

IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2008-IA-01191-SCT

SHANNON HOLMES AND STATE
FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

APPELLANTS

VS.

LEE MCMILLAN

APPELLANT

APPEAL FROM THE COUNTY COURT OF HINDS COUNTY, MISSISSIPPI

BRIEF OF APPELLEE, LEE MCMILLAN

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 Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

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5. Shannon Holmes, Defendant/Appellant
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7. Honorable Houston Patton
Hinds County Court Judge

Respectfully submitted this the 17th day of February, 2009.


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I. STATEMENT OF THE ISSUE

Whether venue of an action for negligence and breach of contract may be brought in the County where the breach occurred under Miss. Code Ann. §11-11-3 and in the County of the principal office of the municipality as provided for by Miss. Code Ann. §61-9-3(3)?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

On December 12, 2007, Plaintiff Lee McMillan ("McMillan") filed a Complaint in the County Court of Hinds County, Mississippi against Shannon Holmes ("Holmes") and State Farm Mutual Automobile Insurance Company ("State Farm").¹ The Complaint asserts a cause of action against State Farm for breach of contract arising out of State Farm's failure to pay uninsured motorist benefits. And, the Complaint asserts a cause of action against Holmes for automobile negligence.

State Farm and Holmes filed Motions to Dismiss or Transfer Venue to Rankin County.² McMillan responded to the motions.³ After reviewing the motions and response, and hearing argument of counsel, the trial judge denied the motions to dismiss or transfer.⁴ State Farm and Holmes brought this interlocutory appeal.

¹See Complaint, TR at 6-10, RE Tab 2.

²See TR at 12 to 18 and TR at 19 - 24, RE 3 and 4.

³See TR at 25 - 39, RE 5.

⁴See TR 56, RE 8.

B. STATEMENT OF THE FACTS

On July 8, 2006, McMillan and Holmes were involved in an automobile collision in the round-a-bout at the Jackson-Evers International Airport.⁵ McMillan was driving a 2006 Chevy Trailblazer owned by Alamo Financing LP.⁶ McMillan was returning the rented vehicle to the airport facility of Alamo Rent-A-Car.

The round-a-bout is located in the City of Jackson, Mississippi and Rankin County. The collision was investigated by the Jackson Police Department. Holmes was given a citation (ticket number 932675) for driving without insurance.⁷ The traffic citation was adjudicated in the Municipal Court of the City of Jackson located at 327 East Pascagoula Street, Jackson, Mississippi. Holmes plead guilty to driving without motor vehicle insurance in case number 2006-T932675 in the Municipal Court of Jackson, Mississippi.⁸

Prior to the collision, McMillan purchased motor vehicle insurance coverage with State Farm. McMillan insured three vehicles. The three (3) separate State Farm insurance policies each contained endorsements providing Twenty Five Thousand Dollars (\$25,000) in uninsured motorist coverage.⁹ The State Farm insurance agent who sold McMillan the automobile insurance is Jackie Bland whose office is located in the City of Jackson.¹⁰ At the time he

⁵See State of Mississippi Uniform Crash Report, TR at 30-35.

⁶See State of Mississippi Uniform Crash Report, TR at 35.

⁷See State of Mississippi Uniform Crash Report, TR 32.

⁸This Court can take Judicial Notice of the Municipal Court Case of Holmes, pursuant to M.R.E. 201.

⁹See Complaint TR at 7, RE 2.

¹⁰See TR at 25, RE 5.

purchased the insurance, McMillan resided at 887 Winthrop Circle, Jackson, First Judicial District of Hinds County, Mississippi.¹¹

McMillan was injured in the collision. He incurred in excess of Sixty Thousand Dollars (\$60,000) in medical expenses.¹² McMillan pursued a claim for uninsured motorist benefits with State Farm. McMillan communicated with State Farm from his Jackson home. State Farm mailed a letter to McMillan at his 887 Winthrop Circle, Jackson, Mississippi address on May 15, 2007 offering to settle his claim for Three Thousand Dollars (\$3,000).¹³ The return address on the letter is in Birmingham, Alabama.

On December 12, 2007, McMillan filed the subject Complaint.

III. SUMMARY OF THE ARGUMENT

Hinds County is the proper venue for actions occurring at the Jackson municipal airport. Section 61-9-3 of the Mississippi Code provided for the incorporation of properties constituting an airport. Under this statute, venue of actions occurring at that location must be brought in the county in which the principal office of the municipality is located. The principal office of the City of Jackson is located in Hinds County, Mississippi. The vehicle collision occurred in the City of Jackson. Venue of this action is proper in Hinds County, Mississippi.

Under the general venue statute, Miss. Code Ann. §11-11-3, venue is proper where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred. State Farm breached the contract it entered into with McMillan in Hinds County,

¹¹See TR at 26, RE 5.

