

IN THE SUPREME COURT OF MISSISSIPPI

2010-IA-00776-SCT

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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

BRIEF OF APPELLANTS SUNSHINE MEDICAL CLINIC AND DR. VIBHA VIG

ORAL ARGUMENT 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 or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Sunshine Medical Clinic, defendant-appellant
2. Dr. Vibha Vig, defendant-appellant
3. Lisa Hoehn, defendant-appellant
4. Expertox, Inc., defendant-appellant

5. MedScreens, Inc., defendant-appellant
6. Mississippi Crime Laboratory, defendant-appellant
7. Mississippi State Medical Examiners, defendant-appellant
8. Dr. Steven Hayne, defendant-appellant
9. Hattie Douglas, plaintiff-appellee
10. Kevin Hamlin, plaintiff-appellee
11. Minors Kelvin L. Douglas, Kendell Douglas, Lakendrick R. Douglas, Ty'sia A. Douglas, and Jerome E. Douglas, plaintiffs-appellees
12. Watkins & Eager PLLC, counsel for Sunshine Medical Clinic and Dr. Vibha Vig
13. Scott, Sullivan, Streetman & Fox, P.C., counsel for Lisa Hoehn
14. Robert Boyd and Associates, PLLC, counsel for Expertox, Inc.
15. Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., counsel for MedScreens, Inc.
16. Brunini, Grantham, Grower & Hewes, PLLC, counsel for Mississippi Crime Laboratory, Mississippi State Medical Examiners, and Dr. Steven Hayne
17. Mitchell, McNutt & Sams, P.A., counsel for Dr. Steven Hayne
18. Sweet & Associates, PLLC, counsel for plaintiffs-appellees
19. Law Office of Latrice Westbrooks, counsel for plaintiffs-appellees
20. Medical Assurance Company of Mississippi, insurer for Sunshine Medical Clinic and Dr. Vibha Vig



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STATEMENT OF ISSUE

I. Whether the circuit court abused its discretion in denying the Medical Negligence Defendants' Motion to Sever and Transfer Venue.

STATEMENT REGARDING ORAL ARGUMENT

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

STATEMENT OF THE CASE

I. Nature of Case, Course of Proceedings, and Disposition in the Circuit Court

This is an interlocutory appeal from the denial of a motion to sever and transfer venue. In the Circuit Court of Hinds County, Plaintiffs Hattie Douglas and Kevin Hamlin filed a Complaint against Sunshine Medical Clinic, Dr. Vibha Vig, and nurse practitioner Lisa Hoehn (collectively "Medical Negligence Defendants"), alleging those Defendants' acts and omissions in rendering medical treatment to their minor son, Kaddarius Douglas, caused his death.¹ In the same pleading, Plaintiffs also brought claims against the Mississippi Crime Laboratory, the Mississippi State Medical Examiner's Office, Dr. Steven Hayne, Expertox, Inc., and MedScreens, Inc. (collectively "Wrongful Incarceration Defendants"), asserting those Defendants' acts and omissions in performing a post-mortem examination and toxicological tests on Kaddarius's body, as well as in storing and handling blood and urine specimens, caused Hattie Douglas to be wrongfully incarcerated for murdering Kaddarius.

¹ Both Plaintiffs sue in their capacities as the natural parents and next friends of Kaddarius Douglas. (R. 10; R. Exc. Tab 3.) Ms. Douglas also sues in both her individual capacity and as the wrongful death beneficiary representative of Kaddarius Douglas. (R. 10; R. Exc. Tab 3.) In addition, Mr. Hamlin sues as next friend of Kaddarius's five minor siblings. (R. 10; R. Exc. Tab 3.)

