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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1170820

Ex parte Tyson Chicken, Inc., and Charles Gregory Craig

PETITION FOR WRIT OF MANDAMUS

(In re: Lisa Burke Huffstutler

v.

Tyson Chicken, Inc., and Charles Gregory Craig)

(Marshall Circuit Court, CV-18-900113)

SELLERS, Justice.

1170820

Tyson Chicken, Inc. ("Tyson"), and Charles Gregory Craig petition this Court for a writ of mandamus directing the Marshall Circuit Court ("the trial court") to vacate its order denying Tyson and Craig's motion for a change of venue and to enter an order transferring the underlying action to the Cullman Circuit Court. We grant the petition and issue the writ.

Facts and Procedural History

On November 29, 2017, a vehicle driven by Lisa Burke Huffstutler collided with a tractor-trailer driven by Craig, an employee of Tyson. The collision occurred at the intersection of County Road 747 and County Road 1609 in Cullman County. Emergency responders, including state troopers and medical personnel, investigated the accident, treated Huffstutler for her injuries at the scene, and then transported her to Cullman Regional Medical Center for further medical treatment.

On March 6, 2018, Huffstutler sued Tyson, Craig, and multiple fictitiously named defendants in the Marshall Circuit Court alleging wantonness, negligence, negligent and/or wanton supervision or training, and negligent and/or wanton hiring,

1170820

retention, and entrustment. Tyson and Craig jointly moved for a change of venue to the Cullman Circuit Court under Alabama's forum non conveniens statute, Ala. Code 1975, § 6-3-21.1. After the trial court denied that motion, Tyson and Craig filed this mandamus petition.¹

Standard of Review

A petition for a writ of mandamus is the "proper method for obtaining review of a denial of a motion for a change of venue in a civil action." Ex parte National Sec. Ins. Co., 727 So. 2d 788, 789 (Ala. 1998). "A writ of mandamus is appropriate when the petitioner can demonstrate '(1) a clear legal right 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) the properly invoked jurisdiction of the court.'" Ex parte Kane, 989 So. 2d 509, 511 (Ala. 2008) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)). When reviewing a mandamus petition challenging a ruling on a change-of-venue motion on the basis

¹In response to this mandamus petition, Huffstutler filed a motion to strike Appendix II of the petition on the ground that it included evidence that was not submitted to the trial court. This Court granted that motion to strike. Accordingly, we will not consider Appendix II or any arguments based on the documents in it.

1170820

of forum non conveniens, this Court must determine whether the trial court exceeded its discretion in granting or denying the motion. Ex parte Fuller, 955 So. 2d 414, 415 (Ala. 2006). "Our review is limited to only those facts that were before the trial court." Ex parte Kane, 989 So. 2d at 511.

Discussion

Alabama's forum non conveniens statute provides:

"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."

§ 6-3-21.1, Ala. Code 1975. Tyson and Craig concede that venue is proper in the Marshall Circuit Court; however, Tyson and Craig argue that the action should be transferred to the Cullman Circuit Court in the interest of justice and for the convenience of parties and witnesses.

Our analysis under the interest-of-justice prong of the forum non conveniens statute does not involve a "simple balancing test weighing each county's connection to an action." Ex parte J & W Enters., LLC, 150 So. 3d 190, 196 (Ala. 2014). Instead, "[t]he 'interest of justice' prong of

1170820

§ 6-3-21.1 requires 'the transfer of the action from a county with little, if any, connection to the action, to the county with a strong connection to the action.'" Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d 536, 540 (Ala. 2008) (quoting Ex parte National Sec. Ins. Co., 727 So. 2d at 789).

"This Court has held that litigation should be handled in the forum where the injury occurred." Ex parte Fuller, 955 So. 2d at 416. The Court has also noted that a key factor to consider in its venue analysis is "the interest of the people of a county to have a case that arises in their county tried close to public view in their county." Ex parte Smiths Water & Sewer Auth., 982 So. 2d 484, 490 (Ala. 2007). The following factors are significant in evaluating the propriety of a transfer of the underlying action to Cullman County: (1) the accident occurred in Cullman County; (2) the accident was investigated in Cullman County; (3) Huffstutler was treated at the accident scene by employees of Cullman Emergency Medical Services, based in Cullman County; (4) Huffstutler was transported from the accident scene to Cullman Regional Medical Center to receive additional medical care and treatment; (5) Tyson maintains a facility in Cullman County

1170820

where the truck involved in the accident is registered; and
(6) Huffstutler is employed in Cullman County and owns a house there.

