89962-2

King County No. 12-2-20411-0
Court of Appeals No. 69691-2

SUPREME COURT OF THE STATE OF WASHINGTON

DEANDRA GRANT
Appellant,

v.

NATIONAL COLLEGE FOR DUI DEFENSE,

Respondent

APPEAL FROM THE DISTRICT COURT FOR KING COUNTY
THE HONORABLE THERESA B. DOYLE, DISTRICT COURT JUDGE

PETITIONER'S PETITION FOR DISCRETIONARY REVIEW PURSUANT TO WASH.R.APP.P. 13.1, 13.3 AND 13.4

FILED
MAR - 4 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

KEITH LYNCH, Esq. WSBN 44642
Lynch & Kelly, Ltd.
520 S Grand Ave Ste 665
Los Angeles, CA 90071-2660

OKORIE OKOROCHA Esq., CSBN 226658
(Pro Hac Vice Application forthcoming)
THE OKOROCHA FIRM
3940 Laurel Canyon Blvd. Suite 1038
Studio City, CA 91604
Tel: (310) 497-0321
Email: Okorie@gmail.com
Attorneys for Appellant

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 FEB 12 AM 9:43

TABLE OF CONTENTS PAGE

TABLE OF AUTHORITIES PAGES

STATUTORY LAW

CASE LAW

TABLE OF AUTHORITIES PAGES

CASE LAW (CONT.)

OTHER AUTHORITIES

King County No. 12-2-20411-0
Court of Appeals No. 69691-2

SUPREME COURT OF THE STATE OF WASHINGTON

DEANDRA GRANT
Appellant,

v.

NATIONAL COLLEGE FOR DUI DEFENSE,

Respondent

APPEAL FROM THE DISTRICT COURT FOR KING COUNTY
THE HONORABLE THERESA B. DOYLE, DISTRICT COURT JUDGE

PETITIONER'S PETITION FOR DISCRETIONARY REVIEW PURSUANT TO WASH.R.APP.P. 13.1, 13.3 AND 13.4

KEITH LYNCH, Esq. WSBN 44642
Lynch & Kelly, Ltd.
520 S Grand Ave Ste 665
Los Angeles, CA 90071-2660

OKORIE OKOROCHA Esq., CSBN 226658
(Pro Hac Vice Application forthcoming)
THE OKOROCHA FIRM
3940 Laurel Canyon Blvd. Suite 1038
Studio City, CA 91604
Tel: (310) 497-0321
Email: Okorie@gmail.com
Attorneys for Appellant

I.

IDENTITY OF PETITIONER

Plaintiff, appellant and petitioner Deandra Grant ("Petitioner"), asks this Court to accept review of the Court of Appeals decision pursuant to RAP 13.1, 13.3 and 13.4.

II.

COURT OF APPEALS DECISION

Petitioner seeks review of the unpublished Court of Appeals decision entered on December 23, 2013, a copy of which is attached as an appendix.

III.

ISSUES PRESENTED FOR REVIEW

1. Does a trial court have a duty to provide a reasoned decision on dispositive motions?

2. Can a company that incorporates in the State of Washington claim that litigation filed a venue specified by the corporation is an inconvenient forum?

3. Can a corporation use A Forum Selection provision compelling litigation to be filed in King County, Washington and claim that this venue is an inconvenient forum?

IV.

PROCEDURAL POSTURE

This petition for discretionary review is taken from the Superior court's decision to render dismissal on forum nonconveniens against the Petitioner, and the Court of Appeal's upholding that decision. The Supreme Court of Washington has jurisdiction to consider the issues raised in this appeal under authority of the Wash.R.App.P. 13.1, 13.3 and 13.4.

