

NOT DESIGNATED FOR PUBLICATION

NICHOLAS EAGAN * **NO. 2002-CA-2335**
VERSUS * **COURT OF APPEAL**
E. RENTON SR., INC. AND * **FOURTH CIRCUIT**
GULF SOUTH MARINE * **STATE OF LOUISIANA**
TOWING, INC.

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2002-2945, DIVISION "J-13"
Honorable Nadine M. Ramsey, Judge

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Judge Terri F. Love

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(Court composed of Chief Judge William H. Byrnes III, Judge Terri F. Love,
Judge David S. Gorbaty)

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REVERSED AND REMANDED

Nicholas Eagan filed suit, in Orleans Parish, against his employers for injuries he sustained while performing his duties as a seaman aboard the M/V E. Renton Sr. Nicholas Eagan asserts four separate injuries, occurring in New Orleans, Louisiana, Baton Rouge, Louisiana, and Pascagoula, Mississippi. Defendants filed an Exception of Improper Cumulation of Actions and Improper Venue. The trial court overruled the exceptions and the defendants filed the instant appeal. For the foregoing reasons, we reverse the judgment of the trial court and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Nicholas Eagan (“Eagan”), a seaman, filed a Petition for Damages in Civil District Court for the Parish of Orleans, against his employer, Gulf South Marine Towing, Inc., and E. Renton Sr., Inc. (referred to collectively as “Marine Towing”), as owner/operator of the M/V E. Renton Sr., claiming injuries and seeking damages under the Jones Act, 46 U.S.C.A. § 688, the General Maritime Law, and La. C.C. art. 2315, et seq.

In his petition, Eagan alleged five causes of action, which include four incidents of injury, allegedly occurring on August 16, 2001, in New Orleans,

Louisiana; August 24, 2001, in Pascagoula, Mississippi; August 26, 2001, in Baton Rouge, Louisiana; and November 9, 2001, in Baton Rouge, Louisiana. Eagan's fifth cause of action is a claim for maintenance and cure.

Eagan alleged in his petition that on August 16, 2001, he was injured while pulling a shore wire in Orleans Parish. In his accident report, he stated he suffered back pain. Eagan also alleged that on August 24, 2001, he was injured while assisting in building a tow in Pascagoula, Mississippi. Eagan claimed that he sustained two large bruises to his inner thighs as a result of grabbing a cavel with his legs. In his third cause of action, Eagan alleged that on August 26, 2001, he was injured while assisting in building a tow in Baton Rouge, Louisiana. Eagan's accident report regarding this incident asserted injuries to his legs, middle back and shoulders. In his fourth cause of action, Eagan claimed he was injured on November 9, 2001, in Baton Rouge, Louisiana. He asserted that he suffered injuries to his shoulder and neck, but did not state how those injuries occurred.

Marine Towing filed Exceptions of Improper Cumulation of Actions and Improper Venue, arguing Eagan's second, third, fourth, and fifth causes of action were improperly brought in Orleans Parish. The trial court overruled Marine Towing's exceptions without written reasons for judgment.

Marine Towing maintains Eagan's causes of action are separate and distinct. They argue that venue in Orleans Parish is improper as to those causes of action which occurred in Baton Rouge, Louisiana and Pascagoula, Mississippi, dictating dismissal of Eagan's second, third, fourth and fifth causes of action, or in the alternative, a transfer of these causes of action to a court of proper venue.

DISCUSSION

Marine Towing argues that the trial court erred in overruling their Exceptions of Improper Cumulation of Actions and Improper Venue because: 1) Venue is not proper in Orleans Parish for Eagan's second, third, fourth and fifth causes of action as the Defendants are not domiciled in Orleans Parish, the wrongful conduct did not occur in Orleans Parish, and Eagan did not sustain his damages in Orleans Parish; 2) Eagan's causes of action are improperly cumulated before a court of improper venue pursuant to Louisiana Code of Civil Procedure articles 462 and 463; 3) The doctrine of ancillary venue does not support the cumulation of Eagan's distinct causes of action, because common or identical questions of fact do not exist and all of Eagan's causes of action share a court of common venue; and 4) The only court of proper venue for all of Eagan's causes of action is Jefferson Parish, the parish of Marine Towing's registered offices.

