

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

APPELLEE

APPEAL FROM THE COUNTY COURT OF HINDS COUNTY, MISSISSIPPI

BRIEF OF THE APPELLANTS, SHANNON HOLMES AND STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY

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CASE NO. 2008-IA-01191

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following list of persons have an interest in the outcome of this case. The following representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Shannon Holmes: Defendant/Appellant
2. Henderson M. Jones, Esq.
Attorney for Shannon Holmes
3. Philip W. Gaines, Esq.
Jeremy T. Hutto, Esq.
Attorneys for State Farm Mutual Automobile Insurance Company
4. Lee McMillan: Plaintiff/Appellee
5. Gregory K. Davis, Esq.
Attorney for Lee McMillan
6. Honorable Houston Patton
Hinds County Court Judge

Respectfully submitted, this the 16th day of January, 2009.

By: 


Henderson M. Jones 

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Miss. Code Ann. § 11-11-3	1,3,4,5,6,7,8,9

I. STATEMENT OF THE ISSUES

- I. Does Miss. Code § 61-9-3(3) apply for the venue of civil actions, and if so, does it supercede the venue provisions of Miss. Code § 11-11-3 as applied to civil actions filed in Mississippi Courts?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

This case is before the Court on Defendants Shannon Holmes and State Farm Mutual Automobile Insurance Company's (hereinafter respectively referred to as "Holmes" and "State Farm,") Petition for Interlocutory Appeal. Lee McMillan (hereinafter referred to as "McMillan") and Holmes were involved in a motor vehicle accident on July 8, 2006 near the Roundabout intersection of Old Brandon Road and International Drive located in Rankin County, Mississippi¹. On December 12, 2007 McMillan filed suit against Holmes and State Farm in the First Judicial District of Hinds County, Mississippi². McMillan sued Holmes on an ordinary automobile negligence cause of action; she sued State Farm on a contractual Uninsured Motor Vehicle Insurance Coverage claim.

Holmes and State Farm both filed Motions for Dismissal or to Transfer Venue to Rankin County, Mississippi³. The Order denying

¹See TR at 30 to 35.

²See Complaint, TR at 6 to 10.

³See TR at 12 to 19, and TR at 19 to 24.

that Motion was entered on or about June 20, 2008⁴. Holmes and State Farm seek relief on Interlocutory Appeal from that Order.

B. STATEMENT OF THE FACTS

McMillan and Holmes were involved in a motor vehicle accident on July 8, 2006 near the Roundabout intersection of Old Brandon Road and International Drive in Rankin County, Mississippi⁵. At the time of the subject accident and at the time suit was filed, Defendant Holmes was a resident of Rankin County, Mississippi⁶. Plaintiff McMillan is a Hinds County resident⁷. McMillan brought the underlying action in the First Judicial District of Hinds County, Mississippi asserting a claim against Holmes for negligence and against State Farm for UM contractual/policy benefits⁸.

McMillan admits that a suit against a Rankin resident for an automobile accident that occurred in Rankin County would ordinarily be required to be filed in Rankin County. However, he contends that Miss. Code § 61-9-3 places venue for actions that occur in the City of Jackson's annexed territory at the Jackson-Evers International Airport in the First Judicial District of Hinds County, applying that statutory directive to civil negligence suits in addition to criminal prosecutions. Alternatively, McMillan

⁴See TR at 56.

⁵See TR at 30 to 35.

⁶See Affidavit of Holmes, TR at 46.

⁷See TR at 34.

⁸See TR at 6 to 10.

argues that the subject UM contract was breached in the First Judicial District of Hinds County based upon correspondence received by McMillan at his residence in the City of Jackson, and that, even though this suit includes a negligence cause against an in-state Rankin County defendant (Holmes), the UM cause allowed the entire case to proceed in Hinds County⁹.

Holmes and State Farm contend that Miss. Code § 61-9-3(3) does not supercede Miss. Code § 11-11-3 for the venue determination of civil negligence suits between private parties and that, under Miss. Code § 11-11-3, venue would only properly lie in Rankin County¹⁰. Holmes and State Farm also contend that McMillan's alternative argument that venue is proper in Hinds County because McMillan received correspondence from State Farm at his Hinds County residence is likewise incorrect as a matter of law¹¹.