The defendant and respondent National College for DUI Defense ("Respondent") responded to the complaint (CP 001-031) with an objectively overzealous, ad hominem and vexatious defense of filing a motion to dismiss/change of venue (CP 042-068), supplementing that with a motion for sanctions (CP 0152-203), and a motion to quash/for protective order (CP 082-111). Appellant filed oppositions thereto, Dismiss (CP 311-323), Quash/Protective Order (CP 325-338), and Sanctions (CP 340-381). On November 16, 2012, the motion to dismiss was granted based upon the District Court's vague assertions provided only orally in court, and was not put into a reasoned decision, that because Appellant had no injury occurring in the State of Washington, there was no subject matter or personal jurisdiction. (CP 380-81) Appellant filed a motion for reconsideration and request for judicial notice. (CP 383-410)

This motion was rubber stamp denied, also without any reasoned decision. (CP 421) Appellant then filed a timely notice of appeal. (CP 422).

IV.

STATEMENT OF THE CASE

Respondent controls, conducts, and administers the only board certification for DUI defense attorneys in the United States that is approved by the government and/or publicly funded American Bar Association ("ABA").

Respondent corporation is controlled and operated by the white males it designates as "Regents" and "Fellows" and has substantial underrepresentation of women. Appellant is a licensed attorney in the State of Texas and specifically, at all times material hereto, specializes in criminal defense of driving under the influence ("DUI") cases. Respondent is responsible for granting Certification in DUI Defense Specialist to attorneys in the entire United States, and has the approval of ABA. Respondent holds no elections whatsoever, and only males, (prior to the filing of this lawsuit, at which time there was a scramble to round up anyone female, African-American or both, to be annointed) were chosen to become Respondent Corporation's leaders and decision-makers "Regents", "Dean", "Fellows" and/or Nationally Board Certified in DUI Defense ("Board Certified"). The titles "Fellow", "Regent", and "Dean"

are based on being an older White male are used to imply grandeur, but lack substance. The "Board Certification" approved by the ABA is being peddled and gifted amongst "good ol' boys", who are also those with grandiose titles.

Any woman who attempts to obtain the honor, prestige, gigantic marketing and business boost associated with Board Certification is given forms to fill out, asked to spend several thousand dollars, take a "Board Certification examination," and then is arbitrarily told that they failed the exam. Very coincidentally, token women have been certified since the filing of this lawsuit, despite decades of running a racket with and gifting the certification to "good ol' boys". They are not, however, given the opportunity to review their graded exam. In addition, some women are not even allowed to take the examination while male members with lesser qualifications are allowed to sit for the exam.

Prominently displayed on Respondent's membership website is a Forum Selection and Choice of Law provision that mandates all litigation arising from membership and testing issues must be filed in King County, Washington Court, and must be decided under Washington State law.

> 8. GOVERNING LAW AND JURISDICTION.
> "Applicant agrees and acknowledges that any dispute relating to Board Certification, including but not limited to rules, application, evaluation, qualification, examination,

> grading, and results, will be governed by the laws of the State of Washington. Applicant further irrevocably agrees to submit to the exclusive jurisdiction of and venue in the Superior Court of King County, Washington. This provision shall be enforced without reference to any conflict-of-laws provision that would require application of a different choice of law.
> Available at
> http://ncdd.com/rules-governing-board-certification

In Respondents pleading to the District Court on its motion to dismiss/transfer, they argued in part forum non conveniens and stated that Washington State was an inconvenient forum that would place a hardship on them, and argued for transferring the case to Alabama.

> "In short there is not one scrap of paper or one potential witness in this case (including Plaintiff herself) located in Washington and **it will be extremely burdensome for everyone involved for this case to be litigated in Washington**. Conversely, all of the documents are located in Alabama, and the person with actual personal knowledge regarding those books and records is located in Alabama as well. Thus, the convenience factors weigh strongly in favor of this litigation taking place in Alabama, not Washington." (CP 059)

This was, in effect, a fraud upon the court because Respondents' knew that they had already required Petitioner to agree to Washington State court as the forum and Washington law that the claims would be decided under Washington law.

The King County court in Washington was and is the only proper forum for this case, and Washington law is the proper controlling

law in this case as Respondent's have purposefully availed themselves to the jurisdiction of Washington State Court.

