

No. **14-14-00126-CV**

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
2/11/2014 10:13:28 AM
CHRISTOPHER A. PRINE
Clerk

IN THE _____ COURT OF APPEALS
HOUSTON, TEXAS

IN RE JULIE HANNAH

PETITION FOR WRIT OF MANDAMUS

Bobbie G. Bayless
Bayless & Stokes
State Bar No. 01940600
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218
bayless@baylessstokes.com

Attorneys for Relator

ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Relator:

Julie Hannah (Plaintiff in the trial court)

Bobbie G. Bayless
State Bar No. 01940600
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218

Attorneys for Relator

Respondent:

Honorable Kyle Carter
Presiding Judge of 125th District Court
Harris County Civil Courthouse
201 Caroline, 10th Floor
Houston, Texas 77002
Telephone: (713) 368-6141

Real Parties in Interest:

David Lee Hatcher (Defendant in the trial court)

Odean L. Volker
Haynes and Boone, LLP
One Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010
Telephone: (713) 547-2036
Telecopier: (713) 547-2600

Attorneys for David Lee Hatcher

Marjorie Cordes (Defendant in the trial court)

Erika C. Anderson
The Stinemetz Law Firm PLLC
5120 Woodway Dr., Suite 6019
Houston, Texas 77056
Telephone: (713) 824-7392
Telecopier: (713) 456-2908

Attorneys for Marjorie Cordes

Additional Defendant in the trial court who did not challenge venue:

Robert Alan Hatcher

Robert Hatcher
822 W. San Antonio
Lockhart, Texas 78644
Telephone: (512) 995-1059
Telecopier: (866) 860-4272

Pro Se

TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL..... ii

INDEX OF AUTHORITIES. vi

STATEMENT OF THE CASE. 1

STATEMENT OF JURISDICTION. 3

ISSUE PRESENTED... .. 4

Whether Judge Carter’s Orders transferring Hannah’s slander case to the County Court at Law of Aransas County violated the mandatory venue provisions of Tex. Civ. Prac. & Rem. Code Ann. §15.017 and constituted an abuse of the trial court’s discretion.

STATEMENT OF FACTS. 4

ARGUMENT AND AUTHORITIES. 4

A. Hannah complied with the mandatory venue provision contained in Tex. Civ. Prac. & Rem. Code Ann. §15.017 and is entitled to have that venue provision enforced..... 4

B. Hannah’s lawsuit is not a probate proceeding and it was an abuse of discretion to transfer it to the Aransas County Court at Law which has no jurisdiction to hear Hannah’s lawsuit.... . 10

PRAYER. 23

CERTIFICATION OF BOBBIE G. BAYLESS. 24

CERTIFICATE OF COMPLIANCE..... 24

CERTIFICATE OF SERVICE... .. 25

APPENDIX

Order Granting David Lee Hatcher’s Motion to Transfer Venue.	A
Order Granting Marjorie Cordes’ Plea in Abatement and Motion to Transfer Venue.	B
Tex. Civ. Prac. & Rem. Code Ann. §15.017.	C
Tex. Civ. Prac. & Rem. Code Ann. §15.002	D
Tex. Civ. Prac. & Rem. Code Ann. §15.004.	E
Tex. Civ. Prac. & Rem. Code Ann. §15.005.	F
Tex. Civ. Prac. & Rem. Code Ann. §15.0642.	G
Tex. R. Civ. P. 86.	H
Tex. R. Civ. P. 87.	I

INDEX OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Chamberlain v. Witts</i> , 696 S.W.2d 204 (Tex. App.–Dallas, 1985, writ ref’d n.r.e.)	20, 21
<i>In re Adan Volpe Properties, Ltd.</i> , 306 S.W.3d 369 (Tex. App.–Corpus Christi, 2010) (orig. proceeding)	5
<i>In re: Jennings</i> , 203 S.W.3d 32 (Tex. App.–San Antonio, 2006) (orig. proceeding)	3, 9
<i>In re John G. Kenedy Mem’l Foundation</i> , 159 S.W.3d 133 (Tex. App.–Corpus Christi 2004, no writ)	11
<i>In re: Missouri Pac. RR</i> , 998 S.W.2d 212 (Tex. 1999) (orig. proceeding)	3
<i>In re Stroud Oil Properties, Inc.</i> , 110 S.W.3d 18 (Tex. App.–Waco, 2002) (orig. proceeding)	9
<i>In re Swepi</i> , 85 S.W.3d 800 (Tex. 2002) (orig. proceeding)	20
<i>In re Tex. Ass’n of Sch. Bds, Inc.</i> , 169 S.W.3d 653 (Tex. 2005) (orig. proceeding)	5
<u>STATUTES</u>	<u>PAGE</u>
Tex. Civ. Prac. & Rem. Code Ann. §15.002	6, 9
Tex. Civ. Prac. & Rem. Code Ann. §15.002(a)	5
Tex. Civ. Prac. & Rem. Code Ann. §15.004	6
Tex. Civ. Prac. & Rem. Code Ann. §15.005	7
Tex. Civ. Prac. & Rem. Code Ann. §15.017	1, 2, 4, 6, 7, 9
Tex. Civ. Prac. & Rem. Code §15.0642	3, 5
Tex. Gov’t Code Ann. §25.0003(c)(1)	12
Tex. Prob. Code Ann. §3(bb)	13, 16
Tex. Prob. Code Ann. §4B	18

Tex. Prob. Code Ann. §8..... 11, 12, 22

RULES

PAGE

Tex. R. Civ. P. 86. 8
Tex. R. Civ. P. 86(3). 7
Tex. R. Civ. P. 87. 8, 9
Tex. R. Civ. P. 87(3). 7, 8, 9
Tex. R. Civ. P. 87(3)(c). 9

No. _____

IN THE _____ COURT OF APPEALS
HOUSTON, TEXAS

IN RE JULIE HANNAH

PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE COURT OF APPEALS:

Relator, Julie Hannah (“Relator”, “Plaintiff”, or “Hannah”), seeks mandamus relief from this court against Judge Kyle Carter, the presiding judge of the 125th District Court of Harris County, Texas. Hannah contends Judge Carter’s orders which granted motions to transfer Hannah’s slander lawsuit to the County Court at Law in Aransas County violate the mandatory provisions of Tex. Civ. Prac. & Rem. Code Ann. §15.017 and were an abuse of his discretion (App. A and B).^{1/} Hannah seeks the issuance of a writ of mandamus compelling Judge Carter to vacate those orders.