III. SUMMARY OF THE ARGUMENT

On behalf of Holmes and State Farm, we respectfully submit that Miss. Code § 11-11-3 controls the venue determination for this civil suit, and that it establishes that the only proper venue for this action lies in Rankin County, Mississippi. On an issue of first impression on these facts, we respectfully submit that the learned Trial Court has incorrectly applied Miss. Code § 61-9-3(3) outside of its intended scope. The provisions of Miss. Code § 61-

⁹See TR at 26 to 27.

¹⁰See TR at 40 to 44.

¹¹See TR at 40 to 44.

9-3(3) should not be applied to supercede Miss. Code § 11-11-3 in a civil negligence cause of action against a Rankin County resident, with regard to an accident that occurred in Rankin County. This would be inconsistent with the direct controlling intent and language of Miss. Code § 11-11-3, and would extend application of Miss. Code § 91-6-3(3) beyond its intended criminal case context. Holmes and State Farm therefore jointly submit this Appeal and Brief, and we respectfully pray that this Court will reverse the Trial Court's denial of their Motions for Dismissal or Transfer and remand this case with an Order to transfer the venue of this action to Rankin County, Mississippi.

IV. ARGUMENT

A. STANDARD OF REVIEW

The Mississippi Supreme Court applies an abuse of discretion standard of review in considering a trial court's ruling on an application for change of venue. *Adams v. Baptist Memorial Hospital-Desoto, Inc.*, 965 So.2d 652, 655 (¶11) (Miss. 2007). However, this Court has additionally held that when it must interpret a statute, that statutory interpretation is a matter of law that is reviewed *de novo*. *Id.*; citing *Franklin Collection Serv., Inc. v. Kyle*, 955 So.2d 284, 287 (Miss. 2007). We therefore respectfully submit that the proper standard for this appeal is a *de novo* review.

B. MISS. CODE § 61-9-3(3) DOES NOT APPLY TO THE VENUE DETERMINATION OF CIVIL ACTIONS

The issue presented to this Court for resolution is: whether or not Miss. Code § 61-9-3(3) is intended to also apply to civil actions and, if so, whether it is intended to supercede the venue provisions of Miss. Code § 11-11-3 with regard to these civil actions. This question is one of first impression in Mississippi Courts. Holmes and State Farm respectfully submit and contend that a plain reading of Miss. Code § 61-9-3(3) reveals that its provisions are not intended to apply to the venue determination of civil disputes between private parties. Miss. Code § 61-9-3(3) indicates that its provisions apply to violations of municipal laws, ordinances, and local options which occur on a municipality's (the City of Jackson in this instance) annexed air navigational facility property, when that property is located in a different county from the county in which the municipality is located. Such would obviously include such matters as traffic tickets or other criminal/misdemeanor violations of municipal ordinances; it does not logically include civil negligence actions between private parties, which type suits have never in Mississippi history been subject to any municipal boundary references, as opposed to County/Circuit Court jurisdictional boundaries, for venue purposes. No violations of any municipal laws, ordinances, or local options have been alleged by McMillan against Holmes or State Farm. Miss. Code § 61-9-3(3) states, in relevant part, as follows:

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...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]

Section 61-9-3(3) sets venue for the trial of "offenses against such laws and ordinances" in the county in which the owning municipality is located. However, Miss. Code Section 61-9-3(3) makes no direct or indirect reference at all to common law civil disputes arising between private parties. If it did, it would cause them to be in direct conflict with the civil venue statute directly on point, Miss. Code § 11-11-3.

It is long established in Mississippi jurisprudence that the words of a statute are to be ascribed their plain and ordinary meaning. *McMillan v. Puckett*, 678 So.2d 652, 657 (Miss. 1996); *Pearl River Valley Water Supply Dist. v. Hinds County*, 445 So.2d 1330, 1334 (Miss. 1984); *Entrican v. King*, 289 So.2d 913, 917 (Miss. 1974). The language of Section 61-9-3(3) plainly limits its venue application to offenses against municipal laws, which is a criminal/misdemeanor case context. We therefore respectfully submit that the Trial Court's holding herein incorrectly applied

Miss. Code § 91-6-3(3) to a scope that is beyond its plan meaning and intended scope. In so ruling, the Trial Court also necessarily held that Miss. Code § 61-9-3(3) superceded the clear and direct language of Miss. Code § 11-11-3 with regard to the required venue of civil cases in Mississippi Courts.

C. MISS. CODE § 11-11-3 PROPERLY APPLIES FOR THE VENUE DETERMINATION OF THIS CIVIL ACTION

Miss. Code § 11-11-3 is the proper statute to review for a venue determination of McMillan's civil vehicular negligence and insurance policy contract claims. The Mississippi Legislature has made clear that the provisions of Miss. Code § 11-11-3 shall directly control the determination of venue for civil actions.