All Defendants moved to sever the claims against the Medical Negligence Defendants from those against the Wrongful Incarceration Defendants and to transfer venue from Hinds County to Madison County (for the Medical Negligence Defendants) and Rankin County (for the Wrongful Incarceration Defendants).² (R. 196, 224, 229, 232, 238.) The circuit court summarily denied the motions. (R. 347; R. Exc. Tab 2.) All Defendants then joined in a Joint Petition for Interlocutory Appeal by Permission, which this Court granted. (R. 408–09.)

II. Statement of Facts

As to the Medical Negligence Defendants, Plaintiffs allege that Kaddarius was taken to the Sunshine Medical Clinic in Canton, Mississippi, on three occasions for treatment of severe respiratory problems. (R. 12 at ¶7; 14 at ¶¶16–18; R. Exc. Tab 3.) Nurse practitioner Lisa Hoehn treated Kaddarius on the first two visits (October 15 and December 17, 2005), and Dr. Vibha Vig treated him on the third (May 8, 2006). (R. 14 at ¶¶16–18; R. Exc. Tab 3.) Plaintiffs claim that the acts and omissions of Sunshine Medical Clinic, Dr. Vig, and Hoehn caused Kaddarius's death on May 11, 2006. (R. 14 at ¶19; 16 at ¶32; R. Exc. Tab 3.) They present several tort claims, including ones for medical negligence and negligent hiring and supervision, against the Medical Negligence Defendants based on those alleged acts and omissions and seek recovery of various damages. (R. 18–24; R. Exc. Tab 3.)

Regarding the Wrongful Incarceration Defendants, Plaintiffs allege that Dr. Steven Hayne performed an autopsy on Kaddarius's body, during which blood and urine samples were collected. (R. 14 at ¶20; R. Exc. Tab 3.) According to Dr. Hayne's affidavit, he was the Designated State Pathologist when he performed those actions at the Rankin County Morgue in Pearl, Mississippi.

² In their Motion to Transfer Venue and Sever, Defendants Sunshine Medical Clinic and Dr. Vig entered a special appearance in order to preserve various defenses, including insufficient service of process. (R. 238.)

(R. 222 at ¶¶1–3; R. Exc. Tab 4.) The blood and urine samples were sent under chain of custody to MedScreens, Inc., which is located in Flowood, Mississippi. (R. 12 at ¶6; 15 at ¶21; 222 at ¶3; R. Exc. Tabs 3 & 4.) MedScreens forwarded the samples to Expertox, Inc. in Texas under chain of custody. (R. 12 at ¶5; 15 at ¶22; 228 at ¶4; R. Exc. Tabs 3 & 5.) After testing the specimens, Expertox’s initial report indicated a blood-alcohol content reading of 0.02g%. (R. 15 at ¶24; R. Exc. Tab 3.) Following additional testing, Expertox revised the blood-alcohol content reading to 0.04g% and reported a urine reading of 0.4g%. (R. 15 at ¶25; R. Exc. Tab 3.) According to the affidavit of Earnest Lykissa, Ph.D., an employee of Expertox, Expertox sent those reports to MedScreens. (R. 228 at ¶¶1–2, 5; R. Exc. Tab 5.) MedScreens forwarded the reports to Dr. Hayne. (R. 223 at ¶6; R. Exc. Tab 4.) Dr. Hayne reviewed the reports in his Brandon, Mississippi, office and prepared his final autopsy report there. (R. 223 at ¶6; R. Exc. Tab 4.) No portion of the post-mortem examination, toxicological analysis, or preparation of the autopsy report occurred in Hinds County, Mississippi. (R. 223 at ¶7; R. Exc. Tab 4.) Rather, all aspects of Dr. Hayne’s involvement, as well as all other employees of the Mississippi Crime Laboratory and the Mississippi State Medical Examiner’s Office, occurred in Rankin County, Mississippi. (R. 223 at ¶8; R. Exc. Tab 4.)

