

SPREE DUNN

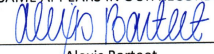
NO. 21-C-478

VERSUS

FIFTH CIRCUIT

UNITED SPECIALTY INSURANCE
COMPANY, CHAM LOGISTICS, LLC,
AND MOHAMED EDJE

COURT OF APPEAL
STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS

Alexis Barteet
Deputy Clerk, Clerk of Court

September 27, 2021

Alexis Barteet
Deputy Clerk

IN RE SPREE DUNN

**APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE JUNE B.
DARENSBURG, DIVISION "C", NUMBER 814-914**

Panel composed of Judges Stephen J. Windhorst,
Hans J. Liljeberg, and John J. Molaison, Jr.

WRIT GRANTED

Plaintiff, Spree Dunn, seeks review of the district court's judgment, which granted a motion for change of venue filed by defendant, United Specialty Insurance Company, pursuant to the *forum non conveniens* provision set forth in La. C.C.P. art. 123(A). For reasons stated more fully below, we grant Ms. Dunn's writ application, vacate the trial court's judgment and remand for further proceedings.

This matter involves a motor vehicle accident that occurred on I-10 in Jefferson Parish on August 28, 2020. Ms. Dunn alleges in her petition that a truck owned by defendant, Cham Logistics, LLC, and driven by its employee, Mohamed Edje, struck her vehicle. Ms. Dunn filed suit in Jefferson Parish against Mr. Edje, Cham Logistics, and its insurer, United Specialty. In its motion for change of venue, United Specialty requested that the district court transfer the lawsuit to Tangipahoa Parish because, Travis Dunn, a passenger in Ms. Dunn's vehicle, had filed a prior lawsuit against the same defendants, as well as Ms. Dunn, in that parish. In support of its motion, United Specialty attached a copy of the prior lawsuit filed in Tangipahoa Parish. However, according to the transcript from the June 16, 2021 hearing, neither the lawsuit nor any other evidence in support of the motion was offered or accepted into evidence. Following the hearing, the district court indicated that it would grant the motion and transfer the lawsuit to Tangipahoa Parish. On June 30, 2021, the district court signed a judgment granting the motion for change of venue, but the judgment did not include language stating that the lawsuit was transferred to Tangipahoa Parish.

La. C.C.P. art. 123(A) permits a district court to transfer a case to another district court with venue pursuant to the following grounds:

A. (1) For the convenience of the parties and the witnesses, in the interest of justice, a district court upon contradictory motion, or upon the court's own motion after contradictory hearing, may transfer a civil case to another district court where it might have been brought; however, no suit brought in the parish in which the plaintiff is domiciled, and in a court which is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court pursuant to this Article.

(2) For purposes of Subparagraph (1) of this Paragraph, domicile shall be the location pursuant to Article 42 where the plaintiff would be subject to suit had he been a defendant.¹

The plaintiff's initial choice of forum is entitled to deference, and the burden is on the party seeking a transfer to show why the motion should be granted. *Holland v. Lincoln General Hosp.*, 10-38 (La.10/19/10), 48 So.3d 1050, 1055. However, a "plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting on him expense or trouble not necessary to his own right to pursue his remedy." *Id.* (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S.Ct. 839, 91 L.Ed. 1055 (1947)). If proper venue exists for the proposed forum, La. C.C.P. art. 123(A)(1) provides for a *forum non conveniens* transfer based on the "convenience of the parties and the witnesses" and "in the interest of justice." *Id.*

In her first assignment of error, Ms. Dunn argues that the district court erred in granting the motion for change of venue because Tangipahoa Parish is not a proper venue. The basis for her argument is that the accident did not occur in Tangipahoa Parish and the defendants are not domiciled there. However, in her petition, Ms. Dunn alleges that she is a resident of Tangipahoa Parish. She further alleges that defendant, Cham Logistic, LLC, is a "Texas Company not authorized to do and doing business in Louisiana." She requested service on this defendant in Austin, Texas via the Louisiana long-arm statute, La. R.S. 13:3201, *et. seq.* La. R.S. 13:3202, the venue provision for the long-arm statute, allows a plaintiff to file suit in his or her parish of domicile, or in any parish of proper venue. Furthermore, La. C.C.P. art. 42(5) provides that suit "against a foreign limited liability company not licensed to do business in the state, . . . shall be brought in the parish of the plaintiff's domicile or in a parish where the process may be, and subsequently is, served on the defendant." Accordingly, on the showing made in the allegations of Ms. Dunn's petition, venue exists in Tangipahoa Parish.

In her second assignment of error, Ms. Dunn argues that even if Tangipahoa Parish is a proper venue, the district court erred by granting the motion for change of venue because United Specialty did not meet its burden by introducing evidence regarding the convenience of the parties and witnesses, or the interests of justice as

¹ La. C.C.P. art. 42 provides in relevant part:

The general rules of venue are that an action against:

(1) An individual who is domiciled in the state shall be brought in the parish of his domicile; or if he resides but is not domiciled in the state, in the parish of his residence.

required by La. C.C.P. art. 123(A). Our review of the hearing transcript indicates that the trial court decided to transfer the lawsuit to Tangipahoa Parish for purposes of judicial efficiency due to the costs associated with litigating two lawsuits between the same parties for the same accident. In rendering its decision, the trial court clearly considered the lawsuit attached in support of United Specialty's motion to change venue; however, United Specialty did not introduce the lawsuit into evidence.

Evidence not properly offered and admitted into evidence cannot be considered, even if it was physically placed in the record. *Denoux v. Vessel Management Services, Inc.*, 07-2143 (La. 5/21/08), 983 So.2d 84, 88. While an exception exists for specified documents attached to summary judgment motions, generally, documents attached to memoranda and not admitted into the record, do not constitute evidence and cannot be considered as evidence by an appellate court. *See Calamia v. Parish of Jefferson*, 19-270 (La. App. 5 Cir. 12/30/19), 288 So.3d 278, 280, fn. 5; *see also Alost v. Lawler*, 18-1271 (La. App. 1 Cir. 5/8/19), 277 So.3d 329, 334, fn. 4. (finding that documents attached to an exception of venue, but not admitted into evidence, could not be considered). Suit records from other courts must be introduced into the record as evidence. *United General Title Ins. Co. v. Casey Title, Ltd.*, 01-600 (La. App. 5 Cir. 10/30/01), 800 So.2d 1061, 1065.

For these reasons, we find the district court erred by granting the motion for change of venue based on a document attached to the motion and not admitted into evidence. La. C.C.P. art. 123(A)(1) requires the district court to evaluate the issues of convenience of the parties and witnesses, as well as the interests of justice, prior to granting a motion seeking a transfer based on *forum non conveniens*. Accordingly, we grant Ms. Dunn's writ application, vacate the court's June 30, 2021 judgment and remand for further proceedings.

Gretna, Louisiana, this 27th day of September, 2021.

HJL
SJW
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **09/27/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

21-C-478

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable June B. Darensburg (DISTRICT JUDGE)
No Attorney(s) were ENOTIFIED

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