

COURT OF APPEALS NO. 40977-1-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

McGEE GUEST HOME, Inc.,
Appellant

v.

ROBERT CHAMBERS, in his capacity as the Personal Representative
of the Estate of Richard H. Chambers, deceased,
Respondent.

FILED
STATE OF WASHINGTON
BY [Signature]
JUN 11 2009
10:15 AM
DIVISION II

COURT OF APPEALS
DIVISION II

BRIEF OF APPELLANT

Grays Harbor Superior Court Cause No. 09-2-00633-1

JENNY M. CHURAS, WSBA #35772
JOHNSON ANDREWS & SKINNER, P.S.
200 West Thomas, Suite 500
Seattle, WA 98119
206-223-9248/ Fax: 206-623-9050

Attorney for Appellant

ORIGINAL

TABLE OF CONTENTS

| | Page |
|---|-------------|
| I. INTRODUCTION | 1 |
| II. ASSIGNMENTS OF ERROR | 2 |
| III. STATEMENT OF THE CASE | 3 |
| A. Factual Background. | 3 |
| B. Procedural Background. | 5 |
| IV. ARGUMENT | 6 |
| A. Standard of Review. | 6 |
| B. Grays Harbor County is Not the Proper Venue. | 6 |
| C. The Trial Court Abused its Discretion when it Denied McGee's Renewed Motion to Change Venue. | 12 |
| V. CONCLUSION | 13 |

TABLE OF AUTHORITIES

| <u>Case Authority</u> | <u>Page</u> |
|---|-------------------------|
| <i>Andrews v. Cusin</i> , 65 Wn.2d 205, 396 P.2d 155 (1964) | 6, 12 |
| <i>Hatley v. Saberhagen Holdings, Inc.</i> 118 Wn.App. 485, 76 P.3d 255 (2003) | 6 |
| <i>Hickey v. City of Bellingham</i> , 90 Wn.App. 711, 953 P.2d 822 (1998) | 6 |
| <i>State ex rel. Anacortes Veneer, Inc. v. Ophelan</i> , 23 Wn.2d 142, 160 P.2d 515 (1945) | 8 |
| <i>State ex rel. Carroll v. Junker</i> , 79 Wn.2d 12, 482 P.2d 775 (1971) | 6 |
| <i>Trans-Northwest Gas v. Northwest Nat. Gas Co.</i> , 40 Wn.2d 35, 240 P.2d 261 (1952) | 8-10 |
| <i>Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.</i> , 122 Wn.2d 299, 858 P.2d 1054 (1993) | 6, 13 |
| <u>Statutes</u> | <u>Page</u> |
| RCW 4.12.020 | 7, 11, 13, 14 |
| RCW 4.12.020(3) | 7 |
| RCW 4.12.025 | 1, 8, 13 |
| RCW 4.12.025(1) | 7 |
| RCW 4.12.025(3) | 1, 2, 5, 7, 8, 11-12 |
| RCW 4.12.025(3)(a) and (d) | 7 |
| RCW 4.12.030 | 5, 6 |

I. INTRODUCTION

On June 15, 2010 the Grays Harbor County Superior Court denied Defendant McGee Guest Home's (hereinafter "McGee") Renewed Motion to Change Venue to Pierce County, where the corporate defendant resides and operates and where the torts at issue in this litigation occurred. McGee seeks reversal of that order.

This case presents a simple but fundamental legal question regarding venue: Under RCW 4.12.025(3), must an action against a corporation be filed in the county where the corporation operates, when the torts at issue occurred in its county of residence and it did not perform any work outside of its county of operation? By the clear language of RCW 4.12.025(3), the answer is yes.

Venue is a basic legal principle: A defendant can only be sued in a county where venue is appropriate under the law. Statutes set forth the legal standards used in Washington to determine proper venue for a lawsuit. The general rule is that a defendant can only be sued in the county in which it resides or, in personal injury actions, in the county where the tort occurred. RCW 4.12.025.¹ When the defendant is a corporation, the analysis differs slightly. Before a corporation can be sued

¹ As discussed below, this rule has a few exceptions; however, the exceptions to this rule focus on the actions of the parties that give rise to the suit.

in another county (other than the county where it resides), the corporation's business transactions within that other county must be a substantial part of its usual and ordinary business, not just incidental or occasional contacts. RCW 4.12.025(3).