Based on the toxicology reports, Plaintiffs say, Hattie Douglas was arrested and charged with Kaddarius’s murder. (R. 16 at ¶¶27–28; R. Exc. Tab 3.) Her five children were then removed from her custody by the Mississippi Department of Human Services. (R. 16 at ¶30; R. Exc. Tab 3.) After being incarcerated for more than a year and a half, the murder charge against Ms. Douglas was nolle prossed. (R. 16 at ¶31; R. Exc. Tab 3.) Plaintiffs claim the acts and omissions of the Mississippi Crime Laboratory, Mississippi State Medical Examiner’s Office, Expertox, MedScreens, and Dr. Hayne (in both his official and personal capacities) in performing the post-mortem examination, conducting toxicological tests, and storing and handling specimens caused Ms. Douglas to be

wrongfully incarcerated, to have her children removed from her custody, and them to experience pain, embarrassment, and public ridicule. (R. 14–16 at ¶¶20–22, 25–26, 28; 17–18 at ¶¶36–39; R. Exc. Tab 3.) Plaintiffs assert several tort claims against the Wrongful Incarceration Defendants based on those alleged wrongs and request sundry damages. (R. 18, 21–24; R. Exc. Tab 3.)

Plaintiffs claim venue is proper against all Defendants in the Circuit Court of Hinds County under Mississippi Code Annotated section 11-11-3 because the principal places of business of the Mississippi Crime Laboratory and the Mississippi State Medical Examiner’s Office are located in Hinds County, and because the “incident in question occurred in whole or in part in Hinds County, Mississippi.” (R. 13 at ¶14; R. Exc. Tab 3.)

SUMMARY OF ARGUMENT

The circuit court abused its discretion in denying the Medical Negligence Defendants’ motion to sever and transfer venue.

Severance. Under Mississippi Rule of Civil Procedure 20(a), joinder of defendants in one action is appropriate if both (1) the right to relief asserted against them arises out of the same transaction or occurrence or series of transactions or occurrences, and (2) a question of law or fact common to all defendants exists. The first prong has been interpreted to require a distinct litigable event linking all defendants joined under the rule. That requirement is not satisfied here. Plaintiffs’ claims against the Medical Negligence Defendants are based on events that transpired before Kaddarius’s death and that concern the medical treatment he received at the Sunshine Medical Clinic in Canton, Mississippi, on three occasions. By contrast, Plaintiffs’ claims against the Wrongful Incarceration Defendants concern those Defendants’ performance of a post-mortem examination and toxicological tests on Kaddarius’s body and their storing and handling of blood and urine specimens,

all of which happened in Pearl, Flowood, and Brandon, Mississippi, and in Texas. In addition, a finding of liability concerning one set of Defendants has no bearing on the liability of the other set. What's more, Plaintiffs allege multiple wrongdoings, and the evidence and witnesses for each set of claims are vastly different and risk confusing the jury.

Likewise, and for many of the same reasons, the second prong of Rule 20(a) is not satisfied. The claims against each set of Defendants are unique to them, both in the legal questions presented and the factual disputes that must be resolved. Both prongs of Rule 20(a) must be satisfied in order for a motion for severance to be denied. Here, because neither standard is met, the circuit court abused its discretion in denying the Medical Negligence Defendants' request for severance.

Transfer of Venue. The circuit court also abused its discretion in denying the Medical Negligence Defendants' request to transfer venue. Once severed, the claims against the Medical Negligence Defendants should have been transferred to Madison County. Under Mississippi Code Annotated section 11-11-3(3), venue in medical negligence cases is appropriate "only in the county in which the alleged act or omission occurred." All of the alleged misconduct by the Medical Negligence Defendants occurred in Canton, Mississippi, which is in Madison County. Therefore, the claims against them should have been transferred there.

