

APPELLATE**MICHIGAN SUPREME COURT HOLDS THAT A PLAINTIFF IS NOT PERMITTED TO REQUEST A CHANGE OF VENUE**

by Phillip J. DeRosier

When venue of a civil action is improper, Michigan Court Rule 2.223(A) provides that the court “shall” order a change of venue “on timely motion of a defendant,” or that it “may” order a change of venue “on its own initiative with notice to the parties and opportunity for them to be heard on the venue question.” But what if developments in a case give a plaintiff reason to seek a change of venue? In the recent case of *Dawley v Hall* (Docket No. 155991, decided January 3, 2018), the Michigan Supreme Court held that Rule 2.223 does not permit a motion for a change of venue by a plaintiff.

The Facts

In August 2014, Rodney Hall and James Armour III were involved in a car accident in Lake County. Armour died. His wife, Joanne Dawley, filed a lawsuit against Hall in Wayne County, which is where Dawley resided. At the time, Hall resided in New Mexico. Hall moved to transfer venue either to Lake County, where the accident occurred, or Mason County, where Hall allegedly owned the “Barothy Lodge” and thus conducted business for purposes of the relevant venue statutes. The trial court transferred venue to Mason County.

After discovery revealed evidence that Hall did not personally own the lodge, but rather was a member of a limited liability company that did, Dawley moved to change venue back to Wayne County. The trial court denied Dawley’s motion, but the Court of Appeals reversed, holding that venue was not proper in Mason County because Hall did not personally reside or conduct business there. And because neither party had requested a transfer to Lake County, that left Wayne County as the only remaining appropriate venue.

The Supreme Court’s Decision

Without addressing whether venue was actually proper in Mason County, the Supreme Court reversed the Court of Appeals’ decision, holding that Dawley, as the plaintiff, was not permitted under Rule 2.223 to file a motion to change venue. The Court observed that the rule “provides two avenues for changing venue: the defendant’s timely motion or the court’s order on its own initiative. Neither avenue contemplates a plaintiff’s motion.” Similarly, the relevant venue statute only authorizes “a defendant” to move for a change of venue. As a result, the trial court should not have transferred venue to Wayne County in response to Dawley’s motion.

So what should Dawley have done? The Supreme Court noted that she had two options when the trial court initially transferred venue to Mason County. *First*, Dawley could have filed a motion for reconsideration or an application for leave to appeal. Though Dawley claimed that she had no way of knowing at that point that Hall did not

personally conduct business in Mason County, the Court questioned that assertion, pointing out “the Department of Licensing and Regulatory Affairs (LARA) has publicly provided online documents, dating back to 2010, revealing that ‘Barothy Lodge’ is an assumed name for an entity known as Hall Investments, LLC.”

Second, assuming that ownership of the lodge was newly discovered evidence, Dawley could have sought relief from the order transferring venue under Rule 2.612(C), although the Court noted that it was “unclear” whether the rule applies to motions to change venue since Rule 2.221 contains a more specific provision allowing for the late filing of motions for change of venue “if the court is satisfied that the facts on which the motion is based were not and could not with reasonable diligence have been known to the moving party more than 14 days before the motion was filed.” MCR 2.221(B). The Court further noted that even if Dawley had been permitted to file a motion for a change of venue, she “likely would not have satisfied the criteria for allowance of a late motion for change of venue under MCR 2.221(B).”

In light of the Supreme Court’s decision in *Dawley*, it is important for a plaintiff facing a successful motion for a change of venue to immediately assess whether there are any potential grounds for challenging that decision and consider filing an interlocutory appeal. Otherwise, the decision transferring venue may well be final.

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