Rel: October 30, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2026-0178

Ex parte BMSS, LLC

PETITION FOR WRIT OF MANDAMUS

(In re: Warren Averett Companies, LLC

v.

BMSS, LLC)

(Jefferson Circuit Court: CV-25-900599)

PARKER, Justice.

In this case, an accounting firm accused a competitor of poaching its employees and clients in the Mobile area. Warren Averett Companies, LLC, alleged that BMSS, LLC, induced six of Warren Averett's employees to violate their contracts with Warren Averett and stole several of Warren Averett's clients. But the specifics of this case are not before us. Instead, we address only a single issue: the proper venue for resolving these accounting firms' dispute.

Warren Averett brought this lawsuit in the Jefferson Circuit Court. When BMSS tried to have the case moved to the Mobile Circuit Court, the Jefferson Circuit Court denied the request. BMSS now petitions this Court for a writ of mandamus directing the Jefferson Circuit Court to transfer the case to the Mobile Circuit Court. Because the "interest of justice" favors transfer, we grant the petition to enforce BMSS's clear right under our "forum non conveniens" (or inconvenient-forum) statute. See Ala. Code 1975, § 6-3-21.1.

I.

For a time, Warren Averett maintained an office in Mobile where Phillip Rivers worked as a supervising partner. But in 2024, Warren Averett decided to close its Mobile office and move its personnel to a new

office in Daphne. After that move, Warren Averett fired Rivers. Rivers then accepted an accounting job in Mobile with BMSS, one of Warren Averett's competitors.

Before long, six other Warren Averett employees left Warren Averett to work with Rivers at BMSS's Mobile office. Those six employees had previously worked with Rivers in Warren Averett's Mobile office. All six had previously signed employment contracts with Warren Averett that included various restrictions, such as noncompete clauses and confidentiality clauses. After BMSS hired Rivers and the other Warren Averett employees, several Warren Averett clients ended their relationships with Warren Averett and hired BMSS instead.

In early 2025, two lawsuits arose out of these events. In the Mobile Circuit Court, Rivers and the other former Warren Averett employees sued Warren Averett arguing that the restrictive covenants in their contracts with Warren Averett are void and unenforceable. That declaratory-judgment action is still pending in the Mobile Circuit Court. Meanwhile, in the Jefferson Circuit Court, Warren Averett filed this lawsuit against BMSS alleging six claims of tortious interference with contractual relations and one claim of tortious interference with business

relations. Warren Averett argues that BMSS has wrongly caused the former Warren Averett employees to violate their contracts and has wrongly stolen Warren Averett's clients.

BMSS moved the Jefferson Circuit Court to transfer this case to the Mobile Circuit Court under a statute that requires a venue change either "for the convenience of the parties and witnesses" or "in the interest of justice." § 6-3-21.1(a). BMSS argued that the Mobile Circuit Court was a proper venue, that the convenience of the parties and witnesses favored the Mobile Circuit Court, and that the interest of justice favored the Mobile Circuit Court. The Jefferson Circuit Court held oral arguments and denied BMSS's motion. BMSS now seeks a writ of mandamus from this Court.

II.

A writ of mandamus is a "drastic and extraordinary writ." Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995). This Court will issue a writ of mandamus only when the petitioner has a "clear legal right" to an order that the lower court has refused to issue, there is no other adequate remedy, and this Court's jurisdiction is properly invoked. Id.

When a trial court denies a motion to change venue, this Court will issue a writ of mandamus if the trial court exceeded its discretion. Id. Our precedent has established that an improper venue cannot be cured by an appeal or other remedy. See Lawler Mobile Homes, Inc. v. Tarver, 492 So. 2d 297, 302 (Ala. 1986).

BMSS's mandamus petition turns ultimately on whether the Jefferson Circuit Court exceeded its discretion in determining that neither "the convenience of the parties and witnesses" nor "the interest of justice" favored transferring the case to Mobile Circuit Court. If either of these factors favored transfer, then BMSS had a "clear legal right" to the transfer, and the Jefferson Circuit Court retained no discretion to keep the case. See Ex parte First Tennessee Bank, 994 So. 2d 906, 912 (Ala. 2008). In deciding this question, we confine ourselves to the evidence that was properly presented to the Jefferson Circuit Court. Ex parte Cincinnati Ins. Co., 51 So. 3d 298, 310 (Ala. 2010).

III.

