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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Ex parte Tania Burgess

PETITION FOR WRIT OF MANDAMUS

(In re: Tania Burgess

v.

Jonathan Aaron Stephens and Patti Mollica)

(Jefferson Circuit Court, CV-19-902041)

SELLERS, Justice.

Tania Burgess petitions this Court for a writ of mandamus directing the Jefferson Circuit Court to vacate its order

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transferring the underlying action to the Shelby Circuit Court. We grant the petition and issue the writ.

Facts and Procedural History

On April 22, 2019, a vehicle driven by Burgess collided with a vehicle driven by Jonathan Aaron Stephens; the accident occurred in Shelby County. Burgess sued Stephens and Patti Mollica in the Jefferson Circuit Court, alleging as to Stephens negligence and wantonness and as to Mollica negligent entrustment of her vehicle to Stephens and seeking damages for her accident-related injuries. Burgess, Stephens, and Mollica are all Jefferson County residents.

On Friday, July 26, 2019, Stephens and Mollica (hereinafter referred to collectively as "the defendants") filed a joint motion for a change of venue under Alabama's forum non conveniens statute, § 6-3-21.1, Ala. Code 1975, requesting that the action be transferred to Shelby County in the interest of justice.

On Monday, July 29, 2019, the Jefferson Circuit Court entered an order transferring the case to the Shelby Circuit Court. On Wednesday, July 31, 2019, Burgess moved the Jefferson Circuit Court to set aside its transfer order and to

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set the matter for a hearing so she could respond to the defendants' motion for a change of venue. The Jefferson Circuit Court set the matter for a hearing on August 22, 2019;¹ however, the case had been docketed in the Shelby Circuit Court on August 5, 2019, divesting the Jefferson Circuit Court of jurisdiction. Burgess timely filed the instant petition asking this Court to direct the Jefferson Circuit Court to vacate its order transferring the case to the Shelby Circuit Court.²

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

¹On August 20, 2019, before the scheduled hearing, Burgess filed a response and affidavit in opposition to the defendants' motion for a change of venue. This Court has not considered the arguments or evidence made part of Burgess's response because they were not considered by the Jefferson Circuit Court. See Ex parte Hrobowski, 258 So. 3d 333 n. 7 (Ala. 2018).

²See Ex parte MedPartners, Inc., 820 So. 2d 815, 921 (Ala. 2001) (noting that a trial court cannot change its mind or reconsider a change of venue once the action has been transferred to and docketed in the transferee court, nor can the transferee court consider a motion to retransfer the action to the county in which it was originally filed; the aggrieved party's only remedy is a petition for a writ of mandamus directed to the transferor court).

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).

Discussion

Burgess argues that the Jefferson Circuit Court exceeded its discretion in transferring the underlying action to the Shelby Circuit Court under the interest-of-justice prong of § 6-3-21.1(a). Section 6-3-21.1(a) 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."

It is undisputed that Jefferson County and Shelby 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). Thus, this Court must determine whether the interest of justice overrides the deference due Burgess's choice of venue. Our inquiry depends on the facts of the case. Ex parte J & W Enters., LLC, 150 So. 3d 190 (Ala. 2014).

"[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 at 196. Additionally, this Court has held that "litigation

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should be handled in the forum where the injury occurred." Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006). "Although 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." Ex parte J & W Enters., LLC, 150 So. 3d at 196-97. Accordingly, in determining venue under § 6-3-21.1, this Court traditionally considers the residence of the parties and any interested or affected nonparties. See, e.g., Ex parte Benton, 226 So. 3d 147 (Ala. 2016); Ex parte Manning, 170 So. 3d 638 (Ala. 2014); Ex parte Morton, 167 So. 3d 295 (Ala. 2014); and Ex parte Kane, 989 So. 2d 509 (Ala. 2008).