Tyson and Craig contend that the location-of-the-accident factor is especially noteworthy in this case because, they say, the terrain near the scene of the accident may have been a contributing factor.² Tyson and Craig's original motion for a change of venue included an affidavit from an expert in accident reconstruction who stated that, in his opinion, a viewing of the scene of the accident would aid the fact-finder in understanding the evidence presented in this case. Furthermore, Tyson and Craig claim that, in addition to much of the evidence surrounding the accident itself and the resulting injuries, all the documentary evidence pertaining to Craig's employment with Tyson is located at Tyson's facility in Cullman County.³ Cullman County then, in addition to being the site of the accident, is also the location of records that

²Tyson and Craig allege the collision occurred near the crest of a hill where a cautionary road sign is located to warn of the upcoming intersection.

³In their original motion, Tyson and Craig stated that 38 of the 43 document requests served on Tyson "concern, pertain, or relate to information, witnesses, and/or documents located by Tyson in Cullman County."

1170820

would be relevant to Huffstutler's claims of negligent and/or wanton hiring, training, supervision, and retention.

Huffstutler argues that Marshall County's connection to the case is not so weak as to justify a transfer of the action to Cullman County. She points out that both she and Craig are residents of Marshall County and that Tyson operates a facility in Marshall County.⁴ Huffstutler also asserts that, because Craig works at Tyson's facility in Marshall County, it is likely that Tyson employees from that facility will have to provide testimony relating to her claim of negligent and/or wanton training and supervision.

Huffstutler primarily relies on this Court's opinion in Ex parte J & W Enterprises to support her claim that a transfer of the action to Cullman County is not warranted. That case also concerned a motorist who was injured in an automobile accident with an employee who was operating his employer's tractor-trailer. The plaintiff in that case filed

⁴The accident report listed Huffstutler's home address as Cullman County, and Huffstutler admits that she owns a house there in which she lived previously. However, she submitted an affidavit to the trial court stating that she currently resides with her mother in Marshall County. We cannot say that the trial court erred in concluding, if it did, that Huffstutler resides in Marshall County.

1170820

suit in Clarke County, where the defendant driver resided and the defendant employer maintained its principal place of business. The defendants filed a motion to transfer the action to Mobile County, where the accident occurred, but the trial court denied the motion. In ruling on the defendants' subsequent petition for a writ of mandamus, this Court found that the fact that the accident occurred in Mobile County was not, alone, enough to warrant a change of venue. See Ex parte J & W Enters., 150 So. 3d at 196-97 (noting that, "[a]lthough we assign 'considerable weight' to the location where the accident occurred, it is not, and should not be, the sole consideration for determining venue under the 'interest of justice' prong of § 6-3-21.1").

In Ex parte J & W Enterprises, this Court noted the following regarding the tenuous connections of the action to the proposed transferee forum:

"The accident occurred in Mobile County, and the Mobile Police Department prepared an accident report, but there the connections to Mobile County cease. None of the parties lives in Mobile County. [The plaintiff] did not receive treatment for his injuries in Mobile County. [The defendants] have not identified any relevant documents that are located in Mobile County. No eyewitnesses are located in Mobile County, and the investigating police officer has testified that he is willing to travel to Clarke

1170820

County. In light of the facts before us, Mobile County's nexus to the action is purely fortuitous--the place on the interstate where the accident occurred."

150 So. 3d at 196 (footnote omitted). The facts of this case are much different.

Here, Huffstutler was treated for her injuries in Cullman County, both at the scene and later at a hospital in Cullman County. Tyson maintains a place of business in Cullman County, where the tractor-trailer involved in the accident is registered and where, Tyson claims, all the documentary evidence pertaining to Craig's employment, training, and supervision is located. Moreover, Tyson has shown that the location of the accident is unique and relevant to the case. Thus, the connections to the county to which a transfer is being requested in the present case are much stronger than those in Ex parte J & W Enterprises.

Although it appears that the Court in Ex parte J & W Enterprises was primarily concerned that the connections with the proposed transferee forum were not strong, the Court also noted that the connections to the plaintiff's chosen forum, Clarke County, were not "markedly weak." 150 So. 3d at 197. The Court pointed out that both defendants were located

1170820

there--the defendant truck driver resided there and his employer had its principal place of business there. The Court also noted that documents relevant to the plaintiff's claims of negligent entrustment, hiring, retention, and training were located at the defendant employer's principal place of business in Clarke County. In this case, although Tyson maintains a facility in Marshall County, it is not Tyson's principal place of business.⁵ Further, as noted above, Tyson asserted in its motion for a change of venue that all the requested documentary evidence relating to Craig's employment and training is located at its Cullman County facility, not its Marshall County facility. Huffstutler has not disputed this assertion, although she speculates that it is likely that Tyson employees from its Marshall County facility will have to provide testimony relative to her negligent-training-and-supervision claim. The connections to the plaintiff's chosen forum in the present case are weaker than those in Ex parte J & W Enterprises.

The gravamen of the complaint in this action is that Craig's and Tyson's negligence and/or wantonness resulted in

⁵Tyson is a foreign corporation with its principal place of business in Springdale, Arkansas.

