Rel: September 13, 2019

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2019

1180564

Ex parte Dara Myelia Reed

PETITION FOR WRIT OF MANDAMUS

(In re: Judy Watwood

v.

Dara Myelia Reed)

(Jefferson Circuit Court, CV-18-904442)

SELLERS, Justice.

Dara Myelia Reed petitions this Court for a writ of mandamus directing the Jefferson Circuit Court to vacate its

order denying Reed's motion for a change of venue and to enter an order transferring the underlying action to the Marshall Circuit Court. We grant the petition and issue the writ.

Facts and Procedural History

On May 22, 2017, a vehicle driven by Reed collided with a vehicle driven by Judy Watwood, at or near the intersection of Gilliam Springs Road Northwest and U.S. Highway 231 in Marshall County. Reed is a resident of Jefferson County. Watwood is a resident of Cullman County. An officer with the Arab Police Department and emergency personnel from Samaritan Medical Services, Inc., responded to the accident.[1] Samaritan Medical Services transported Watwood from the accident scene to Huntsville Hospital in Madison County for medical treatment. According to the accident report, two persons witnessed the accident; one of the witnesses is a resident of Marshall County and the other is a resident of Blount County.

On November 5, 2018, Watwood sued Reed in the Jefferson Circuit Court, alleging negligence and wantonness and seeking damages for her accident-related injuries. Reed filed a motion for a change of venue under Alabama's forum non conveniens

[1]The Arab Police Department and Samaritan Medical Services, Inc., are both located in Marshall County.

statute, § 6-3-21.1, Ala. Code 1975, requesting that the action be transferred to Marshall County in the interest of justice. Watwood filed a response in opposition to the motion for a change of venue. Following a hearing on the matter, the circuit court denied the motion. Reed then filed this petition.

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

Discussion

Reed contends that the circuit court exceeded its discretion in denying her motion to transfer the underlying action from Jefferson County to Marshall County under the interest-of-justice prong of Alabama's forum non conveniens statute.

Alabama's forum non conveniens statute states, 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."

§ 6-3-21.1(a), Ala. Code 1975 (emphasis added).

Jefferson County and Marshall County are each a proper venue 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, therefore, has the initial burden of showing that a transfer is justified under § 6-3-21.1(a). Ex parte National Sec. Ins. Co., 727 So. 2d at 789.

"[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). The "interest of justice" requires "the transfer of an action from a county with little, if any, connection to the action, to a county with a strong connection to the action." Ex parte National Sec. Ins. Co., 727 So. 2d at 790.

Two key factors in determining whether the interest-of-justice prong requires a transfer are "the burden of piling court services and resources upon the people of a county that is not affected by the case" and "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). This Court also has held that "litigation should be handled in the forum where the injury occurred." Ex parte Fuller, 955 So. 2d 414, 416 (Ala. 2006). This Court has stated that, "[a]lthough it is not a talisman, the fact that the injury occurred in the

proposed transferee county is often assigned considerable weight in an interest-of-justice analysis." Ex parte Wachovia Bank, N.A., 77 So. 3d 570, 573–74 (Ala. 2011).

"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 190, 196-97 (Ala. 2014). Accordingly, in determining venue under the forum non conveniens statute, 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).

Reed argues that a change of venue to Marshall County is in the interest of justice based on the connection the action has to Marshall County. She asserts that that connection is strong because: (1) the accident and/or injury occurred in Marshall County; (2) the Arab Police Department, which is located in Marshall County, investigated the accident; (3) emergency personnel from Samaritan Medical Services, which is

located in Marshall County, responded to the scene and transported Watwood to the hospital; and (4) one of the eyewitnesses to the accident is a resident of Marshall County. Conversely, Reed asserts that Jefferson County's connection to this action is weak because its only connection is that she is a resident there.

Reed cites Ex parte Benton, among other cases, in support of her argument that a transfer is required in this case. In Ex parte Benton, 226 So. 3d 147, this Court held that the interest of justice mandated the transfer of a personal-injury action from Bibb County, where it was originally filed, to Shelby County, where the injury occurred. As in this case, the plaintiff's injuries in Ex parte Benton were the result of an automobile accident. This Court noted that the accident occurred in Shelby County, that police personnel and emergency personnel who responded to the accident were from Shelby County, and that the plaintiff was a resident of Shelby County. 226 So. 3d at 151. Additionally, this Court noted that nothing material to the underlying action transpired in Bibb County and that Bibb County's only connection to the case was the fact that the defendant driver and the defendant car

owner resided there. Id. This Court concluded that there was "no need to burden Bibb County, with its weak connection to the case, with an action that arose in Shelby County simply because [the defendants] reside there." 226 So. 3d at 151.

Watwood argues in opposition that Marshall County's connection to this action is not strong enough to warrant a transfer under the interest-of-justice prong of § 6-3-21.1. Watwood asserts that Ex parte Benton is distinguishable because the plaintiff in that case was a resident of the county where the accident occurred, while, in this case, neither party resides in the county where the accident occurred. Instead, Watwood claims that this case is more analogous to Ex parte J&W Enterprises, LLC, supra, in which this Court held that a transfer was not warranted under the interest-of-justice prong of § 6-3-21.1.

The underlying action in Ex parte J&W Enterprises stemmed from an accident involving two tractor-trailer rigs. One of the drivers, a resident of Texas, sued the other driver and that driver's employer 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; that motion was denied. On mandamus review, this Court held that § 6-3-21.1(a) did not mandate a transfer of the action to Mobile County under the interest-of-justice prong. 150 So. 3d at 196-97. This Court noted that, although the accident occurred in Mobile County and law-enforcement officers located there investigated the accident, Mobile County's connection to the accident was not particularly strong because neither party lived in the county, the plaintiff did not receive medical treatment in the county, and no eyewitnesses were located in the county. The Court noted that Clarke County's connection to the action was not "markedly weak," because both defendants were located there and evidence relevant to the plaintiff's claim against the defendant employer was likely to be located there. Id.

This Court's inquiry in cases invoking the forum non conveniens statute necessarily depends on the facts of each case. Taking into account all the facts before us in the present case, we conclude that Marshall County's connection to the underlying action is strong. The accident occurred in Marshall County, the police personnel and emergency personnel

who responded to the accident were from Marshall County, and one of the eyewitnesses to the accident is a resident of Marshall County. On the other hand, Jefferson County's only connection to the action is that the defendant resides there. Given that nothing material to the action transpired in Jefferson County, we consider Jefferson County's connection to the action to be weak. See Ex parte Benton, 226 So. 3d at 151.

Although we accord deference to a plaintiff's choice of venue, the facts in this case dictate that Marshall County has a strong connection to the action and that Jefferson County has a weak connection. Therefore, a transfer is warranted under the interest-of-justice prong of § 6-3-21.1.

Conclusion

The trial court should have granted Reed's motion for a change of venue under the interest-of-justice prong of § 6-3-21.1. We grant the petition and direct the Jefferson Circuit Court to vacate its order denying the motion for a change of venue and to enter an order transferring this action to the Marshall Circuit Court.

PETITION GRANTED; WRIT ISSUED.

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

Stewart, J., dissents.