

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CW 0902 R

LOU A. BABINEAUX

VERSUS

THE BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM

Judgment Rendered: May 31, 2019

On Supervisory Review from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. C663485

The Honorable Janice Clark, Judge Presiding

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BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

Guidry, J. CONCURS.

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THERIOT, J.

On January 8, 2019, the Supreme Court of Louisiana remanded this matter to this court for briefing, argument, and full opinion. For the following reasons, we vacate this court's September 4, 2018 denial of the application for supervisory writs of the Board of Supervisors for the University of Louisiana System and render judgment granting the Board's exception of venue.

FACTS AND PROCEDURAL HISTORY

On November 21, 2017, Lou A. Babineaux filed a petition for damages against the Board of Supervisors for the University of Louisiana System ("the Board") in the Nineteenth Judicial District Court ("19th JDC"). Ms. Babineaux was previously employed at the University of Louisiana at Lafayette Student Health Service Clinic ("the Clinic") as a licensed practical nurse. Ms. Babineaux alleged that she and her co-worker, Schantell Washington, were the only two African American employees at the clinic and that both were supervised by Julia A. Lognion, the Clinic's nursing supervisor, and Dr. Chris Hayes, the director of the office of student health. Ms. Babineaux further alleged that Ms. Washington, a registered nurse, became the target of race-based discrimination from Ms. Lognion and Dr. Hayes almost immediately upon her hire. Ms. Babineaux allegedly encouraged Ms. Washington to report the discriminatory treatment to the human resources department. In April 2016, Ms. Washington filed suit against the Board for racial discrimination and retaliation. Ms. Washington's lawsuit is still pending.

Ms. Babineaux alleges that, at approximately the same time that Ms. Washington filed suit against the Board, Ms. Lognion and Dr. Hayes began subjecting her to unlawful discriminatory treatment in an attempt to force her to quit her job. Following various alleged acts of discrimination, Ms. Babineaux scheduled a meeting with the Vice President of Student Affairs and Dr. Hayes to

discuss the discriminatory treatment that she was receiving. According to Ms. Babineaux, no corrective action was taken.

Ms. Babineaux alleged that she was forced to seek psychiatric treatment as a result of the stress and anxiety caused by her mistreatment in the workplace. Ms. Babineaux further alleged that on or about September 14, 2016, she filed a charge of discrimination with the equal employment opportunity commission, complaining of race discrimination and retaliation. According to Ms. Babineaux, her physician informed her that Ms. Babineaux's health was being severely affected by the stress caused by her mistreatment in the workplace and recommended that Ms. Babineaux leave the job as soon as possible. On June 1, 2017, Ms. Babineaux retired.

Ms. Babineaux asserts that she received a written notice of her Equal Employment Opportunity Commission Right to Sue letter on or about August 17, 2017, and that she has thus exhausted all of her administrative remedies and satisfied all administrative prerequisites for bringing this action. Ms. Babineaux further asserts that the Board is in violation of the Louisiana Employment Discrimination Law, La. R.S. 23:301, *et seq.*, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, due to the Board's alleged discriminatory treatment against Ms. Babineaux. Ms. Babineaux further asserts that the Board's mistreatment of her constitutes unlawful retaliation pursuant to 42 U.S.C. § 2000e, *et seq.* Accordingly, Ms. Babineaux seeks both pecuniary and nonpecuniary damages.

On March 23, 2018, the Board filed an exception of venue and, alternatively, a motion to transfer for forum non conveniens. The Board argued that venue in this particular case was controlled by La. R.S.23:303(A), which requires suit be brought in the district court in the parish in which the alleged violation occurred, and that Lafayette Parish was the proper venue for this suit.

The trial court denied the Board's exception of venue and alternate motion to transfer for forum non conveniens. The Board subsequently applied for supervisory writs with this court. This court denied the Board's application for supervisory writs on September 4, 2018.

Following this court's denial of the Board's application for supervisory writs, the Board sought writs of certiorari with the Supreme Court of Louisiana. The Supreme Court of Louisiana subsequently granted the Board's application for writs of certiorari on this issue and remanded the case back to this court for briefing, argument, and full opinion, with due consideration of this court's earlier holding in *Washington v. The Board of Supervisors for the University of Louisiana System*, 2018-0008 (La. App. 1 Cir. 5/14/18); 2018 WL 2202309 (unpublished).

