Third District Court of Appeal

State of Florida

Opinion filed October 30, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1397
Lower Tribunal No. 18-29307

Port Royal Property, LLC,
a Florida limited liability company,
Appellant,

vs.

Woodson Electric Solutions, Inc., a Florida corporation;
Robert J. Smallwood, an individual; and
Richard L. Hanson, an individual,
Appellees.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Jose M. Rodriguez, Judge.

Coffey Burlington, P.L., and Kevin C. Kaplan and Jeffrey B. Crockett, for appellant.

Holmes Fraser, PA, and Ian T. Holmes, David P. Fraser, and Daniel P. Fraser (Naples), for appellees.

Before SALTER, LINDSEY, and HENDON, JJ.

HENDON, J.

Port Royal Property, LLC ("Plaintiff"), appeals from a non-final order granting the defendants', Woodson Electric Solutions, Inc., et al. (collectively, "Defendants"), amended motion to transfer venue from Miami-Dade County to Collier County pursuant to section 47.122, Florida Statutes (2019) ("amended motion to transfer venue"). For the reasons that follow, we reverse the order under review and remand for further proceedings.

I. Facts and Procedural History

This is the Plaintiff's and the Defendants' second time before this Court. See Woodson Elec. Sols., Inc. v. Port Royal Prop., LLC, 271 So. 3d 111 (Fla. 3d DCA 2019) ("Woodson Electric I"). As stated in Woodson Electric I, the Plaintiff filed suit against the Defendants in Miami-Dade County, stemming from the design, installation, and implementation of audiovisual and internet systems in a house owned by the Plaintiff in Naples, Collier County, Florida. Id. at 113. The Defendants moved to dismiss for improper venue and/or to transfer the action from Miami-Dade County to Collier County under section 47.011, Florida Statutes (2018)[1] ("motion to dismiss"). Id. In response to the motion to dismiss, the

[1] Section 47.011 provides as follows:

> **Where actions may be begun.**—Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located. This section shall not apply to actions against nonresidents.

Plaintiff filed an affidavit, which provides that the Defendants made misrepresentations that induced the Plaintiff to enter into a contract executed by the Plaintiff in Miami. Id. Following a hearing, the trial court entered a non-final order denying the Defendants' motion to dismiss, and the Defendants filed the non-final appeal in Woodson Electric I. Id. Based on this Court's determination that the causes of action based on the Defendants' alleged misrepresentations accrued in Miami, we affirmed the trial court's non-final order denying the Defendants' motion to dismiss. Id. at 114-15.

Following this Court's affirmance, the Defendants filed the amended motion to transfer venue from Miami-Dade County to Collier County pursuant to section 47.122, which provides: "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." In their amended motion to transfer venue, the Defendants argued that transferring the action from Miami-Dade County to Collier County was warranted pursuant "to the required analysis under Kinney System, Inc. v. Continental Insurance Co., 674 So. 2d 86 (Fla. 1996)." In making this argument, the Defendants relied on this Court's opinion in Westchester Fire Insurance Co. v. Fireman's Fund Insurance Co., 673 So. 2d 958 (Fla. 3d DCA 1996), which was issued a few months after the Florida Supreme Court issued Kinney.

At the hearing on the amended motion to transfer venue, the Defendants argued that the trial court was required to conduct the following four-part analysis set forth in Kinney:

> [1] As a prerequisite, the court must establish whether an adequate alternative forum exists which possesses jurisdiction over the whole case. [2] Next, the trial judge must consider all relevant factors of *private* interest, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice. [3] If the trial judge finds this balance of private interests in equipoise or near equipoise, he must then determine whether or not factors of *public* interest tip the balance in favor of a trial in [another] forum. [4] If he decides that the balance favors such a . . . forum, the trial judge must finally ensure that plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice.

Id. at 90 (quoting Pain v. United Techs. Corp., 637 F.2d 775, 784-85 (D.C. Cir. 1980)); see also Fla. R. Civ. P. 1.061(a) (codifying the four-step analysis set forth in Kinney). In response, the Plaintiff argued that the Kinney factors are not applicable because Kinney relates to the transfer of a case filed in Florida to a jurisdiction outside of Florida based on forum non conveniens, not a transfer from one Florida county to another Florida county pursuant to section 47.122.