V.
ARGUMENT/ POINTS AND AUTHORITIES
A.
STANDARDS OF REVIEW

A Court of Appeals decision is subject to review by petition, as provided in that rule if it is a "decision terminating review". . .A decision terminating review in the Court of Appeal is one going to those decisions which unconditionally terminate review after review has been accepted. See *Fox v. Sunmaster Products, Inc.,* 115 Wash.2d 498, 501 (1990).

Generally, the scope of review of a court of appeals decision is limited to the questions raised in the petition for review and the answer. RAP 13.7(b). See *State v. Collins*, 121 Wash.2d 168, 178-79 (1993). This court, however, has discretion to waive this rule to " 'serve the ends of justice' ". See *Kruse v. Hemp*, 121 Wash.2d 715, 721 (Wn. 1993). The Supreme Court may choose to review an issue not raised in the petition for review or answer, if necessary to further the ends of justice. See *Tuerk v. State, Dept. of Licensing*, 123 Wash. 2d 120, 124 (Wn. 1994). A petition for review must state the issues with specificity. See *Clam Shacks of Am., Inc. v. Skagit Cy.*, 109 Wash.2d 91, 98 (1987).

The underlying case involves a motion to dismiss based upon subject matter jurisdiction, which is reviewed de novo. See *Todric Corp. v. Dep't. of Revenue*, 109 Wn. App. 785, 788 n. 2 (2002); and for a motion to dismiss based upon personal jurisdiction, the standard is also de novo. See *MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc.*, 60 Wn. App. 414, 418 (1991). A de novo standard of review applies to all questions relating to the forum selection clause because they are questions of law. See *Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 833-34 (2007). The same standard applies to choice-of-law provisions. See *State v. Whelchel*, 97 Wn. App. 813, 817 (1997), "Review of a trial court's choice of law decision, its interpretation, and its application to the facts of the case is de novo."

B.

THE DISTRICT COURT'S FAILURE TO RENDER ANY REASONED DECISION OR ANY SHORT EXPLANATION FOR ITS ORDER IS WHOLLY DEFICIENT

The District Court has made it difficult to render a decision on appeal because it made no "reasoned decision", or even a short explanation for the decision in its order, while stating orally at the hearing that it believed Washington State was inconvenient for Respondent because the wrong alleged did not occur in Washington. (CP 340-381. 421)

Properly, this court should decide if the order is so devoid of reasoning that it can deem the order void. See *Gov't Employees Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir.1998), "[t]he district court left us with no reasoned decision to review, and no basis upon which to evaluate its exercise of discretion, thereby making it impossible for us to do our judicial duty. Where, as here, a district court does not explain its reasoning, we must remand to that court to reconsider its decision and to set forth its reasons for whatever decision it reaches, so that we can properly exercise our powers of review." See also *Couveau v. American Airlines, Inc.*, 218 F.3d 1078, 1081 n. 3 (9th Cir. 2000), "Appellate review is a particularly difficult process when there is nothing to review,"

The trial courts have no guidance presently on what motions require a reasoned decision, and whether a single sentence denial prepared by the prevailing party is suffice.

This court should grant review to decide this issue of first impression for Washington.

//

//

//

C.

BY RESPONDENT INCORPORATING IN WASHINGTON, THEY SUBMITTED TO THE JURISDICTION OF ITS COURTS FOR RESOLUTION OF CIVIL DISPUTES, AND CANNOT CLAIM FORUM NONCONVENIENS TO ITS COURTS

First, it must be stated that the Court of Appeal egregiously erred in holding that Petitioner had not addressed the motion to dismiss in its briefs and waived it. The motion to dismiss was the only motion of Respondent's that was granted, and the only one that Petitioner's opening brief addressed, even if the words "motion to dismiss" were not mentioned at every page in the brief. That is what the entire brief went to, as demonstrated in its standards of review.

Respondent's claimed King County, Washington is an inconvenient forum. It was the Respondent's own choice to incorporate in the State of Washington. Respondent's President is listed as being domiciled in King County, and its agent for service of process is in Thurston County. See Respondent's Secretary of State Corporation status page, available at http://www.sos.wa.gov/corps/search_detail.aspx?ubi=601646197. By choosing to incorporate in Washington, Defendants are a legal entity of this state, are subject to its personal jurisdiction, and may be sued here. See RCW 4.12.025

(1) An action may be brought in any county in which the....
(1) An action may be brought in any county in which the

> defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For the purpose of this section, the residence of a corporation defendant shall be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; or (d) where any person resides upon whom process may be served upon the corporation.