Plaintiff's claims relate solely to alleged torts committed by McGee at McGee's facility in Spanaway, Pierce County, Washington. The claims do not involve any actions arising out of or occurring in Grays Harbor County.

RCW 4.12.025(3) is clear: a corporate defendant such as McGee cannot be sued in a county where it does not operate and which has no relationship to the alleged tortious acts. This Court should reverse the trial court's denial of the renewed motion to transfer venue and transfer the underlying suit to Pierce County.

II. ASSIGNMENTS OF ERROR

Did the trial court abuse its discretion when it denied McGee's request to change venue to Pierce County where it is undisputed that the torts alleged in the underlying suit occurred in Pierce County, where McGee's sole business location is in Pierce County and where there is no evidence that McGee conducted substantial transactions in furtherance of its business in Grays Harbor County?

III. STATEMENT OF THE CASE

This lawsuit arises out of the death of Richard Chambers in March 2008 while he was a resident at McGee in Spanaway, Pierce County, Washington. CP 18-24. The above-captioned matter was filed in Grays Harbor County on May 4, 2009. CP 18. Defendant was served with a Summons and Complaint at its business location in Spanaway, Pierce County, Washington. CP 48.

A. Factual Background.

McGee Guest Home is a boarding home licensed to do business in the State of Washington. CP 47. Its sole place of business is located at 21520 82nd Avenue East in Spanaway, Pierce County, Washington. *Id.* McGee Guest Home is unique in that it is one of a handful of male-only boarding homes in Washington. CP 48.

On or about March 14, 2008 McGee Guest Home received a call from the Department of Social and Health Services, (“DSHS”) regarding a gentleman named Richard H. Chambers. CP 69. McGee was told that Mr. Chambers was living in Westhaven, an assisted living facility in Aberdeen, Washington, but was evicted and required a new facility. CP 47-48. DSHS asked McGee to consider Mr. Chambers and determine whether it would accept him as a resident at its sole facility in Spanaway, Pierce County, Washington. *Id.* DSHS faxed McGee a written DSHS assessment regarding

Mr. Chambers. CP 44. From its location in Spanaway, Pierce County, McGee reviewed the Assessment and participated in two to three telephone calls regarding Mr. Chambers before DSHS faxed McGee a second assessment prepared by DSHS. CP 44, 71. Ultimately, McGee accepted Mr. Chambers as a resident. CP 48, 71.

McGee did nothing to solicit or transfer Mr. Chambers to its facility. CP 44, 47-49, 69, 72. McGee did not arrange for or provide Mr. Chambers' transportation from Grays Harbor County to its facility in Pierce County. CP 48, 72. Mr. Chambers arrived at McGee Guest Home on or about March 17, 2008. *Id.* He remained there until March 28, 2008, when he died unexpectedly in Pierce County, Washington. CP 48.

At the time of Mr. Chambers' admission to McGee, the majority, i.e. 29, of McGee's residents came from Pierce County. CP 37. In fact, only one resident, aside from Mr. Chambers, came to live at McGee from Grays Harbor County in that same time period.² *Id.* At no time has McGee Guest Home owned or operated any portion of its business in Grays Harbor County or any other county. CP 47-48. It has not maintained an office in any county other than Pierce County. *Id.* Moreover, McGee does not advertise its facility in any capacity in Grays Harbor County or elsewhere. CP 44.

² There is one other resident who was admitted from Pacific County, but it is unclear whether or not he resided in Grays Harbor County prior to that.