“Venue is a question of law and where a legal error interdicts the fact finding process and the record is otherwise complete, an appellate court should then conduct *de novo* review of the record.” *Crawford v. Blue Cross and Blue Shield of Louisiana*, 2000-2026, p.3 (La.App. 4 Cir. 12/05/01), 814 So.2d 574, 577 (citing *Bloomer v. Louisiana Workers’ Compensation Corp.*, 99-0707, p.3 (La.App. 3 Cir. 5/12/00), 767 So.2d 712, 714). Since Marine Towing argues that the trial court committed legal error in the instant case, we will review *de novo* their Exceptions of Improper Cumulation of Actions and Improper Venue.

La. C.C.P. art. 42(2) states, “The general rules of venue are that an action against:

A domestic corporation, a domestic insurer, or a domestic limited liability company shall be brought in the parish where its registered office is located.

Marine Towing argues that their registered offices are located in Jefferson Parish; as such, venue for Eagan’s causes of action is in Jefferson Parish. Eagan argues that the registered agents of Marine Towing are in Orleans Parish, which would make venue proper in Orleans Parish for all of the causes of action. Under La. C.C.P. art. 42(2), it is not the location of the registered agent that is determinative of venue, but the location of the registered office. Marine Towing submitted an “Unofficial Detail Record” from the Secretary of State, which indicates the domicile address of Marine

Towing to be Jefferson Parish; Eagan did not produce any evidence to contradict this assertion. Therefore, on the face of the record, Jefferson Parish would be a proper venue for Eagan's actions.

Eagan alleges an exception to La. C.C.P. art. 42, in furtherance of his argument that venue in Orleans Parish is proper. Under La. C.C.P. art. 74, an action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained. Eagan argues that since the first cause of action occurred in Orleans Parish, venue in Orleans Parish is proper. The apparent conflict between La. C.C.P. art. 42 and 74 is resolved in La. C.C.P. art. 45, which states in pertinent part that if there is a conflict between Articles 42 and Articles 71 through 77, the plaintiff may bring the action in any venue provided by any applicable article. Therefore, Eagan may rightly avail himself of the exception provided in Article 74. However, considering the first cause of action occurred in New Orleans and may be brought before a court in Orleans Parish, Plaintiff's remaining causes of action, which occurred in Baton Rouge, Louisiana and Pascagoula, Mississippi, cannot be properly brought in Orleans Parish, under the above articles.

Plaintiff circumvented this discrepancy by attempting to cumulate the remaining actions under La. C.C.P. art. 462, which states:

A plaintiff may cumulate against the same defendant two or

more actions even though based on different grounds, if:

- (1) Each of the actions cumulated is within the jurisdiction of the court and is brought in the proper venue; and
- (2) All of the actions cumulated are mutually consistent and employ the same form of procedure.

However under our analysis of La. C.C.P. art. 42, actions two, three, and four by Eagan cannot be properly brought in Orleans Parish. Therefore, Eagan cannot cumulate the causes of action under La. C.C.P. 462.

Eagan argues that he may bring all of his claims in Orleans Parish under the doctrine of ancillary venue. Ancillary venue applies when separate claims involving common or identical questions of fact share no common venue. The concept of ancillary venue allows such claims to be tried together for reasons of judicial economy and efficiency, even though venue is not proper technically for one claim or one party. *Underwood v. Lane Memorial Hospital*, 97-1997, p.8 (La. 7/8/98), 714 So.2d 715, 719.

While in the instant case the causes of action do involve common questions of fact, it is not true that they share no common venue. La. C.C.P. art. 45 allows Eagan to choose venue under either Article 42 or 74, Jefferson Parish or the Parish where the injury was sustained, respectively. This applies to each of Eagan's causes of action, and each of his causes of action could be properly brought in Jefferson Parish. Therefore, ancillary venue does not apply here. Eagan is thus left with two choices. Eagan's claims could be

properly cumulated in Jefferson Parish, or he could file suits separately in different appropriate venues. However, Eagan may not cumulate his causes of action in Orleans Parish. We therefore remand the instant case so that the trial court may determine the proper venue or venues and subsequently transfer the plaintiff's various causes of action accordingly.

CONCLUSION

For the foregoing reasons we reverse the ruling of the trial court and remand.

**REVERSED AND
REMANDED**