Further, while RCW 23B.15.010(1) states that a corporation "may not transact business in this state until it obtains a certificate of authority from the secretary of state', transacting business does not include litigation. RCW 23B.15.010(2)(a); RCW 23B.15.010(2)(h). Here, Respondent does not need to do any business in the state, but still may be incorporated here, and may sue and be sued here, and personal jurisdiction exists by fact of their incorporation. See also Title 28 U.S.C. § 1332 (c), "for diversity purposes, a corporation is a citizen of the State of incorporation".

Respondents cannot legitimately claim forum non conveniens in a state that they chose and elected to incorporate in, and subjected its own personal jurisdiction to. "A party's incorporation in a state is a contact sufficient to allow the parties to choose that state's law to govern their contract." *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal.4th 459, 467 (Cal. 1992); accord, *Carlock v. Pillsbury Co.*, 719 F. Supp. 791, 807-808 (Minn.D.C. 1989); *Ferrofluidics Corp. v. Advanced Vacuum Components, Inc.*, 968 F.2d 1463, 1467-68 (1st Cir. 1992); *Hale v. Co-Mar Offshore*

Corp., 588 F. Supp. 1212, 1215 (W.D.La. 1984); *In re Falk*, 2 B.R. 609, 614 n. 17 (Bankr.D.N.J. 1980); See also Restatement (Second) Conflicts of Laws, § 187 comment f (1971), [domicile of party satisfies "reasonable relation" test].

While Washington has yet to adopt this principal of incorporation conferring jurisdiction in a state, this court should properly do so in this case as a matter of first impression.

Respondent's claim of forum non conveniens is frivolous based upon their incorporation choice. Non conveniens has only an extremely limited application to a case where on party is a bona fide resident of the forum state. See *Thomson v. Continental Ins. Co.*, 66 Cal.2d 738,742 (Cal. 1967). "In several jurisdictions, led by New York, a forum non conveniens dismissal is never permissible if either plaintiff or defendant resides in the forum state." *Id.* at 743. (citing cases). Thus, "[u]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed". *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

The Trial Court and Court of Appeal both erred in disregarding Respondent's incorporation and residency in Washington in deciding the motion to dismiss on forum non conveniens grounds.

This court should grant review to decide this imperative issue of first impression for Washington on the relationship between incorporation and forum non conveniens.

/

D.

IT WAS REVERSIBLE ERROR TO NOT ENFORCE RESPONDENT'S ADHESIVE FORUM SELECTION PROVISION/AGREEMENT THAT CONSTITUTES ACKNOWLEDGMENT OF THE VENUE OF KING COUNTY, WASHINGTON AS A CONVENIENT FORUM

It would be a mockery of forum selection clauses if the drafting party later tacitly repudiates that agreement by claiming forum nonconveniens; especially where it is an adhesive, "take it or leave it" contract that results in a "Hobson's Choice."[1] That is what Respondent has done in his case in order to avoid having to answer to this lawsuit. They decided to repudiate their own agreement and refuse to even respond to the fact of its existence. This agreement on their websites states as follows:

---

[1] A Hobson's choice comes from Thomas Hobson, an English liveryman who required every customer to choose the horse nearest the door or none at all. Webster's Ninth New Collegiate Dictionary 574 (1985). A Hobson's choice is thus an apparently free choice when there is no real alternative. See *Wang v. Reno*, 81 F.3d 808, 813 n. 5 (9th Cir. 1996).

