> "In Alabama the proper venue for an action against an LLC [i.e., a limited-liability company] and its members is governed by § 6-3-2, Ala. Code 1975, which governs lawsuits against individual defendants. Ex parte Miller, Hamilton, Snider & Odom, LLC, 942 So. 2d 334, 336-37 (Ala. 2006)(holding that the defendant law firm, an LLC, was a partnership for purposes of venue and was governed by § 6-3-2(a)(3)); Ex parte Burr & Forman, LLP, 5 So. 3d 557, 565 (Ala. 2008)('The statute governing venue for individuals, § 6-3-2, Ala. Code 1975, also governs venue for partnerships. For purposes of venue, a partnership is deemed to reside where its partners reside.'). Therefore, venue in the present case is governed by § 6-3-2(a), which provides:
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> > "'(a) In proceedings of a legal nature against individuals:
> >
> > "'(1) All actions for the recovery of land, of the possession thereof or for a

> trespass thereto must be commenced in the county where the land or a material part thereof lies.
>
> "'(2) All actions on contracts, except as may be otherwise provided, must be commenced in the county in which the defendant or one of the defendants resides if such defendant has within the state a permanent residence.
>
> "'(3) All other personal actions, if the defendant or one of the defendants has within the state a permanent residence, may be commenced in the county of such residence or in the county in which the act or omission complained of may have been done or may have occurred.'"

Ex parte WMS, LLC, 170 So. 3d 645, 650 (Ala. 2014) (emphasis added).

B&N does not have a physical office in the State of Alabama, it does not have a principal office in Montgomery County or in any other Alabama county, and none of its members are residents of Montgomery County or any other Alabama county. Further, the accident occurred in Autauga County, not Montgomery County. Therefore, pursuant to § 6-3-2(a)(3), Ala. Code 1975, venue at the time of commencement of this action

would have been proper in Autauga County and not in Montgomery County.

Moreover, the amendment of the complaint to add Alabama Power, Jettison, and JB Waste as defendants was irrelevant to the determination of proper venue for the case.

"It is ... well established that

> "'[l]ater amendments to the complaint to add parties or claims, with the exception of substituting the true name of a fictitiously named party, are not considered in determining whether venue is improper at the commencement of the action. See Rule 15(c)(4)[, Ala. R. Civ. P.] ("relation back is permitted by principles applicable to fictitious party practice pursuant to Rule 9(h)[, Ala. R. Civ. P.]").'

"Ex parte Lugo de Vega, 65 So. 3d 886, 892 (Ala. 2010)."

Ex parte Hampton Ins. Agency, 85 So. 3d at 352. See also Ex parte Green Tree Fin. Corp., 89 So. 3d 84, 89 (Ala. 2011)("recognizing that proper venue is determined at the commencement of an action, Ex parte Chapman Nursing Home, Inc., 903 So. 2d 813, 815-16 (Ala. 2004), and not after additional parties have been joined to possibly repair a mislaid venue").

In this case, Rachel added Alabama Power, Jettison, and JB Waste as defendants when she filed her first amended complaint. However, she did not substitute those defendants for defendants who had been fictitiously named in the original complaint. Therefore, we do not consider the amended complaint in determining whether venue was proper when the action was commenced.[1]

For the reasons set forth herein, when the action was commenced, venue was not proper in Montgomery County.

> "'Once venue has been shown to be improper, transfer of the action is mandatory.' Ex parte Wright Bros. Constr. Co., 88 So. 3d 817, 821 (Ala. 2012)(citing Ex parte Parker, 413 So. 2d 1105, 1106 (Ala. 1982)). See also Ex parte Perfection Siding, Inc., 882 So. 2d 307, 309 (Ala. 2003)('If venue is improper at the outset, then upon motion of the defendant, the court must transfer the case to a court where venue is proper.' (citing Ex parte Pike Fabrication[, Inc.], 859 So. 2d [1089,] 1091 [(Ala. 2002)]))."

[1]Although Rachel attempts to circumvent this precedent by arguing that she amended her complaint before B&N answered the complaint and challenged venue, she has not cited any caselaw that actually contradicts the specific holdings in Ex parte Lugo de Vega, 65 So. 3d 886 (Ala. 2010), and its progeny that are cited above. Therefore, her argument in this regard is without merit.