Alternatively, even if joinder of all Defendants in this action was appropriate under Rule 20(a) and severance thus not warranted, the circuit court nevertheless abused its discretion by not transferring venue to Rankin County. Under the Tort Claims Act, the Mississippi Crime Laboratory and Mississippi State Medical Examiner's Office are considered the State, and Dr. Steven Hayne is considered a State employee. Under Mississippi Code Annotated section 11-46-13(2), in cases where the State or its employees are sued under the Act, venue lies only in the county where the events allegedly giving rise to liability against the State and its employees took place. Because the

record demonstrates that all such events occurred in Rankin County, the action should have been transferred there.

ARGUMENT

I. Standard of Review

This Court reviews the disposition of a motion to sever and transfer venue for an abuse of discretion. *Wyeth Labs. v. James*, 918 So. 2d 1243, 1245 (Miss. 2005).

II. The Circuit Court Abused Its Discretion in Denying the Medical Negligence Defendants' Motion to Sever and Transfer Venue

A. Severance Was Warranted Because Joinder of the Medical Negligence Defendants with the Wrongful Incarceration Defendants Is Improper under Mississippi Rule of Civil Procedure 20(a).

Under Mississippi Rule of Civil Procedure 20(a), “[a]ll persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all defendants will arise in the action.” A motion for severance cannot be denied unless both of these prongs are established. *Hegwood v. Williamson*, 949 So. 2d 728, 730 (Miss. 2007). Because neither prong is satisfied, the circuit court’s denial of the Medical Negligence Defendants’ request to sever was an abuse of discretion.

1. The “same transaction or occurrence” prong is not satisfied

The “same transaction or occurrence” contemplated by the first prong requires there be a “distinct litigable event linking the parties.” *Miss. Farm Bureau Fed’n v. Roberts*, 927 So. 2d 739, 741 (Miss. 2006) (quoting *Wyeth-Ayerst Labs. v. Caldwell*, 905 So. 2d 1205, 1207–08 (Miss. 2005)); accord *Miss. R. Civ. P. 20*, cmt. To determine whether such an event exists, a court should consider,

among other things,

whether a finding of liability for one plaintiff essentially establishes a finding for all plaintiffs, indicating that proof common to all plaintiffs is significant. The appropriateness of joinder decreases as the need for additional proof increases. If plaintiffs allege a single, primary wrongful act, the proof will be common to all plaintiffs; however separate proof will be required where there are several wrongful acts by several different actors. The need for separate proof is lessened only where the different wrongful acts are similar in type and character, and occur close in time and/or place.

Hegwood, 949 So. 2d at 730–31 (quoting *Ill. Cent. R.R. v. Gregory*, 912 So. 2d 829, 834–35 (Miss. 2009)). Whether the proof would be confusing to the jury due to the multiplicity of facts is another important factor a court should consider. *Id.* at 731.

No distinct litigable event links the Medical Negligence Defendants with the Wrongful Incarceration Defendants. First, even a cursory comparison of the events on which Plaintiffs' claims against the two sets of Defendants are based reveals no commonality. Plaintiffs' claims against the Medical Negligence Defendants concern those Defendants' medical care and treatment of Kaddarius's respiratory problems on three occasions in Canton, Mississippi. By contrast, their claims against the Wrongful Incarceration Defendants concern those Defendants' post-mortem performance of examinations and toxicological tests on, and storing and handling of specimens from, Kaddarius's body in Pearl, Flowood, and Brandon, Mississippi, as well as in Texas.

Plaintiffs may argue here as they did to the circuit court that Kaddarius's death is a distinct litigable event linking the two sets of Defendants, and that but for his death, there would be no claims against either set. But this Court rejected similar reasoning in *Hegwood*. There, the plaintiff had been in an automobile accident. *Id.* at 729. She and the other driver were both insured by State Farm. *Id.* at 730. The plaintiff sued the other motorist for negligence in regard to the accident, and also sued State Farm for first-party breach of contract and bad faith in handling claims she had made