Miss. Code § 11-11-3 states, in relevant 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. [Emphasis added]

(b) If venue in a civil action against a nonresident defendant cannot be asserted under paragraph (a) of this subsection (1), a civil action against a nonresident may be commenced in the county where the plaintiff resides or is domiciled. [Emphasis added]

The plain language of Section 11-11-3 requires venue to be fixed, in the present case, as follows: (1) the county where the in-state defendant resides (Holmes was a Rankin County resident); or (2) in the county where a substantial alleged act, omission, or injury causing event occurred (the subject motor vehicle accident occurred in Rankin County).

Hinds County would be a proper venue, on the present facts, under paragraph (b) only if venue could not be fixed under paragraph (a). Holmes was a Rankin County resident, and the subject accident occurred in Rankin County. The statute even uses the mandatory term "shall" in the language of paragraph (a). Therefore, we respectfully submit that the only proper venue for this action is Rankin County.

The learned Trial Court correctly held that the intersection where the subject accident occurred was "...physically located in Rankin County¹²." However, the Trial Court went on to hold that the "...City of Jackson has jurisdiction over that matter in that it is leading to the airport property. So that falls within the jurisdiction of the City of Jackson¹³." We submit that the Trial Court was mistaken in that conclusion, since Miss. Code § 61-9-3(3) by its own terms, applies only to offenses against municipal laws, ordinances, and local options. Miss. Code § 11-11-3, by contrast, specifically states by its own terms that it applies directly to such civil actions. Reference to the direct and unambiguous language of Miss. Code § 11-11-3 therefore demonstrates that Rankin County is the only allowed venue for a civil action involving a Rankin County Defendant on a common law negligence charge arising from a Rankin County car wreck.

¹²See TR at 70.

¹³TR at 70.

V. CONCLUSION

This appeal presents a question of first impression to this Court on the construction of Miss. Code § 61-9-3(3), which Holmes and State Farm respectfully submit was mistakenly misconstrued by the Trial Court. Holmes and State Farm pray for a Ruling and Opinion that Miss. Code § 61-9-3(3) does not apply for venue determination of ordinary civil suits, and that it does not supercede the directly stated venue provisions of Miss. Code § 11-11-3 with regard to such ordinary civil actions. We therefore pray herein for an Order reversing and remanding this matter with instructions that the venue of this action be transferred to the Circuit or County Court of Rankin County (with Plaintiff having the option choice between those two Courts of proper venue).

Holmes and State Farm further request that this Court issue a ruling clarifying Miss. Code § 11-11-3 and stating that a Plaintiff suing both an in-state defendant and an out-of-state defendant in a single civil action must do so in the county in which the in-state defendant resides or in which the cause of action occurred, both of which would be Rankin County for this case.

WHEREFORE, PREMISES CONSIDERED, Appellants, Shannon Holmes and State Farm Mutual Automobile Insurance Company do hereby jointly submit this Appeal and Brief, and do respectfully pray that the Trial Court's June 20, 2008, Order Ruling on Defendants' Motion to Dismiss or to Transfer Venue be reversed, and that this case then be remanded for required transfer to the Circuit Court or County

Court of Rankin County, Mississippi, and for an Order and Mandate to such effect, with all costs of this appeal to be assessed against Plaintiff herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

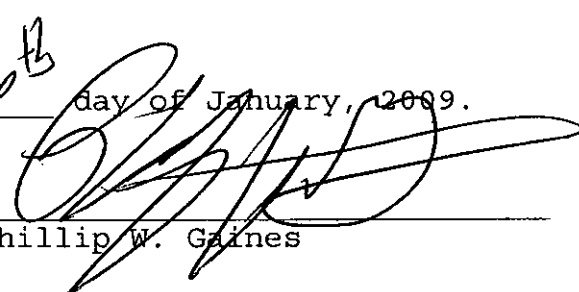
I, Phillip W. Gaines, hereby certify that I have this day mailed via United States Mail, postage fully prepaid, a true and correct copy of the above and foregoing instrument to:

Ms. Betty Sephton
Mississippi Supreme Court Clerk
P.O. Box 117
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Honorable Houston J. Patton
Hinds County Court Judge
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So certified, this the 16th day of January, 2009.


Phillip W. Gaines