As the parties moving for the change of venue, the defendants had the initial burden of demonstrating that having the underlying action heard in Shelby County would better serve the interest of justice. Ex parte Fuller. In support of their motion for a change of venue, the defendants submitted an "Alabama Uniform Crash Report" indicating that the accident occurred in Shelby County. The defendants rely heavily on the fact that an action should be litigated in the county where

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the accident occurred. The cases upon which they rely, however, include facts in addition to the location of the accident that justified a transfer to the forum where the accident occurred. See, e.g., Ex parte Tier 1 Trucking, LLC, 222 So. 3d 1107 (Ala. 2016) (ordering transfer to Conecuh County, where the accident occurred; individual defendant resided; local law enforcement investigated the accident; and one of the injured plaintiffs received medical treatment); Ex parte Southeast Alabama Timber Harvesting, LLC, 94 So. 3d 371 (Ala. 2012) (ordering transfer to Lee County, where accident occurred; police officers responded to the scene; injured plaintiff was treated at a hospital; plaintiff resided at the time of the accident; and only nonparty eyewitness resided); Ex parte Autauga Heating & Cooling, LLC, 58 So. 3d 745 (Ala. 2010) (ordering transfer to Lee County, where accident occurred; plaintiff resided; defendant corporation had some business connections; and emergency-medical technicians who responded to the accident worked and resided); and Ex parte Indian Mills & Mfg., Inc., 10 So. 3d 536 (Ala. 2008) (ordering transfer to Lee County where accident occurred; accident was investigated by local law enforcement; accident victim was

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transported to a hospital; victim's death was investigated by the county coroner; and the allegedly defective garbage truck was towed to a facility). In the instant case, although the accident occurred in Shelby County, the defendants still had the burden of demonstrating that Jefferson County has a "weak" or "little" connection to the case. The accident report, in and of itself, was insufficient to meet that burden.

The facts of this case are most analogous to the facts in Ex parte J & W Enterprises, LLC, in which this Court held that a change of venue was not warranted under the interest-of-justice prong of § 6-3-21.1. In that case, the plaintiff was injured in an automobile accident in Mobile County. The plaintiff filed suit in Clarke County, where one of the defendants resided and where the defendant employer maintained its principal place of business. The defendants filed a motion for a change of venue to Mobile County, where the accident occurred; that motion was denied. The defendants petitioned this Court for a writ of mandamus. In denying the petition, this Court reasoned:

"In the present case, the facts before this Court do not indicate that Mobile County has a particularly strong connection to this lawsuit. 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. Cruz did not receive treatment for his injuries in Mobile County. Coates and J & W 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 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. Although 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."

150 So. 3d at 196-97 (footnote omitted; emphasis added).

Shelby County's sole connection to this case is the fact that the accident occurred there. The defendants have not asserted any additional facts to indicate that the overall connection between Shelby County and this case is strong. The defendants do not suggest that law enforcement located in Shelby County investigated the accident or prepared the accident report; they do not assert that any of the parties received medical treatment for their injuries in Shelby County; they have not identified any eyewitnesses who are located in Shelby County; and they have not identified any documents located in Shelby County. However, even accepting the defendants' contention that Shelby County has a strong

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connection to this case, the defendants have not demonstrated that Burgess's choice of venue, Jefferson County, has a weak or little connection to the case. As indicated, Burgess, as well as both defendants, resides in Jefferson County, and it stands to reason that documents relevant to Burgess's negligent-entrustment claim are located in Jefferson County. Simply put, the defendants have failed to demonstrate that the interest of justice overrides the deference due Burgess's choice of venue.

Additionally, we find it troubling that the Jefferson Circuit Court granted the motion for a change of venue without affording Burgess a reasonable time in which to file a response. Although courts are encouraged to act promptly in ruling on motions, especially at the initial phase of any case, we cannot condone a hasty decision that fails to consider a response from the opposing party--effectively ignoring any argument in support of the opposition. In this case, the Jefferson Circuit Court received the motion for a change of venue on a Friday afternoon and entered an order granting that motion the following Monday. This short period could not have allowed a full consideration of the motion, and

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excluding Burgess's views effectively divested the court of any presumption that it appropriately used its discretion. Even though our procedural rules are silent and provide no specific guidance, we hold that, before a ruling is entered on a motion for change of venue, a trial judge should, at a minimum, allow the party opposing the motion to file a response and then consider whether a hearing would provide a more complete foundation for the exercise of its discretion regarding a change in venue.

Conclusion

For the foregoing reasons, we conclude that the Jefferson Circuit Court exceeded its discretion in transferring this case to the Shelby Circuit Court. We, therefore, grant the petition for a writ of mandamus and direct the Jefferson Circuit Court to vacate its July 29, 2019, order transferring this action to the Shelby Circuit Court.

PETITION GRANTED; WRIT ISSUED.

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

Shaw, Bryan, and Mitchell, JJ., concur in the result.