on both her and the other motorist's policies. *Id.* The defendant-motorist moved to sever the plaintiff's claims against her from those against State Farm, but the circuit court denied that motion without explanation. *Id.* On interlocutory appeal, this Court reversed, holding that the circuit court abused its discretion in denying the motion for severance. *Id.* at 732. In concluding there was no distinct litigable event linking the parties, the Court observed that the claims against the two defendants arose out of separate allegations of misconduct that occurred at separate times. *Id.* Importantly, the Court reasoned that although "the genesis of both claims arose out of the accident, the two claims involve different factual issues and different legal issues." *Id.* at 731. The Court then discussed how the two claims were dissimilar: The negligence claim against the other motorist presented the legal questions of the elements of negligence and raised fact issues about how the accident happened. By contrast, the breach of contract and bad faith claims against State Farm concerned legal questions of policy interpretation and bad faith and involved fact issues of how the plaintiff's policy claims were handled by two adjusters. *Id.* In addition, the Court found it important that the negligence and bad faith claims would be proven by two different sets of witnesses. *Id.*

Hegwood thus forecloses Plaintiffs' argument that because Kaddarius's death is the genesis of the claims against both sets of Defendants, it is a distinct litigable event linking them. Like the claims against the two defendants in *Hegwood*, the claims against the two sets of Defendants here arise from separate allegations of wrongdoing occurring at separate times. The claims against the Medical Negligence Defendants are based on Kaddarius's visits to the Sunshine Medical Clinic on three occasions—October 15 and December 17, 2005, and May 8, 2006—and the treatment of his respiratory problems he allegedly did or did not receive. (R. 14 at ¶¶16–18; R. Exc. Tab 3.) In contrast, the claims against the Wrongful Incarceration Defendants are based on alleged misconduct that occurred after Kaddarius's death, during their performance of the post-mortem examination,

conducting of toxicological tests, and storing and handling of blood and urine specimens. (R. 14 at ¶¶20; 15 at ¶¶21–22, 24–26; R. Exc. Tab 3.)

In addition, both here and in *Hegwood* the claims against the two sets of Defendants involve different legal and factual issues. The medical negligence and negligent hiring and supervision claims against the Medical Negligence Defendants concern legal issues of the elements of negligence and present fact questions about the symptoms Kaddarius had, the diagnostic measures used and the type and manner of treatment rendered to him, and the Clinic's supervision of Dr. Vig and nurse practitioner Hoehn. Conversely, the tort claims against the Wrongful Incarceration Defendants concern legal matters of reckless disregard for the rights and safety of Plaintiffs and causation of Ms. Douglas's wrongful incarceration; those claims raise factual issues about the performance and evaluation of the post-mortem examination and toxicological tests, as well as the storing, handling, and transmission of blood and urine specimens.

Moreover, as in *Hegwood*, the witnesses for each set of claims would be quite different. For the claims against the Medical Negligence Defendants, the witnesses would be persons with personal knowledge of Kaddarius's three visits to Sunshine Medical Clinic (*i.e.*, doctors, nurses, and other medical personnel), and perhaps with expert opinions concerning the treatment he received there. The witnesses for the claims against the Wrongful Incarceration Defendants, by contrast, would be persons with personal knowledge of the post-mortem examination, toxicological tests, and specimens, and their relationship, if any, to Ms. Douglas's incarceration—*e.g.*, law enforcement officials, prosecutors, employees of all of the entity Wrongful Death Defendants—and experts on the proper manner of conducting such tests and storing and handling such specimens. Under *Hegwood*, then, Kaddarius's death is not a distinct litigable event linking the two sets of Defendants and severance is necessary.

