IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REVEREND MITCHELL HEDGEPETH
AND CATHERINE HEDGEPETH — **APPELLANTS / PLAINTIFFS**

VS. — **CASE # 2006-IA-01991**

MELODY JOHNSON, Individually and as an agent of State Farm; STATE FARM FIRE AND CASUALTY COMPANY; AND JOHN AND JANE DOE DEFENDANTS A; B; C; D; E; F; G; AND H — **APPELLEES / DEFENDANTS**

ON APPEAL FROM
THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI
PER THIS COURT'S ORDER GRANTING INTERLOCUTORY APPEAL

APPELLANTS' REBUTTAL TO BRIEF OF APPELLEES

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Counsel of Record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court may evaluate possible disqualification or recusal.

Special Judge, (Jackson County Circuit Court): The Honorable Edward C. Prisock

Appellants:	Reverend Mitchell Hedgepeth and Catherine Hedgepeth
Appellees:	Melody Johnson and State Farm Fire and Casualty Company
Attorneys for Appellants:	Clyde H. Gunn, III., Esq.; Christopher C. Van Cleave, Esq.; W. Corban Gunn, Esq., and Corban, Gunn & Van Cleave, PLLC
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Amicus Curiae:	Charles R. Mullins, Esquire; Coxwell & Associates, PLLC; John F. Hawkins, Esquire; Hawkins, Stracener & Gibson; Mississippi Association for Justice

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A. Rebuttal Argument

In rebuttal to the Brief of the Appellees (hereinafter referred to as "Defendants"), Appellants (hereinafter referred to as "the Hedgepeths") state the following:

1. Defendants argue the Hedgepeths' interpretation of the statute, giving four (4) possible choices for venue, is nothing more than a "formulistic interpretation of sentence structure, completely ignoring the political atmosphere in which the Legislature was operating." This argument is fatally flawed for two reasons.

(a) First, there is no cause for construction of the subject statute, as this Court has long held that "where a statute is plain and unambiguous there is no room for construction". *Callahan vs. Leake County Democratic Executive Committee*, 773 So.2d 938, ¶ 9 (Miss. 2000). At the hearing on Defendants' Motion to Transfer Venue, the Hedgepeths presented un-rebutted expert testimony that, through the use of commas instead of semi-colons or periods, and the use of the disjunctive "or" to separate phrases, the Legislature unambiguously set out four (4) possible options for where venue shall be placed in all civil actions "of which the circuit court has original jurisdiction" in the 2004 version of § 11-11-3. (see discussion of Mrs. Mohler's testimony in Appellant's initial brief). Indeed, the concept that there are multiple venue options for civil actions has long been recognized by this Court. *Medical Assur. Co. of Mississippi vs. Myers*, 956 So.2d 213, ¶ 19 (Miss. 2007) (noting "[The] position that an action could properly be filed in multiple venues . . . was anything but novel.").

(b) The statutory construction authority cited by Defendants similarly provides

> 18. Words are to be interpreted according to the proper grammatical effect of their arrangement within the statute . . .

Karl N. Llewellyn's *Remarks on the Theory of Appellate Decision and the Rules or Canons About how Statutes are to be Construed*, 3 Vanderbilt Law Review 395 (1950) (R, Vol. 2,

140). The evidence in the Record is un-rebutted that, interpreting the words in the statute "according to the proper grammatical effect of their arrangement in the statute," venue of the Hedgepeths' claims is appropriate in Jackson County (where both "substantial alleged act[s] and omission[s]" and "substantial event[s] that caused the injury" occurred).

(c) Second, Defendants' argument ignores the absurd result the statutory interpretation they are urging on this Court would render – **a resident Defendant could not be sued outside her county of residence under any scenario.** No amount of "political atmosphere" would lead our Legislature to pass a law which would require, for instance, the family of maimed child to travel to some distant county to seek compensation from a drunk driver, resident defendant who caused the maiming while committing a tort outside his county of residence.