Ex parte Liberty Nat'l Life Ins. Co., 297 So. 3d 391, 395 (Ala. 2019). See also Rule 82(d)(1), Ala. R. Civ. P. ("When an action is commenced laying venue in the wrong county, the court, on timely motion of any defendant, shall transfer the action to the court in which the action might have been properly filed ...."); Ex parte Wright Bros. Constr. Co., 88 So. 3d 817, 821 (Ala. 2012) ("Once venue has been shown to be improper, transfer of the action is mandatory.").

Conclusion

Because venue in Montgomery County was not proper as to B&N when the action was commenced, the trial court exceeded its discretion in denying the motions to transfer the case to Autauga County, where venue would have been proper. See Ex parte Perfection Siding, 882 So. 2d at 309-10. Accordingly, we grant the petitioners' petition for the writ of mandamus and direct the trial court to vacate its order denying their motions to transfer the action to the Autauga Circuit Court and to enter an order transferring the case from the Montgomery Circuit Court to the Autauga Circuit Court.

PETITION GRANTED; WRIT ISSUED.

Shaw, J., concurs in the result, with opinion, which Bolin, J., joins.

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

Mitchell, J., concurs in the result, with opinion, which Parker, C.J., and Wise, J., join.

SHAW, Justice (concurring in the result).

I concur in the result. I believe that this action should be transferred from the Montgomery Circuit Court to the Autauga Circuit Court under the doctrine of forum non conveniens, Ala. Code 1975, § 6-3-21.1, instead of on the basis that venue in Montgomery County is improper.

In its motion to transfer venue, one of the petitioners and a defendant below, B&N Clearing and Environmental, LLC ("B&N"), asserted that it was a "foreign" limited-liability company (hereinafter, I refer to limited-liability companies as "LLCs") that did not have "a principal office" in any county in Alabama and that none of its members resided in Alabama. "In Alabama the proper venue for an action against an LLC and its members is governed by § 6-3-2, Ala. Code 1975, which governs lawsuits against individual defendants." Ex parte WMS, LLC, 170 So. 3d 645, 650 (Ala. 2014). See also Ex parte Miller, Hamilton, Snider & Odom, LLC, 942 So. 2d 334, 336-37 (Ala. 2006) (discussing why Ala. Code 1975, § 6-3-2, as opposed to other Code sections addressing venue, including Ala. Code 1975, § 6-3-7, applied in an action against an LLC).

However, § 6-3-2(a)(3), which is applicable to this type of action, does not appear to apply to a nonresident defendant. That subsection provides: "All other personal actions, if the defendant or one of the defendants has within the state a permanent residence, may be commenced in the county of such residence or in the county in which the act or omission complained of may have been done or may have occurred." The "personal actions" over which that subsection governs venue are those involving a defendant with a residence in the state. "If" means "in the event that." Merriam-Webster's Collegiate Dictionary 617 (11th ed. 2020). Thus, the subsection can be read as follows: "All other personal actions, [in the event that] the defendant … has within the state a permanent residence, may be commenced in the county of such residence or in the county in which the act or omission … occurred." The subsection does not state that all personal actions may be brought in the county where the act or omission underlying the action occurred. Instead, the language following the "if" defines the personal actions to which the subsection applies -- when a defendant has a permanent residence in the state -- and provides as to those actions where venue is proper.

Caselaw further holds that § 6-3-2 "'governs venue of actions

against individuals, but … does not provide for venue of actions against nonresident individuals.' " Ex parte Del Mercado, 723 So. 2d 19, 20 (Ala. 1998) (quoting Ex parte Jones, 681 So. 2d 1062, 1063 (Ala. 1996) (plurality opinion)). See also Ex parte Cummings, Gazaway & Scott, Inc., 386 So. 2d 732, 735 (Ala. 1980) (stating that "actions at law against nonresident defendants ... were not covered by the general venue statute regarding actions at law against individuals, Code 1940, Title 7, § 54 [the predecessor to § 6-3-2(a)]"). Instead, "it is well established that an action against a nonresident individual can be brought in any county of the State." Ex parte McCord, 896 So. 2d 493, 494 (Ala. 2004). See also Ex parte Green, 108 So. 3d 1010, 1012-13 (Ala. 2012); Del Mercado, 723 So. 2d at 20-21; and Jones, 681 So. 2d at 1063.[2]