Second, a finding of liability against either set of Defendants will not be dispositive of liability against the other set. Whether the care and treatment rendered by the Medical Negligence Defendants deviated from the applicable standard of care and caused Kaddarius's death has no bearing on whether the Wrongful Death Defendants' actions in performing the post-mortem examination and toxicological tests and handling and storing the specimens caused Ms. Douglas's wrongful incarceration, and vice versa. The same is true concerning the propriety of punitive damages against each set of Defendants. Given the different types of claims against the two sets of Defendants and the underlying multiple instances of alleged wrongdoing, there will be little, if any, proof common to the claims. Moreover, the wrongs allegedly committed by the two sets of defendants are not similar in type and character, and did not occur close in time or place. For these reasons, too, there is no distinct litigable event linking the two sets of Defendants.

Third, the numerous facts unique to Plaintiffs' disparate claims against the two sets of Defendants would be confusing to a jury. Because of the dissimilar sets of claims and the different evidence and witnesses specific to each set, the danger of jury confusion is great. This factor also counsels in favor of severance. *Hegwood*, 949 So. 2d at 731; *Caldwell*, 905 So. 2d at 1209.

2. The "common question of law or fact" prong is not satisfied

For joinder to be appropriate under Rule 20(a), there must also be a question of law or fact common to all Defendants. As the preceding discussion demonstrates, there is none. The claims against each set of Defendants are unique to them, both in the legal questions presented and the factual disputes that must be resolved. Because this prong is not satisfied, joinder of the two sets of Defendants in the same action is improper and severance is warranted.

B. Once Severed, the Claims Against the Medical Negligence Defendants Must Be Transferred to Madison County. Under Mississippi Code Annotated Section 11-11-3(3), that County Is the Only Proper Venue Because It Is Where Their Alleged Acts or Omissions

Occurred.

Should this Court agree that the circuit court abused its discretion in denying the Medical Negligence Defendants' request for severance, then it was also an abuse of discretion for the circuit court to deny their request for transfer of venue.

Mississippi Code Annotated section 11-11-3(3) directs that venue in medical negligence cases is appropriate "only in the county in which the alleged act or omission occurred."³ *Accord*, e.g., *Pringle v. Kramer*, 40 So. 3d 516, 520 (Miss. 2010) (under section 11-11-3(3), medical negligence actions are required "to be filed in the county where the alleged negligence occurred"). Because Plaintiffs have sued the Medical Negligence Defendants for medical negligence, section 11-11-3(3) dictates that venue is appropriate only where their alleged acts or omissions occurred. Plaintiffs' Complaint plainly asserts that *all* of the alleged acts or omissions by the Medical Negligence Defendants occurred at the Sunshine Medical Clinic in Canton, Mississippi. (R. 12 at ¶7; 14 at ¶¶16–18; R. Exc. Tab 3.) This Court should take judicial notice that the city of Canton is located in Madison County. *Jackson v. State*, 556 So. 2d 335, 337 (Miss. 1990) ("We may take judicial notice that a certain town or city is in a certain county."). Therefore, under section 11-11-3(3), Madison County is the only appropriate venue for the Medical Negligence Defendants. It necessarily follows, then, that the circuit court abused its discretion in refusing to transfer the claims

³ The full text of that subsection reads:

Notwithstanding subsection (1) of this section, any action against a licensed physician, osteopath, dentist, nurse, nurse-practitioner, physician assistant, psychologist, pharmacist, podiatrist, optometrist, chiropractor, institution for the aged or infirm, hospital or licensed pharmacy, including any legal entity which may be liable for their acts or omissions, for malpractice, negligence, error, omission, mistake, breach of standard of care or the unauthorized rendering of professional services shall be brought only in the county in which the alleged act or omission occurred.

against those Defendants to Madison County under Mississippi Rule of Civil Procedure 82(d)⁴.

C. Alternatively, If Severance Was Not Warranted, Venue for All Defendants Must Be Transferred to Rankin County. Under Mississippi Code Annotated Section 11-46-13(2), that County Is the Only Proper Venue Because It Is Where the Alleged Misconduct of the State and State-employee Defendants Occurred.

Alternatively, should this Court conclude that the circuit court did not abuse its discretion in denying the request for severance, it nevertheless abused its discretion in refusing to transfer the action to Rankin County. As shown below, that county is the only proper venue.