2. The depth of Defendants' misinterpretation of the statute is obvious upon review of their Brief. Defendants assert, for example:

> . . . the 2004 version of the venue statute narrowed the permissible counties in which venue is proper, providing that a resident defendant must be sued in his or her county of residence and that a corporation **may** be sued in . . . .

(*Brief of the Appellees*, pp. 8-9) (emphasis added). As an extension of their strained effort to minimize the effect of the venue statute beyond its terms, Defendants seek to insert a non-existent "may" into the statute, as noted above. No such language is contained in the statute, of course. Rather, the statute only contains one directive verb:

> (1)(a)(i) Civil actions of which the circuit court has original jurisdiction **shall be commenced** in the county where the defendant resides, or, if a corporation, in the county of its principal place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred.

(Miss. Code Ann. § 11-11-3) (eff. Sept. 1, 2004). The Hedgepeths' expert witness clearly explained the effect of NOT including "may be commenced" as a separate verb; but of using

only a single verb, "shall be commenced", with a single subject, "civil actions":

> [The subject of the sentence is "civil actions". The subject is modified by the phrase "of which the Circuit Court has original jurisdiction". The verb of the sentence is "shall be commenced". After the verb "shall be commenced", the sentence, through the use of commas and the coordinator "or", gives four (4) separate and equal options of where "civil actions of which the Circuit Court has original jurisdiction" "shall be commenced": (1) in the county where the defendant resides, or, (2) if a corporation, in the county of its principle place of business, or (3) in the county where a substantial alleged act or omission occurred or (4) where a substantial event that caused the injury occurred.
>
> The words "if a corporation" are limiting words, but they **only limit** the next phrase, the "next preceding antecedent", specifically, the phrase "in the county of its principal place of business". The limiting words "if a corporation" do **not** act to limit any of the other words or phrases in the sentence.]

(RE, 38-46) (R, Vol. 3, 39-47).

3. This Court has long recognized, and has often written opinions discussing, the difference and effect of the directives "shall" and "may". Had the Legislature intended to break the statute up into a single, mandatory venue choice for resident defendants and several, "permissive" choices for suits against other defendants; it had the tools, words and grammar at its disposal to do so. It did not, and the Trial Court's decision (finding that venue for civil actions against a resident defendant may **only** be brought in the resident defendant's county of residence) should be reversed.

4. Defendants' argument that the 2004 amendment of § 11-11-3 "serves no purpose" if interpreted in the manner suggested by the Hedgepeths similarly ignores the obvious intent and impact of the subject statute. As set forth in Defendants' Brief, the 2003 amendment was passed in conjunction with an abolishment of the special venue statute for insurance companies, § 11-11-7 (which allowed venue in suits against insurance companies to be determined by the county of residence of the plaintiff). The 2003 amendment **still** allowed for the county of residence of the plaintiff to vest venue in some instances, however:

> Civil actions of which the circuit court has original jurisdiction shall be

> commenced in the county where the defendant resides or in the county where the alleged act or omission occurred or where the event that caused the injury occurred. Civil actions against a nonresident may also be commenced in the county where the Plaintiff resides or is domiciled.

(Miss. Code Ann. § 11-11-3, as amended by 2002 Miss. Laws, 3rd Ex.Sess., ch. 4, § 1, eff. January 1, 2003). Defendants are correct that the Legislature further limited venue options when it made the subsequent amendment, effective September 1, 2004; but the Legislature did not limit venue options to the extreme suggested by Defendants – taking away the right to ever sue a resident defendant outside her county of residence. Rather, the Legislature abolished the residence of the plaintiff as a stand alone basis for venue.