STATEMENT OF THE CASE

On August 15, 2013, Hannah filed her Petition in Harris County asserting causes of action for tortious interference with inheritance rights, slander, and conspiracy against David Lee Hatcher (“David”, “Defendant”, or “Real Party in

^{1/} References to the documents contained in the Appendix attached to this Petition are designated as “App. ____”.

Interest”), Robert Alan Hatcher (“Robert”)^{2/}, and Marjorie Cordes (“Marjorie”, “Defendant”, or “Real Party in Interest”) (R. 1).^{3/} Hannah’s lawsuit alleges that false statements about her conduct were published to David Burnell Hatcher from whom she was to receive a testamentary bequest until those false statements were made, and that because of those false statements, her inheritance rights were lost (R. 1).

Hannah complied with the provisions of Tex. Civ. Prac. & Rem. Code Ann. §15.017 (App. C) which requires that a suit for slander must be filed in the county of Plaintiff’s residence or the county where any of the Defendants reside. One of the Defendants resides in Harris County, and the necessary venue facts supporting the Harris County filing were set forth in Hannah’s petition (R. 1).

David and Marjorie each filed motions asking that the case be transferred to the County Court at law of Aransas County. Those motions did not contain specific denials of Hannah’s venue facts but were instead based on the contention that Hannah’s slander case was really a second probate proceeding. Thus, David and Marjorie’s theory was that because David Burnell Hatcher’s estate had been probated in Aransas County as a muniment of title, that court either had exclusive jurisdiction over Hannah’s claims or some type of superior right to determine those claims (R. 3

^{2/} This Defendant did not file a motion to transfer venue. (See R. 2).

^{3/} References to the documents provided in the Record filed with this Petition are designated as “R. ____”.

and 4). Judge Carter granted both David and Marjorie's motions on January 14, 2014^{4/} and ordered Hannah's lawsuit transferred to the Aransas County Court at Law (App. A and B).

STATEMENT OF JURISDICTION

This Court has jurisdiction over this mandamus action by virtue of Tex. Civ. Prac. & Rem. Code Ann. §15.0642 (App. G) which allows a party to apply for a writ of mandamus to enforce the mandatory venue provisions of Chapter 15 of the Tex. Civ. Prac. & Rem. Code Ann. To obtain the relief she seeks, Hannah must show the trial court abused its discretion, but she is not required to establish that she is without an adequate appellate remedy. *In re: Missouri Pac. RR*, 998 S.W.2d 212, 215 (Tex. 1999) (orig. proceeding); *In re: Jennings*, 203 S.W.3d 32, 35 (Tex. App.–San Antonio, 2006) (orig. proceeding). This application is being filed within the time frames established by Tex. Civ. Prac. & Rem. Code Ann. §15.0642.^{5/}

^{4/} Hannah's counsel received an email notification that there had been a ruling on the pending motions concerning venue but there was a notation in that email that stated "Plea of Priv Granted–Not Transferred." Because of difficulties involving access to documents since the mandatory online filing became effective, it was not possible to actually obtain the signed orders until January 22, 2013.

^{5/} The parties have agreed that no transfer of the case to Aransas County should be made until this Court reaches a decision on this Petition. An Unopposed Motion to Stay the transfer is being filed contemporaneously with this Petition.

ISSUE PRESENTED

Whether Judge Carter's Orders transferring Hannah's slander case to the County Court at Law of Aransas County violated the mandatory venue provisions of Tex. Civ. Prac. & Rem. Code Ann. §15.017 and constituted an abuse of the trial court's discretion.

STATEMENT OF FACTS

Hannah's lawsuit alleges she was a beneficiary under David Burnell Hatcher's will until that will was revoked and a new one prepared because of slanderous statements about Hannah made to David Burnell Hatcher and others by Defendants (R. 1). Hannah learned of those false statements, and the impact those statements had, after David Burnell Hatcher's death. Hannah filed her action for slander, tortious interference with inheritance rights, and conspiracy in Harris County where one of the Defendants resides (R. 1).

By that time, David Burnell Hatcher's new will which eliminated the bequest to Hannah had already been probated in the Aransas County Court at Law, not through an administration of his estate, but as a muniment of title (R. 3, Ex. A and R. 4, Ex. A).

ARGUMENT AND AUTHORITIES

- A. Hannah complied with the mandatory venue provision contained in Tex. Civ. Prac. & Rem. Code Ann. §15.017 and is entitled to have that venue provision enforced.**

The only issue presented in a mandamus proceeding filed pursuant to Tex. Civ. Prac. & Rem. Code Ann. §15.0642 is whether the trial court properly interpreted the mandatory venue provision. *In re Tex. Ass'n of Sch. Bds, Inc.*, 169 S.W.3d 653 656 (Tex. 2005) (orig. proceeding); *In re Adan Volpe Properties, Ltd.*, 306 S.W.3d 369 (Tex. App.–Corpus Christi, 2010) (orig. proceeding). The trial court's orders granting David's and Marjorie's motions (App. A and B) were abuses of discretion because they misapplied the law and ignored the applicable mandatory venue provision.

When Hannah filed her action for tortious interference with inheritance rights, slander, and conspiracy against the three defendants, she complied with the venue requirements for such actions. Tex. Civ. Prac. & Rem. Code Ann. §15.002(a) (App. D) provides as follows:

(a) Except as otherwise provided by this subchapter or Suchapter B or C, all lawsuits shall be brought:

(1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) in the county of defendant's residence at the time the cause of action accrued if defendant is a natural person;

(3) in the county of the defendant's principal office in this state, if the defendant is not a natural person; or

(4) if Subdivisions (1), (2), and (3) do not apply, in the county in which the plaintiff resided at the time of the accrual of the cause of action.

This general venue provision applies to Hannah's claim for tortious interference with inheritance rights.

