

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ROBERT CHAMBERS, in his capacity
as the Personal Representative of the
Estate of Richard H. Chambers, deceased,

Plaintiff/Respondent,

v.

McGEE GUEST HOME, INC.,

Defendant/Petitioner.

No. 40977-1-II

UNPUBLISHED OPINION

Worswick, A.C.J. — In this discretionary appeal, McGee Guest Homes, Inc. (McGee) challenges the trial court’s refusal to transfer venue from Grays Harbor County to Pierce County. It argues that the trial court erred by denying its motion to transfer venue because McGee resides only in Pierce County and the cause of action arose entirely within Pierce County. We agree; therefore, we reverse the trial court and remand for the court to enter an order transferring venue to Pierce County.

FACTS

Richard Chambers was evicted from the Westhaven assisted living facility in Aberdeen, Grays Harbor County. The Department of Social and Health Services (DSHS) contacted McGee by telephone about housing Richard¹ in McGee's boarding house in Spanaway, Pierce County. As part of McGee's mandatory preadmission assessment of Richard, McGee received faxed documents from and had telephone conversations with a DSHS office in Grays Harbor County. McGee also spoke with Westhaven over the phone about Richard.

After conducting its assessment, McGee accepted Richard as a resident. Shortly thereafter, Richard wandered out of McGee's facility in cold weather, inadequately dressed, and died. In May 2009, Robert Chambers, in his capacity as the personal representative of Richard's estate, sued McGee in Grays Harbor County Superior Court. Robert alleged that McGee was negligent in admitting and caring for Richard, and also alleged neglect of a vulnerable adult under RCW 74.34.200.

Before filing its answer, McGee moved to transfer venue to Pierce County. The trial court denied McGee's motion without prejudice and allowed McGee to renew the motion after the parties conducted discovery. McGee renewed its motion to transfer venue in May 2010. The trial court issued an order denying McGee's renewed motion without specifying the basis for denial. We accepted discretionary review of the trial court's orders.

¹ Because Richard Chambers and his son, Robert Chambers, share the same last name, we refer to them by their first names for clarity. We intend no disrespect.

ANALYSIS

I. Standard of Review

Under RCW 4.12.020(3), the appropriate venue in a personal injury suit is “either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides.” In an action against a corporation, venue is appropriate “(a) [i]n the county where the tort was committed; (b) in the county where the work was performed for said corporation; (c) in the county where the agreement entered into with the corporation was made; or (d) in the county where the corporation has its residence.” RCW 4.12.025(3). Under RCW 4.12.025(1), a corporation is deemed to reside where it “(a) [t]ransacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; or (d) where any person resides upon whom process may be served upon the corporation.” RCW 4.12.025(1).

Under RCW 4.12.030, a court may order a change of venue when

. . . it appears by affidavit, or other satisfactory proof:

- (1) That the county designated in the complaint is not the proper county; or,
 - (2) That there is reason to believe that an impartial trial cannot be had therein;
- or,
- (3) That the convenience of witnesses or the ends of justice would be forwarded by the change; or,
 - (4) That from any cause the judge is disqualified

When a plaintiff brings suit in a county not authorized by statute, the defendant has the right to have venue transferred to its county of residence. *Isho v. Angland*, 65 Wn.2d 375, 376, 397 P.2d 422 (1964); *see also Davidson v. Weyerhaeuser Co.*, 36 Wn. App. 150, 152, 672 P.2d 767 (1983) (“When a plaintiff commences an action in a county not authorized by statute, a solely

named defendant has an absolute right, when timely sought, to have venue of a transitory action changed to his county of residence.”). As such, this court reviews for abuse of discretion a ruling on venue under RCW 4.12.030(2) through .030(4), where venue is authorized by statute but may otherwise be inappropriate. *Moore v. Flateau*, 154 Wn. App. 210, 214, 255 P.3d 361 (2010). But a ruling on a motion to transfer venue under RCW 4.12.030(1) is a question of law, reviewed de novo. *Moore*, 154 Wn. App. at 214. McGee argues that Grays Harbor County is not the proper county because no statute authorizes venue there; as such, this court’s review is de novo.²

II. Venue

A. Transacting Business

McGee first argues that it does not reside in Grays Harbor County for the purpose of venue. Robert responds that McGee resides in Grays Harbor County because it transacted business there by accepting residents from Grays Harbor County.³ Robert also argues that McGee transacted business in Grays Harbor County because it received faxes from and had

² In a statement of additional authorities, Robert cites *State ex rel. Conley v. Superior Court for King County*, 106 Wn. 569, 181 P. 50 (1919), for the issue of whether the trial court can be found to have abused its discretion when it rules on a motion to transfer venue based on disputed facts. But consistent with *Moore*, 154 Wn. App. at 214, *Conley* held that the trial court had discretion to decide a motion to transfer venue for the convenience of witnesses. 106 Wn. at 572. The trial court in *Conley* made no ruling as to the defendant’s residence and the Supreme Court did not reach that issue. 106 Wn. at 572. *Conley* does not contradict *Moore*’s holding that a motion to transfer venue from a county not authorized by statute is a matter of law.

