

IN THE SUPREME COURT OF MISSISSIPPI

2010-IA-00776-SCT

MISSISSIPPI CRIME LABORATORY, MISSISSIPPI STATE
MEDICAL EXAMINERS, DR. STEVEN HAYNE, IN HIS
OFFICIAL AND PERSONAL CAPACITIES, SUNSHINE
MEDICAL CLINIC, DR. VIBHA VIG, IN HER OFFICIAL
AND PERSONAL CAPACITIES, LISA HOEHN,
M.D./NURSE PRACTITIONER, IN HER OFFICIAL AND
PERSONAL CAPACITIES, EXPERTOX, INC., AND
MEDSCREENS, INC.

DEFENDANTS-APPELLANTS

v.

HATTIE DOUGLAS, INDIVIDUALLY AND AS THE
NATURAL MOTHER, NEXT FRIEND AND ON BEHALF
OF ALL THE HEIRS AT LAW AND WRONGFUL DEATH
BENEFICIARIES OF KADDARIUS DOUGLAS,
DECEASED, AND KEVIN HAMLIN, AS THE NATURAL
FATHER AND NEXT FRIEND OF KADDARIUS DOUGLAS,
DECEASED, KELVIN L. DOUGLAS, A MINOR, KENDELL
DOUGLAS, A MINOR, LAKENDRICK R. DOUGLAS, A
MINOR, TY'SIA A. DOUGLAS, A MINOR, AND JEROME E.
DOUGLAS, A MINOR

PLAINTIFFS-APPELLEES

Interlocutory Appeal from the Circuit Court of Hinds County

REPLY BRIEF OF APPELLANTS SUNSHINE MEDICAL CLINIC AND DR. VIBHA VIG

ORAL ARGUMENT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Sunshine Medical Clinic and Dr. Vibha Vig request oral argument in order to explicate the factual and legal matters presented by this appeal.

REPLY ARGUMENT

I. The Death of Kaddarius Douglas Is Not a Distinct Litigable Event Linking the Two Sets of Defendants

As anticipated in the Medical Negligence Defendants' principal brief, Plaintiffs have argued in their brief that the death of Kaddarius Douglas is a distinct litigable event linking the two sets of Defendants. (Pls. Br. at 9.) Plaintiffs reason that but for Kaddarius's death, no claims against either set of Defendants would exist. (*Id.*)

A. Plaintiffs Have Not Materially Distinguished Hegwood

But as was already demonstrated on pages 7–9 of the Medical Negligence Defendants' principal brief, this Court foreclosed that very sort of argument in *Hegwood v. Williamson*, 949 So. 2d 728 (Miss. 2007). Faced with *Hegwood*, Plaintiffs' only response is that the case "turned on" the issue of potential prejudice to the individual defendant if the fact that she had liability insurance was disclosed at trial during the presentation of evidence on the plaintiff's claims against co-defendant State Farm. Plaintiffs seem to suggest that *Hegwood* is inapplicable because the Medical Negligence Defendants have not identified any potential prejudice they might suffer if the claims asserted against them are tried alongside those asserted against the Wrongful Incarceration Defendants.

Plaintiffs have misread *Hegwood*. The case did not "turn on" the issue of potential prejudice; rather, the Court's discussion of that topic concerned Mississippi Rule of Evidence 411 and the comments to Mississippi Rule of Civil Procedure 42(b), and merely supplied an alternative basis for its holding that severance was warranted. *Id.* at 731. The lion's share of the Court's opinion

concerned the impropriety of joinder under Rule 20(a). *Id.* at 730–31. An especially prominent part of the discussion of that issue was the Court’s rejection of the argument that the automobile accident was a distinct litigable event linking the defendants merely because it was the factual root of the plaintiff’s negligence claims against Hegwood and her breach of contract and bad faith claims against State Farm. *Id.* at 731. Because Plaintiffs similarly allege Kaddarius’s death is a distinct litigable event linking the two sets of Defendants because it was the “but-for” antecedent event concerning the claims against them, *Hegwood* controls the viability *vel non* of that argument, irrespective of the absence of any allegations of potential prejudice by the Medical Negligence Defendants.

B. The “But-For” Standard Advanced by Plaintiffs Has Not Been Recognized by This Court and Is Contrary to Rule 20(a)

The “same transaction or occurrence” standard governs the propriety of joinder under Rule 20(a), which the comment says “requires that there be a distinct litigable event linking the parties.” MISS. R. CIV. P. 20, cmt. Plaintiffs’ proposed “but for” standard has never been recognized by this Court in the context of Rule 20(a), and a careful reading and application of the rule’s text demonstrates that the “but for” standard is contrary to it.