Tex. Civ. Prac. & Rem. Code Ann. §15.017 (App. C)^{6/} provides that:

A suit for damages for libel, slander, or invasion of privacy shall be brought and can only be maintained in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county in which the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff.

This is the mandatory venue provision applicable to Hannah's slander claim.

Tex. Civ. Prac. & Rem. Code Ann. §15.004 (App. E) requires the application of the mandatory venue provision relating to slander claims over the general venue provision by stating:

In a suit in which a plaintiff properly joins two or more claims or causes of action arising from the same transaction, occurrence, or series of transactions or occurrences, and one of the claims or causes of action is governed by the mandatory venue provision of Subchapter B, the suit shall be brought in the county required by the mandatory venue provision.

^{6/} This section is in Subchapter B to which Tex. Civ. Prac. & Rem. Code Ann. §15.002 and Tex. Civ. Prac. & Rem. Code Ann. §15.004 refer.

The venue chosen by Hannah which complies with Tex. Civ. Prac. & Rem. Code Ann. §15.017 is valid as to all Defendants because of Tex. Civ. Prac. & Rem. Code Ann. §15.005 (App. F) which provides as follows:

In a suit in which the plaintiff has established proper venue against a defendant, the court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

Not only did Hannah comply with all of these venue statutes, she also alleged the necessary venue facts in her petition (R. 1).

Based on the foregoing, Hannah believes any attack on her venue selection would have been futile, even if such attack had been approached as the Texas Rules of Civil Procedure require. The rules require that a motion requesting a transfer of venue must either provide a legal and factual basis for asserting that the county where the action is pending is not a proper county or must provide a legal and factual basis for asserting that mandatory venue, as established by one or more specifically and clearly designated statutory provisions, lies in a county other than the one in which the suit is pending. Tex. R. Civ. P. 86(3) (App. H).

Defendants did neither. Instead David and Marjorie ignored the requirements imposed by those rules in seeking the transfer of the case.^{7/} In fact, neither Tex. R. Civ. P. 86 or Tex. R. Civ. P. 87 (App. I) which sets forth the procedures to be followed when challenging venue were ever mentioned by either David or Marjorie (R. 3 and 4). Instead, David and Marjorie attempted to avoid the impossible burdens imposed by the rules on a transfer of Hannah's lawsuit and relied entirely on the contention that Hannah's lawsuit is not really a lawsuit at all but is instead an attempt to file a second probate proceeding of David Burnell Hatcher's estate (R. 3 and 4). Thus, they claim the pursuit of Hannah's claims in Harris County is either prohibited by or must defer to the probate proceeding previously conducted in the County Court at Law in Aransas County.^{8/}

Tex. R. Civ. P. 87 states that the party seeking to maintain venue has the burden to establish that venue can be maintained where the action is filed. Hannah did that through her venue facts in Plaintiff's Original Petition (R. 1). Tex. R. Civ.

^{7/} Only David attempts to assert some type of competing mandatory venue provision when he claims Tex. Prob. Code Ann. §6 is a mandatory venue provision applicable to Hannah's case (R.4, p. 1, paragraph 2). Since that provision only addresses venue for proceedings in which wills are being admitted to probate and letters testamentary and of administration are granted, neither of which will occur in connection with Hannah's lawsuit, that provision does not apply to Hannah's lawsuit.

^{8/} That position also faces a number of impediments which will be discussed in more detail later in this Petition, but some of the most notable problems include the absence in Hannah's case of an estate as a party, the fact that Hannah's case has no impact on a decedent's estate, and that there is no estate even currently being administered or pending in Aransas County with which Hannah's lawsuit could be combined or to which it could be transferred.

P. 87(3) provides that properly pleaded venue facts are taken as true unless specifically denied by the opposing party. Neither David nor Marjorie specifically denied any of Hannah's venue facts (R. 3 and 4), and therefore, Hannah met her burden of showing that the case is maintainable in Harris County based on the allegations set forth in her petition (R. 1). *In re Jennings*, 203 S.W. 3d 36; *In re Stroud Oil Properties, Inc.*, 110 S.W.3d 18, 22-23 (Tex. App.–Waco, 2002) (orig. proceeding).

Frankly, an attempt to deny or otherwise refute Hannah's venue facts which establish venue in Harris County would have been an impossible task. As stated, Hannah relies on both the mandatory venue provision relating to slander claims^{9/} and the general venue provision relating to other actions.^{10/} Under both, venue is established by David's Harris County residence which, again, neither Marjorie nor David denied (R. 3 and 4). Therefore, Tex. R. Civ. P. 87(3)(c) prevents this Court from transferring the case to Aransas County.

Tex. R. Civ. P. 87 also specifies that the party seeking to transfer venue has the burden to prove that venue is maintainable in the county to which the transfer is sought. Defendants' arguments that Hannah's lawsuit is really some kind of probate

^{9/} Tex. Civ. P. & Rem. Code §15.017 (App. C).

^{10/} Tex. Civ. P. & Rem. Code §15.002 (App. D).

proceeding are flawed and would not meet the burden of overcoming the mandatory venue provision even if an attempt had been made to comply with the rules.

B. Hannah's lawsuit is not a probate proceeding and it was an abuse of discretion to transfer it to the Aransas County Court at Law which has no jurisdiction to hear Hannah's lawsuit.

As stated, Defendants did not assert that Harris County is an improper county or even deny the applicability of a mandatory venue provision in slander cases. Marjorie asserted that Harris County had no jurisdiction by claiming Hannah's claims are either a claim for money owed by a decedent or that arise from an administration of a decedent's estate (R. 3, p. 1, first paragraph). As part of the second alternative, Marjorie alleges that Hannah's claims center around the validity of David Burnell Hatcher's will (R. 3, p. 2, first two paragraphs). This is not at all what Hannah's claims are about. David basically makes the same argument when he contends that because Hannah claims she was entitled to inherit under a prior will of David Burnell Hatcher, her lawsuit is a probate proceeding (R. 4, p. 2-3, paragraph 3 and 5-6).

