Rel: June 26, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1190478

Ex parte Doris Sanders

PETITION FOR WRIT OF MANDAMUS

(In re: Doris Sanders

v.

Shawn Reaves, Sae Him Chung, and Alfa Mutual Insurance Company)

(Macon Circuit Court, CV-19-900181)

SELLERS, Justice.

Doris Sanders petitions this Court for a writ of mandamus directing the Macon Circuit Court to vacate its March 13, 2020, order transferring the underlying action to the Montgomery Circuit Court pursuant to § 6-3-21.1, Ala. Code 1975, Alabama's forum non conveniens statute. We grant the petition and issue the writ.

Facts and Procedural History

On August 22, 2019, Sanders, a resident of Barbour County, was involved in a multi-vehicle accident on Interstate 85 in Macon County. Sanders sued the drivers of the other two vehicles, Sae Him Chung and Shawn Reaves,[1] in the Macon Circuit Court, alleging negligence and wantonness and seeking damages for her accident-related injuries.[2] Sanders also included a claim against her insurer, Alfa Mutual Insurance

[1]The parties submit that, at the time the trial court transferred the underlying action to Montgomery County, Reaves, a resident of Shelby County, had been served with process but had not filed an answer or otherwise appeared in the action.

[2]According to the allegations in the complaint, the vehicle driven by Reaves struck the rear of the vehicle driven by Chung, causing Chung's vehicle to strike the rear of Sanders's vehicle.

Company, seeking to recover uninsured/underinsured motorist benefits.[3]

Alfa and Chung (hereinafter referred to collectively as "the defendants") filed a joint motion for a change of venue pursuant to § 6-3-21.1, Ala. Code 1975, the forum non conveniens statute, requesting that the action be transferred to Montgomery County in the interest of justice and for the convenience of the parties and witnesses. The defendants supported their motion with a copy of the "Alabama Uniform Traffic Crash Report," indicating, in relevant part, (1) that the accident occurred in Macon County and was investigated there; (2) that Sanders was employed by the State of Alabama Tourism Department, which is located in Montgomery County; (3) that Chung lived and worked in Montgomery County; and (4) that Kellie Leigh McElvaine, a witness to the accident, lived and worked in Montgomery County.

Sanders filed a response in opposition to the motion for a change of venue, arguing that the case should remain in Macon County because, she said, the defendants failed to carry

[3]The materials before us do not include any relevant information regarding Alfa, other than the fact that it issued the policy insuring Sanders's vehicle.

their burden of showing that a transfer to Montgomery County was required under § 6-3-21.1. Sanders supported her motion with her own affidavit stating that litigating the case in Macon County would be more convenient for her because Macon County was closer to her residence in Barbour County. Sanders also stated that she did not work in Montgomery County; rather, she said, she worked in Macon County at the Macon County Rest Area. Finally, she stated that she received medical treatment for her injuries in Lee County and Barbour County, both of which are closer to Macon County than to Montgomery County. Thus, she asserted that her health-care providers in Lee County and Barbour County would have to travel farther if the case were transferred to Montgomery County.

Following a hearing, the Macon Circuit Court entered an order transferring the action to Montgomery County. Sanders petitioned this Court for mandamus review.

Standard of Review

> "The proper method for obtaining review of a denial [or grant] of a motion for a change of venue in a civil action is to petition for the writ of mandamus. Lawler Mobile Homes, Inc. v. Tarver, 492 So. 2d 297, 302 (Ala. 1986). 'Mandamus is a drastic and extraordinary writ, to be issued only where

> there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court.' Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). 'When we consider a mandamus petition relating to a venue ruling, our scope of review is to determine if the trial court [exceeded] its discretion, i.e., whether it exercised its discretion in an arbitrary and capricious manner.' Id. Our review is further limited to those facts that were before the trial court. Ex parte American Resources Ins. Co., 663 So. 2d 932, 936 (Ala. 1995)."