5. Defendants' alternative argument, that venue was properly transferred to Madison County even if this Court does not agree with their strained interpretation of the statute, ignores the facts and the law. Defendants' argument that Jackson County would not be an appropriate venue even if the Hedgepeths' interpretation of the statute is correct ignores the facts that:

(a) The ONLY relation Madison County has to this action is that it is the residence of Defendant Johnson. Her office, where Defendants argue some of the acts that gave rise to her being a defendant occurred, is in Hinds County;

(b) Johnson sold a policy of insurance to residents of, and to cover property in, Jackson County; failed to procure a separate policy of flood insurance covering property located in Jackson County that was requested by the Hedgepeths; and misrepresented the availability of flood insurance for said property in Jackson County;

(c) Johnson personally traveled to Jackson County, Mississippi, as part of the process of adjusting claims under the State Farm policy she sold to the Hedgepeths; and while on the property of the St. Paul United Methodist Church Parsonage in Jackson County, urged the Reverend and Mrs. Mitchell Hedgepeth to commit insurance fraud, causing them to suffer severe emotional distress – a distinct litigable event alleged by the Hedgepeths in their

Complaint;

(d) Jackson County is where the Hedgepeths' suffered the loss of tens of thousands of dollars of personal contents, including the entire history of Reverend Hedgepeth's sermons, dissertations and studies (the text of which had been maintained on electronic discs), which loss was not compensated as a result of Johnson's gross negligence and State Farm's bad faith; and

(e) Jackson County is the appropriate venue for the Hedgepeths' claims against co-defendant State Farm.

6. Defendants' argument also ignores the law of joinder. M.R.C.P. 82(c) provides, in pertinent part:

> Where several claims or parties have been properly joined, the suit may be brought in any county in which any one of the claims could properly have been brought.

Similarly, this Court recently confirmed "[i]n suits involving multiple defendants, venue properly established against one defendant generally is proper against all defendants." *Penn Nat. Gaming, Inc. vs. Ratliff*, 954 So.2d 427, ¶ 14 (Miss. 2007). As noted above, the new venue statute does not use mandatory "shall" language for placing venue against resident defendants, while using permissive "may" language for placing venue against other defendants. Since all four (4) venue options in the new § 11-11-3 are governed by the mandatory "shall" (prohibiting a classification of "primary" and "secondary" venue choices), and since the Trial Court determined venue was appropriate against State Farm in Jackson County (R, Vol. 2, 167); venue is likewise proper in Jackson County for the Hedgepeths' claims against Johnson pursuant to M.R.C.P. 82(c). The Record in this cause is devoid of any evidence that Johnson and/or State Farm are anything other than properly joined defendants.

B. Conclusion

The Trial Court acknowledged Jackson County is a proper venue for the Hedgepeths' claims against State Farm, and entered an Order transferring venue based solely on its conclusion that the recently amended venue statute does not permit a Mississippi resident to be sued outside her county of residence, regardless of where she commits a tort or causes injuries and damages. The Trial Court's interpretation of Miss. Code Ann. § 11-11-3(1)(a)(i) (Rev. 2004) is in error, thus its Order Transferring Venue, which was based entirely on its erroneous interpretation of the statute, was an abuse of discretion. Alternatively, even if the newly amended Statute does not allow venue against a resident defendant to be independently placed anywhere other than her county of residence, Jackson County was the proper venue for the Hedgepeths' claims against Johnson pursuant to M.R.C.P. 82(c), because the Trial Court concluded venue was proper in Jackson County against State Farm, a properly joined Defendant; and the Trial Court's Order transferring venue constituted an abuse of discretion.

WHEREFORE, the Hedgepeths respectfully request this Honorable Court Reverse the Trial Court's Order, and hold that venue is proper in Jackson County, where substantial alleged acts and/or omissions, and substantial injuries and damages to the Hedgepeths, occurred.

Respectfully submitted, this 9th day of August, 2007,

REVEREND MITCHELL HEDGEPETH
AND CATHERINE HEDGEPETH

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CERTIFICATE OF SERVICE

I certify that I have this day forwarded by U.S. mail, postage prepaid, a true and correct copy of the foregoing *Appellants' Rebuttal to Brief of the Appellees*, to the following:

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This the 9th day of August, 2007.

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