Both Defendants claimed the case should be transferred to the County Court at Law in Aransas County because of the muniment of title proceeding filed there concerning David Burnell Hatcher's will. Since that case was disposed of before this case was filed, there is no pending probate proceeding to which Hannah's lawsuit

could be linked if transferred.^{11/} Nevertheless, David and Marjorie both argued that Hannah’s lawsuit was simply a second probate proceeding and that, therefore, Tex. Prob. Code Ann. §8^{12/} supports the relief they sought. But Hannah did not file a probate proceeding, and her claims do not otherwise “relate to” a decedent’s estate, as would be required by the Texas Probate Code and related case law to establish probate jurisdiction over Hannah’s lawsuit.

Nothing in Hannah’s state court petition suggests it is a probate proceeding, either in form or substance (R. 1). Hannah filed suit for damages against the Defendants named in her petition. Hannah’s suit does not seek to probate a will or to contest the probate of a will. Likewise, no claim is made against a decedent, and no claim is even made against anyone in their capacity as a personal representative for a decedent’s estate (R. 1). Thus, the trial court misapplied the law and abused its discretion when it ordered the case transferred to the Aransas County Court at Law.

^{11/} There is absolutely no authority for the suggestion by Marjorie that because a bill of review could still be filed the action is still pending (R. 3, p. 4, first full paragraph). Indeed, there is authority to the contrary. The holding in the case of *In re John G. Kenedy Mem’l Foundation*, 159 S.W.3d 133 (Tex. App.–Corpus Christi 2004, no writ) was that filing a bill of review does not open a closed estate proceeding.

^{12/} Effective January 1, 2014, the Texas Probate Code was replaced by the Texas Estates Code. All briefing before the trial court was prior to January 1, 2014 and referred to Texas Probate Code provisions. To avoid confusion, and Hannah has continued to use those Probate Code citations in this Petition.

The amount in controversy in Hannah's lawsuit is more than \$200,000. Since the jurisdiction of county civil courts at law is limited to controversies between \$500 and \$200,000, there can be no jurisdiction in the court to which the trial court has transferred Hannah's case unless it is probate jurisdiction. Tex. Gov't Code Ann. §25.0003(c)(1). A review of applicable Texas Probate Code provisions on which David and Marjorie rely confirms there is no probate jurisdiction over Hannah's lawsuit. Tex. Prob. Code Ann. §8 on which Defendants rely heavily only deals with venue between two actual probate proceedings. That section states:

(a) When two or more courts have concurrent venue of a probate proceeding, the court in which the application for the proceeding is first filed shall have and retain jurisdiction of the proceeding to the exclusion of the other court or courts.

(b) If probate proceedings involving the same estate are commenced in more than one county, each proceeding commenced in a county other than the county in which a proceeding was first commenced is stayed until final determination of venue by the court in the county where first commenced.

Of course, David and Marjorie can not establish venue in a court which has no jurisdiction. And David and Marjorie's attempts to establish probate jurisdiction over Hannah's claims are tortured at best and do not accomplish what is needed to support the transfer that has been ordered.

David and Marjorie both make the argument that Hannah’s lawsuit is an actual probate proceeding, but to do that they have to ignore the plain language of the Texas Probate Code. Marjorie relied on paragraphs (4) and (5) of Tex. Prob. Code Ann. §3(bb) in asserting that Hannah’s case is really a “probate proceeding.” Marjorie claims Hannah’s lawsuit meets the definition of a probate proceeding because it is either:

(4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent; or

(5) a claim arising from an estate administration and any action brought on the claim.

Just saying that Hannah’s case meets that definition is not enough, but Marjorie’s only attempt to explain how these definitions could apply is her statement that Hannah’s claim centers around the validity of the terms of David Burnell Hatcher’s will so that makes it an “application...regarding the probate of a will or an estate administration.” (R.3, p. 2, first full paragraph). The problem with that argument is that there is not one statement in Hannah’s lawsuit questioning the validity of the terms of David Burnell Hatcher. Hannah’s case is not a proceeding to probate a will or attack the probate of a will, nor is it an action to recover anything from a decedent or a decedent’s estate. Neither an estate nor a personal representative

of an estate in his representative capacity is a party to Hannah's case. Hannah's lawsuit does not fall under either description^{13/}.

Yes, Hannah's petition does discuss her right to bequests under prior wills of David Burnell Hatcher because that fact relates to one of the elements of her claims and to the amount of her damages. But the mere mention of a decedent's name in Hannah's Petition does not make this action a probate proceeding. Nor does it not make Hannah's filing a contest of the will in existence at the time of David Burnell Hatcher's death. Both Hannah and Defendants are faced with the reality that the Defendants' slander successfully interfered with Hannah's rights and that changes were made to David Burnell Hatcher's will as a result of those slanderous statements. Because that change resulted from the wrongful acts of Defendants, Hannah alleges that the damage suffered by Hannah should be borne by the Defendants who caused it. That does not make Hannah's suit a probate proceeding, nor is it so intertwined with a probate proceeding as to permit transfer to Aransas County, particularly in the

^{13/} Marjorie also claims a lack of jurisdiction in the Harris County district court over Plaintiff's claims based on an argument that the County Court at Law of Aransas County has acquired dominant jurisdiction over Hannah's lawsuit, thus requiring Hannah to pursue her claims in that court even though the amount in controversy exceeds its jurisdictional limits (R.3, p. 3, paragraphs 3). The problem is that at least three of the conditions specified by Marjorie's motion do not apply. The Aransas County proceeding is no longer pending and it does not involve the same parties or the same controversies.

face of applicable mandatory venue provisions and jurisdictional constraints to the contrary.^{14/}

Likewise, Hannah's claims arise from actions taken before David Burnell Hatcher even died, so this is not a claim arising from the administration of his estate. In fact, there does not appear to have even been an administration of his estate. Hannah did not dispute the fact that an order probating David Burnell Hatcher's will as a muniment of title was signed in Aransas County, but that does not impair Harris County's jurisdiction or somehow overcome the mandatory venue statute which establishes Harris County as a proper venue in Hannah's slander and tortious interference action. And since there is no administration in a muniment of title action, there never was an administration of David Burnell Hatcher's estate. Therefore, Hannah's claims can not arise from an estate administration.