8. GOVERNING LAW AND JURISDICTION.
"Applicant agrees and acknowledges that any dispute relating to Board Certification, including but not limited to rules, application, evaluation, qualification, examination, grading, and results, will be governed by the laws of the State of Washington. Applicant further irrevocably agrees to submit to the exclusive jurisdiction of and venue in the Superior Court of King County, Washington. This provision shall be enforced without reference to any conflict-of-laws provision that would require application of a different choice of law.
Available at
http://ncdd.com/rules-governing-board-certification

Respondent went forward in arguing facts completely contrary to that agreement solely because they wanted to use it to get the case dismissed. Here are those remarkable words:

> "In short there is not one scrap of paper or one potential witness in this case (including Plaintiff herself) located in Washington and it will be extremely burdensome for everyone involved for this case to be litigated in Washington."
> (CP 059)

The law is clear that absent any of the established defenses to contracts, forum selection and choice-of-law provisions are to be fully enforced.

The unusual situation here is the Respondents created and adhered Petitioner to their forum selection clause, and they now disavow it because that seems to be their best way to get the case dismissed.

"Before invoking the doctrine of forum non conveniens to dismiss a case, a court must examine: (1) whether an adequate alternative forum exists, and (2) whether the balance of private and public interest factors favors dismissal. *Piper Aircraft v. Reno*, 454 U.S. 235, 250, 254 n. 22 (1981); *Myers v. Boeing Co.*, 115 Wn.2d 123, 128-30 (1990). An alternative forum is deemed adequate if: (1) the defendant is amenable to process there; and (2) the other jurisdiction offers a satisfactory remedy. *Piper*, 454 U.S. at 250, 254 n. 22. An alternative forum ordinarily exists when defendants are amenable to service of process in the foreign forum. *Id.*

The ultimate question to be decided in determining whether the doctrine of forum non conveniens is applicable is whether "`the forum chosen by the plaintiff is so completely inappropriate and inconvenient that it is better to stop the litigation in the place where brought and let it start all over again somewhere else' " *Norwood v. Kirkpatrick*, 349 U.S. 29, 31 (1955). The defendant bears the burden of proving the existence of an adequate alternative forum." *Lueck*, 236 F.3d at 1142.

Forum selection clauses are prima facie valid. See *Kysar v. Lambert*, 76 Wash.App. 470, 484-85 (1995), *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972). "[P]articularly in the commercial context, the enforcement of forum selection clauses serves the salutary purpose of enhancing contractual predictability." *Voicelink Data Servs. v. Datapulse,*

Inc., 86 Wash.App. 613, 617 (1997). "When the parties have agreed on a forum, the trial court must enforce the agreement unless the party objecting to the chosen forum can establish that enforcing it would be 'unreasonable and unjust.'" *Keystone Masonry, Inc. v. Garco Const., Inc.*, 135 Wash.App. 927, 933-34 (Wn. 2006). "When the parties have selected a forum, the court does not engage in a balancing test under RCW 4.12.030. RCW 4.12.080. Further, inconvenience foreseeable by the parties at the time they entered the contract cannot render a forum selection unenforceable." *Keystone Masonry, Inc.*, 135 Wash.App. at 934, accord, *M/S Bremen*, 407 U.S. at 16.

To meet its heavy burden of proving "unreasonable and unjust" enforcement, a defendant must show "either that: (1) the venue agreement was obtained by fraud, undue influence, or unfair bargaining power; or (2) the chosen forum would be so seriously inconvenient as to deprive the party of a meaningful day in court. *Bank of America, N.A. v. Miller*, 108 Wash.App. 745, 748 (2001). "If the objecting party does not prove the venue agreement is unreasonable and unjust, failure to enforce the agreement is reversible error." *Id.* a 749. (emphasis added)

Thus, a defendant's own forum selection clause should properly defeat a subsequent forum non conveniens argument, especially whereas

here, the forum selection clause is an adhesive contract drafted by the party who now attempts to repudiate its own prior mandate.

This court must grant review to take up the issue of whether a party mandating jurisdiction and venue by way of a forum selection clause can repudiate it and subsequently claim forum nonconveniens. Here, it was reversible error. *Miller*, 108 Wash.App. at 748.

VI.

CONCLUSION

Based on the foregoing, this court should grant review and decide the issues of first impression that control over the imperative issues of proper court orders, the relationship between incorporation and the forum non conveniens doctrine, and that a forum selection clause for King County, Washington negates any claim to forum nonconveniens.

