

No. 96-388

IN THE SUPREME COURT OF THE STATE OF MONTANA

1997

LARRY ISAKSON,

Plaintiff and Appellant,

v.

BURLINGTON NORTHERN RAILROAD COMPANY,

Defendant and Respondent.

APPEAL FROM: District Court of the First Judicial District,
In and for the County of Lewis and Clark,
The Honorable Robert Goff, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

William A. Rossbach and Elizabeth A. Brennan;
Rossbach and Whiston; Missoula, Montana

For Respondent:

Jeffrey Hedger; Kroschel, Yerger & Hedger;
Billings, Montana

Submitted on Briefs: January 16, 1997

Decided: May 1, 1997

Filed:

Clerk

Justice Jim Regnier delivered the opinion of the Court.

Larry Isakson alleges he was injured while working for Burlington Northern Railroad Company in Park County, Montana, where he also resides. On January 5, 1993, Isakson filed a complaint under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51-60 (1994) in Cascade County. On January 12, 1995, Burlington Northern

moved for a change of venue under 25-2-122(2), MCA, which provided specific venues for tort suits brought against nonresident corporations. On May 7, 1996, the Eighth Judicial District Court granted Burlington Northern's motion for a change of venue to the First Judicial District Court, Lewis and Clark County. Isakson appeals from the order granting the change of venue.

This Court recently held in *Davis v. Union Pacific Railroad Company* (Mont. April 16, 1997), No. 96-163, that 25-2-122(2), MCA, is unconstitutional because it violates the Equal Protection Clause of the Montana Constitution. Our ruling in that case is controlling over the issues presented in this appeal.

Based on our ruling in *Davis*, the order granting the change of venue in this case is reversed, and this case is remanded to the District Court for proceedings consistent with our decision in *Davis*.

/S/ JIM REGNIER

We Concur:

/S/ J. A. TURNAGE
/S/ JAMES C. NELSON
/S/ WILLIAM E. HUNT, SR.
/S/ TERRY N. TRIEWEILER

Justice W. William Leaphart, dissenting.

I dissent for the reason set forth in my dissent in *Davis v. Union Pacific Railroad Company* (Mont. April 16, 1997), No. 96-163.

/S/ W. WILLIAM LEAPHART

Justice Karla M. Gray joins in the foregoing dissent.

/S/ KARLA M. GRAY