^{14/} These same problems prevent David and Marjorie from prevailing on their requests that the proceeding be stayed or abated in favor of the Aransas County probate proceeding. Hannah's case does not have common parties or issues, but there is no estate pending in Aransas County in which to insert it even if it did. In making their arguments, David and Marjorie simply ignore the fact that the Aransas County muniment of title proceeding is over, that Hannah was not a party to that proceeding, that the estate probated there is not a party in Hannah's lawsuit, and that while the Aransas County probate proceeding and Hannah's tort claims may share some common facts, such as the terms of David Burnell Hatcher's will when he died, those facts are not disputed and Hannah's lawsuit is not intertwined with the muniment of title proceeding.

In making his arguments, David claims the Texas Probate Code defines a probate proceeding broadly (R. 4, p. 2-3). David relies on excerpted language from Tex. Prob. Code Ann. §3(bb). That provision reads as follows:

“Probate proceeding” is synonymous with the terms “Probate matter,” “Proceeding in probate,” and “Proceedings for probate.” The terms means a matter or proceeding related to the estate of a decedent and includes:

(1) the probate of a will, with or without administration of the estate;

(2) the issuance of letters testamentary and of administration;

(3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;

(4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;

(5) a claim arising from an estate administration and any action brought on the claim;

(6) the settling of a personal representative’s account of an estate and any other matter related to the settlement, partition, or distribution of an estate; and

(7) a will construction suit.

Hannah’s lawsuit does not fall within even that so-called “broad language.”

No probate of a will is sought by Hannah, there will be no issuance of letters of testamentary or administrative authority in Hannah's case, there will be no heirship or similar determinations or allowances made in Hannah's case, Hannah does not claim money is owed to her by David Burnell Hatcher or his estate, Hannah's claim does not result from an administration of an estate or against a personal representative, and Hannah's case is not one involving construction of a will. Neither an estate nor a personal representative of an estate in his representative capacity is a party to this case. Nor is Hannah's lawsuit a proceeding to probate a will or attack the probate of a will.

Instead, Hannah's claims arise from the false statements Defendants made and the resulting damages caused by those false statements and the interference they caused with Hannah's rights. And any suggestion that this is a claim for money owed by a decedent is simply incorrect. This is a claim of damages against Defendants because Defendants published false statements about Hannah which caused David Burnell Hatch to change his will to eliminate his bequest to Hannah. In other words, the intended interference was successful. That interference by Defendants resulted from Defendants' wrongful actions. Those wrongful acts by Defendants are the subject of Hannah's case.

Nor is Hannah's lawsuit sufficiently related to the David Burnell Hatcher estate to establish probate jurisdiction. And probate jurisdiction is not automatic in a case alleged to "relate to" a probate proceeding, so David and Marjorie must somehow establish that jurisdiction to prevail on their motions. It is Tex. Prob. Code Ann. §4B which addresses jurisdiction for matters relating to probate proceedings. That provision in relevant part states:

- (a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
 - (1) an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative;
 - (2) an action against a surety of a personal representative or former personal representative;
 - (3) a claim brought by a personal representative on behalf of an estate;
 - (4) an action brought against a personal representative in the representative's capacity as personal representative;
 - (5) an action for trial of title to real property that is estate property, including the enforcement of a lien against the property; and

- (6) an action for trial of the right of property that is estate property.
- (b) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
- (1) all matters and actions described in Subsection (a) of this section;
 - (2) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and
 - (3) the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.

Since Aransas County has no statutory probate court, Subsection (b) applies.

Once again, this case does not fall within any of the categories specified as matters “related to” a probate proceeding. Hannah’s case is not one by or against a personal representative or surety of an estate arising out of performance as the personal representative or in the representative’s capacity as personal representative, it is not a case concerning title to or a lien against estate property, it does not seek title to estate property, and it does not involve interpretation or administration of either a testamentary or an inter vivos trust. Thus, David and Marjorie’s motions to transfer are not supportable on that basis either. Without an estate or its personal

representative as a party to Hannah's lawsuit, the court which probated any applicable estate would not have probate jurisdiction over a non-probate proceeding. The Probate Code does not explicitly define Hannah's lawsuit as one related to the muniment of title proceeding and none of the relief Hannah seeks directly affects the estate of David Burnell Hatcher. *In re Swepi*, 85 S.W.3d 800 (Tex. 2002) (orig. proceeding).

Moreover, even under the probate code provisions on which David and Marjorie relied to argue jurisdiction exists in Aransas County over matters incident to an estate, the matters must actually be incident to an estate and the probate estate must actually be pending at the time Hannah's suit was filed. And the further reality is that there is no probate proceeding still pending. The exhibit attached to both David and Marjorie's motions clearly show David Burnell Hatcher's will was probated as a muniment of title. The order even specifies that there will be no administration of the estate (R. 3, Ex. A and 4, R. Ex. A). Even if the order itself did not indicate there was to be no administration of the estate, a Texas court has already spoken on this issue and nullified this critical point to Defendants' position.

The court in *Chamberlain v. Witts*, 696 S.W.2d 204, 206 (Tex. App.–Dallas, 1985, writ ref'd n.r.e.) held that, to be incident to an estate, the case must be one in which the outcome will have direct bearing on assimilating, collecting, or distributing

decedent's estate. This case does not have the necessary impact on the outcome of the probate proceeding because that is not what it is about, and there is no pending action to which Hannah's case can be sent. The probate proceeding in the *Chamberlain* case also involved a will probated as a muniment of title. The *Chamberlain* court held that because the probate was filed as a muniment of title, there was no estate pending and the case filed in connection with the probate proceeding, as if incident thereto, had to be dismissed for lack of jurisdiction. *Id.* Just as in the *Chamberlain* case, there is no estate of David Burnell Hatcher pending that needs to be assimilated, collected, or distributed so Hannah's lawsuit can have no direct bearing on that process. Therefore, Hannah's suit could not be moved to that court on the theory that it is incident to the estate, even if it was necessary to the resolution of an estate, which it clearly is not. The estate has already been resolved, and Hannah's case can have no impact on it.

