REL: September 13, 2019

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2019

1180074

Ex parte KKE, LLC, and Ronny Sanders

PETITION FOR WRIT OF MANDAMUS

(In re: DeWillis Rivers, as father of Londyn Rivers, deceased, and Keisha Rivers, as the personal representative of the Estates of Tarlanda Davenport, deceased, and Makiyah Davenport, deceased

v.

KKE, LLC, et al.)

(Bibb Circuit Court, CV-17-900094)

MITCHELL, Justice.

Ronny Sanders and his employer KKE, LLC, seek to transfer a wrongful-death case filed against them in Bibb County to Chilton County, where the automobile accident giving rise to the case occurred. We deny their petition.

Facts and Procedural History

KKE is a trucking company with its principal place of business in Bibb County. On June 8, 2016, Sanders, a Bibb County resident, was driving a logging truck owned by KKE eastbound on U.S. Highway 82 in Chilton County when the truck collided with a westbound vehicle being driven by Destini Davis. Davis and her three passengers -- Londyn Rivers, Tarlanda Davenport, and Makiyah Davenport -- were killed in the collision.

On September 19, 2017, DeWillis Rivers, as the father of Londyn Rivers, and Keisha Rivers, as the personal representative of the estates of Tarlanda and Makiyah Davenport, sued Sanders, KKE, and fictitiously named defendants in the Bibb Circuit Court. The Riverses alleged that Sanders was operating the logging truck in a negligent and wanton manner at the time of the accident and that KKE had

acted negligently in hiring, training, and supervising Sanders. Sanders and KKE moved the trial court to transfer the action to the Chilton Circuit Court under § 6-3-21.1, Ala. Code 1975, Alabama's forum non conveniens statute, arguing that the transfer was required both "for the convenience of parties and witnesses" and "in the interest of justice." Sanders and KKE emphasized the following facts in their motion to transfer:

> (1) The accident that gave rise to the action occurred in Chilton County;
>
> (2) The Riverses are both residents of Montgomery County;
>
> (3) The Alabama State Trooper who investigated the accident is based in Montgomery County; and
>
> (4) The Chilton Circuit Court had already adjudicated another action stemming from the same automobile accident, an interpleader action filed by the insurer of the vehicle struck by the KKE logging truck for the purpose of determining who should receive the proceeds of the policy covering that vehicle.

The Riverses opposed the motion to transfer and submitted to the trial court two affidavits from individuals who had witnessed Sanders driving at what they considered to be an excessive rate of speed several minutes before the accident. Both witnesses lived in Montgomery County, where they were

employed by the Alabama Department of Transportation. They both stated in their affidavits that they traveled throughout the state as part of their jobs and that there was no significant difference to them between traveling to Bibb County or to Chilton County for the purpose of testifying.

On September 10, 2018, the trial court denied the motion to transfer without providing a rationale for the denial. On October 22, 2018, Sanders and KKE petitioned this Court for a writ of mandamus directing the trial court to vacate its order denying their motion to transfer and to enter a new order granting that motion.

Standard of Review

> "'The proper method for obtaining review of a denial 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 Southeast Alabama Timber Harvesting, LLC, 94 So. 3d 371, 373 (Ala. 2012) (quoting Ex parte National Sec. Ins. Co., 727 So. 2d 788, 789 (Ala. 1998)).

Analysis

It is undisputed that Bibb County is an appropriate venue for the Riverses' action because Sanders is a Bibb County resident and KKE's principal place of business is in Bibb County. See §§ 6-3-2 and 6-3-7, Ala. Code 1975 (setting forth the rules governing venue in actions against individuals and actions against corporations, respectively). Because the accident underlying this action occurred in Chilton County, there is similarly no dispute that Chilton County would be an appropriate venue as well. Importantly, however, "[w]hen 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).

Section 6-3-21.1(a) mandates the transfer of an action from the plaintiff's chosen venue to another appropriate venue if a defendant makes one of two showings:

> "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."

(Emphasis added.) See also Ex parte Masonite Corp., 789 So. 2d 830, 831 (Ala. 2001) ("'A defendant moving for a transfer under § 6-3-21.1 has the initial burden of showing that the transfer is justified, based on the convenience of the parties and witnesses or based on the interest of justice.'" (quoting Ex parte National Sec. Ins. Co., 727 So. 2d at 789)). Sanders and KKE argue that the transfer of the Riverses' action from Bibb County to Chilton County is required both "for the convenience of parties and witnesses" and "in the interest of justice." We consider these arguments in turn.

