STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH E. MCCORKLE,

Plaintiff-Appellee,

v

NATIONWIDE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 10, 2009

No. 280152
Washtenaw Circuit Court
LC No. 07-000373-NF

Before: Murray, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

In this action for no-fault benefits, defendant Nationwide Insurance Company appeals by leave granted from an order denying its motion for a change of venue. We affirm.

This case arises from a motor vehicle accident in Michigan involving an out-of-state insured. At the time of the accident, plaintiff and her husband were residents of South Carolina, and plaintiff was a named insured under an automobile insurance policy issued by defendant in that state. Because defendant transacts business in Michigan, it had filed a certificate with the Michigan Commissioner of Insurance pursuant to MCL 500.3163, whereby it agreed to provide no-fault benefits to its nonresident insureds who were injured in an automobile accident in Michigan. Although plaintiff's accident occurred in Oakland County, she filed this action for no-fault benefits in Washtenaw County, a county where defendant conducts business. Defendant filed a motion for change of venue under MCR 2.223, arguing that venue in Washtenaw County was improper, and also under MCR 2.222, arguing that venue should be changed for the convenience of the parties and the witnesses. The trial court denied defendant's motion under both grounds.

I. MCR 2.223

Defendant first argues that the trial court erred in denying its motion for a change of venue improperly laid under MCR 2.223. We disagree.

A trial court's decision on a motion for a change of venue improperly laid is reviewed for clear error. *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). "Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id*.

Defendant argues that plaintiff's cause of action is statutory, rather than contractual, and, therefore, venue is improper in Washtenaw County.

MCR 2.223 provides:

> (A) **Motion; Court's Own Initiative.** If the venue of a civil action is *improper*, the court
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> (1) *shall* order a change of venue on timely motion of a defendant, or
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> (2) may order a change of venue on its own initiative with notice to the parties and opportunity for them to be heard on the venue question.
>
> If venue is changed because the action was brought where venue was not proper, the action may be transferred only to a county in which venue would have been proper. [Emphasis added.]

Thus, to be entitled to a change of venue under this rule, defendant must show that venue was improperly laid.

Generally, venue in civil cases is determined according to MCL 600.1621, which provides:

> Except for actions provided for in sections 1605 [real property], 1611 [probate bond], 1615 [governmental units], and 1629 [tort], venue is determined as follows:
>
> (a) The county in which a defendant resides, *has a place of business*, or conducts business, or in which the registered office of a defendant corporation is located, is a proper county in which to commence and try an action. [Emphasis added.]

Additionally, MCL 600.1627 provides:

> Except for actions founded on contract and actions provided for in sections 1605, 1611, 1615, and 1629, *the county in which all or a part of the cause of action arose* is a proper county in which to commence and try the action. Suits against the surety of a public officer or his or her appointees are not excepted from the application of this section. [Emphasis added.]

Thus, by its terms, § 1627 does not apply to contract actions.

This Court has held that an action to recover no-fault benefits under a Michigan no-fault insurance policy is a contract action, not a tort action, and venue is therefore governed by §

1621.[1] *Ferguson v Pioneer State Mut Ins Co of Michigan*, 273 Mich App 47, 50-55; 731 NW2d 94 (2006); see also *Shiroka v Farm Bureau Gen Ins Co*, 276 Mich App 98, 104-109; 740 NW2d 316 (2007). Defendant argues, however, that because plaintiff's entitlement to no-fault benefits exists pursuant to MCL 500.3163, her action is statutory, rather than contractual. But even if we were to accept that argument, defendant has not established that venue in Washtenaw County would be improper.

Defendant's argument that venue in Washtenaw County was improperly laid is based on the premise that venue for statutory causes of action is governed *exclusively* by § 1627. However, defendant cites no cases in support of that claim.

Aside from the language in § 1627 excluding contract actions, the exclusionary language in § 1627 is identical to that of § 1621: "[e]xcept for . . . actions provided for in sections 1605, 1611, 1615, and 1629." There is no language in § 1621 or § 1627 that either includes or excludes statutory causes of action. Defendant does not cite any authority holding that § 1621 may not apply to statutory causes of action, or any authority holding that § 1627 is the only venue provision governing statutory causes of action. We conclude that – aside from contract actions – the scope of the two sections is identical, and that, by their terms, §§ 1621 and 1627 both apply to all actions "[e]xcept for actions provided for in sections 1605, 1611, 1615, and 1629."[2]

Clearly, if plaintiff's cause of action sounded in contract as she claims, then § 1627 would not apply. However, defendant has failed to show that the reverse is true. Rather, if plaintiff's action were considered to be statutory in nature, as defendant argues, plaintiff would have the choice of proceeding under either § 1621 or § 1627. Where the language of a statute is clear and unambiguous, the Legislature is presumed to have "intended the meaning clearly expressed, and the statute must be enforced as written." *Shinholster v Annapolis Hosp*, 471 Mich 540, 549; 685 NW2d 275 (2004) (citation omitted). "[J]udicial construction is neither necessary nor permitted." *Dimmitt, supra* at 624.