Hannah's claims are slander and tortious interference claims arising from the false statements Defendants made to David Burnell Hatcher and others and the interference those statements caused with Hannah's then-existing rights. This is a claim of damages against Defendants because Defendants' slanderous statements caused David Burnell Hatcher to change his will to eliminate the bequest he had been making to Hannah. David Burnell Hatcher's estate does not owe Hannah anything.

In other words, the intended interference by Defendants was successful. That interference resulted from Defendants' wrongful actions. Those wrongful acts by Defendants and the damages they caused—not David Burnell Hatcher's estate—are the subject of this case.

David and Marjorie also argued that Tex. Prob. Code §8 required subsequent probate proceedings filed in other counties to be abated or stayed in favor of venue determinations in the probate proceeding first commenced. As stated, that provision does not apply because this is not a subsequent probate proceeding, and there is no currently pending Aransas County case in which a venue determination could be made. The motion to abate should also have been denied and the requests that this proceeding be stayed which necessarily flow from the argument that this was a second probate proceeding should also have been denied. Similarly, David argued that the trial court should dismiss, or alternatively, transfer Hannah's case to Aransas County, the rationale for that request again being the unsupportable assertion that Hannah's case is a second probate proceeding which must defer to the Aransas County probate proceeding. All such requests, as well as the request to transfer the case, should have been denied.

PRAYER

Hannah prays that this Court grant this petition for writ of mandamus, that Judge Carter be ordered to vacate his orders granting the motions to transfer venue, and such other relief to which she may be entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

Bobbie G. Bayless
State Bar No. 01940600
2931 Ferndale
Houston, Texas
Telephone: (713) 522-2224
Telecopier: (713) 522-2218
bayless@baylessstokes.com

Attorneys for Relator

CERTIFICATION OF BOBBIE G. BAYLESS

I certify, pursuant to Tex. R. Civ. App. P. 52.3(j), that I have reviewed the Petition for Writ of Mandamus and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using WordPerfect X4 and contains 4595 words, as determined by the computer software's word-count function, excluding the sections of the document listed in Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2014, a true and correct copy of the above and foregoing *Petition for Writ of Mandamus* together with a true and correct copy of the Appendix filed of even date herewith, has been forwarded to the parties as follows:

Honorable Kyle Carter
Harris County Civil Courthouse
201 Caroline, 10th Floor
Houston, Texas 77002

*Sent via Certified Mail
Return Receipt Requested*

Odean L. Volker
Haynes and Boone, LLP
One Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010

*Sent via Certified Mail
and Email*

Erika C. Anderson
The Stinemetz Law Firm PLLC
5120 Woodway Dr., Suite 6019
Houston, Texas 77056

*Sent via Certified Mail
and Email*

Robert Hatcher
822 W. San Antonio
Lockhart, Texas 78644

*Sent via Certified Mail
Return Receipt Requested*

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

Appendix A

CAUSE NO. 2013-48071

p1
2

JULIE HANNAH,
Plaintiff,

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, TEXAS

DAVID LEE HATCHER,
ROBERT ALAN HATCHER, AND
MARJORJE CORDES
Defendants

125TH JUDICIAL DISTRICT


ORDER ON MOTION TO TRANSFER

On this day, this Court considered Defendant David Lee Hatcher's Motion to Transfer (the "Motion"). After review and consideration of the Motion, responses thereto, if any, and hearing arguments from counsel, this Court finds the Motion should be GRANTED.

It is therefore ORDERED that the Motion is GRANTED.

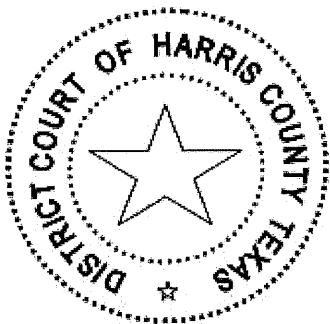
It is further ORDERED that the above-captioned lawsuit is transferred to County Court at Law of Aransas County.

SIGNED this 14 day of January, 2013.



JUDGE PRESIDING

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this February 7, 2014

Certified Document Number: 59269968 Total Pages: 1

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

Appendix B

Filed 13 October 11 P2:51
Chris Daniel - District Clerk
Harris County
FAX15594320

CAUSE NO. 2013-48071

*P1
TABAX
TRANX*

JULIE HANNAH

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

Plaintiff,

vs.

HARRIS COUNTY, TEXAS

DAVID LEE HATCHER, ROBERT
ALAN HATCHER, and MARJORIE
CORDES

Defendants

125th JUDICIAL DISTRICT


ORDER

CAME TO BE HEARD Defendant Marjorie Cordes's Plea in Abatement and Motion to Transfer Venue. Having considered the Motion, any response thereto, the evidence, and the arguments of counsel, the Court hereby

GRANTS Defendant Marjorie Cordes's Plea in Abatement and Motion to Transfer Venue.

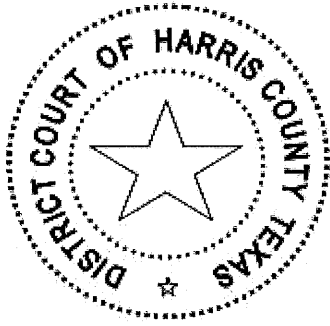
This case is hereby ABATED and TRANSFERED to the Aransas County Court at Law.

Signed on January 14, 2013



Judge Kyle Carter

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this February 7, 2014

Certified Document Number: 59269967 Total Pages: 1

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

Appendix C

C

Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)

Title 2. Trial, Judgment, and Appeal

Subtitle B. Trial Matters

▣ Chapter 15. Venue (Refs & Annos)

▣ Subchapter B. Mandatory Venue (Refs & Annos)

→→ **§ 15.017. Libel, Slander, or Invasion of Privacy**

A suit for damages for libel, slander, or invasion of privacy shall be brought and can only be maintained in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county in which the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff.