A. Convenience of Parties and Witnesses

One purpose of the forum non conveniens doctrine is to spare parties and witnesses the unnecessary expense and inconvenience of litigating and testifying in a distant forum. Ex parte Kane, 989 So. 2d 509, 512 (Ala. 2008). This Court has explained:

> "The burden of proof under [the forum non conveniens] doctrine is on the defendant to prove to the satisfaction of the trial court that the defendant's inconvenience and expense of defending the action in the venue selected by the plaintiff are such that the plaintiff's right to choose the forum is overcome. Stated differently, the transferee forum must be significantly more convenient than the forum in which the action is filed by the plaintiff, to justify transfer."

Ex parte New England Mut. Life Ins. Co., 663 So. 2d 952, 956 (Ala. 1995) (emphasis added). In this case, Sanders is a resident of Bibb County and KKE is headquartered in Bibb County. The Riverses and three potential witnesses live in Montgomery County. No party lives in Chilton County, and neither side has identified any potential witnesses from Chilton County. Sanders and KKE nevertheless argue that Chilton County would be a significantly more convenient forum than Bibb County because Chilton County is closer to Montgomery County. Accordingly, they argue, the potential witnesses who are also state employees -- the Alabama State Trooper who investigated the accident and the two Alabama Department of Transportation employees who witnessed Sanders's driving -- would be away from their state jobs for less time if the action is transferred to Chilton County.

Sanders and KKE cite two decisions of this Court in support of their argument: Ex parte Tier 1 Trucking, LLC, 222 So. 3d 1107 (Ala. 2016), and Ex parte Bama Concrete, 8 So. 3d 295 (Ala. 2008). In Tier 1 Trucking, this Court held that an action should be transferred from a county where only the plaintiffs resided to another county in which one of the defendants and some potential witnesses resided. 222 So. 3d at 1108. Tier 1 Trucking, however, is not on point. First, this Court's holding in that case was based on the interest-of-justice ground of § 6-3-21.1, not the convenience-of-parties-and-witnesses ground. Second, the underlying action in Tier 1 Trucking was transferred to a county in which one of the defendants and multiple potential witnesses resided. In contrast, Sanders and KKE seek to have the Riverses' action transferred to a forum in which no parties or witnesses reside.

Bama Concrete is also of limited assistance to Sanders and KKE. Although the Court in that case stated in its conclusion that "the 'interest of justice' and the 'convenience of parties and witnesses' require[d] the transfer of [the] action from Greene County to Tuscaloosa County," 8

So. 3d at 299, the analysis that precedes that conclusion is focused almost exclusively on the interest-of-justice ground of § 6-3-21.1. Moreover, as in Tier 1 Trucking, the Court in Bama Concrete ordered the action transferred to a county in which a defendant and multiple witnesses resided, 8 So. 3d at 296, not a county in which no parties or potential witnesses resided.

Sanders and KKE have not established that Chilton County is a significantly more convenient forum than Bibb County. Sanders is a resident of Bibb County and KKE's principal place of business is there. While they would prefer to have this action litigated in Chilton County, it is not clear how traveling to Chilton County would be more convenient for them than remaining in Bibb County. They have accordingly based their argument that Chilton County is a more convenient forum on the fact that the Riverses and the identified potential witnesses live in Montgomery County. The Riverses, however, have indicated their preference to litigate this action in Bibb County, and two of the identified witnesses have indicated that Bibb County and Chilton County are equally

convenient for them.[1] In Perfection Siding, this Court declined to transfer an action to an adjoining county because any inconvenience caused "simply by crossing the county line" was marginal where the defendant's place of business in Tuscaloosa County was only 20 minutes away from the courthouse in Hale County, where the action was pending. 882 So. 2d at 312. In this case, any convenience that would be achieved on behalf of parties and witnesses located in Montgomery County by moving this action from Bibb County to Chilton County would seem to be similarly negligible.

In sum, there is nothing before us indicating that Chilton County would be a more convenient forum, much less a significantly more convenient forum, than Bibb County for any of the parties or witnesses. Accordingly, the trial court did

[1]We recognize that in Tier 1 Trucking this Court gave little heed to an affidavit from a Conecuh County police officer indicating that he would not be inconvenienced by traveling to a nearby county to serve as a witness in the case. 222 So. 3d at 1114. But in doing so, the Court was not addressing the convenience of parties and witnesses. Rather, the Court emphasized the police officer's and the case's connections to Conecuh County, in accordance with the interest-of-justice analysis that served as the basis of the decision. In any event, in this case, it cannot be said that the state-trooper and state-employee witnesses have a stronger connection to Chilton County than to Bibb County. To the contrary, they all work in a third county and serve the people of the entire state, not just one county.

not exceed its discretion when it denied Sanders and KKE's motion to transfer based on the convenience of the parties and witnesses.