Plaintiffs admit in their Complaint that Defendants Mississippi Crime Laboratory and Mississippi State Medical Examiner's Office are "creatures" of the State of Mississippi and recognize that such Defendants are immune from tort liability except as provided in the Tort Claims Act, Mississippi Code Annotated sections 11-46-1, *et seq.* (R. 11-12 at ¶¶3-4; *see* 13 at ¶¶12, 15; R. Exc. Tab 3.) The Act contains a provision—Mississippi Code Annotated section 11-46-13(2)—that sets venue in cases where the State, State employees, or political subdivisions of the State are sued.⁵ *U.S. Fid. & Guar. Co. v. Moss*, 873 So. 2d 76, 77 (Miss. 2004). The first sentence

⁴ Mississippi Rule of Civil Procedure 82(d) provides in relevant part: "When an action is filed laying venue in the wrong county, the action shall not be dismissed, but the court, on timely motion, shall transfer the action to the court in which it might properly have been filed and the case shall proceed as though originally filed therein."

⁵ The full text of subsection 2 of section 11-46-13 reads:

The venue for any suit filed under the provisions of this chapter against the state or its employees shall be in the county in which the act, omission or event on which the liability phase of the action is based, occurred or took place. The venue for all other suits filed under the provisions of this chapter shall be in the county or judicial district thereof in which the principal offices of the governing body of the political subdivision are located. The venue specified in this subsection shall control in all actions filed against governmental entities, notwithstanding that other defendants which are not governmental entities may be joined in the suit, and notwithstanding the provisions of any other venue statute that otherwise would apply.

of subsection 2 of section 11-46-13 dictates that “[t]he venue for any suit filed under the provisions of this chapter against the state or its employees shall be in the county in which the act, omission or event on which the liability phase of the action is based, occurred or took place.” The Act defines “State” as “the State of Mississippi and any *office*, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority *or other instrumentality thereof*, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.” Miss. Code Ann. § 11-46-1(j) (emphasis added). The Mississippi Crime Laboratory and Mississippi State Medical Examiner’s Office are Offices of the State Mississippi located in the Department of Public Safety. Miss. Code Ann. § 45-1-2(2)(b), (d). Therefore, they fit within the definition of “State” from section 11-46-1(j). (Alternatively, at the very least, both of those Defendants qualify as an “other instrumentality” of the State under section 11-46-1(j).)

In addition, section 11-46-1(f) defines “employee” as “any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation.” Dr. Steven Hayne⁶, who was the Designated State Pathologist when he performed the post-mortem examination on Kaddarius, fits within that definition.⁷ (R. 222 at ¶1;

⁶ Plaintiffs have sued Dr. Hayne in both his official and personal capacities.

⁷ The second sentence of subsection 2 of section 11-46-13 provides that “[t]he venue for all other suits filed under the provisions of this chapter shall be in the county or judicial district thereof in which the principal offices of the governing body of the political subdivision are located.” That sentence plainly instructs that venue for “all other suits” under the Tort Claims Act—*i.e.*, suits other than those against the State or its employees, which are addressed by the first sentence—is in the county where the principal offices of the political subdivision are located. Thus the second sentence applies to political subdivisions and their employees. Section 11-46-1(i) defines a “political subdivision” as “any body politic or body corporate *other*