CREDIT(S)

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

Current through the end of the 2013 Third Called Session of the 83rd Legislature

(c) 2013 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

Appendix D

C

Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
 [Ⓜ] Chapter 15. Venue (Refs & Annos)
 [Ⓜ] Subchapter A. Definitions; General Rules
 → → **§ 15.002. Venue: General Rule**

(a) Except as otherwise provided by this subchapter or Subchapter B or C, [FN1] all lawsuits shall be brought:

(1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) in the county of defendant's residence at the time the cause of action accrued if defendant is a natural person;

(3) in the county of the defendant's principal office in this state, if the defendant is not a natural person; or

(4) if Subdivisions (1), (2), and (3) do not apply, in the county in which the plaintiff resided at the time of the accrual of the cause of action.

(b) For the convenience of the parties and witnesses and in the interest of justice, a court may transfer an action from a county of proper venue under this subchapter or Subchapter C to any other county of proper venue on motion of a defendant filed and served concurrently with or before the filing of the answer, where the court finds:

(1) maintenance of the action in the county of suit would work an injustice to the movant considering the movant's economic and personal hardship;

(2) the balance of interests of all the parties predominates in favor of the action being brought in the other county; and

(3) the transfer of the action would not work an injustice to any other party.

(c) A court's ruling or decision to grant or deny a transfer under Subsection (b) is not grounds for appeal or man-

damus and is not reversible error.

CREDIT(S)

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 15.001 and amended by Acts 1995, 74th Leg., ch. 138, § 1, eff. Aug. 28, 1995.

[FN1] V.T.C.A., Civil Practice & Remedies Code § 15.011 et seq. or § 15.031 et seq.

Current through the end of the 2013 Third Called Session of the 83rd Legislature

(c) 2013 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

Appendix E

C

Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)

Title 2. Trial, Judgment, and Appeal

Subtitle B. Trial Matters

▣ Chapter 15. Venue (Refs & Annos)

▣ Subchapter A. Definitions; General Rules

→→ § 15.004. Mandatory Venue Provisions Governs Multiple Claims

In a suit in which a plaintiff properly joins two or more claims or causes of action arising from the same transaction, occurrence, or series of transactions or occurrences, and one of the claims or causes of action is governed by the mandatory venue provisions of Subchapter B, [FN1] the suit shall be brought in the county required by the mandatory venue provision.

CREDIT(S)

Added by Acts 1995, 74th Leg., ch. 138, § 1, eff. Aug. 28, 1995.

[FN1] V.T.C.A., Civil Practice & Remedies Code § 15.011 et seq.

Current through the end of the 2013 Third Called Session of the 83rd Legislature

(c) 2013 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

Appendix F

C

Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)

Title 2. Trial, Judgment, and Appeal

Subtitle B. Trial Matters

▣ Chapter 15. Venue (Refs & Annos)

▣ Subchapter A. Definitions; General Rules

→→ **§ 15.005. Multiple Defendants**

In a suit in which the plaintiff has established proper venue against a defendant, the court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

CREDIT(S)

Added by Acts 1995, 74th Leg., ch. 138, § 1, eff. Aug. 28, 1995.

Current through the end of the 2013 Third Called Session of the 83rd Legislature

(c) 2013 Thomson Reuters. No Claim to Orig. US Gov. Works.

END OF DOCUMENT

Appendix G

C**Effective:[See Text Amendments]**

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
 ▣ Chapter 15. **Venue**(Refs & Annos)
 ▣ Subchapter D. General Provisions (Refs & Annos)
 →→ **§ 15.0642. Mandamus**

A party may apply for a writ of **mandamus** with an appellate court to enforce the mandatory **venue** provisions of this chapter. An application for the writ of **mandamus** must be filed before the later of:

- (1) the 90th day before the date the trial starts; or
- (2) the 10th day after the date the party receives notice of the trial setting.

CREDIT(S)

Added by Acts 1995, 74th Leg., ch. 138, § 5, eff. Aug. 28, 1995.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Section 11 of the 1995 Act provides:

“(a) Except as provided by Subsection (b) of this section, this Act applies only to a suit commenced on or after September 1, 1995. A suit commenced before September 1, 1995, is governed by the law applicable to the suit immediately before the effective date of this Act, and that law is continued in effect for that purpose.

“(b) **Venue** under Section 15.018, Civil Practice and Remedies Code, as added by this Act, applies only to a suit commenced on or after January 1, 1996. **Venue** under that section for a suit commenced before January 1, 1996, is governed by the law applicable to the suit immediately before the effective date of this Act, and that law is continued in effect for that purpose.”

CROSS REFERENCES

Appendix H

C

Vernon's Texas Rules Annotated Currentness

Texas Rules of Civil Procedure

Part II. Rules of Practice in District and County Courts

▣ Section 4. Pleading

▣ C. Pleadings of Defendant

→ → **Rule 86. Motion to Transfer Venue**

1. Time to File. An objection to improper venue is waived if not made by written motion filed prior to or concurrently with any other plea, pleading or motion except a special appearance motion provided for in Rule 120a. A written consent of the parties to transfer the case to another county may be filed with the clerk of the court at any time. A motion to transfer venue because an impartial trial cannot be had in the county where the action is pending is governed by the provisions of Rule 257.

2. How to File. The motion objecting to improper venue may be contained in a separate instrument filed concurrently with or prior to the filing of a movant's first responsive pleading or the motion may be combined with other objections and defenses and included in the movant's first responsive pleading.

3. Requisites of Motion. The motion, and any amendments to it, shall state that the action should be transferred to another specified county of proper venue because:

(a) The county where the action is pending is not a proper county; or

(b) Mandatory venue of the action in another county is prescribed by one or more specific statutory provisions which shall be clearly designated or indicated.

The motion shall state the legal and factual basis for the transfer of the action and request transfer of the action to a specific county of mandatory or proper venue. Verification of the motion is not required. The motion may be accompanied by supporting affidavits as provided in Rule 87.

4. Response and Reply. Except as provided in paragraph 3(a) of Rule 87, a response to the motion to transfer is not required. Verification of a response is not required.

5. Service. A copy of any instrument filed pursuant to Rule 86 shall be served in accordance with Rule 21a.

CREDIT(S)

Oct. 29, 1940, eff. Sept. 1, 1941. Amended by orders of March 31, 1941, eff. Sept. 1, 1941; June 16, 1943, eff. Dec. 31, 1943; July 20, 1954, eff. Jan. 1, 1955; April 12, 1962, eff. Sept. 1, 1962; June 15, 1983, eff. Sept. 1, 1983.