B. Procedural Background.

McGee's registered agent, Toni Anderson, was served with a Summons and Complaint in the underlying action on or about May 12, 2009 in Pierce County, Washington. CP 48. On or about June 1, 2009, before filing an Answer to plaintiff's Complaint, McGee moved to change venue. CP 26. That motion was denied. *Id.* The court gave McGee leave to file a renewed motion to change venue after discovery occurred. *Id.*

In May, 2010, McGee moved again to transfer venue from Grays Harbor County to Pierce County pursuant to RCW 4.12.030. CP 1-13. McGee asserted in its motion that discovery failed to reveal any facts to support venue in Grays Harbor County pursuant to the provisions of RCW 4.12.025(3). *Id.* In the renewed motion, which is the subject of this appeal, McGee established that under each prong of RCW 4.12.025(3), the evidence demonstrates that Pierce County, not Grays Harbor County, is the proper venue for this action. *Id.* Through a written order dated June 15, 2010, McGee's motion was denied. CP 104-105. McGee filed a motion for discretionary review of that order, which was granted by Commissioner Eric Schmidt on September 20, 2010. Commissioner Schmidt found that continued proceedings in Grays Harbor County Superior Court were useless, because the trial court committed obvious error when it denied McGee's renewed motion to change venue.

IV. ARGUMENT

A. Standard of Review.

The Court of Appeals reviews a trial court's ruling on a motion to transfer venue for abuse of discretion. *See Hatley v. Saberhagen Holdings, Inc.* 118 Wn.App. 485, 488, 76 P.3d 255 (2003) *citing Hickey v. City of Bellingham*, 90 Wn.App. 711, 719, 953 P.2d 822 (1998). "A trial court abuses its discretion when it exercises it on untenable grounds or for untenable reasons." *Hatley*, 118 Wn.App. at 488 *citing State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A trial court decision may be manifestly unreasonable or based upon untenable grounds when its ruling is based upon an "erroneous view of the law." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

B. Grays Harbor County is Not the Proper Venue.

A trial court may transfer venue when the county designated in the complaint is not the proper county. RCW 4.12.030. When presented with a motion to change venue premised upon plaintiff's selection of an incorrect venue, as opposed to the convenience of witnesses or impossibility of a fair trial, the court has little discretion in deciding the motion. *See Andrews v. Cusin*, 65 Wn.2d 205, 396 P.2d 155 (1964).

It is undisputed that this lawsuit arises out of the death of Mr.

Richard Chambers in Pierce County, Washington on or about March 28, 2008. Plaintiffs' claims are for wrongful death and negligence, which are personal injury claims. RCW 4.12.020 instructs how to determine the proper venue for litigation arising out of a personal injury case:

For the recovery of damages for injuries to the person or for injury to personal property, the plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the 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.

RCW 4.12.020(3) (*emphasis added*).

When the defendant is a corporation, plaintiff may file suit against a corporation in any county where 1) the tort was committed; or 2) the corporation has its residence. RCW 4.12.025(3)(a) and (d). The residence of a defendant corporation is 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. RCW 4.12.025(1).³

As the statute provides, it is plaintiff's choice to file suit pursuant

³ McGee did not and does not maintain an office in any county except Pierce County. Its registered agent received service of process in the underlying action at its sole location in Pierce County. As such, RCW 4.12.025(1)(b) and (d) are not in dispute and will not be addressed here.

to the provisions of RCW 4.12.025, which means that Plaintiff can choose to file suit where the tort occurred (Pierce County) or where the defendant resides.⁴ For venue to be proper in a county other than where the tort was committed or the corporation resides, the business transacted by the corporation in that county must be a substantial part of its usual and ordinary business. *See generally Trans-Northwest Gas v. Northwest Nat. Gas Co.*, 40 Wn.2d 35, 240 P.2d 261 (1952) *citing State ex rel. Anacortes Veneer, Inc. v. Ophelan*, 23 Wn.2d 142, 154, 160 P.2d 515 (1945).

When there is a dispute between parties regarding venue, the following inquiry must be made regarding the actions of the corporation:

It must be determined whether or not the corporation is engaged in the transaction of that kind of business, or any part thereof, for which it was created and organized. Also, the business transacted by the corporation must be some substantial part of its usual and ordinary business, and not transaction which are merely incidental to that business or merely causal or occasional.

