STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE YOUNKIN,

Plaintiff-Appellee,

v

MICHAEL ZIMMER and STEVEN HILFINGER,

Defendants-Appellants.

FOR PUBLICATION
April 15, 2014

No. 313813
Genesee Circuit Court
LC No. 2012-099229-AW

Before: M. J. KELLY, P.J., and CAVANAGH and FORT HOOD, JJ.

CAVANAGH, J. (*dissenting*).

I respectfully dissent. I would hold that the trial court's interpretation of MCL 418.851 was erroneous and, thus, the trial court's issuance of the writ of mandamus constituted an abuse of discretion.

The statute regarding appropriate venue for worker's compensation claims is MCL 418.851, which provides, in relevant part, that the "hearing shall be held at the locality where the injury occurred." The dispositive issue here is the meaning of the word "locality." Because the Worker's Disability Compensation Act (WDCA) does not define the word "locality," a dictionary may be consulted to determine the ordinary meaning of the word. See *Cairns v East Lansing*, 275 Mich App 102, 107; 738 NW2d 246 (2007). *Webster's New World Dictionary* (1982) defines the word "locality" as "a place; district; neighborhood." Similarly, the *Random House Webster's Unabridged Dictionary* (1998) defines "locality" as "a place, spot, or district, with or without reference to things or persons in it or to occurrence there" and "the state or fact of being local or having a location." The word "local" means: "pertaining to or characterized by place or position in space; spatial" and "pertaining to a city, town, or small district rather than an entire state or country." *Id*. Because the word "locality" is used in the context of the venue provision of the WDCA, I also note that *Black's Law Dictionary* (7th ed) defines "locality" as: "A definite region; vicinity; neighborhood; community."

Plaintiff argued, and the majority appears to agree, that the correct definition of "locality" in the context of worker's compensation claims is "community," "vicinity," or "neighborhood." I do not agree. "Statutory language should be construed reasonably, keeping in mind the purpose of the act." *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 43; 672 NW2d 884 (2003). Clearly, it would not be reasonable or feasible for a hearing to be held in every neighborhood or community in which an employee is injured. And in designating the appropriate venue for

hearings in worker's compensation cases, the Legislature did not specifically state that the hearing must be held in the "city" or "county" where the injury occurred. If that was the Legislature's intention, it could have been so designated. See, *e.g.*, MCL 600.1621 and 600.1629. "A court must not judicially legislate by adding into a statute provisions that the Legislature did not include." *In re Wayne Co Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998).

Here, defendants clearly interpreted the meanings of the word "locality" to include "district" and "definite region." Consequently, defendants divided the state into several reasonably located hearing districts and worker's compensation claims are assigned from definite regions of the state to particular hearing district offices. While the majority concedes that a "locality" is commonly understood to mean "region," the majority concludes that the "region" must be the municipality where the injury occurred. But an agency's interpretation of a statute, although not binding on the courts, is entitled to "respectful consideration" and, if persuasive, should not be overruled without "cogent reasons." *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 103, 108; 754 NW2d 259 (2008) (citation omitted). I would conclude that defendants' interpretation of MCL 418.851, and their establishment of reasonably located hearing district offices throughout the state which service definite regions of the state, comports with the fair and natural import of the word "locality" in view of the subject matter of the statute—worker's compensation claims. See *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). Defendants' interpretation does not conflict with the Legislature's intent as expressed in the language of MCL 418.851. See *In re Complaint of Rovas Against SBC Mich*, 482 Mich at 103.

My conclusion is also cognizant of the fact that a "strong rationale" for the WDCA is to provide injured employees with "expeditious" relief. See *Maiuri v Sinacola Const Co*, 12 Mich App 22, 27; 162 NW2d 344 (1968). Considering the realities of budgetary constraints and the limited number of magistrates, as well as the summary nature of worker's compensation proceedings, requiring hearing locations in every community, neighborhood, or municipality would not only be extremely costly and unnecessary, but would defeat a significant purpose of the WDCA which is to provide expeditious relief to claimants. I agree with plaintiff's argument that defendants cannot disregard their statutory duty because of a reduction in state funding. However, I would conclude that defendants fulfilled their duty under MCL 418.851 by establishing reasonably located hearing district offices throughout the state which service definite regions of the state.

Further, when interpreting a statute, the purpose of the statute should be harmonized with the entire statutory scheme. *Petersen v Magna Corp*, 484 Mich 300, 340; 773 NW2d 564 (2009). In that regard I note that ERO No. 2011-4, compiled at MCL 445.2030, states that the MAHS is to provide efficient, fair, and responsive services. Specifically, MCL 445.2030 provides that the purposes for the reorganization and creation of the MAHS was to (1) "reorganize functions among state departments to ensure efficient administration;" (2) ensure the most efficient use of taxpayer dollars by providing more streamlined services; (3) centralize "administrative hearing functions" so as to "eliminate unnecessary duplication and streamline the delivery of necessary services;" and (4) "achieve greater efficiency by abolishing harmful, redundant, or obsolete government agencies." "Once an executive order survives potential legislative disapproval, and achieves the force of law, there is no basis on which to distinguish

between it and a statute; each has passed the scrutiny of the Legislature and deserves to be enforced as such." *Soap & Detergent Ass'n v Natural Resources Comm*, 103 Mich App 717, 729; 304 NW2d 267 (1981). As discussed above, I conclude that interpreting the word "locality" to recognize the use of several hearing districts reasonably located throughout the state to process and adjudicate worker's compensation claims that are assigned from definite regions of the state is consistent with the entire statutory scheme.

In this case, defendants sought to close the Flint district office and transfer all worker's compensation claims arising in Genesee County, including plaintiff's claim, from the Flint district office to the Dimondale district office, which is located within 70 miles of Genesee County. I would hold that defendants' actions were permissible under MCL 418.851. Although plaintiff argues that defendants' interpretation of the venue statute would allow them to transfer worker's compensation claims to remote places or even to a single location in the name of efficiency, this scenario simply is not present in this case. At issue here is whether the Dimondale district office is a proper venue for worker's compensation claims that arose in Genesee County and I would conclude that it is an appropriate venue under MCL 418.851.

In summary, I would hold that plaintiff failed to establish that he had a clear legal right to have his worker's compensation claim adjudicated at the Flint district office or in Genesee County; therefore, plaintiff was not entitled to a writ of mandamus. Accordingly, I would reverse the trial court's order granting plaintiff's request for a writ of mandamus.

/s/ Mark J. Cavanagh