Current with amendments received through April 15, 2013

(C) 2013 Thomson Reuters

END OF DOCUMENT

Appendix I

C

Vernon's Texas Rules Annotated Currentness

Texas Rules of Civil Procedure

Part II. Rules of Practice in District and County Courts

[Ⓝ] Section 4. Pleading [Ⓝ] C. Pleadings of Defendant →→ **Rule 87. Determination of Motion to Transfer**

1. Consideration of Motion. The determination of a motion to transfer venue shall be made promptly by the court and such determination must be made in a reasonable time prior to commencement of the trial on the merits. The movant has the duty to request a setting on the motion to transfer. Except on leave of court each party is entitled to at least 45 days notice of a hearing on the motion to transfer.

Except on leave of court, any response or opposing affidavits shall be filed at least 30 days prior to the hearing of the motion to transfer. The movant is not required to file a reply to the response but any reply and any additional affidavits supporting the motion to transfer must, except on leave of court, be filed not later than 7 days prior to the hearing date.

2. Burden of Establishing Venue.

(a) *In General.* A party who seeks to maintain venue of the action in a particular county in reliance upon Section 15.001 (General Rule), Sections 15.011-15.017 (Mandatory Venue), Sections 15.031-15.040 (Permissive Venue), or Sections 15.061 and 15.062 (Multiple Claims), Civil Practice and Remedies Code, has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county of suit. A party who seeks to transfer venue of the action to another specified county under Section 15.001 (General Rule), Sections 15.011-15.017 (Mandatory Venue), Sections 15.031-15.040 (Permissive Venue), or Sections 15.061 and 15.062 (Multiple Claims), Civil Practice and Remedies Code, has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county to which transfer is sought. A party who seeks to transfer venue of the action to another specified county under Sections 15.011-15.017, Civil Practice and Remedies Code on the basis that a mandatory venue provision is applicable and controlling has the burden to make proof, as provided in paragraph 3 of this rule, that venue is maintainable in the county to which transfer is sought by virtue of one or more mandatory venue exceptions.

(b) *Cause of Action.* It shall not be necessary for a claimant to prove the merits of a cause of action, but the existence of a cause of action, when pleaded properly, shall be taken as established as alleged by the pleadings. When the defendant specifically denies the venue allegations, the claimant is required, by prima facie proof as provided in paragraph 3 of this rule, to support such pleading that the cause of action taken as established by the pleadings, or a part of such cause of action, accrued in the county of suit. If a defendant seeks transfer to a county where the cause of action or a part thereof accrued, it shall be sufficient for the defendant to plead that if

a cause of action exists, then the cause of action or part thereof accrued in the specific county to which transfer is sought, and such allegation shall not constitute an admission that a cause of action in fact exists. But the defendant shall be required to support his pleading by prima facie proof as provided in paragraph 3 of this rule, that, if a cause of action exists, it or a part thereof accrued in the county to which transfer is sought.

(c) *Other Rules.* A motion to transfer venue based on the written consent of the parties shall be determined in accordance with Rule 255. A motion to transfer venue on the basis that an impartial trial cannot be had in the county where the action is pending shall be determined in accordance with Rules 258 and 259.

3. Proof.

(a) *Affidavit and Attachments.* All venue facts, when properly pleaded, shall be taken as true unless specifically denied by the adverse party. When a venue fact is specifically denied, the party pleading the venue fact must make prima facie proof of that venue fact; provided, however, that no party shall ever be required for venue purposes to support by prima facie proof the existence of a cause of action or part thereof, and at the hearing the pleadings of the parties shall be taken as conclusive on the issues of existence of a cause of action. Prima facie proof is made when the venue facts are properly pleaded and an affidavit, and any duly proved attachments to the affidavit, are filed fully and specifically setting forth the facts supporting such pleading. Affidavits shall be made on personal knowledge, shall set forth specific facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify.

(b) *The Hearing.* The court shall determine the motion to transfer venue on the basis of the pleadings, any stipulations made by and between the parties and such affidavits and attachments as may be filed by the parties in accordance with the preceding subdivision of this paragraph 3 or of Rule 88.

(c) If a claimant has adequately pleaded and made prima facie proof that venue is proper in the county of suit as provided in subdivision (a) of paragraph 3, then the cause shall not be transferred but shall be retained in the county of suit, unless the motion to transfer is based on the grounds that an impartial trial cannot be had in the county where the action is pending as provided in Rules 257-259 or on an established ground of mandatory venue. A ground of mandatory venue is established when the party relying upon a mandatory exception to the general rule makes prima facie proof as provided in subdivision (a) of paragraph 3 of this rule.

(d) In the event that the parties shall fail to make prima facie proof that the county of suit or the specific county to which transfer is sought is a county of proper venue, then the court may direct the parties to make further proof.

4. No Jury. All venue challenges shall be determined by the court without the aid of a jury.

5. Motion for Rehearing. If venue has been sustained as against a motion to transfer, or if an action has been transferred to a proper county in response to a motion to transfer, then no further motions to transfer shall be considered regardless of whether the movant was a party to the prior proceedings or was added as a party subsequent to the venue proceedings, unless the motion to transfer is based on the grounds that an impartial trial

cannot be had under Rules 257-259 or on the ground of mandatory venue, provided that such claim was not available to the other movant or movants.

Parties who are added subsequently to an action and are precluded by this rule from having a motion to transfer considered may raise the propriety of venue on appeal, provided that the party has timely filed a motion to transfer.

6. There shall be no interlocutory appeals from such determination.

CREDIT(S)

Oct. 29, 1940, eff. Sept. 1, 1941. Amended by orders of Sept. 20, 1941, eff. Dec. 31, 1941; June 16, 1943, eff. Dec. 31, 1943; Aug. 18, 1947, eff. Dec. 13, 1947; June 15, 1983, eff. Sept. 1, 1983; July 15, 1987, eff. Jan. 1, 1988; April 24, 1990, eff. Sept. 1, 1990.

Current with amendments received through April 15, 2013

(C) 2013 Thomson Reuters

END OF DOCUMENT