Rule 20(a) dictates that defendants may be joined in the same action if there is asserted against them “*any right to relief in respect of or arising out of* the same transaction, occurrence, or series of transactions or occurrences.” (Emphasis added.) Plaintiffs’ claimed right to relief against the Medical Negligence Defendants respects or arises out of the occurrence of Kaddarius’s death because it is the harm for which they seek relief. By contrast, Plaintiffs’ claimed right to relief against the Wrongful Incarceration Defendants does not respect or arise out of Kaddarius’s death because they do not seek relief for that event. Rather, the harm for which they seek relief is Hattie

Douglas's alleged wrongful incarceration for a year and a half, which did not inexorably follow from Kaddarius's death. In no sense, then, can it be said that the claims against both sets of Defendants respect or arise from Kaddarius's death.

Regarding the "but for" approach, in other contexts courts have recognized such a standard "has in itself no limiting principle; it literally embraces every event that hindsight can logically identify in the causative chain." *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996); accord *Moki Mac River Expeditions v. Drugg*, 221 S.W.2d 569, 581 (Tex. 2007) (quoting *Nowak*). So, even though Plaintiffs' claims against the Wrongful Incarceration Defendants do not respect or arise from Kaddarius's death as the text of the rule requires, the "but for" approach would expand the rule's sweep to permit their joinder merely because the existence of the claims against them is logically contingent upon an ancestral fact (Kaddarius's death) up the causative chain that gave rise to the claims against the Medical Negligence Defendants. The "but for" approach thus conflicts with the rule and must be rejected. What's more, as a prudential matter, using the "but for" standard that Plaintiffs suggest would severely undermine the already modest constraints Rule 20(a) places on permissive joinder of parties. The rule need not be expanded to the point of near limitlessness.

II. The Allegations Presented in Part II.B of Plaintiffs' Brief Are Not Subject to this Court's Consideration

Venue is a matter that should be decided early in the course of a case. *Flight Line, Inc. v. Tanksley*, 608 So. 2d 1149, 1155 (Miss. 1992). The factual allegations of a plaintiff's complaint therefore play a central role in determining venue, as do affidavits that supplement or contest the same. *Id.* For a chosen venue to be sustained, there must be some credible evidence of the factual bases of the claimed venue. *Am. Home Prods. Corp. v. Sumlin*, 942 So. 2d 766, 769 (Miss. 2006); *Flight Line*, 608 So. 2d at 1155.

In Plaintiffs' Complaint, however, they offered no specific factual allegation in support of their conclusory statement that venue lies in Hinds County. (*See* R. 10–25; R. Exc. Tab 3.) Neither did Plaintiffs attach any affidavits to their Combined Response and Memorandum of Authorities in Opposition to the Motion to Sever and Transfer Venue that would sustain venue in Hinds County. (*See* R. 251–89.) If anything, what is clear from the factual allegations of the Complaint and the affidavits of record is that venue is proper in either Rankin or Madison County. (*See* R. 10–25; 222–23; 227–28; R. Exc. Tabs 3, 4, 5.)

Yet now on appeal, in support of their argument that venue is proper in Hinds County under Mississippi Code Annotated section 11-46-13(2) because some of the purported acts and omissions of the State/State-employee Wrongful Incarceration Defendants occurred there, Plaintiffs present a slew of factual allegations against those Defendants that are said to have occurred in Hinds County. (Pls. Br. at 11–13.) But because none of those allegations are contained in the Complaint or in an affidavit attached to Plaintiffs' trial court filing opposing the Motion to Sever and Transfer Venue, they are not subject to this Court's consideration. *Chantey Music Publ'g, Inc. v. Malaco, Inc.*, 915 So. 2d 1052, 1060 (Miss. 2005).

CONCLUSION

For the foregoing reasons and those given in their principal brief, Sunshine Medical Clinic and Dr. Vibha Vig submit that their joinder with the Wrongful Incarceration Defendants was improper because neither prong of Rule 20(a) was satisfied. Accordingly, the circuit court's denial of their Motion to Sever and Transfer Venue should be reversed and the case remanded with instructions that the circuit court sever the claims against them and transfer venue to Madison County, where their alleged acts and omissions occurred.

Alternatively, should severance not be warranted, the circuit court's denial of the transfer of venue portion of their motion should be reversed and the case remanded with instructions that venue as to all Defendants be transferred to Rankin County. Based on the factual allegations and affidavits properly before this Court, Rankin County is, alternatively, the only proper venue under Mississippi Code Annotated section 11-46-13(2).

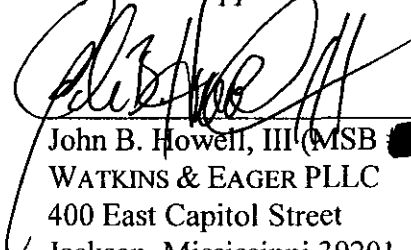
This 18th day of April 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that today I sent a true and correct copy of the foregoing document by United States mail, postage prepaid, to the following:

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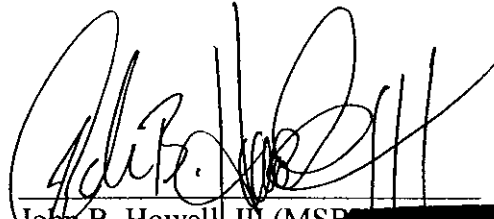
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