[2]The decision in Ex parte Lashley, 596 So. 2d 890, 892 (Ala. 1992), states that "a nonresident defendant in a transitory action could be sued in any county of the state where such defendant is personally served or personally appeared." (Emphasis added.) The plurality opinion in Jones, supra, describes this reading as "unduly limited," 681 So. 2d at 1063 n.1, and the broader reading recited in Jones -- that suit may be brought against nonresident defendants in any county in the state -- has been applied in subsequent decisions. See Ex parte Green, Ex parte McCord, and Ex parte Del Mercado, supra. Additionally, Rule 82(b)(2), Ala. R. Civ. P., has no application in this case. See Ex parte Lashley, 596 So. 2d at 892 ("Rule 82 applies only when there is an inconsistency between the legal and equitable provisions of the venue statute.").

Although, according to Ex parte WMS and Ex parte Miller, LLCs are apparently treated as "individual" defendants under § 6-3-2, given the language of § 6-3-2(a)(3) and the above caselaw, it has not been demonstrated that that Code section would apply to nonresident defendants like B&N. Ex parte Wiginton, 743 So. 2d 1071, 1072-73 (Ala. 1999) (noting that a petitioner for a writ of mandamus must show a clear legal right to the order sought and that this Court "will sustain the decision of the trial court if it is right for any reason, even one not presented by a party or considered or cited by the trial judge"). At best, B&N falls in a "gap" not addressed by our Code sections addressing venue -- § 6-3-7(a) does not apply to LLCs, and § 6-3-2(a)(3) would not appear to apply to nonresident LLCs. Thus, absent a statutory provision providing otherwise, the general rule stated above -- that an action can be brought against a nonresident defendant in any county of the state -- would appear to apply in this case, making Montgomery County a proper venue. Thus, in my opinion, it has not been established that Montgomery County is an improper venue for an action against B&N, and I respectfully disagree that the petition can be granted on that basis.

Nevertheless, the petitioners contend that this action should be

transferred on the basis of forum non conveniens. I agree.

> "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."

§ 6-3-21.1(a). Specifically, it is argued that a transfer is warranted under the "interest-of-justice" prong of that Code section.

> "'[I]n 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). The 'interest of justice' requires 'the transfer of an action from a county with little, if any, connection to the action, to a county with a strong connection to the action.' Ex parte National Sec. Ins. Co., 727 So. 2d [788,] 790 [(Ala. 1998)].
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> "Two key factors in determining whether the interest-of-justice prong requires a transfer are '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). This Court also has held that 'litigation should be handled in the forum where the injury occurred.' Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006). This Court has stated that, '[a]lthough 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 Wachovia Bank, N.A., 77 So. 3d 570, 573-74 (Ala. 2011)."

Ex parte Reed, 295 So. 3d 38, 41 (Ala. 2019).

In Reed, this Court held that the case at issue in that decision had a strong connection to Marshall County and weak connection to Jefferson County based on the following:

> "The accident occurred in Marshall County, the police personnel and emergency personnel who responded to the accident were from Marshall County, and one of the eyewitnesses to the accident is a resident of Marshall County. On the other hand, Jefferson County's only connection to the action is that the defendant resides there. Given that nothing material to the action transpired in Jefferson County, we consider Jefferson County's connection to the action to be weak."

295 So. 3d at 43.

The claims of tortious conduct by the numerous defendants in the instant case relate to activities in Autauga County. Emergency personnel from that county responded to the accident, and an eyewitness resides there. Autauga County, the scene of the accident, has a "strong connection" to the action.

The only connection to Montgomery County appears to be that one of the many defendants in this case resides there. That defendant, the

respondent alleges, has a "history of bad acts reflecting a disregard for health and safety," but no support for this assertion is cited, and it was not discussed in the respondent's opposition to the motions to transfer filed below. Based on the materials before this Court, I believe Montgomery County's connection to the action is weak and that the trial court exceeded its discretion in denying the motions to transfer the case from that county to Autauga County, which has a strong connection. Because the main opinion orders transfer to Autauga County, albeit on a different basis, I concur in the result.

Bolin, J., concurs.

MITCHELL, Justice (concurring in the result).