³ Robert also argues that McGee “admits that it solicits” residents from Grays Harbor County and all over the state. Br. of Appellant at 15. But Robert’s citations to the record on this point do not support this contention. The record reflects that McGee has accepted at least one resident from Grays Harbor County aside from Richard, and many residents from other counties. But there is no evidence in the record that McGee engages in any kind of solicitation of residents. In this case, DSHS contacted McGee to request that McGee accommodate Richard; McGee did not solicit Richard as a resident.

telephone conversations with people in Grays Harbor County when conducting its assessment of Richard. We agree with McGee.

In order to support venue in a particular county, the business a corporation transacts there must be “some substantial part of its usual and ordinary business, and not transactions which are merely incidental to that business or merely casual or occasional.” *Trans-Northwest Gas, Inc. v. Northwest Natural Gas Co.*, 40 Wn.2d 35, 37, 240 P.2d 261 (1952). What constitutes transacting business for any given corporation is highly fact specific and not amenable to a single test. *See State ex rel. Verd v. Superior Court for King County*, 31 Wn.2d 625, 627, 198 P.2d 663 (1948).

Because the question is highly fact specific, it is instructive to look to prior venue cases. The *Trans-Northwest Gas* court held that the defendant gas corporation transacted sufficient business to support venue in a county where it conducted preliminary surveys that were necessary for the defendant to lay transmission pipes in that county. 40 Wn.2d at 37. In *State ex rel. Verd*, the defendant lumber corporation transacted sufficient business to support venue in a county where the corporation’s president entered an agreement to sell lumber in that county. 31 Wn.2d at 631-32. And in *State ex rel. Anacortes Veneer, Inc. v. O’Phelan*, 23 Wn.2d 142, 155, 160 P.2d 515 (1945), the defendant plywood corporation conducted sufficient business to support venue in a county where it purchased lumber that it required for its business of manufacturing plywood veneer.

Although the question of what constitutes sufficient transaction of business to support venue is specific to the kind of business the defendant engages in, one thing is clear from the

above cases: in none of them does venue rest on simply contacting another county. Central to each case is some kind of transaction *within the forum county*. Although McGee received information and residents from Grays Harbor County, no business transaction occurred there. The record shows that McGee transacts all of its business in Pierce County; there is no law or rational argument to support Robert's theory that contacting other counties, or serving clients who come from other counties, establishes venue in those counties.⁴ As such, venue did not exist in Grays Harbor County based on McGee transacting business there.

B. Where Cause of Action Arose

Robert next argues that venue is appropriate in Grays Harbor County because part of the cause of action arose there. We disagree.

One of Robert's causes of action was for McGee negligently conducting its assessment of Richard. Robert argues that because this assessment involved contact with entities in Grays Harbor County by telephone and fax, part of the cause of action arose in Grays Harbor County.⁵

⁴ Without citing authority, Robert further argues that personal jurisdiction is an issue "closely related" to venue, and that this court should rely on the law of personal jurisdiction to determine whether McGee transacted sufficient business in Grays Harbor County. Br. of Resp't at 14. But as our Supreme Court has held, "Venue and jurisdiction are distinct concepts." *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 315, 76 P.3d 1183 (2003). Jurisdiction is a matter of a court's power and authority to act, whereas venue is a procedural matter. *Dougherty*, 150 Wn.2d at 315-16. Jurisdiction may exist in courts that are not the proper venue. *Dougherty*, 150 Wn.2d at 315. As such, it does not follow from the conclusion that personal jurisdiction exists that venue also exists and we decline to import personal jurisdiction law to determine the issue of venue.

⁵ Robert also asserts that McGee "participated with" DSHS and Westhaven staff in removing Richard from Westhaven and bringing him to McGee's facility "against his will." Br. of Resp't at 11-12. Robert cites nothing in the record to support this assertion. DSHS records reflect that Richard agreed to go to McGee's facility, and that DSHS arranged to transport Richard there. The record reflects that McGee's only participation in transporting Richard to its facility was to inform DSHS when it would prefer to accept him. Moreover, Robert's suit did not allege that the

But every action taken by McGee in this case was taken in Pierce County. As such, any alleged negligence by McGee in conducting the assessment occurred in Pierce County and the entire cause of action arose there. This cause of action did not arise in Grays Harbor County merely because McGee communicated with people in that county.

We reverse and remand to the trial court to enter an order transferring venue to Pierce County.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, A.C.J.

We concur:

Armstrong, J.

Quinn-Brintnall, J.

physical act of transporting Richard to McGee's facility was negligent, only that McGee was negligent in accepting Richard and negligent in monitoring him thereafter. As such, even if Robert's assertion had any basis in the record, it would be irrelevant to the question of where the cause of action arose.