It is common for multiple courts to be proper venues for the same lawsuit. See, e.g., Ex parte KKE, LLC, 295 So. 3d 26, 29 (Ala. 2019). And, generally speaking, plaintiffs get to choose their forum: If the plaintiff's

chosen forum is a court that has jurisdiction and is otherwise proper, then that choice will receive "great deference." Ex parte Perfection Siding, Inc., 882 So. 2d 307, 312 (Ala. 2003). Notwithstanding that deference, a statute requires a case to be transferred out of the plaintiff's preferred venue if dictated by "the convenience of the parties and witnesses, or in the interest of justice." § 6-3-21.1(a). This statute is often called the "forum non conveniens" statute because it fulfills a role similar to the common-law doctrine of that name. See Ex parte Sawyer, 892 So. 2d 898, 900 (Ala. 2004).[1] "Forum non conveniens" is a Latin phrase that we can simplify as "inconvenient forum."

Under this inconvenient-forum statute, the party seeking a transfer must first prove that the proposed transferee court is itself a proper venue. Id. at 903. Then that party must also prove that either "the convenience of the parties and witnesses" or "the interest of justice" favors transferring the case to the transferee court. Id. As previously mentioned, if the party seeking a transfer establishes either of these

[1]The Legislature has enacted a separate statute that expressly uses the term "forum non conveniens" in both the title and its substantive text. See Ala. Code 1975, § 6-5-430. But that separate statute, which addresses claims arising in a different state and which ought to be heard in a different state, is not at issue in this case.

grounds, then the case must be transferred. See Ex parte Smiths Water & Sewer Auth., 982 So. 2d 484, 488-89 (Ala. 2007). Here, we conclude that the interest of justice favors transfer and therefore need not discuss the convenience of the parties. See Ex parte Indiana Mills & Mfg., Inc., 10 So. 3d 536, 539 (Ala. 2008).

A.

BMSS concedes that the Jefferson Circuit Court is a proper venue for this case but argues that the Mobile Circuit Court is also a proper venue under the statute governing venue for corporate defendants. See Ala. Code 1975, § 6-3-7; Ex parte Rivers, [Ms. SC-2025-0301, Sept. 26, 2025] __ So. 3d __ (Ala. 2025) (holding that § 6-3-7 is the proper venue statute for cases against LLCs). Under this statute, venue is proper where a "substantial part of the events or omissions giving rise to the claim occurred." § 6-3-7(a)(1). In suits (like this one) claiming tortious interference with a contract, we have looked to the location where the defendant engaged in the allegedly tortious conduct. See Ex parte WMS, LLC, 10 So. 3d 645, 650-52 (Ala. 2014) (analyzing venue under Ala. Code 1975, § 6-3-2(a)(3), which is analogous to § 6-3-7(a)(1)). Here, BMSS is

correct that venue is proper in Mobile County because Mobile County is where its allegedly tortious conduct occurred.

For one thing, the allegation that BMSS tortiously interfered with Warren Averett's employment contracts centers on activity occurring in Mobile County. BMSS, after all, allegedly hired the former Warren Averett employees to work in its Mobile office. Because Warren Averett's claims depend on the restrictive covenants in the employment contracts it entered with its former employees, any actions that could potentially violate those restrictive covenants (and thus constitute the tortious interference) must have occurred at the BMSS Mobile office. Warren Averett's verified complaint even acknowledges this point, alleging that the six former Warren Averett employees now work in "the same geographic territory in which" they "previously worked for Warren Averett." This geographic territory, of course, primarily consists of Mobile County.

BMSS's alleged tortious interference with Warren Averett's business relations is also centered in Mobile County. Warren Averett alleges that BMSS interfered with existing business relationships between Warren Averett and the clients "serviced by" the former Warren

Averett employees. According to Rivers, "[most] of these corporate clients and their staff, as well as individual clients, reside or are based in Mobile, or within an hour's drive of Mobile." Therefore, any interference with the business relationships has substantially occurred in Mobile County.

The alleged acts by BMSS, both in inducing the former employees to violate their contracts with Warren Averett and in soliciting Warren Averett clients, substantially occurred in Mobile County. The Mobile Circuit Court is thus a proper venue. See § 6-3-7(a)(1).

B.

Having established the Mobile Circuit Court as a proper venue, our analysis under the inconvenient-forum statute turns to whether transfer was required in the "interest of justice." § 6-3-21.1(a). The interest-of-justice analysis requires transfer "from a county with little, if any, connection to the action … to the county with a strong connection to the action." Ex parte National Sec. Ins. Co., 727 So. 2d 788, 790 (Ala. 1998). We want to know 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, 994 So. 2d at 911.