ASSIGNMENTS OF ERROR

In its brief on remand from the Supreme Court of Louisiana, the Board assigns the following as error:

- (1) The trial court committed reversible error when it, despite the binding authority of the First Circuit regarding the exact same issue in *Washington v. Board of Supervisors for the University of Louisiana System*, 2018-0008 (La. App. 1 Cir. 5/14/18); 2018 WL 2202309 (unpublished), applied the general provisions of La. R.S. 13:5104(A) to find East Baton Rouge Parish is a proper venue for this Louisiana Employment Discrimination Law matter. Lafayette Parish is the parish of proper venue for this matter.

STANDARD OF REVIEW

Venue is a question of law, which is reviewed *de novo* by the appellate court. *Price v. Roy O. Martin Lumber Co.*, 2004-0227 (La. App. 1 Cir. 4/27/05); 915 So.2d 816, 824, *writ denied*, 2005-1390 (La. 1/27/06); 922 So.2d 543.

DISCUSSION

The sole issue for review is whether the trial court erred in applying La. R.S. 13:5104(A) to find that Baton Rouge is a proper venue for this matter. The Board

argues that this matter is controlled by La. R.S. 23:303(A), whereas Ms. Babineaux argues that this matter is controlled by La. R.S. 13:5104(A).

Louisiana Revised Statutes 23:303 is located within Title 23, Chapter 3-a of the Louisiana Revised Statutes. Title 23 governs labor and workers' compensation law in Louisiana. Chapter 3-a pertains to prohibited discrimination in Louisiana employment. La. R.S. 23:303(A) provides:

A plaintiff who has a cause of action against an employer, employment agency, or labor organization for a violation of this Chapter may file a civil suit in a district court seeking compensatory damages, back pay, benefits, reinstatement, or if appropriate, front pay, reasonable attorney fees, and court costs. In such a suit, the venue shall be the district court in the parish in which the alleged violation occurred. (Emphasis added.)

Louisiana Revised Statutes 13:5104(A) is located within Title 13, Chapter 32, Part XV of the Louisiana Revised Statutes. Title 13 governs courts and judicial procedure. Chapter 32 pertains to particular classes of actions and cases. Part XV of Chapter 32 applies to suits against the state, state agencies, or political subdivisions. La. R.S. 13:5104(A) provides:

All suits filed against the state of Louisiana or any state agency or against an officer or employee of the state or state agency for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be instituted before the district court of the judicial district in which the state capitol is located or in the district court having jurisdiction in the parish in which the cause of action arises. (Emphasis added.)

The question presented is which of these two statutes is controlling. It is a well-settled canon of statutory construction that the more specific statute controls over the general statute. *Jones v. Anderson*, 2016-1361 (La. App. 1 Cir. 6/29/17); 224 So.3d 413, 418. The Supreme Court of Louisiana has held that "it is a fundamental rule of statutory construction that when two statutes deal with the same subject matter, if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in

character.” *Burge v. State*, 2010-2229 (La. 2/11/11); 54 So.3d 1110, 1113 (quoting *State v. Campbell*, 2003-3035 (La. 7/6/04); 877 So.2d 112, 118).

Ms. Babineaux’s petition contains two causes of action. The first count alleges that the Board violated the Louisiana Employment Discrimination Law and 42 U.S.C. § 2000e, *et seq.*, which governs equal employment opportunities. The second count alleges that the Board’s mistreatment of Ms. Babineaux constitutes unlawful retaliation under 42 U.S.C. § 2000e, *et seq.*, 42 U.S.C. § 2000e-3(a), and other applicable laws and statutory provisions. The crux of both of Ms. Babineaux’s causes of action is the discrimination she allegedly suffered. As such, her claims are properly governed by La. R.S. 23:303(A), which is located in the chapter pertaining to prohibited discrimination in Louisiana employment. La. R.S. 23:303(A) requires that a plaintiff who has a cause of action against an employer for a violation of Title 23, Chapter 3-a of the Louisiana Revised Statutes bring suit in the district court in the parish in which the alleged violation occurred. Therefore, we find this suit should have been filed in Lafayette Parish. As such, the Board’s exception of venue should have been granted. Accordingly, we vacate this court’s September 4, 2018 denial of the Board’s application for supervisory writs and render judgment granting the Board’s exception of venue.¹

DECREE

For the above and foregoing reasons, we vacate this court’s September 4, 2018 denial of the Board’s application for supervisory writs and render judgment granting the Board’s exception of venue. All costs are assessed to Plaintiff-Respondent, Lou A. Babineaux.

VACATED AND RENDERED.

¹ The alternate motion for forum non conveniens is rendered moot. *See In re E.W.*, 2009-1589 (La. App. 1 Cir. 5/7/10); 38 So.3d 1033, 1037 (“An issue is moot when a judgment or decree on that issue has been ‘deprived of practical significance’ or ‘made abstract or purely academic.’”).