Trans-Northwest Gas, 40 Wn.2d at 36.

In *Trans-Northwest Gas*, the plaintiff, Tran-Northwest Gas, (“TNG,”) and the defendant Northwest Natural Gas Co., (“Northwest,”) were organized to build and operate transmission pipelines and associated

⁴ This assumes of course, that the facts of any particular case may yield more than one proper venue. In the event that an analysis under RCW 4.12.025(3) results in only one proper venue, plaintiff has no discretion and no choice of venue.

facilities to transport natural gas from Canada to Washington and other locations. *Id.* TNG was a Washington corporation, Northwest a Delaware corporation. *Id.* TNG sued Northwest in Spokane County for sending allegedly libelous letters to TNG's stockholders. *Id.* Northwest moved to change venue to King County, which it alleged was the only county in Washington in which it transacted business. *Id.* Northwest's motion was denied and it appealed. *Id.*

On appeal, the court examined the actions taken by Northwest in Spokane County. *Id.* Prior to being sued by TNG, Northwest "surveyed routes and made market and field studies in Spokane County" which were alleged to be important to Northwest and vital to the construction and success of its enterprise. *Id.* at 37. The surveys and market studies were ongoing in Spokane County when TNG's cause of action against Northwest arose. *Id.* The Court of Appeals determined that these actions were part of Northwest's usual and ordinary business and necessary to the accomplishment of the purposes for which the company was incorporated. *Id.* Without the preliminary surveys or market evaluations, which were performed in Spokane County, the pipe lines likely could not be laid. *Id.* Because the pipe lines could not be laid without the preliminary surveys or market evaluations, that work was not incidental, casual or occasional to Northwest's business. *Id.*

By contrast, McGee is a licensed boarding home with a single location in Spanaway, Pierce County, Washington. The purpose for which McGee was created was to provide services to residents at its facility in Pierce County. The provision of services to its residents is McGee's sole usual and ordinary business. McGee does not provide any services to residents until they actually reside at McGee's in Pierce County. As such, all actions and business necessary to accomplish the purposes of the corporation necessarily must be completed at the boarding home itself.

In this case, McGee was approached by DSHS to accept Mr. Chambers as a resident. McGee did not solicit Mr. Chambers. Unlike the defendant in *Trans-Northwest Gas*, McGee received and reviewed the information it was provided regarding Mr. Chambers at its facility in Pierce County. No work was performed in Grays Harbor County. McGee did not transport Mr. Chambers to the facility or otherwise engage in any activities vital to its operation with respect to Mr. Chambers until he arrived in Pierce County. At best, the handful of telephone calls and faxes McGee received regarding Mr. Chambers prior to his arrival at the facility were incidental and occasional, and in any event, were received and processed at McGee's Pierce County location. McGee's actions differ from those of the defendant in *Trans-Northwest Gas* because it did not conduct substantial transactions or its "usual and ordinary business" in

Grays Harbor County. In fact, the evidence reflects that it did not conduct *any* business in Grays Harbor County whatsoever.

Plaintiff argued below that venue is proper in Grays Harbor County because McGee received a few unsolicited telephone calls and two faxes originating from Grays Harbor County regarding Mr. Chambers. In other words, it is plaintiff's position that a corporation can be sued in any county in the State of Washington provided that there is any contact with that county; no matter how minor or insignificant the contact or who instigates the contact. This goes far beyond the boundaries established under RCW 4.12.025(3). It is illogical that a corporation could be sued in a county outside its county of residence where it does not transact business, solely because it received a few telephone calls or a facsimile. McGee cannot control who decides to call or fax them. More importantly, such activities are incidental to its operation of a boarding home and are not a substantial part of its usual and customary business.

McGee should not be required to defend claims against it in far flung counties with no relationship to it or the claims at issue. Under RCW 4.12.020 and .025, the only location where McGee can be sued in this matter is Pierce County. McGee has no actual business connection with Grays Harbor County, nor did it ever transact any business of any nature there. The record before this court is clear: McGee did not conduct any

business in Grays Harbor County that would support a determination that McGee does or did transact business in that county.