While the "convenience" ground for transfer focuses on the logistics of conducting the litigation -- for example, bringing witnesses and evidence to a courthouse for trial -- the interest-of-justice ground focuses more broadly on the dynamics of the underlying dispute -- for example, where the harm occurred. See Ex parte Tier 1 Trucking, LLC, 222 So. 3d 1107, 1113 (Ala. 2016). This Court has consistently considered where parties and witnesses reside as part of this inquiry -- but only as a proxy for determining which communities are impacted by the litigation. See id. In considering the interest of justice, we are ultimately trying to avoid "the burden of piling court services and resources upon the people of a county that is not affected by the case" while respecting "the interest of the people of a county to have a case that arises in their county tried close to public view." Ex parte Smiths Water & Sewer Auth., 982 So. 2d at 490.

1.

Jefferson County has little, if any, connection with this litigation. Warren Averett has its principal place of business in Jefferson County, and BMSS does business in Jefferson County. But neither of these facts is related to this dispute. See Ex parte Tier 1 Trucking, LLC, 222 So. 3d at 1113. In fact, "no material events occurred in" Jefferson County and,

"other than the plaintiffs, no potential witnesses who reside in" Jefferson County "have been identified." Id. at 1114. None of the former Warren Averett employees ever worked in Jefferson County, and none currently work there. BMSS has an office in Jefferson County, but -- according to Don Murphy, BMSS's president -- no BMSS employees at that office were involved in the recruitment of the six former Warren Averett employees.

Nor has Warren Averett identified any clients in Jefferson County who have left for BMSS in connection with this litigation. Rivers even testified that none of his communications with Warren Averett clients occurred in Jefferson County. BMSS's business in Jefferson County may be relevant to the extent that this business relates to the specifics of this litigation. But Warren Averett has not presented any argument or evidence supporting such a relationship between BMSS's business in Jefferson County and the claims brought in this lawsuit.

Warren Averett seems to suggest that this litigation has connections with Shelby County that are relevant to the interest-of-justice inquiry. Warren Averett points out that BMSS's principal place of business is in Shelby County and that Murphy resides and works in Shelby County. It may be that some of BMSS's actions in recruiting the

former Warren Averett employees occurred in Shelby County -- although even this conclusion requires significant inference due to Warren Averett's choice to present no evidence thus far. But regardless of any connection between this litigation and Shelby County, it cannot be imputed to Jefferson County based merely on Shelby County's proximity as a neighboring county. Had Warren Averett brought this suit in Shelby County, the analysis might be different. But the interest-of-justice analysis recognizes county borders and thus requires separate analyses of neighboring counties. See, e.g., Ex parte Southeast Alabama Timber Harvesting, LLC, 94 So. 3d 371, 374-76 (Ala. 2012) (analyzing Lee County and Chambers County separately despite proximity); Ex parte Smiths Water & Sewer Auth., 982 So. 2d at 490 (distinguishing between Lee County and Russell County).

Furthermore, the distance between the Jefferson Circuit Court and the location of reasonably anticipated witnesses in and around Mobile County likely prevents the use of compulsory process. Under Alabama's Rules of Civil Procedure, a trial court may quash a subpoena that requires a nonparty Alabama resident to travel more than 100 miles "from the place where that person resides, is employed, or regularly

transacts business in person." Ala. R. Civ. P. 45(c)(3)(A)(ii). As we have recognized, this potential handicap is a valid factor in the interest-of-justice analysis. Ex parte Kia Motors Am., Inc., 881 So. 2d 396, 399-401 (Ala. 2003) (applying Ala. Code 1975, § 6-5-430, which has identical language regarding the interest of justice). Here, this factor -- just like the other foregoing considerations -- points toward transferring the case to the Mobile Circuit Court.

2.

