DENY; and Opinion Filed May 8, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00382-CV

IN RE PETER BEASLEY, Relator

Original Proceeding from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-05741-2017

MEMORANDUM OPINION

Before Justices Bridges, Brown, and Boatright
Opinion by Justice Brown

Before the Court is relator's motion for rehearing. We deny the motion for rehearing. On our own motion, we withdraw our opinion of April 19, 2018 and vacate the order of that date. This is now the opinion of the Court.

In this original proceeding, relator complains of the trial court's order granting the real parties in interest's motion to transfer venue to Dallas County. To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Based on the record before us, we conclude relator is not entitled to the relief requested.

First, the order complained of is not subject to appellate or mandamus review because the real parties in interest moved to transfer venue pursuant to section 15.002(b) of the civil practice

and remedies code, and the trial court granted the motion to transfer without stating a reason. Section 15.002(c) of the civil practice and remedies code prohibits appellate or mandamus review of the granting of a motion to transfer venue brought under section 15.002(b). TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(c) (West 2017). Where, as here, the motion to transfer sufficiently invoked subsection (b) in requesting a transfer and the trial court did not give a reason for granting the transfer request, the order granting the transfer is statutorily beyond our review. *E.g., Jones v. Pioneer/Eclipse Corp.*, No. 05-08-00446-CV, 2009 WL 1395932, at *1 (Tex. App.—Dallas May 20, 2009, pet. denied) (mem. op.) (appellate court statutorily prohibited from reviewing order granting motion to transfer venue where the motion sufficiently invoked section 15.002(b)); *see also Garza v. Garcia*, 137 S.W.3d 36, 39 (Tex. 2004) ("it is irrelevant whether a transfer for convenience is supported by any record evidence" because appellate review of such a transfer is statutorily prohibited); *In re Coastal Alamo Invs., LLC*, No. 04-16-00455-CV, 2016 WL 4444384, at *1 (Tex. App.—San Antonio Aug. 24, 2016, orig. proceeding) ("A court's ruling or decision to grant or deny a transfer venue for the convenience of the parties and witnesses may not be reviewed by mandamus").

Relator argues that mandamus review is appropriate here because he seeks to enforce a mandatory venue statute. *See In re Lopez*, 372 S.W.3d 174, 176 (Tex. 2012) (mandamus relief is the proper remedy to enforce a mandatory venue provision when the trial court has denied a motion to transfer venue); TEX. CIV. PRAC. & REM. CODE ANN. § 15.0642 (West 2017) ("A party may apply for a writ of mandamus with an appellate court to enforce the mandatory venue provisions of this chapter."). Relator argues that venue was mandatory in Collin County under section 15.017 of the civil practice and remedies code because his claims include a libel claim. He is not entitled

to mandamus relief, however, because he did not establish prima facie proof that a mandatory venue statute applies to this case.

A plaintiff has the first opportunity to fix venue in a proper county by filing suit in that county. *In re Masonite Corp*., 997 S.W.2d 194, 197 (Tex. 1999) (orig. proceeding); TEX. R. CIV. P. 87(2)(a). In its motion to transfer venue, a defendant must specifically deny the venue facts in the plaintiff's petition; if not, they are taken as true. TEX. R. CIV. P. 87(3)(a). After the defendant has specifically denied the plaintiff's venue facts, then the plaintiff is required to make prima facie proof of its venue facts. TEX. R. CIV. P. 87(3)(a); *In re Mo. Pac. R.R. Co.*, 998 S.W.2d 212, 216 (Tex. 1999). The trial court evaluates venue based on the pleadings and affidavits. TEX. R. CIV. P. 87(3)(b). "If the plaintiff fails to establish proper venue, the trial court must transfer venue to the county specified in the defendant's motion to transfer, provided that the defendant has requested transfer to another county of proper venue." *In re Masonite Corp.*, 997 S.W.2d at 197.

Here, relator avers that mandatory venue is in Collin County under sections 15.002(3) and 15.017 of the civil practice and remedies code because "defendant's principal office" is in Collin County. TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.002(3), 15.017 (West 2017). To establish mandatory venue, relator had to establish prima facie proof that the real party in interest's principal office is in Collin County and that relator asserted a claim covered by section 15.017. "Principal office" is defined as "a principal office of a corporation ... in which the decision makers for the organization within this state conduct the daily affairs of the organization. The mere presence of an agency or representative does not establish a principal office." TEX. CIV. PRAC. REM. CODE ANN. § 15.001(a) (West 2017). To establish venue based upon a principal office, a plaintiff must show: (1) the employees in the county where the lawsuit was filed are "decision makers" for the company and (2) the employees in the county where the lawsuit was filed have "substantially equal

responsibility and authority" relative to other company officials within the state. *In re Mo. Pacific R.R. Co.*, 998 S.W.2d at 217, 220. A principal office is not just any place where company officials make decisions about the company's business because "such a broad definition would include agencies and representatives, which the statute expressly rejects." *Union Pac. R.R. Co. v. Stouffer*, 420 S.W.3d 233, 240 (Tex. App.—Dallas 2013, pet. dism'd) (quoting *Mo. Pacific*, 998 S.W.2d at 217). "Rather, 'decision makers' who 'conduct the daily affairs' are different kinds of officials than agents or representatives. And the term 'daily affairs' does not mean relatively common, low-level management decisions." *Id.*

Here, the real parties in interest specifically denied relator's venue facts and submitted evidence in support of the motion to transfer venue establishing that they did not reside in Collin County and the corporation does not have a principal office in Collin County. Further, the real parties in interest showed that relator's own pleadings in this case and in prior, related cases established Dallas County as a situs of proper venue in a suit against real party in interest SIM-DFW. Relator's rebuttal evidence did not present prima facie proof that SIM-DFW has a principal office in Collin County. Relator alleged in an affidavit that SIM-DFW was operated out of the Collin County homes of Kristy Autrey and Dorothy Autrey, and that Kristy kept the corporation's books and records at her Collin County home. Relator's affidavit testimony did not, however, establish that Kristy or Dorothy were employees of SIM-DFW, let alone company decision-makers with "substantially equal responsibility and authority" relative to other company officials within the state. Relator, therefore, did not meet his burden of proof to establish mandatory venue in Collin County. Because section 15.017 does not apply here, relator is not entitled to mandamus relief to enforce a mandatory venue provision. *See, e.g., Shamoun & Norman, LLP v. Yarto Int'l*

Group, LP, 398 S.W.3d 272, 297 (Tex. App.—Corpus Christi 2012, pet. dism'd) (mandamus relief denied where court determined venue statute relied on by relator did not apply).

Based on this record, we conclude relator is not entitled to the relief requested. Accordingly, we deny relator's petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Ada Brown/
ADA BROWN
JUSTICE

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