B. Interest of Justice

The Riverses also argue that this case should be transferred to Chilton County in the interest of justice. As this Court has recently emphasized, we do not apply a simple balancing test when considering this ground. "Rather, to compel a change of venue [in the interest of justice], the underlying action must have both a 'strong' connection to the county to which the transfer is sought and a 'weak' or 'little' connection to the county in which the case is pending ...." Ex parte Tyson Chicken, Inc., [Ms. 1170820, May 24, 2019] ___ So. 3d ___, ___ (Ala. 2019).

The Riverses do not dispute that this action may have a strong connection to Chilton County. They recognize that the automobile accident occurred and was investigated in Chilton County, and they acknowledge Alabama caselaw holding that the location of the underlying injury is given "considerable weight in an interest-of-justice analysis." Ex parte Wachovia Bank, N.A., 77 So. 3d 570, 573-74 (Ala. 2011). The Riverses

nevertheless argue that, under the facts of this case, Chilton County's connection to this action is no greater than Bibb County's connection. We therefore focus our inquiry on the connection between Bibb County and the Riverses' action. See Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d 536, 540 (Ala. 2008) (explaining that when this Court considers whether an action should be transferred in the interest of justice under § 6-3-21.1 it "'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'" (quoting Ex parte Tennessee Bank Nat'l Ass'n, 994 So. 2d 906, 911 (Ala. 2008))).

Sanders and KKE assert that "[t]he only relevant connection this case has to Bibb County is the fact that [Sanders] resides there and [KKE's] principal place of business is located there." Petition at p. 11. They argue that those types of connections are too weak to justify proceeding in a plaintiff's selected forum when there is another forum with stronger connections, and they cite numerous decisions of this Court in support of that argument. See, e.g., Tier 1 Trucking, 222 So. 3d at 1113 (directing the

trial court to transfer an action from a forum because the forum's only connection to the case was that "the [plaintiffs] reside there and [the defendant trucking company] has conducted some business there that was not related to this action"); Ex parte McKenzie Oil Co., 13 So. 3d 346, 349 (Ala. 2008) (directing the trial court to transfer a case in the interest of justice where the case's only connection to the plaintiff's chosen forum was the fact that the defendant's corporate headquarters were located there); Ex parte Kane, 989 So. 2d at 513 (directing the trial court to transfer an action from Clay County because "[t]he only connection with this case and Clay County ... is that [the plaintiff] resides there and [the defendant insurance company] does business there").

The Riverses dispute Sanders and KKE's characterization of the connection between their action and Bibb County. They argue that Sanders and KKE have focused exclusively on the negligence and wantonness claims based on Sanders's driving and have overlooked the negligent hiring, training, and supervision claim asserted against KKE. Although the accident occurred in Chilton County, the Riverses assert that the hiring, training, and supervision of Sanders all occurred in

Bibb County. This claim, they argue, combined with the fact that Sanders -- a defendant and the only eyewitness to the accident -- also resides in Bibb County creates a sufficiently strong connection between Bibb County and their action to satisfy the interest of justice. In support of their argument, the Riverses rely on Ex parte J & W Enterprises, LLC, 150 So. 3d 190 (Ala. 2014), which they assert is virtually identical to this case and should govern this Court's review.

J & W Enterprises involved an accident between two tractor-trailer rigs in Mobile County. The driver of one of the rigs, a nonresident of Alabama, subsequently sued the other driver and the defendant driver's trucking company in Clarke County, where the defendant driver resided and the trucking company was based. The plaintiff asserted negligence and wantonness claims based on the defendant driver's operation of his rig, as well as negligent and wanton entrustment, hiring, retention, and training claims against the trucking company. The defendants subsequently asked the Clarke Circuit Court to transfer the action from Clarke County to Mobile County under § 6-3-21.1. After the Clarke Circuit

Court denied that motion, the defendants petitioned this Court for a writ of mandamus, arguing that the interest-of-justice ground of § 6-3-21.1 required the transfer.

In denying the defendants' petition, this Court emphasized that, although the location of the accident is given considerable weight when performing an interest-of-justice analysis, location "is not, and should not be" the sole consideration under that analysis. 150 So. 3d at 196-97. The Court further determined that Clarke County's connection to the action was not "markedly weak" because both defendants were located in Clarke County, and "it stands to reason that documents relevant to [the plaintiff's] claims ... of negligent or wanton entrustment, hiring, retention, and training are located at [the trucking company's] place of business in Clarke County." 150 So. 3d at 197. Therefore, the Court held that the interest of justice would not be offended by trial in Clarke County and that the trial court had not exceeded its discretion by denying the defendants' motion to transfer under § 6-3-21.1. Id.