Dated this 11th day of February, 2014

Keith Lynch, Esq.
Okorie Okorocha, Esq.
Attorney for Appellant
Deandra Grant

King County No. 12-2-20411-0

Court of Appeals No. 69691-2

SUPREME COURT OF THE STATE OF WASHINGTON

DEANDRA GRANT
Appellant,

v.

NATIONAL COLLEGE FOR DUI DEFENSE,

Respondent

APPEAL FROM THE DISTRICT COURT FOR KING COUNTY
THE HONORABLE THERESA B. DOYLE, DISTRICT COURT JUDGE

PETITIONER'S APPENDIX OF ORDERS ON PETITION FOR DISCRETIONARY REVIEW PURSUANT TO WASH.R.APP.P. 13.1, 13.3 AND 13.4

FILED
MAR - 4 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

KEITH LYNCH, Esq. WSBN 44642
Lynch & Kelly, Ltd.
520 S Grand Ave Ste 665
Los Angeles, CA 90071-2660

OKORIE OKOROCHA Esq., CSBN 226658
(Pro Hac Vice Application forthcoming)
THE OKOROCHA FIRM
3940 Laurel Canyon Blvd. Suite 1038
Studio City, CA 91604
Tel: (310) 497-0321
Email: Okorie@gmail.com
Attorneys for Appellant

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 FEB 12 AM 9:43

Comes Petitioner Deandra Grant, who files an appendix of orders on petition for review. This appendix includes the following two court orders:

A. November 16, 2012 Order Granting Motion to Dismiss

B. December 23, 2013 Opinion of the Court of Appeal

Dated this 11th day of February, 2014

Keith Lynch, Esq.
Okorie Okorocha, Esq.
Attorneys for Appellant
Deandra Grant

A

FILED
KING COUNTY, WASHINGTON
NOV 16 2012
SUPERIOR COURT CLERK
BY LEANNE SYMONDS
DEPUTY

SUPERIOR COURT FOR THE STATE OF WASHINGTON

COUNTY OF KING

DEANDRA GRANT, an individual,

Plaintiffs,

vs.

NATIONAL COLLEGE FOR DUI DEFENSE, a Washington Corporation, and DOES 1-10, inclusive,

Defendant.

Case No.: 12-2-20411-0 SEA

~~[PROPOSED]~~ ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Two Union Square
601 Union Street, Suite 4200 | Seattle, WA 98101
Phone: 855.467.4351 | Fax: 855.467.4352

This Court has reviewed all written arguments, responses, evidence and oral argument, if any, in support of and in opposition to Defendant's Motion to Dismiss Pursuant to CR 12(B)(6) ("Motion").

NOW, THEREFORE, it is hereby ORDERED that the Motion to Dismiss is granted and Plaintiff's Complaint is dismissed with prejudice.

IT IS SO ORDERED.

The Honorable Theresa B. Doyle

Presented By:

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

Carllene M. Placide, WSBA No. 28824
carllene.placide@ogletreedeakins.com
Sarah J. Evans, WSBA No. 37409
sarah.Evans@ogletreedeakins.com
Two Union Square
601 Union Street, Suite 4200
Seattle, WA 98101
Phone: 855.467.4351

ATTORNEYS FOR DEFENDANT
NATIONAL COLLEGE FOR DUI DEFENSE, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of August 2012, I filed the foregoing document with the Clerk of the Court and mailed a copy by U.S. mail to the following:

Keith Lynch, Esq.
The Law Office of Keith Lynch
3780 Kilroy Airport Way, Suite 200-220
Long Beach, CA 90806

Okorie Okorocha, Esq.
California Legal Team
117 E. Colorado Blvd., Suite 465
Pasadena, CA 91105

Attorneys for Plaintiff

Tarla Moore

12998229.1 (OGLETREE)

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Two Union Square
601 Union Street, Suite 4200 | Seattle, WA 98101
Phone: 855.467.4351 | Fax: 855.467.4352

B

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 DEC 23 AM 10: 50

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEANDRA GRANT, an individual, Appellant, v. NATIONAL COLLEGE OF DUI DEFENSE, a Washington corporation, Respondent.	No. 69691-2-I DIVISION ONE UNPUBLISHED OPINION FILED: December 23, 2013

BECKER, J. — The plaintiff, an attorney, claims the defendant College wrongfully refused to certify her as a specialist. The trial court dismissed the complaint with prejudice for failure to state a claim and also on grounds of forum non conveniens. We affirm.