Ex parte National Sec. Ins. Co., 727 So. 2d 788, 789 (Ala. 1998).

Analysis

Sanders argues that the Macon Circuit Court exceeded its discretion in transferring the underlying action to the Montgomery Circuit Court under the doctrine of forum non conveniens. Section 6-3-21.1(a), Ala. Code 1975, provides, in pertinent part:

> "With respect to civil actions filed in an appropriate venue, any court of general jurisdiction shall, for the convenience of parties and witnesses, or in the interest of justice, transfer any civil action or any claim in any civil action to any court of general jurisdiction in which the action might have been properly filed and the case shall proceed as though originally filed therein."

It is undisputed that Macon County and Montgomery County are both proper venues for the underlying action. See 6-3-2(a)(3), Ala. Code 1975. "When venue is appropriate in more than one county, the plaintiff's choice of venue is generally given great deference." Ex parte Perfection Siding, Inc., 882 So. 2d 307, 312 (Ala. 2003). The party moving for a transfer has the initial burden of showing that a transfer is justified under § 6-3-21.1. Ex parte National Sec. Ins. Co., 727 So. 2d at 789. Thus, this Court must determine whether the defendants met their burden of showing that the interest of justice or the convenience of the parties and witnesses override Sanders's choice of venue.

"The purpose of the doctrine [of forum non conveniens] is to prevent the waste of time, energy, and money and also to protect witnesses, litigants, and the public against unnecessary expense and inconvenience." Ex parte New England Mut. Life Ins. Co., 663 So. 2d 952, 956 (Ala. 1995). "[I]n analyzing the interest-of-justice prong of § 6-3-21.1, this Court focuses on whether the 'nexus' or 'connection' between the plaintiff's action and the original forum is strong enough to warrant burdening the plaintiff's forum with the action."

Ex parte First Tennessee Bank Nat'l Ass'n, 994 So. 2d 906, 911 (Ala. 2008). "[T]he county to which the transfer is sought must have a 'strong' nexus or connection to the lawsuit, while the county from which the transfer is sought must have a 'weak' or 'little' connection to the action." Ex parte J & W Enters., LLC, 150 So. 3d 190, 196 (Ala. 2014). Additionally, this Court has held that "litigation should be handled in the forum where the injury occurred." Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006).

The defendants argue that the interest of justice requires a transfer of the action to Montgomery County because, they say, Chung, one of the defendants, and McElvaine, a witness to the accident, live and work in Montgomery County. The defendants also assert that a section of cable barrier owned by the State of Alabama was damaged in the accident and that the appropriate witness to testify regarding the damage is employed in Montgomery County. Although the Alabama Uniform Traffic Crash Report does indicate that a "section of cable barrier" owned by the State of Alabama was damaged as a result of the accident, the State is not a party to this action, and there is no evidence

indicating that the State is seeking compensation for the damaged cable barrier. Further, the defendants have not identified any specific witness they claim will testify on behalf of the State. In short, Montgomery County's sole material contact with this case is that one of the defendants and an eyewitness reside there. The defendants have not demonstrated that Sanders's choice of venue, Macon County, has a weak or little connection to this case. As indicated, the accident made the basis of this case occurred in Macon County and was investigated there. Sanders indicated in her affidavit that litigating the case in Macon County would be more convenient for her because she works in Macon County, and Macon County is closer to her residence in Barbour County. Sanders also asserted that her health-care providers in Lee County and Barbour County would have to travel farther if the case were transferred to Montgomery County. Simply put, the defendants have failed to demonstrate that the interest of justice overrides the deference due Sanders's choice of venue. In seems apparent from the facts before the trial court that Macon County has a very strong connection to the action whereas Montgomery County's connection is weak.