¹²See TR at 64, RE 9.

¹³See at TR 38, RE 5.

Mississippi. Venue is proper in Hinds County, Mississippi.

I. ARGUMENT

Venue of this action is proper in Hinds County, Mississippi. When filing a Complaint, the plaintiff may select among permissible venues, and his choice must be sustained unless there is no credible evidence supporting the factual basis for the claim of venue. Flight Line, Inc. v. Tanksley, 608 So.2d 1149, 1155 (Miss. 1992). At the trial and appellate level, the plaintiff must be given the benefit of the reasonable doubt. Id. The motion for change of venue is addressed to the discretion of the trial judge, and the ruling should not be disturbed on appeal unless it clearly appears there has been an abuse of discretion. Hedgepeth v. Johnson, 975 So.2d 235, 237 (Miss. 2008).

Venue is a function of statute. Flight Line, Inc., 608 So.2d at 1155. There are two statutes which apply to venue for this case, Miss. Code Ann. §61-9-3 and the general venue statute, Miss. Code Ann. §11-11-3. In determining which statute applies, the specific venue statute controls over the general venue statute. Office of the Governor Division of Medicaid v. Johnson, 950 So.2d 1033, 1035 (Miss. 2007). Here, venue is proper in Hinds County under both statutes.

A. Hinds County Is The Proper Venue for Actions Which Occur Within the Municipal Boundaries of the City of Jackson at the Airport

On July 8, 2006, McMillan was a resident of Jackson, First Judicial District of Hinds County, Mississippi. While returning a rental vehicle to Alamo Rent-A-Car facility at the Jackson-Evers International Airport, McMillan was struck by Holmes.¹⁴ The collision was

¹⁴See State of Mississippi Uniform Crash Report, TR 30-35, RE 5.

investigated by the Jackson Police Department. Holmes was cited for driving without automobile insurance.¹⁵ Subsequently, Holmes pled guilty to driving without automobile insurance in the Jackson Municipal Court located at 327 East Pascagoula Street, Jackson, Mississippi.

The airport is owned and operated by the Jackson Municipal Airport Authority, an agency of the City of Jackson, whose principal office is located in the First Judicial District of Hinds County, Mississippi. Mississippi Code §61-9-3, was passed by the legislature regarding the incorporation of properties constituting an airport. The statute includes provisions for venue of actions. Miss. Code §61-9-3(3) states as follows:

(3) Subject only to the provisions hereof, and irrespective of the geographic location of the airport or air navigational facility in a county or judicial district other than the county or judicial district within which the principal office of the municipality is located, any such ordinance shall become effective upon the effective date fixed therein. On and after such effective date and on or after March 10, 1976 all laws, municipal ordinances, and local options effective in the municipality as a result of municipal, judicial district and county options exercised in the municipality, judicial district or the county within which the principal office of the municipality is located, and all other laws, orders, codes and resolutions of and applicable to the municipality availing or having availed itself of the provisions hereof as well as those of the board of supervisors of the county in which the principal office of the municipality is located, shall be applicable to such airport or air navigational facility; provided, however, that no permit for the sale of any alcoholic beverage as defined in section 67-1-5, Mississippi Code of 1972, except an on-premises retailer's permit as authorized by section 67-1-51(c), shall be issued for use at such airport or air navigational facility. **Venue for the trial of all offenses against such laws and ordinances shall be in the county in which the principal office of the municipality is located.** [Emphasis added]

While State Farm and Holmes admit in their brief that Miss. Code §61-9-3 sets venue in the geographical area, they attempt to argue that the statute is inapplicable to the facts of this case. However, Holmes submitted to the venue of the Jackson Municipal Court in Hinds County

¹⁵See State of Mississippi Uniform Crash Report, TR 33-34.

regarding the citation she received for driving without insurance as required by Miss. Code Ann §63-15-43. That violation is a substantial act alleged in the breach of contract action against State Farm for uninsured motorist. In addition to the violation of Miss Code Ann §63-15-43, the Complaint alleges that Holmes violated Mississippi Statutes regarding automobile negligence.¹⁶ McMillan alleges Holmes violated Miss Code Ann. §63-3-801 which requires drivers to yield the right of way. And, the Complaint alleges State Farm violated Miss Code Ann. §83-11-101 by breaching its contract regarding uninsured motor vehicle insurance coverage.

While State Farm and Holmes agree that venue is proper for Holmes' violation of Miss. Code Ann. §63-15-43, they argue that the venue is not proper for civil suits. In Jackson Municipal Airport Authority v. Evans, 191 So.2d 126 (Miss. 1966), a civil suit was filed by the Jackson Municipal Airport Authority and City of Jackson regarding trees grown on a Rankin County residents land. Although the defendant was a Rankin County resident, the alleged action arose in the area owned by the airport and was properly brought in the First Judicial District of Hinds County, Mississippi. Id.