R. Exc. Tab 4.)

Therefore, under the first sentence of subsection 2 of section 11-46-13, venue is appropriate in the county where the events ostensibly creating liability as to the those three State/State-employee Defendants occurred. That county is Rankin County. Dr. Hayne's affidavit indicates that all of his activities concerning this case occurred either at the Rankin County Morgue in Pearl (post-mortem examination and specimen collection, submission of specimens to MedScreens), or at his office in Brandon (analysis of Expertox reports, dictation and preparation of final autopsy reports). (R. 222-23 at ¶¶2-3, 6; R. Exc. Tab 4.) This Court should take judicial notice that those cities are located in Rankin County. *Jackson*, 556 So. 2d at 337. In addition, Dr. Hayne states in his affidavit that all aspects of his involvement and the involvement of all other employees of the Mississippi Crime Laboratory and the Mississippi Medical Examiner's Office with this matter occurred in Rankin County. (R. 223 at ¶8; R. Exc. Tab 4.) He also avows that no aspect of the relevant examination, tests, or reports took place in Hinds County.⁸ (R. 223 at ¶¶5, 7; R. Exc. Tab 4.) Therefore, venue is proper in Rankin County as to the three State/State-employee Defendants because all of the events that could give rise to their liability occurred there.

Moreover, venue is appropriate *only* in Rankin County. The third sentence of subsection 2 of section 11-46-13 provides that the venue set by that subsection "shall control in all actions filed

than the state responsible for governmental activities only in geographic areas smaller than that of the state, including, but not limited to, any county, municipality, school district, community hospital . . . , airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name." (Emphasis added). Because none of the Defendants are political subdivisions (or an employee thereof) under that definition, the second sentence of subsection 2 of section 11-46-13 is not implicated here.

⁸ Although Plaintiffs plead that "the incident in question occurred in whole or in part in Hinds County," the remainder of the Complaint, as well as the rest of the record, is devoid of any particular allegations in support of that generic claim. (R. 13 at ¶14; R. Exc. Tab 3.)

against governmental entities, notwithstanding that other defendants which are not governmental entities may be joined in the suit, and notwithstanding the provisions of any other venue statute that otherwise would apply.”⁹ It is plain, then, that Rankin County is the only appropriate venue despite the facts that non-governmental Defendants are joined in this action and that venue as to them might be appropriate elsewhere. (Again, this is the Medical Negligence Defendants’ alternative position and assumes only for the sake of argument that joinder of all Defendants in one action is appropriate). Therefore, the circuit court abused its discretion in refusing to transfer the action to Rankin County.

CONCLUSION

For the foregoing reasons, the circuit court’s denial of the Medical Negligence Defendants’ 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. 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.

This 1st day of March 2011.

Respectfully submitted,


John B. Howell, III (MSB [REDACTED])
WATKINS & EAGER PLLC

⁹ “Governmental entities” are simply “the state and political subdivision” as defined in the Torts Claim Act. Miss. Code Ann. § 11-46-1(g).

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CERTIFICATE OF SERVICE

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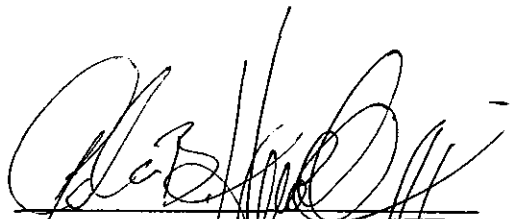
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This 1st day of March 2011.



John B. Howell, IV (MSB # [REDACTED])
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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

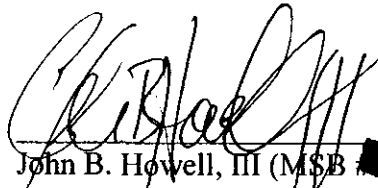
Interlocutory Appeal from the Circuit Court of Hinds County

CERTIFICATE OF SERVICE

I certify that today I sent a true and correct copy of the *Brief of Appellants Sunshine Medical
Clinic and Dr. Vibha Vig* by United States mail, postage prepaid, to the following:

The Honorable Winston Kidd
Hinds County Circuit Court Judge
Post Office Box 327
Jackson, Mississippi 39205

This 3rd day of March 2011.

A handwritten signature in black ink, appearing to read "John B. Howell, III", written over a horizontal line.

John B. Howell, III (MSB # [REDACTED])

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