The trial court entered a non-final order granting the Defendants' amended motion to transfer venue. In doing so, the trial court addressed the applicable standard as follows:

> Pursuant to Fla. Stat. § 47.122, this Court can transfer any civil action to any other court of record in which it might have been brought for the convenience of the parties or witnesses or in the interest of justice.

> The Court is unpersuaded by Plaintiff's contention that Kinney does not apply to intrastate forum cases. This is because in Westchester Fire Ins. Co. v. Fireman's Fund Ins. Co., 673 So. 2d 958 (Fla. 3rd DCA 1996), relied upon by Defendants, the Third District affirmed the Dade County Circuit Court's transfer of a case from Dade County, Florida to Hillsborough County, Florida applying Kinney.
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> Thus, this Court must conduct a "meaningful analysis" addressing each of the following factors set forth in Kinney System, Inc. v. Continental Insurance Co., 674 So. 2d 86 (Fla. 1996): [Sets forth the four-part analysis in Kinney]. Carlos Luis Vasallo Tome, et al., v. Victor Herrera-Zenil, etc., [273 So. 3d 140 (Fla. 3d DCA 2019)] (when ruling on an issue of *forum non conveniens* the trial court must set forth a "meaningful analysis" addressing each of the Kinney factors); Westchester Fire Insurance Co. v. Fireman's Fund Insurance Co., 673 So. 2d 958 (Fla. 3rd DCA 1996).

After addressing each of the four Kinney factors, the trial court granted the Defendants' amended motion to transfer venue. The Plaintiff's non-final appeal followed.

II. Analysis

The Plaintiff contends that the trial court erred by applying the four-part analysis set forth in Kinney when considering the Defendants' amended motion to transfer venue from Miami-Dade County to Collier County pursuant to section 47.122. We agree.

Generally, a trial court's ruling on a motion to transfer venue under section 47.122 is reviewed for an abuse of discretion. Gonzalez v. Hilton Palm Beach Airport Hotel, 248 So. 3d 1236, 1237 (Fla. 3d DCA 2018); Marques v. Garcia, 245 So. 3d 900, 904 (Fla. 3d DCA 2018). However, as the Plaintiff asserts on appeal

that the trial court applied the incorrect standard when ruling on the Defendants' amended motion to transfer venue, we apply a de novo standard of review. See Barnhill v. State, 140 So. 3d 1055, 1060-61 (Fla. 2d DCA 2014) ("Ordinarily, we would review the trial court's discretionary decision regarding whether to impose a downward departure for abuse of discretion. But because the issue here revolves around the trial court's applying an incorrect standard in determining whether to exercise its discretion, we apply a de novo standard of review.") (citations omitted).

In finding that it was required to consider the four-part analysis set forth in Kinney when addressing the Defendants' amended motion to transfer venue filed pursuant to section 47.122, the trial court relied on two decisions from this Court—Westchester Fire and Tome. The trial court's reliance on these cases was misplaced.

In Kinney, the Florida Supreme Court addressed "the common law doctrine of *forum non conveniens* and adopt[ed] a four-part analysis for deciding when venue would be more conveniently sought **in a jurisdiction other than Florida**." Brown v. Williamson Tobacco Corp. v. Young, 690 So. 2d 1377, 1379 n.3 (Fla. 1st DCA 1997) (emphasis added); see also E.I. DuPont De Nemours & Co. v. Fuzzell, 681 So. 2d 1195, 1197 (Fla. 2d DCA 1996). In Westchester Fire, this Court stated as follows:

> . . . [T]his Court now adopts both the literal and philosophical ethos of the Supreme Court wherein Florida should not be the forum for cases that, in reality, have no connection with Florida.
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> In this context, we extend the philosophical train of thought to its next and logical plane: Our district should not be a forum for cases that have little or no connection to Dade and Monroe counties. Therefore, it is the stated policy of our Court to literally apply the doctrine of forum non-conveniens where there is little else other than the plaintiff's choice of venue and where witnesses reside in other more suitable venues.
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> It is "in the interest of justice," § 47.122, Fla. Stat. (1995), that a Dade County jury, which is both a scarce and precious resource, should not be burdened with determining a case that has no connection with Dade County. Accordingly, in the spirit of Kinney, we find that the trial judge was correct in transferring this case to Hillsborough County.