Thus, we conclude that even if plaintiff's cause of action were considered statutory, as defendant argues, plaintiff would be entitled to choose between the venue provisions of § 1621 and § 1627. Plaintiff chose § 1621 and properly filed suit in a county where defendant admittedly conducts business. Accordingly, because defendant cannot show that venue was improperly laid, it was not entitled to a change of venue under MCR 2.223.

II. MCR 2.222

Defendant also argues that even if venue was proper in Washtenaw County, the trial court erred in denying its motion for a change of venue under MCR 2.222, for the convenience of the parties and the witnesses.

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[1] Tort actions are governed by MCL 600.1629.

[2] It is undisputed that none of those exceptions apply to this case.

Unlike a motion under MCR 2.223, a trial court's decision on a motion to change proper venue under MCR 2.222 is reviewed for an abuse of discretion. *Chilingirian v City of Fraser*, 182 Mich App 163, 165; 451 NW2d 541 (1989); *Kohn v Ford Motor Co*, 151 Mich App 300, 305; 390 NW2d 709 (1986). An abuse of discretion occurs only when the trial court's decision is outside the range of "reasonable and principled outcome[s]." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

MCR 2.222(A) provides that, upon the motion of a party:

> The court *may* order a change of venue of a civil action, or of an appeal from an order or decision of a state board, commission, or agency authorized to promulgate rules or regulations, for the convenience of parties and witnesses or when an impartial trial cannot be had where the action is pending. In the case of appellate review of administrative proceedings, venue may also be changed for the convenience of the attorneys. [Emphasis added.]

"[T]he moving party has the burden of demonstrating inconvenience or prejudice, and a persuasive showing must be made." *Chilingirian, supra* at 165; see also *Kohn*, *supra* at 305; *Duyck v Int'l Playtex, Inc*, 144 Mich App 595, 599; 375 NW2d 769 (1985), overruled on other grounds by *Russell v Chrysler Corp*, 443 Mich 617, 621-624; 505 NW2d 263 (1993) (*forum non-conveniens*).[3] "Furthermore, [the] plaintiff's initial choice of venue is to be accorded deference." *Chilingirian, supra* at 165; *Duyck, supra* at 599.

In *Kohn*, *supra* at 305-308, this Court held that the trial court did not abuse its discretion in changing venue from Wayne County to Tuscola County, located 90 miles away, where the plaintiff and most of the witnesses resided. In *Chilingirian*, *supra* at 165, this Court reversed a trial court's decision to transfer venue from Wayne County to Macomb County, holding that "[t]he inconvenience caused by travel between two adjoining counties does not constitute a 'persuasive showing' of inconvenience or prejudice which would justify a change of venue." Conversely, in *Hunter v Doe*, 61 Mich App 465, 466-469; 233 NW2d 39 (1975), this Court held that the trial court did not abuse its discretion in changing venue from Wayne County to Oakland County, where seven of the eight defendants lived. The Court noted that, although the defendants themselves did not submit any affidavits in support of the claim of inconvenience, defense counsel did. *Id*.

In the present case, plaintiff asserts that the Washtenaw Circuit Court is approximately 47 miles from the Oakland Circuit Court. Defendant did not submit any affidavits in support of its claim of witness inconvenience or prejudice. However, defendant attached pleadings showing

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[3] "*Forum non conveniens* is defined as the discretionary power of [a] court to *decline jurisdiction* when the convenience of the parties and ends of justice would be better served if [the] action were brought and tried in another forum." *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 604; 719 NW2d 40 (2006) (emphasis added) (citation omitted). The remedy is dismissal. See *id*. at 602, 615-617. In this case, defendant's motion asked for a change of venue, not for dismissal, and defendant did not raise the doctrine of *forum non-conveniens*.

that plaintiff's husband had a separate lawsuit pending against defendant in the 46th District Court in Southfield, which is in Oakland County, and that plaintiff had a separate lawsuit pending against the Southfield Public Schools in the Oakland Circuit Court, both arising from the same accident as this case. Further, defendant presented a list of witnesses showing that 30 of the 31 witnesses likely to be called at trial lived or worked in Oakland County. It is undisputed that the accident occurred in Oakland County, and that the parties' trial attorneys are located in Oakland County.

The documentation submitted by defendant shows that Oakland County has a connection with this action, that most witnesses are located there, and that Oakland County is not an inconvenient forum for plaintiff. Thus, the trial court would not have abused its discretion if it had decided to grant defendant's motion for a change of venue under MCR 2.222. Indeed, were we deciding this de novo, we may have concluded this case was more appropriate in Oakland County. However, "an abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *Maldonado, supra* at 388 (citation omitted). In this case, the two potential venues are only approximately 45 miles apart, and plaintiff's choice of forum is entitled to deference. We conclude that defendant did not make such a strong and persuasive showing of inconvenience or prejudice to remove Washtenaw County venue from the range of reasonable and principled outcomes. Thus, the trial court did not abuse its discretion in denying defendant's motion for a change of venue under MCR 2.222.

Affirmed.

Plaintiff may tax costs as the prevailing part. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Peter D. O'Connell
/s/ Alton T. Davis