We agree that our holding in J & W Enterprises controls this case. Sanders and KKE argue that J & W Enterprises is

distinguishable because "the record undisputedly demonstrates that relevant documents to [the Riverses'] claim for negligent or wanton hiring, training, or supervision do not exist." Sanders and KKE's reply brief at p. 8. But Sanders and KKE have submitted no materials to this Court to support that assertion -- and the Riverses claim otherwise. See Ex parte Guaranty Pest Control, Inc., 21 So. 3d 1222, 1228 (Ala. 2009) ("When this Court considers a petition for a writ of mandamus, the only materials before it are the petition and the answer and any attachments to those documents. There is no traditional 'record' submitted to this Court by the trial court clerk as in an appeal."). We further note that this Court's holding in J & W Enterprises was not dependent on the existence of documents in the plaintiff's chosen forum.

Sanders and KKE also argue that in J & W Enterprises this Court emphasized that the injury occurred on a strip of interstate highway in Mobile County (Interstate 10), while the accident in this case occurred on a public highway in Chilton County used by Chilton County citizens on a daily basis (U.S. Highway 82). We are not persuaded by this distinction. First, while U.S. Highway 82 is no doubt used by many Chilton

County citizens each day, we can say with similar certainty that I-10 is also used by many Mobile County citizens every day. Second, to the extent Sanders and KKE are arguing that U.S. Highway 82 has unique characteristics that make the connection of this action to Chilton County stronger, that argument is irrelevant. The Riverses do not dispute that their action may have a strong connection to Chilton County. Rather, they argue that their action does not have a weak connection to Bibb County. See Ex parte Tyson Chicken, ___ So. 3d at ___ (explaining that, despite evidence demonstrating that the county in which the accident occurred had a strong connection to the case, "that evidence alone does not require a transfer" because the petitioner "must still show that [the original forum's] connection to the underlying action is 'weak' or 'little'").[2] Sanders and KKE have not shown that Bibb County's connection to this action is weak. Therefore, they have not demonstrated that the trial court exceeded its

[2]For this same reason, it is unnecessary to consider what effect the interpleader action filed in Chilton County has on the interest-of-justice analysis. It is sufficient to note that the existence of that earlier action has no bearing on the connection between Bibb County and the Riverses' action.

discretion by not transferring this action to Chilton County based on the interest-of-justice ground of § 6-3-21.1.

Conclusion

The Riverses sued Sanders and KKE after the Riverses' relatives died as the result of a collision with a KKE logging truck driven by Sanders. After the trial court denied Sanders and KKE's motion to transfer the action from Bibb County to Chilton County, they petitioned this Court for a writ of mandamus, arguing that the transfer was required by § 6-3-21.1. As explained above, Sanders and KKE have not established that Chilton County is a significantly more convenient forum than Bibb County or that Bibb County's connection to the action is weak. Because they have not established a clear legal right to the transfer they seek, Sanders and KKE are not entitled to mandamus relief. Accordingly, their petition for the writ of mandamus is denied.

PETITION DENIED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Mendheim, and Stewart, JJ., concur.

Sellers, J., concurs specially.

SELLERS, Justice (concurring specially).

I concur with the main opinion's conclusion that KKE, LLC, and Ronny Sanders have not established a clear legal right to a transfer under § 6-3-21.1, Ala. Code 1975, and, therefore, are not entitled to mandamus relief. I write specially to note that this Court is releasing another decision today in a case that also involves the application of § 6-3-21.1, Ala. Code 1975. See Ex parte Reed, [Ms. 1180564, September 13, 2019] __ So. 3d __ (Ala. 2019)(holding that a transfer of the underlying action was warranted under the interest-of-justice prong of § 6-3-21.1(a)). Although the result in these two cases is different, I view their holdings to be consistent in their application of this Court's established precedent in this area.

In this case, Bibb County, where the underlying action was filed, is where the defendant individual resides and where the corporate defendant maintains its principal place of business; the latter is noteworthy because the complaint includes a claim alleging negligent hiring, training, and supervision. In Ex parte J & W Enterprises, LLC, 150 So. 3d 190 (Ala. 2014), this Court held that virtually identical connections were not "markedly weak." Thus, the main opinion

correctly concludes that the "holding in J & W Enterprises controls this case." ___ So. 3d at ___.

Alternatively, in Ex parte Reed, although the complaint was filed in Jefferson County, the underlying action's only connection there was the fact that the defendant individual resided there -- a connection that, by itself, this Court has repeatedly characterized as weak. See, e.g., Ex parte Benton, 226 So. 3d 147, 151 (Ala. 2016).

Determining whether the requested transfer of an action is warranted under § 6-3-21.1, Ala. Code 1975, is an inquiry that necessarily depends on the facts of each case. With that said, our decision in this case and our decision in Ex parte Reed add to this Court's long line of cases applying § 6-3-21.1, which should serve as guideposts for the trial courts when ruling on motions for a change of venue based on the doctrine of forum non conveniens.