Although not conclusive, the location of the alleged injury has been described as "the foremost factor in the interest-of-justice analysis." Ex parte Elliott, 254 So. 3d 882, 887 (Ala. 2017). One may assume that in some sense Warren Averett has been "injured" at its principal place of business in Jefferson County. But "in venue cases, the word injury commonly refers not to the damage allegedly suffered by the plaintiff, but to the wrongful act or omission allegedly committed by the defendant." Ex parte Windom, 840 So. 2d 885, 889 n.2 (Ala. 2002).[2] In a legal-

[2]See, e.g., Ex parte Wiginton, 743 So. 2d 1071, 1074 (Ala. 1999); Ex parte SouthTrust Bank of Tuscaloosa Cnty., N.A., 619 So. 2d 1356, 1358 (Ala. 1993); and Age-Herald Publ'g Co. v. Huddleston, 207 Ala. 40, 44, 92 So. 193, 197 (1921).

malpractice case, for example, we have looked to where the defendant law firm performed the allegedly tortious legal work. See Ex parte Maynard, Cooper & Gale, P.C., 280 So. 3d 391, 399 (Ala. 2018). Similarly, in a libel action, the injury occurs where the libelous statement is made, regardless of where the plaintiff is located. See Ex parte Wilson, 408 So. 2d 94, 96 (Ala. 1981).

To the extent that BMSS has interfered with the contractual relationships between Warren Averett and its former employees, the interference has occurred at BMSS's Mobile office where those former employees now work.[3] This Mobile office is where the former employees perform work in alleged violation of their contracts with Warren Averett. This Mobile office is also where the former employees presumably do much of their work in soliciting Warren Averett clients. Just as a breach-of-contract claim arises "where the contract was breached, rather than where the contract was entered into," a claim of tortious interference with

[3]Warren Averett's verified complaint claims that there was a meeting on January 24, 2025, at which Murphy encouraged four of the former Warren Averett employees to breach their contracts with Warren Averett. The verified complaint does not identify the location of this meeting. This date is after the employees began working for BMSS at BMSS's Mobile office.

a contract arises where a defendant interferes with the contract. See Vulcan Materials Co. v. Alabama Ins. Guar. Ass'n, 985 So. 2d 376, 382 (Ala. 2007).

The ongoing declaratory-judgment action in the Mobile Circuit Court also factors into the interest-of-justice analysis. In Vulcan Materials Co., this Court considered a case involving parallel actions proceeding in different forums. Id. at 383-84. While this Court noted that matters of evidence and witnesses weighed in favor of transfer for convenience purposes, this Court also stated that "avoiding a duplicative action" would further "the interests of justice." Id. at 384. Allowing cases to go forward in multiple courts with overlapping factual and legal issues "unnecessarily and unjustifiably burden[s] the parties and the respective judicial systems" of each forum. Id.

In denying BMSS's transfer motion, the Jefferson Circuit Court implicitly acknowledged the importance of the parallel declaratory-judgment action pending in the Mobile Circuit Court. It noted how "the Plaintiff rests its claims on the enforceability of certain restrictive covenants found in the contracts of its former employees" and explained that a finding that those restrictive covenants are void would render

Warren Averett's case "extremely difficult" to prove. But although this is the exact issue being litigated already in the Mobile Circuit Court, the Jefferson Circuit Court ignored the role that parallel litigation should play in the interest-of-justice analysis. Transferring this case to the Mobile Circuit Court will allow more efficient consideration of the legal and factual issues at stake. That court will be able to make a single decision regarding those restrictive covenants that will apply to both lawsuits, resulting in less cause of repetitive testimony and argument and less likelihood of inconsistent judgments. These considerations all weigh in favor of transferring the case as requested by BMSS.

Ultimately, the evidence shows no suit-related conduct by BMSS in Jefferson County but significant suit-related conduct by BMSS in Mobile County. The former Warren Averett employees worked in Mobile while working for Warren Averett and now work in Mobile while working for BMSS. Many of the clients who have left Warren Averett for BMSS reside or have their offices in Mobile County. Mobile County thus has a strong connection to this case while Jefferson County has little, if any, connection. The interest of justice thus requires transfer of the case to the Mobile Circuit Court, and the Jefferson Circuit Court exceeded its

discretion in concluding that BMSS's general business activity in Jefferson County warranted keeping the case there.

IV.

BMSS has shown that the Mobile Circuit Court is a proper venue for this suit and that the interest of justice favors transferring the case to that venue. BMSS thus has a clear legal right to an order transferring this case from Jefferson County to Mobile County. We grant BMSS's petition for a writ of mandamus and direct the Jefferson Circuit Court to (1) vacate its order denying BMSS's transfer motion and (2) enter a new order transferring this action to the Mobile Circuit Court.

PETITION GRANTED; WRIT ISSUED.

Stewart, C.J., and Shaw, Wise, Bryan, Sellers, Cook, and McCool, JJ., concur.

Mendheim, J., recuses himself.