I agree with the main opinion that the Montgomery Circuit Court should have transferred this action to the Autauga Circuit Court. The main opinion reaches that result by treating B&N Clearing and Environmental, LLC, as an individual and deciding this case under § 6-3-2, Ala. Code 1975, the statute governing venue in actions against individual defendants. In my view, that is not the correct analytical path. Rather, as the petitioners urge, I believe we must decide this case under § 6-3-7, Ala. Code 1975, the venue statute applying to corporate defendants. Indeed, our Court has indicated in our more recent cases that § 6-3-7 applies to limited-liability companies ("LLCs"). See Ex parte Road Gear Truck Equip., LLC, 300 So. 3d 1101, 1107-08 (Ala. 2019); Ex parte Engineering Design Grp., LLC, 200 So. 3d 634, 638 (Ala. 2016); Ex parte J & W Enters., LLC, 150 So. 3d 190, 193 (Ala. 2014); see also Ex parte Blair Logistics, LLC, 157 So. 3d 951, 954 (Ala. Civ. App. 2014). Under this approach, the result is straightforward: § 6-3-7(a)(1) makes venue proper in Autauga County, where "a substantial part of the events

or omissions giving rise to the claim occurred," and (based on the facts alleged) there is no proper venue under any other provision of § 6-3-7.[3]

None of Alabama's venue statutes explicitly address LLCs. The three general venue statutes that might apply are those governing actions against "individuals," § 6-3-2; against "unincorporated organization[s] or association[s]," § 6-3-6, Ala. Code 1975; and against "corporations," § 6-3-7.[4] The Legislature has not expressly defined "individual," "unincorporated organization or association," or "corporation" for venue purposes. Thus, in interpreting the venue statutes, we should presumptively give each term its ordinary legal

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[3]Because venue is proper in only Autauga County under § 6-3-7, transferring the action to Autauga County under the doctrine of forum non conveniens is not an option; that doctrine "'is applicable only when the action is commenced in a county in which venue is appropriate.'" Ex parte Volvo Trucks North America, Inc., 954 So. 2d 583, 585 (Ala. 2006) (citation omitted). See also § 6-3-21.1(a), Ala. Code 1975 (permitting a civil action "filed in an appropriate venue" to be transferred to another appropriate venue "for the convenience of parties and witnesses, or in the interest of justice").

[4]I refer to these venue statutes as "general" to distinguish them from those based (in whole or part) on specific subject matters or business activities, and not simply the nature of the defendant. See, e.g., § 6-3-3, Ala. Code 1975 (governing actions concerning easements and rights-of-way); § 6-3-4, Ala. Code 1975 (governing actions against unincorporated organizations or associations that issue insurance policies).

meaning at the time the relevant statute was adopted. See Ex parte Tutt Real Estate, LLC, 334 So. 3d 1249, 1254 & n.6 (Ala. 2021) (Mitchell, J., concurring specially).

Of the three options, the individual venue statute appears the least likely to cover LLCs. An LLC plainly is not an individual; rather, it "is a separate legal entity" that can sue, be sued, and have private-law rights in its own name. § 10A-5A-1.04(a), Ala. Code 1975. Further, as the label "limited-liability company" reflects, the members of an LLC (unlike general partners) are not jointly and severally liable for the obligations of the entity. See § 10A-5A-3.01, Ala. Code 1975. A suit against an LLC, then, is not a suit against its individual members either in form or in substance, making the notion that § 6-3-2 should govern the suit implausible.[5] The case against § 6-3-2 is further bolstered by the structural observation that, together, §§ 6-3-6 and 6-3-7 appear designed to cover the whole universe of private business entities. Either such an

[5]It also makes little practical sense. Allowing an LLC to be sued anywhere one of its members resides is a recipe for inconvenience. An LLC may easily have members who live far from where it does business or from any other logical venue for a suit against the entity.

entity is a corporation, in which case § 6-3-7 applies, or it's an unincorporated organization or association, in which case § 6-3-6 applies.[6]

As between those options, it may be tempting at first to think an LLC is an unincorporated organization or association, not a corporation. After all, it doesn't have "Inc." at the end of its name. To the modern-day practicing lawyer, the terms "LLC" and "corporation" refer to separate sorts of formalized business entities that are governed by separate (though often similar) sets of legal rules.