We further conclude that the defendants have not met their burden of demonstrating that a transfer of the underlying action to Montgomery County is required based on the convenience of the parties and witnesses. See Ex parte New England Mut. Life Ins. Co., 663 So. 2d at 956 (noting that the burden is on the defendant to prove to the satisfaction of the trial court that the transferee forum is significantly more convenient than the forum selected by the plaintiff). In this case, although the defendants rely on the fact that one of the defendants, a nonparty witness, and a witness from the State of Alabama all reside or work in Montgomery County, they have produced no evidence or affidavits from any witnesses declaring that Montgomery County would be a significantly more convenient forum for litigating the action or that traveling to Macon County for trial would be burdensome or otherwise inconvenient for them. See Ex party Tyson Chicken, Inc., 291 So. 3d 477, 481 (Ala. 2019)(noting that this Court has declined to order a transfer in cases in which the party moving for a transfer has failed to present evidence demonstrating that the transferee forum is significantly more convenient than the transferor forum). Accordingly, the

defendants have not met their burden of showing that Montgomery County is a significantly more convenient forum than Macon County -- Sanders's chosen forum.

Conclusion

For the foregoing reasons, we conclude that the Macon Circuit Court exceeded its discretion in transferring this case to the Montgomery Circuit Court. We, therefore, grant the petition for a writ of mandamus and direct the Macon Circuit Court to vacate it March 13, 2020, order transferring this action to the Montgomery Circuit Court.

PETITION GRANTED; WRIT ISSUED.

Bolin, Wise, Bryan, and Mendheim, JJ., concur.

Mitchell, J., concurs specially.

Parker, C.J., and Shaw and Stewart, JJ., concur in the result.

MITCHELL, Justice (concurring specially).

I agree with the majority opinion that venue for this case should be in Macon County, the location of the automobile accident in which the petitioner Doris Sanders was injured. I caution future litigants, however, against relying too heavily upon the following quotation from Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006), in the majority opinion: "'litigation should be handled in the forum where the injury occurred.'" ___ So. 3d at ___. Although the general principle for which Ex parte Fuller is cited applies here, we have clarified in more recent decisions that the location of the injury is not the single determinative factor in the forum non conveniens analysis. In 2017, this Court emphasized the importance of the location where the injury occurred, while recognizing that, in certain circumstances, the interests of justice may nevertheless dictate that a case be tried in a different venue:

> "[A]lthough we have cautioned that it is not a talisman, this Court has stated that where the injury occurred is 'often assigned considerable weight in an interest-of-justice analysis.' Ex parte Wachovia, 77 So. 3d 570, 574 (Ala. 2011). Our recent cases bear out this principle. See, e.g., Ex parte Tier 1 Trucking, LLC, 222 So. 3d 1107 (Ala. 2016); Ex parte Wayne Farms, LLC, 210 So. 3d 586

> (Ala. 2016); Ex parte Quality Carriers, Inc., 183 So. 3d 937 (Ala. 2015); Ex parte Manning, 170 So. 3d 638 (Ala. 2014); Ex parte Morton, 167 So. 3d 295 (Ala. 2014); Ex parte State Farm Mut. Auto. Ins. Co., 149 So. 3d 1082 (Ala. 2014); Ex parte Southeast Alabama Timber Harvesting, LLC, 94 So. 3d 371 (Ala. 2012). Nevertheless, 'the location where the accident occurred ... is not, and should not be, the sole consideration for determining venue under the "interest of justice" prong of 6-3-21.1.' [Ex parte] J & W Enters.[, LLC], 150 So. 3d [190,] 196-97 [(Ala. 2014)]."

Ex parte Elliott, 254 So. 2d 882, 886 (Ala. 2017).

In sum, I agree with the majority opinion's forum non conveniens analysis and its conclusion that "the defendants have failed to demonstrate that the interest of justice overrides the deference due Sanders's choice of venue." ___ So. 3d at ___. Despite the quotation from Ex parte Fuller, however, I do not understand the majority opinion to stand for the principle that litigation must always be handled in the forum where the injury occurred.