1170820

a motor-vehicle accident in Cullman County; the evidence before us tends to indicate that the topography at the scene of the accident might have been a contributing factor such that it would be helpful for the jury to view the scene, or at least be familiar with the area, to fully appreciate the unique road conditions. The citizens of Cullman County, then, would appear to have much more of an interest in the outcome of this case than those in Marshall County. And, in looking at the elements Huffstutler must prove to prevail, a substantial amount of the evidence has accumulated in Cullman County. Although Marshall County is not devoid of any connection to the parties, the citizens of Marshall County would have very little interest in the outcome. See Ex parte J & W Enters., 150 So. 3d at 194 (" "[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." (quoting Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d at 540)).

As this court has stated previously, there is "no need to burden [a county], with [a] weak connection to the case,

1170820

with an action that arose in [another county] simply because the individual defendant resides [there] and the corporate defendant does some business there.'" Ex parte Wayne Farms, LLC, 210 So. 3d 586, 593 (Ala. 2016) (quoting Ex parte Autauga Heating & Cooling, LLC, 58 So. 3d 745, 750 (Ala. 2010)). Consequently, we hold that the trial court exceeded its discretion when it denied Tyson and Craig's motion for a change of venue. See Ex parte Autauga Heating & Cooling, LLC, 58 So. 3d at 748 ("With the adoption of § 6-3-21.1, trial courts now have 'the power and the duty to transfer a cause when "the interest of justice" requires a transfer.'" (quoting Ex parte First Family Fin. Servs., Inc., 718 So. 2d 658, 660 (Ala. 1998))).

Because we have concluded that it is in the interest of justice that the underlying action be transferred to the Cullman Circuit Court, we pretermitt discussion of the convenience-of-the-parties-and-witnesses prong also addressed

1170820

in the petition.⁶ Ex parte Wayne Farms, LLC, 210 So. 3d at 593 n. 2.

Conclusion

Tyson and Craig have demonstrated a clear legal right to have the underlying action transferred to Cullman County. Therefore, we grant the petition and issue a writ of mandamus directing the Marshall Circuit Court to vacate its order denying the motion for a change of venue and to enter an order transferring this action to the Cullman Circuit Court.

PETITION GRANTED; WRIT ISSUED.

Stuart, C.J., and Bolin, Parker, and Mendheim, JJ., concur.

Shaw, Main, Wise, and Bryan, JJ., dissent.

⁶It is, however, worth noting that a change of venue to Cullman County will not create an inconvenience for the parties and the potential witnesses. As discussed previously, a substantial number of the potential witnesses and a substantial amount of the documentary evidence are located in Cullman County. Although the plaintiff resides in Marshall County, she also owns a house in Cullman County and is employed there.

1170820

SHAW, Justice (dissenting).

I respectfully dissent. Under Ala. Code 1975, § 6-3-21.1(a), a circuit court shall, "for the convenience of parties and witnesses, or in the interest of justice," transfer an action to another circuit court (emphasis added). In this case, it is alleged that the second provision of the Code section, the "interest of justice," requires a transfer. Such a transfer is mandated when a county has a "weak" or "little" connection to an action and another county has a "strong" connection to the action. Ex parte J & W Enters., LLC, 150 So. 3d 190, 194 (Ala. 2014). The party requesting the transfer must show not just that the transferee county has a strong connection, but "must also demonstrate" that the county in which the case was filed "has a 'weak' or 'little' connection to the action." Ex parte Elliott, [Ms. 1160941, December 22, 2017] ___ So. 3d ___, ___ (Ala. 2017) (emphasis added).

In this case, the individual plaintiff, Lisa Burke Huffstutler, resides in Marshall County. The individual defendant, Charles Gregory Craig, also resides in Marshall County. The corporate defendant, Tyson Chicken, Inc.

1170820

("Tyson"), maintains a facility in Marshall County, at which Craig works. The claims against the defendants relate to Craig's employment with Tyson at the Marshall County facility. I cannot conceive how, under these circumstances, Marshall County has a "weak" connection or "little" connection to this case. Because Marshall County's connection to the case is not weak, the interest of justice does not require a transfer to Cullman County.

To the extent that the main opinion cites in support of the transfer of the action to Cullman County the location of records and the possibility that it might be helpful to the trial court and the jury to view the accident scene, those considerations are not material to the interest-of-justice analysis; instead, they relate to whether "the convenience of parties and witnesses" requires a transfer under § 6-3-21.1(a). The plain language of § 6-3-21.1(a) indicates that factors relating to the convenience of the parties and witnesses involve a wholly separate test different from the interest-of-justice analysis, and the two should not be conflated. I thus respectfully dissent.

Wise, J., concurs.

1170820

BRYAN, Justice (dissenting).