Appellant Deandra Grant is a Texas attorney whose practice consists of defending individuals who are charged with driving under the influence (DUI). Respondent National College of DUI Defense, a Washington corporation, has a program recognized and approved by the American Bar Association for certifying DUI defense specialists.

Grant sued the College in June 2012. Her complaint alleged that she took the College's certification examination and passed it but was denied certification

on account of her gender. The complaint claims the College committed gender discrimination in violation of RCW 49.60.030, violated the American Bar Association standards for a certified program, and operates a monopoly in violation of RCW 19.86. Grant sought declaratory and injunctive relief and punitive damages.

The College moved to dismiss the complaint on various grounds, including failure to state a claim under CR 12(b)(6) and forum non conveniens. The trial court specified both grounds as the bases for the decision to grant dismissal:

> First of all, the forum non conveniens issue, weighing all the factors clearly weighs in favor of finding that Washington is not the appropriate forum. Aside from the defendant corporation and having been incorporated here, there's just no other connection whatsoever. They—nobody lives here; no injury occurred here; plaintiff doesn't live here; plaintiff doesn't practice here; the defendant organization doesn't seem to maintain any presence here beyond just having been incorporated here.
>
> So I find that aside from the fact of incorporation in Washington, there's just no other good reason for this claim to have been brought here rather than in either Texas or I guess there's some connection with Alabama. So for that reason, dismissal is appropriate.
>
> I also find that there just is no unlawful act that's been pled that occurred here. I see that there—what we have here is arguments that there are potential injuries under—that would be actionable or could be actionable under both the Consumer Protection Act and the Washington State Act Against Discrimination. But your client doesn't allege that anything actually occurred here, and something more is required than what's been pled.
>
> In addition, under the CPA, it's fairly restrictive. You have to have an unfair deceptive act in Washington in trade or commerce in Washington impacting the public interest in Washington and injury to the plaintiff, and there has to be a connection between factors three and four. And that's just not been pled, and there are no facts supporting those elements.
>
> And similarly, the Court finds that there's just not been sufficient injury pled under the Washington State Act Against

Discrimination.

The order dismissing the case with prejudice was entered on November 16, 2012.

Grant moved for reconsideration and submitted a printout of "Membership Eligibility Rules" from the College's web site. Rule 8 is entitled "Governing Law and Jurisdiction." It requires that all disputes "arising from or related to membership in the College" shall be filed in King County Superior Court at the Kent Regional Justice Center and decided under Washington law. Grant argued that in view of the College's insistence in its own rules that litigation arising from membership must occur in Washington, the College's forum non conveniens argument was made in bad faith. The trial court denied the motion. This appeal followed.

On appeal, Grant does not identify or brief any issue related to CR 12(b)(6). She does not demonstrate that her complaint stated a claim. By failing to assign error to and argue against the court's decision to dismiss for failure to state a claim, Grant waives this argument. See Smith v. King, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986). We therefore affirm the order of dismissal insofar as it is based on CR 12(b)(6).

Grant does make an argument related to forum non conveniens. This court reviews forum non conveniens dismissals for abuse of discretion. Sales v. Weyerhaeuser Co., 163 Wn.2d 14, 19, 177 P.3d 1122 (2008). "Forum non conveniens refers to the discretionary power of a court to decline jurisdiction

when the convenience of the parties and the ends of justice would be better served if the action were brought and tried in another forum." Johnson v. Spider Staging Corp., 87 Wn.2d 577, 579, 555 P.2d 997 (1976). To decide whether dismissal is warranted, the trial court considers factors set forth in Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508, 67 S. Ct. 839, 91 L. Ed. 1055 (1947). Spider Staging, 87 Wn.2d at 579.