Westchester Fire, 673 So. 2d at 959. Nothing in Kinney or in this Court's opinion in Westchester Fire provides that trial courts are required to apply the four-part analysis set in forth in Kinney when considering a motion to transfer venue from one Florida county to another Florida county filed under section 47.122. In Weschester Fire, this Court affirmed the transfer of venue from Dade County to Hillsborough County citing to section 47.122 of the Florida Statutes, and merely expressing that the transfer was "in the spirit of Kinney."

In American Suzuki Motor Corp. v. Friese, 956 So. 2d 495 (Fla. 4th DCA 2007), the Fourth District Court of Appeal recognized that the Second District Court of Appeal in Fuzzell and the First District Court of Appeal in Brown have refused to apply Kinney to review the transfer of a case from one Florida county to another Florida county based on section 47.122. Am. Suzuki, 956 So. 2d at 496-

97. The Fourth District "agree[d] with the first and second districts that Kinney and rule 1.061 do not apply to intrastate transfers." Id. at 497. In doing so, the Fourth District stated as follows:

> We are not certifying direct conflict with Westchester, because the Westchester panel did correctly cite section 47.122, Florida Statutes, which applies to intrastate transfers, and did not, at least on the face of the opinion, go through the Kinney/Rule 1.061 analysis. We interpret Westchester as merely expressing, as dicta, the thought that the transfer of the case from Dade County to Hillsborough County was "in the spirit of Kinney." Westchester, 673 So. 2d at 959.

Am. Suzuki, 956 So. 2d at 497 n.1. We agree with the Fourth District's characterization of this Court's language in Westchester Fire.

The trial court's reliance on Tome is also misplaced as the motion to dismiss on *forum non conveniens* grounds was filed pursuant to rule 1.061(a), not section 47.122. Rule 1.061(a) does not apply to the transfer of an action from one Florida county to another Florida county as it provides that "[a]n action may be dismissed on the ground that a satisfactory remedy may be more conveniently sought in a jurisdiction **other than Florida**" when applying the four-part analysis. (emphasis added); see Utilicore Corp. v. Bednarsh, 730 So. 2d 853, 854 n.2 (Fla. 3d DCA 1999) ("Transfer for convenience within Florida is governed by section 47.122. When the more convenient forum is outside of Florida, the procedure is governed by Florida Rule of Civil Procedure 1.061."). Thus, the trial court's reliance on Tome was likewise misplaced.

III. Conclusion

Based on the above analysis, we reverse the non-final order under review and remand for reconsideration of the Defendants' amended motion to transfer venue filed under section 47.122 utilizing the correct standard.[2] See Marques v. Garcia, 245 So. 3d 900, 904-05 (Fla. 3d DCA 2018) (setting forth the applicable analysis for ruling on a motion to transfer venue from one Florida county to another Florida county under section 47.122).

Reversed and remanded with directions.

[2] As we are remanding for reconsideration utilizing the correct standard, we do not address the remaining arguments raised by the Plaintiff. On remand, the trial court may reconsider its ruling as to the sufficiency of the affidavit submitted by Dr. Shankaran Nair ("Dr. Nair"). Despite not being a "member" of the Plaintiff, Dr. Nair's sworn affidavit reflects that he has an ownership interest in the Plaintiff. The record also reflects that Dr. Nair was involved in the contract negotiations and communicated directly with Woodson Electric Solutions regarding the project. Although the contract was signed by Vyoma Nair ("Mrs. Nair") on behalf of the Plaintiff, and Robert Smallwood on behalf of Woodson Electric Solutions, the handwritten changes to the contract were initialed by Mrs. Nair, Dr. Nair, and Robert Smallwood. On remand, we express no opinion as to the Defendants' amended motion to transfer.