But it's critical "to give words in statutes the meaning they had when they were adopted." Tutt Real Estate, 334 So. 3d at 1253 (Mitchell, J., concurring specially). And, as it turns out, the basic division of our

[6]This Court's original reasoning for applying § 6-3-2 to LLCs was that (1) LLCs should be treated the same as partnerships and (2) § 6-3-2 covers partnerships. Ex parte Miller, Hamilton, Snider & Odom, LLC, 942 So. 2d 334, 336-37 (2006). Even if the second premise is right (but see note 7, infra), the first isn't convincing. Miller treated partnerships and LLCs the same based on an earlier version of what is now § 10A-5A-1.07(a), Ala. Code 1975, which provides that "[t]he terms 'partnership' and 'limited partnership,' when used in [most Alabama statutes], include a limited liability company ..., unless the context requires otherwise." See 942 So. 2d at 336. But the venue statutes don't use the term "partnership," so that provision is facially inapplicable.

general venue statutes goes way back. The 1896 Code included general venue statutes for actions against individual defendants, see §§ 4205 and 4206, Ala. Code 1896, and for actions against "[a] foreign or domestic corporation," § 4207, Ala. Code 1896. The 1907 Code kept the same basic scheme. See §§ 6110 through 6112, Ala. Code 1907. The 1923 Code did too, see §§ 10467, 10470, and 10471, Ala. Code 1923 -- with the exception of a new section, codified outside the venue chapter, providing that a suit against an unincorporated organization or association "may be maintained in any county where [it] does business or has in existence a branch or local organization," § 5726, Ala. Code 1923. The 1940 Code moved this provision to be near the individual and corporate venue statutes, producing the immediate ancestors of today's §§ 6-3-2, 6-3-6, and 6-3-7. See §§ 54, 57, and 60, Ala. Code 1940.

Apart from their inclusion in the 1975 Code, the unincorporated-organization venue statute has undergone no change since 1940 and the corporate venue statute has been amended only once, in 1999. That amendment changed the substantive venue provisions applicable to corporations, but there is no reason to think it affected which entities

count as corporations for venue purposes. See Act No. 1999-249, Ala. Acts 1999.

The upshot of this history is that the meaning of "corporation" in § 6-3-7 -- and, in particular, the conceptual dividing line between a "corporation" and an "unincorporated organization or association" -- must be determined by looking to an earlier period of legal usage. For most of our venue statutes' history, the primary definition of "corporation" in successive editions of Black's Law Dictionary was as follows:

> "An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals. Such entity subsists as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law."

Black's Law Dictionary 307 (5th ed. 1979); Black's Law Dictionary 409 (4th rev. ed. 1968); Black's Law Dictionary 438 (3d ed. 1933); Henry Campbell Black, A Law Dictionary 273 (2d ed. 1910); see also Henry

Campbell Black, A Dictionary of Law 278-79 (1st ed. 1891) (providing similar definitions).

To cut to the essence, the word "corporation" traditionally encompassed any artificial separate legal personality, capable of continuous existence, that is created and invested with its powers by positive law. If our corporate venue statute carries forward that traditional definition -- and it almost certainly does -- then it seems clear that LLCs should count. Like a "standard" modern corporation (that is, the "Inc." kind), an LLC is a separate legal entity that is created by filing a formal document with the government and whose existence and powers are granted by positive law. See §§ 10A-5A-1.04 and -2.01, Ala. Code 1975. Likewise, an LLC's capacity for continuous existence is not significantly different from that of a "standard" business corporation. Although an LLC does have certain partnership-like qualities -- which can be summarized as "informality of organization and operation, internal governance by contract, direct participation by members in the company, and no taxation at the entity level," 54 C.J.S. Limited Liability Companies § 3 (2020) -- I don't see why any of these attributes should disqualify LLCs as "corporations" under the traditional definition.

In short, our recent cases have been correct to apply § 6-3-7 to actions against LLCs, and I believe we should now repudiate our decisions applying § 6-3-2. I encourage parties to future venue disputes in actions against LLCs (and perhaps other entities) to bring these arguments to us and ask our Court to overrule the § 6-3-2 line of cases where appropriate.

Alternatively, the Legislature may wish to consider updating the venue statutes to provide clear guidance regarding the full range of current-day business entities. The fact is that our venue statutes simply haven't kept pace with modern developments in the forms of business organizations, and it's not surprising that this mismatch has led to confusion. Although this Court is capable of correcting its errors case by case, only the Legislature can resolve these issues once and for all (and preempt future confusion) by giving our state an appropriately thorough and up-to-date venue code. With these observations, I concur in the result.

Parker, C.J., and Wise, J., concur.