The main opinion orders the Marshall Circuit Court to transfer this case to Cullman County under the "interest-of-justice" prong of the forum non conveniens statute, § 6-3-21.1, Ala. Code 1975.

"'Our forum non conveniens analysis has never involved a simple balancing test weighing each county's connection to an action. Rather, to compel a change of venue under the "interest of justice" prong of § 6-3-21.1, the 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 Elliott, [Ms. 1160941, December 22, 2017] ___ So. 3d ___, ___ (Ala. 2017) (quoting Ex parte J & W Enters., LLC, 150 So. 3d 190, 196 (Ala. 2014)). I emphasize that, to order a transfer under the interest-of-justice prong, the case 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 Elliott, ___ So. 3d at ___ ("Even accepting Allstate's contention that Montgomery County has a 'strong' connection to this action, we note that Allstate must also demonstrate that Lowndes County has a 'weak' or 'little' connection to the action."). I agree

1170820

with the main opinion that Cullman County, the proposed transferee forum, has a strong connection to this case. However, I do not think that Marshall County, the proposed transferor forum, has a weak connection to this case. Thus, I disagree with the decision to order the transfer to Cullman County.

Marshall County's connection to the case is not "weak" or "little." The plaintiff, Lisa Burke Huffstutler, resides in Marshall County. One of the two defendants, Charles Gregory Craig, an employee of Tyson Chicken, Inc., also resides in Marshall County. According to the accident report, Craig works for Tyson out of its facility in Marshall County. Thus, every party in this case has a presence in Marshall County. Huffstutler filed claims alleging (1) negligence and/or wantonness against Craig, (2) negligent and/or wanton supervision or training by Tyson, and (3) negligent and/or wanton hiring, retention, and entrustment by Tyson. It is reasonable to believe that, regarding the second and third claims, there will be significant evidence submitted regarding Craig's employment at the Tyson facility in Marshall County. Huffstutler's husband and son, who both live with her in

1170820

Marshall County, may testify about the effect of her injuries. It is evident that the connections to Marshall County here are not weak.

Ex parte J & W Enterprises, supra, illustrates that the connections here are not weak. In Ex parte J & W Enterprises, like this case, the plaintiff was injured in an accident involving a tractor-trailer truck. The plaintiff sued the driver of the truck and the driver's employer in Clarke County. This Court noted that the driver of the truck lived in Clarke County and that the employer's principal place of business was in Clarke County. The Court further noted that "it stands to reason that documents relevant to [the plaintiff's] claims, particularly his claims of negligent or wanton entrustment, hiring, retention, and training, are located at [the employer's] place of business in Clarke County." 150 So. 3d at 197. In denying the mandamus petition seeking to transfer the action to Mobile County, this Court concluded that the connections to Clarke County were not "weak." 150 So. 3d at 197.

As the main opinion notes, there are some distinctions between J & W Enterprises and this case. However, on the

1170820

whole, the connections between Marshall County and this case are at least as strong, if not stronger, than the connections between Clarke County and the case in J & W Enterprises. Like that case, the defendant driver in this case, Craig, resides in the proposed transferor forum. The main opinion notes that the principal place of business of the driver's employer in J & W Enterprises was located in the proposed transferor forum, while Tyson's principal place of business is in Arkansas. Despite that, the accident report indicates that Craig works for Tyson at its facility in the proposed transferor forum, which is a significant connection, regardless of where Tyson's chief executive offices are located. The main opinion alleges another distinction by noting that "Tyson asserted in its motion for a change of venue that all the requested documentary evidence relating to Craig's employment and training is located at its Cullman County facility, not its Marshall County facility." ___ So. 3d at ___. However, that is merely an assertion by Tyson; the trial court did not appear to have any evidence before it supporting that assertion. Of course, "[m]otions, statements in motions, and argument of counsel are not evidence." Ex parte Merrill, [Ms.

1170820

1170216, May 18, 2018] ___ So. 3d ___, ___ n. 4 (Ala. 2018). Moreover, Tyson and Craig, as the parties seeking the transfer, had the burden of establishing that a transfer under § 6-3-21.1 is justified. Ex parte Wachovia Bank, N.A., 77 So. 3d 570, 573 (Ala. 2011). In J & W Enterprises, the connection to the proposed transferor forum was not considered to be weak, despite the fact that the plaintiff resided in Texas. In this case, Huffstutler resides in the proposed transferor forum; in this regard, the connection to that forum is actually stronger than it was in J & W Enterprises.

In this case, every party -- Huffstutler, Tyson, and Craig -- can be found in Marshall County; those are not weak connections. The trial court did not exceed its discretion in declining to order the transfer of this case from Marshall County to Cullman County. The trial court's decision is in line with this Court's instruction in J & W Enterprises. Therefore, I respectfully dissent.

Main, J., concurs.