The specific venue statute appropriately sets venue of McMillan's action in Hinds County, Mississippi, the county in which the principal office of the municipality is located.

B. Venue Is Proper In Hinds County For The Breach Of Contract Action Against State Farm Under Miss. Code Ann. §11-11-3

State Farm and Holmes argue that Rankin County is the only proper venue for an action against a Rankin County resident involved in a collision in Rankin County. This argument ignores the basis for venue in this action. The breach of contract between McMillan and State

¹⁶See Complaint, TR at 9, RE Tab 2.

Farm occurred in Hinds County. Thus, on the breach of contract claim between McMillan and State Farm, Hinds County is the proper venue. Where venue is proper for one defendant, it is proper for all defendants.

Under the general venue statute, Miss. Code Ann. §11-11-3 a plaintiff may select among the permissible venues. Initially, a plaintiff can choose from four (4) venue options when filing a lawsuit. Hedgepeth, 975 So.2d at 238. Miss Code Ann. §11-11-3 states, in part, as follows:

(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.

Under this statute, McMillan could have chosen to file his Complaint in either Hinds County, where the breach of contract occurred, or Rankin County where Holmes resides.

Here, State Farm breached a contract which was entered into in Hinds County between McMillan and State Farm through its agent Ms. Jackie Bland. McMillan communicated with the adjuster from his home at 887 Winthrop Circle, Jackson, Hinds County, Mississippi. On May 15, 2007, a letter was mailed to McMillan at his home from Birmingham, Alabama.¹⁷ The letter indicates there have been unsuccessful negotiations and an impasse. The negotiations by McMillan took place in Jackson, Hinds County, Mississippi.

The Supreme Court has found venue proper in the county where the plaintiffs were advised that their claim would be denied. Hedgepeth at 240. In Hedgepeth, the insureds filed a lawsuit against their insurance company for negligence, breach of contract and intentional infliction of emotional distress. Id. at 236. In finding venue proper in Jackson County, the court

¹⁷See May 15, 2007 letter to Lee McMillan, TR at 38, RE 5.

stated “State Farm also had two representatives inform the Hedgepeths in person in Jackson County that their claim would be denied because they did not have flood coverage. Jackson County is one of the proper venues for this suit.” Id. at 240.

State Farm and Holmes argue that venue is not proper in Hinds County relying upon Medical Assurance Company of Mississippi v. Myers, 956 So.2d 213 (Miss. 2007). However, Myers involved the failure to renew an insurance policy. Id. at 215. Here, the Complaint alleges breach of an existing contract. The Court in Hedgepeth, considered Myers and found the location of the communication regarding denial of a claim under an existing policy was a proper venue.

Further, support for McMillan’s choice of venue is the relationship to the collision which occurred in the City of Jackson. The citation received by Holmes was adjudicated in the Jackson Municipal Court located at 327 East Pascagoula Street, Jackson, Mississippi. The County Court where this action is pending is located on East Pascagoula Street next to the Jackson Municipal Court. Holmes’ failure to obey the traffic laws of the State of Mississippi is a substantial omission which is a basis of the Complaint against Holmes and State Farm.

Miss. Code Ann. 11-11-3, looks to a substantial alleged act or omission. Where an act or omission may occur is not limited to a single county. Snyder v. Logan, 905 So.2d 531, 534 (Miss. 2005). The Complaint alleges breach of contract.¹⁸ The substantial acts which caused the breach of contract occurred between Jackson, Mississippi and Birmingham, Alabama. Although State Farm argued in the trial court for venue from the location where the letter was mailed, it cannot be said that Birmingham is a more convenient venue for trial of this matter than Hinds

¹⁸See TR 6-10, RE 2.

County, Mississippi.

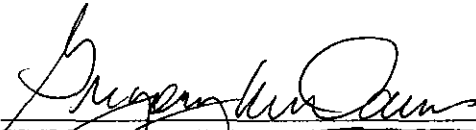


In the final analysis, venue is about convenience. Flight Lines Inc., 608 So.2d 1157. Of the permissible venues, Hinds and Rankin County, Mississippi and Birmingham, Alabama, McMillan selected Hinds County. Credible evidence supports the factual basis of his selection. Being given the benefit of any reasonable doubt, his selection of Hinds County as the proper venue should be sustained.

V. CONCLUSION

Under both Miss. Code Ann. §61-9-3 and §11-11-3, Hinds County, Mississippi is a proper selection for venue of the causes of action alleged in McMillan's Complaint. McMillan requests this Court affirm the ruling of the Hinds County Court denying State Farm and Holmes motions to dismiss or transfer venue.

Respectfully submitted this the 17th day of February, 2009.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day delivered and/or mailed a true and correct copy of
the above **Brief of Appellee, Lee McMillan** to the following:

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