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NO. COA07-1422

NORTH CAROLINA COURT OF APPEALS

Filed: 16 September 2008

CAROL JANE ARCHIE,  
Plaintiff,

v.

Rowan County  
No. 07 CVS 1022

DAVID U. LIPSITZ,  
NORTHEAST UROLOGY  
ASSOCIATES P.A. and  
NORTHEAST MEDICAL  
CENTER,  
Defendants.

# Court of Appeals

Appeal by defendant, Northeast Medical Center, from amended order entered 2 October 2007 by Judge Larry G. Ford in Superior Court, Rowan County. Heard in the Court of Appeals 17 April 2008.

## Slip Opinion

*Law Offices of Grover C. McCain, Jr., by Grover C. McCain, Jr., for plaintiff-appellee.*

*Sharpless & Stavola, P.A., by Joseph M. Stavola and Joseph P. Booth, III, for defendant-appellant.*

STROUD, Judge.

Plaintiff brought an action against defendants for negligence. Defendant Northeast Medical Center filed a motion to change venue. The trial court denied defendant's motion to change venue. Defendant Northeast Medical Center appeals. The dispositive question before this Court is whether defendant "is a public officer and therefore entitled to have the action tried in Cabarrus

County, where plaintiff's cause of action arose, as a matter of right." For the following reasons, we affirm.

### I. Background

In November of 2004 Dr. Lipsitz performed surgery on plaintiff at Northeast Medical Center, in Cabarrus County. On 11 April 2007, plaintiff filed a complaint against defendants claiming defendants were negligent.

On 21 June 2007, defendant Cabarrus Memorial Hospital d/b/a Northeast Medical Center ("Hospital") filed an answer and a motion to transfer venue arguing,

Venue is improper. Cabarrus Memorial Hospital d/b/a Northeast Medical Center is a non-profit corporation and public hospital located in Cabarrus County. Pursuant to Rule 12(b)(3) of the North Carolina Rules of Civil Procedure, and N.C.G.S. Sections 1-77 and 1-82, the defendant hereby moves this Court for an order changing venue of this matter to Cabarrus County.

On or about 6 September 2007, defendant Hospital filed a motion to change venue stating in pertinent part:

Pursuant to sections 1-77 and 1-83 of the North Carolina General Statutes, and upon the annexed affidavit of Alex J. Barker, the defendant Cabarrus Memorial Hospital d/b/a Northeast Medical Center moves the court for an order changing venue to Cabarrus County, North Carolina. In support thereof, this moving party shows unto the court that (1) At the time of commencement of this action, Cabarrus Memorial Hospital was an agency of Cabarrus County entitled to have venue changed to Cabarrus County as a matter of right; (2) Subsequent to the commencement of this action, defendant hospital merged with the Mecklenburg County Hospital Authority, a political subdivision of the State of North Carolina,

thereby retaining its status as a public agency for venue purposes; (3) the underlying facts and circumstances of this action occurred entirely within Cabarrus County; and (4) the convenience of the witnesses and the ends of justice would be promoted by changing venue from Rowan County to Cabarrus County.

In support of defendant Hospital's motion to change venue it submitted an affidavit from Alex J. Barker which stated in pertinent part:

2. I am General Counsel of CMC-NorthEast, Inc., a charitable corporation within the meaning of N.C.G.S. Sec. 55A-1-40(4). CMC-NorthEast heretofore existed and conducted business as Cabarrus Memorial Hospital, d/b/a NorthEast Medical Center.

3. The sole member of CMC-Northeast, Inc. is the Charlotte-Mecklenburg Hospital Authority. The Charlotte-Mecklenburg Hospital Authority organized under N.C.G.S. Sec. 131-E16 et. seq., a "public body and a body that is corporate and political," was organized to act as a component of the Charlotte-Mecklenburg Hospital Authority, which operates a vertically integrated healthcare delivery system.

4. The United States government, as well as the State of North Carolina, have designated CMC-NorthEast, Inc. as a "public hospital," with respect to its qualifications for Medicaid reimbursement.

5. CMC-Northeast, Inc.'s duly filed Articles of Incorporation further specify and delineate the restrictions placed upon it, with respect to its activities, directorship, earnings, assets and obligations, confirming that it is not a private facility but rather, that it acts on behalf of the Charlotte-Mecklenburg Hospital Authority.

Defendant Hospital also submitted three trial court orders entered in other cases: (1) a Mecklenburg County order filed 29 March 2000 where a change in venue was allowed from Mecklenburg

County to Cabarrus County "for the convenience of witnesses and ends of justice[,]" (2) a Rowan County order filed 27 July 1998 where a change in venue was allowed from Rowan County to Cabarrus County because the trial court found "pursuant to G.S. Sec. 1-77(2), Cabarrus Memorial Hospital, d/b/a NorthEast Medical Center is an agency of Cabarrus County for venue purposes[,]" and (3) a Mecklenburg County order filed on or about 16 April 1998 where a change in venue was allowed from Mecklenburg County to Cabarrus County because "pursuant to G.S. Sec. 1-77(2), Cabarrus Memorial Hospital, d/b/a NorthEast Medical Center is an agency of Cabarrus County for venue purposes[.]"

On 2 October 2007, the trial court denied defendant Hospital's motion and entered an amended order which stated that

having concluded that the moving parties failed to show or prove that Northeast Medical Center is or was at the time of the medical care provided for herein a "public officer or person especially appointed to execute his duties; for an act done by him by virtue of his office; or against a person who by his command or in his aid does anything touching the duties of such officer" pursuant to G.S. 1-77(2).

Defendant Hospital appeals. The dispositive question before this Court is whether the trial court erred in denying defendant's motion because defendant "is a public officer and therefore entitled to have the action tried in Cabarrus County, where plaintiff's cause of action arose, as a matter of right."

## II. Venue

This Court recently addressed the issue presented before us in this case in the case of *Odom v. Clark*, \_\_\_ N.C. App. \_\_\_, \_\_\_

S.E.2d \_\_\_\_ (August 19, 2008) (No. COA07-775-2) which involved the same defendant Hospital as the present case. The same counsel represented the defendant Hospital in both cases, and except for the dates, superior court judges and counties, the assignments of error in both cases are identical.<sup>1</sup> The defendant Hospital's briefs submitted in both cases are also substantially the same. Defendant Hospital's motion to change venue in this case and defendants' amended motion to change venue in *Odom* are also substantially the same. As both *Odom* and this case involve the exact same facts relating to defendant Hospital's establishment and administration and the same legal issue, we are bound by the precedent of *Odom* which affirms the trial court's order denying defendant's motion to change venue, see *id* at \_\_\_\_, \_\_\_\_ S.E.2d at \_\_\_\_, and therefore we too affirm the trial court's denial of defendant's motion to change venue.

### III. Conclusion

Pursuant to *Odom*, \_\_\_\_ N.C. App. \_\_\_\_, \_\_\_\_ S.E.2d \_\_\_\_ we affirm the order of the trial court denying defendant's motion to change venue.

AFFIRMED.

Judges McCULLOUGH and TYSON concur.

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<sup>1</sup> In fact, in the case before us, defendant's second assignment of error notes that the order on appeal was entered in Mecklenburg County, but the order on appeal was actually entered in Rowan County. The order on appeal in *Odom* was entered in Mecklenburg County, and thus we suppose that when defendant's counsel copied the assignment of error from the *Odom* record on appeal for use in this case, the county name was inadvertently not changed.

Report per Rule 30(e).