Analysis of the facts of this case pursuant to factors enumerated under RCW 4.12.025(3) indicates that Pierce County is the sole appropriate venue for this action. Grays Harbor County is not a proper venue for the underlying action under any analysis. The trial court committed reversible error when it denied McGee's motion. McGee's appeal must be granted and the matter remanded to the trial court to transfer venue to Pierce County.

C. The Trial Court Abused its Discretion when it Denied McGee's Renewed Motion to Change Venue.

This court should grant McGee's appeal if it determines that the trial court abused its discretion when it denied McGee's motion to change venue. Although the trial court did not explain the basis for its denial, the facts presented herein demonstrate that the trial court's decision was erroneous. When presented with a motion to change venue premised upon plaintiff's selection of an incorrect venue, as opposed to the convenience of witnesses or impossibility of a fair trial, the court has little discretion in deciding the motion. *See Andrews v. Cusin*, 65 Wn.2d 205, 396 P.2d 155 (1964).

By denying the renewed motion to change venue, the trial court condoned litigation of claims against a corporation in a county where it did not reside, or operate and where the alleged torts did not occur. To allow plaintiff's suit to proceed in Grays Harbor County violates the standards set forth in RCW 4.12.020 and .025. Simply put, the facts demonstrate that Grays Harbor County is not an appropriate venue for the underlying litigation under any prong of RCW 4.12.025. The trial court's ruling clearly violates the venue statutes.

A trial court abuses its discretion if its decision was manifestly unreasonable or based upon untenable grounds. A ruling may be manifestly unreasonable or based upon untenable grounds when it is based upon an "erroneous view of the law." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). The torts at issue arose in Pierce County and McGee, the sole defendant, resides in Pierce County and does not transact business in Grays Harbor County. The trial court's ruling is wholly unsupported by fact or law and as such, constitutes reversible error. McGee's appeal should be granted and the underlying action transferred to Pierce County.

V. CONCLUSION

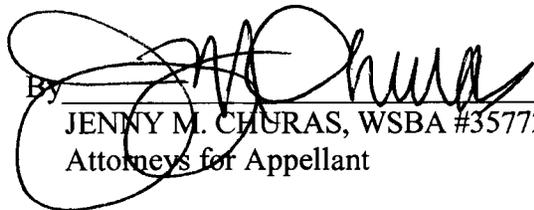
By denying the renewed motion to change venue, the trial court condoned litigation of claims against a corporation in a county where it

did not reside, or operate and where the alleged tort did not occur. To allow such a claim to proceed in Grays Harbor County violates the standards set forth in RCW 4.12.020 and .025. The evidence before the trial court and this court demonstrates that under each and every prong of venue statute, the only appropriate venue is Pierce County.

There are no facts or law that supports Grays Harbor County as an appropriate venue for the underlying action. As such, the trial court abused its discretion when it denied McGee's motion to transfer venue to Pierce County. McGee respectfully requests that this court grant its appeal and remand the matter back to the trial court to transfer venue to Pierce County.

RESPECTFULLY SUBMITTED this 15th day of December, 2010.

JOHNSON ANDREWS & SKINNER, P.S.

By 
JENNY M. CHURAS, WSBA #35772
Attorneys for Appellant

COURT OF APPEALS
CRIMINAL II

10 DEC -2 PM 1:17

STATE OF WASHINGTON
BY [Signature]
DEPUTY

DECLARATION OF SERVICE

I, JANE JOHNSON, hereby declare as follows:

1. That I am a citizen of the United States and of the State of Washington, living and residing in King County, in said State, I am over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness therein.

2. On the 1st day of December, 2010, I caused a copy of the attached BRIEF OF APPELLANT to be served upon the following in the manner noted:

Attorneys for plaintiff:

Jeffrey A. Damasiewicz
Phillips Krause & Brown
101 E. Market St., Ste. 525
Aberdeen, WA 98520
Fax: 360-533-2760

Via Fax and Federal Express Overnight Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 1st day of December, 2010 at Seattle, Washington.

[Signature]
JANE JOHNSON