In part, Grant contends the court's decision to dismiss on grounds of forum non conveniens rested on an erroneous determination that the court lacked "jurisdiction" to hear the case. But the court's ruling nowhere mentions jurisdiction.

To dismiss a case on forum non conveniens grounds *presupposes* that the dismissing court has jurisdiction. If not, resort to forum non conveniens would be unnecessary since the matter could be more easily dismissed by a motion under CR 12(b)(1) (lack of subject matter jurisdiction) or CR 12(b)(2) (lack of personal jurisdiction). The forum non conveniens doctrine gives courts the discretion to *decline to exercise* jurisdiction where the convenience of the parties and ends of justice so require. Werner v. Werner, 84 Wn.2d 360, 370, 526 P.2d 370 (1974); 3 KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE CR 3 (6th ed. 2013).

The trial court clearly had the correct legal framework in mind when making its ruling.

Grant does not contend that the trial court misweighed the Gulf Oil factors.

Instead, she focuses on the College's Rule 8 which requires that disputes related to membership in the College must be filed in King County. Grant argues that a corporation should not be able to maintain a rule that requires litigation in a particular forum while at the same time taking the position that the forum is inconvenient. This argument was first raised in Grant's motion for reconsideration.

A trial court's denial of a motion to reconsider is reviewed for abuse of discretion. River House Dev. Inc. v. Integrus Architecture, P.S., 167 Wn. App. 221, 231, 272 P.3d 289 (2012). Such discretion "extends to refusing to consider an argument raised for the first time on reconsideration absent a good excuse." River House, 167 Wn. App. at 231. Also, a motion for reconsideration is preserved for appellate review only where it is "not dependent upon new facts." Reitz v. Knight, 62 Wn. App. 575, 581 n.4, 814 P.2d 1212 (1991).

Grant did not offer an excuse for failing to bring up Rule 8, a new fact, before the trial court ruled on the motion to dismiss. She does not offer one now. Additionally, Rule 8 on its face does not apply to certification disputes but rather only to membership disputes. Grant does not explain how the College's rules governing membership are relevant to a dispute about whether the College properly denied certification.

We conclude that Grant did not preserve the Rule 8 issue for appellate review, and in any event, dismissing the motion to reconsider was not an abuse of discretion because it was dependent on a new fact. We therefore affirm the

order of dismissal insofar as it is based on forum non conveniens grounds.

Affirmed.

Becker, J.

WE CONCUR:

PROOF OF SERVICE

STATE OF WASHINGTON

I am a resident of/employed in the county of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; My business address is: 3940 Laurel Canyon Blvd., Ste 1038, Studio City, Ca 91604

On February 11, 2014 I served the within documents described as: **PETITIONER'S PETITION FOR DISCRETIONARY REVIEW PURSUANT TO WASH.R.APP.P.13.1,13.3 AND 13.4**

Grant v. NCDD – King County Case No. 12-2-20411-0; Court of Appeals No. 69691-2

on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Studio City, California, addressed as follows

SEE ATTACHED LIST

__X____ (U.S. MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Studio City, California in the ordinary course of business. The envelope was sealed and placed for collection that same day following ordinary business practices, addressed to the above attorney.

I declare under penalty of perjury under the laws of the State of California, State of Washington, and the United States of America, that the foregoing is true and correct.

Executed on February 11, 2014, at Studio City, California

Natalya Vartapetova

Sarah Evans, Esq.
Ogletree Deakins, Nash, Smoak & Stewart
Two Union Square
601 Union Street Ste 4200
Seattle, WA 98101

Alexandra A. Bodnar, Esq.
Ogletree, Deakins, Nash, Smoak & Steward
400 S. Hope Street Ste 1200
Los Angeles, CA 90071

Keith Lynch Lynch & Kelly
520 S. Grand Ave. Ste 665
Los Angeles, Ca 90071

King County Superior Court
516 3rd Ave., Room C-203
Seattle, CA 98104
Mailstop: KCC-SC-0203