

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

R.J. REYNOLDS TOBACCO
COMPANY,

Appellant,

v.

Case No. 5D20-1977

TAMMY L. FROST, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF BILLY ARANT,

Appellees.

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Opinion filed September 10, 2021

Nonfinal Appeal from the Circuit Court
for Volusia County,
Leah Case, Judge.

Marie A. Borland, and Troy A. Fuhrman, of
Hill, Ward & Henderson, Tampa, and Brian
C. Lea, and Stephanie Parker, of Jones
Day, Atlanta, GA for Appellant.

Shea T. Moxon, of Brannock Humphries &
Berman, Tampa, and Rod Smith, and
Dawn Vallejos-Nichols, of Avera & Smith,
LLP, Gainesville, for Appellees.

HARRIS, J.

Appellant, R.J. Reynolds Tobacco Company, appeals the trial court's order transferring this Engle¹-progeny case from Putnam County to Alachua County. Appellant argues that because the decedent first suffered injury in Putnam County, the case could not have initially been brought in Alachua County and therefore, the court's transfer to Alachua County was error. We agree and reverse.

In 2007, Appellee, Tammy L. Frost, as Personal Representative of the Estate of Billy Arant, filed a complaint in the Seventh Judicial Circuit in Putnam County against Appellant and other cigarette manufacturers for the wrongful death of her father.² The decedent continuously resided in Putnam County from 1972 until his death in 1995. He began smoking cigarettes in his late adolescence and smoked at least one pack of cigarettes per day until April 1995. In January 1995, he experienced a feeling of congestion in his chest and subsequently coughed up blood. One month later, he visited his primary physician, also located in Putnam County, who prescribed him antibiotics. His symptoms worsened, and he was admitted to the Putnam

¹ Engle v. Liggett Grp., Inc., 945 So. 2d 1246 (Fla. 2006).

² Appellee originally filed this lawsuit in Putnam County. However, a few months later the case was transferred to Volusia County pursuant to an administrative order entered by the Chief Judge of the Seventh Circuit which assigned all tobacco related cases to the same division.

Emergency Room where a chest x-ray showed fullness in his lung, but examination notes revealed that it was unlikely to be lung cancer.

After further evaluation, in April 1995, a pulmonary specialist located in Alachua County diagnosed the decedent with lung cancer. The decedent was referred to a doctor in Alachua County for further treatment but passed away in September 1995, in Putnam County.

In 2020, with this case on a trial docket in the Seventh Circuit, Appellee filed a motion to transfer venue to Alachua County. The motion to transfer venue alleged that all the decedent's medical care and treatment for his tobacco related illness was provided by physicians located in Alachua County and that several potential witnesses either live or work in Alachua County.

In support of her motion, Appellee submitted affidavits alleging that she and her witnesses and decedent's treating physicians all worked or resided closer to Alachua County than to Volusia County. As to whether Alachua County was an appropriate venue, Appellee argued simply that the decedent was diagnosed and received his lung cancer treatment in Gainesville. Because the actual lung cancer diagnosis was the last event necessary to make Appellant liable, Appellee argued that venue is appropriate where that event occurred. We disagree.

“For the convenience of the parties or witnesses or in the interest of justice, any court of record may transfer any civil action *to any other court of record in which it might have been brought.*” § 47.122, Fla. Stat. (2020) (emphasis added). Before making a finding regarding convenience of parties or witnesses, the court must first determine whether the case could have originally been filed in the requested forum.

In this case, Appellant argues that venue would have been appropriate in Alachua County because her claims accrued when the decedent received his initial lung cancer diagnosis. The trial court agreed with this reasoning and found that this case could have been brought in Alachua County solely because that is where the decedent’s cancer was first diagnosed. This was error.

For purposes of venue, a tort accrues in the county where the plaintiff first suffers injury. Hart v. Com. Realty Grp., Inc., 881 So. 2d 35 (Fla. 4th DCA 2004). Our Court has previously addressed “the well-established rule” that in negligence suits, a cause of action accrues where the plaintiff suffers his injuries. Pearson v. Wallace Aviation, Inc., 400 So. 2d 50 (Fla. 5th DCA 1981) (citing Hopkins v. Lockheed Aircraft Corp., 201 So. 2d 743 (Fla. 1967)); Majestic II, Enters., Inc. v. Butler, 372 So. 2d 548 (Fla. 3d DCA 1979); Kilpatrick v. Boynton, 374 So. 2d 557 (Fla. 4th DCA 1979); Kelly-Springfield

Tire Co. v. Moore, 355 So. 2d 451 (Fla. 3d DCA 1978); Perry Bldg. Sys., Inc. v. Hayes & Bates, Inc., 361 So. 2d 443 (Fla. 1st DCA 1978); Walt Disney World Co. v. Leff, 323 So. 2d 602 (Fla. 4th DCA 1975). Similarly, in Gaboury v. Flagler Hospital, Inc., 316 So. 2d 642 (Fla. 4th DCA 1975), the court held that a wrongful death action accrues where the negligence first took effect on the body. See also Residential Sav. Mortg., Inc. v. Keesling, 73 So. 3d 280 (Fla. 2d DCA 2011) (holding that for venue purposes, tort claim accrues in the county where plaintiff first suffers injury).

In this case, it is undisputed that the decedent first suffered early smoking-related injuries in Putnam County. Although at the time, he was unaware that it was related to his cigarette smoking, he most certainly did not “first suffer injuries” in Alachua County. He was only diagnosed and later treated there. By the time the decedent was ultimately diagnosed, he had long been suffering symptoms of lung cancer. Accordingly, we reverse the trial court’s order transferring venue to Alachua County because Alachua is not a venue where this case could have initially been brought.

REVERSED.

LAMBERT, C.J. and COHEN, J., concur.