

IN THE SUPREME COURT OF MISSISSIPPI

2010-IA-00776-SCT

72

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 Kaddarious Douglas,
Deceased, and Kevin Hamlin, as the natural
father and Next Friend of Kaddarious 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

ORAL ARGUMENT REQUESTED

Brief of Appellants

Mississippi Crime Laboratory, Mississippi State Medical Examiners, and Dr. Steven Hayne

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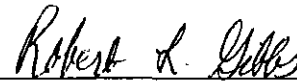
CERTIFICATE OF INTERESTED PERSONS

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 and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Mississippi Crime Laboratory ~ defendant-appellant
2. Mississippi State Medical Examiners ~ defendant-appellant
3. Dr. Steven Hayne ~ defendant-appellant
4. Sunshine Medical Clinic ~ defendant-appellant
5. Dr. Vibha Vig ~ defendant-appellant
6. Lisa Hoehn ~ defendant-appellant
7. Expertox, Inc. ~ defendant-appellant
8. MedScreens, Inc. ~ defendant-appellant
9. Hattie Douglas ~ plaintiff-appellee
10. Kevin Hamlin ~ plaintiff-appellee

11. Minors Kelvin L. Douglas, Kendall Douglas, Lakendrick R. Douglas, Ty'sia A. Douglas, and Jerome E. Douglas ~ plaintiffs-appellees
12. Brunini, Grantham, Grower & Hewes, PLLC ~ counsel for Mississippi Crime Laboratory, Mississippi State Medical Examiners, and Dr. Steven Hayne
13. Mitchell, McNutt & Sams, P.A. ~ counsel for Dr. Steven Hayne
14. Watkins & Eager, PLLC ~ counsel for Sunshine Medical Clinic and Dr. Vibha Vig
15. Scott, Sullivan, Streetman & Fox, P.C. ~ counsel for Lisa Hoehn
16. Robert Boyd and Associates, PLLC ~ counsel for Expertox, Inc.
17. Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. ~ counsel for MedScreens, Inc.
18. Sweet & Associates, PLLC ~ counsel for plaintiffs-appellees
19. Law Office of Latrice Westbrook ~ counsel for plaintiffs-appellees

RESPECTFULLY SUBMITTED,



Robert L. Gibbs (MSB [REDACTED])
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STATEMENT OF ISSUE

Whether the Hinds County Circuit Court Abused Its Discretion in Denying the Wrongful Incarceration Defendants' Motion to Sever and Transfer Venue

STATEMENT OF THE CASE

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

This is an interlocutory appeal from the First Judicial District of Hinds County, Mississippi regarding the denial of a motion to sever and transfer venue. Plaintiffs, Hattie Douglas and Kevin Hamlin, brought two separate and distinct lawsuits in one single action. In their complaint, the Plaintiffs first allege a medical negligence and negligent hiring cause of action against Sunshine Medical Clinic, Dr. Vibha Vig, and nurse practitioner Lisa Hoehn (collectively "Medical Negligence Defendants") concerning the treatment of their minor son, Kaddarius Douglas. The Plaintiffs allege that the minor's death was caused by the acts and/or omissions of the Medical Negligence Defendants. That same complaint also alleged claims against the Mississippi Crime Laboratory, the Mississippi State Medical Examiner's Office, Dr. Steven Hayne, Expertox Analytical Laboratory, Inc. ("Expertox"), and MedScreens, Inc. (collectively "Wrongful Incarceration Defendants") concerning toxicology testing and storage and handling of blood and urine samples surrounding the minor's post-mortem examination. The Plaintiffs allege that the acts and/or omissions of the Wrongful Incarceration Defendants led to a charge of murder against Hattie Douglas resulting in wrongful incarceration.

Thereafter, all Defendants sought severance of the claims and simultaneously moved to transfer the claims against the Wrongful Incarceration Defendants to Rankin County and to transfer the claims against the Medical Negligence Defendants to Madison County. (R. 196, 224, 229, 232, 238) The Circuit Court denied the motions without providing any support for its

findings. (R. 347; R. Exc. Tab 2) Consequently, a Joint Petition for Interlocutory Appeal by Permission was filed by all Defendants, which was granted by this Court. (R. 408-09)

II. Statement of Facts

The complaint alleges that Kaddarius Douglas was taken to Sunshine Medical Clinic, which is located in Canton, Mississippi, on three separate occasions with severe respiratory problems. (R. 12 at ¶7; 14 at ¶¶ 16-18; R. Exc. Tab 3) On October 15 and December 17, 2005, Nurse Practitioner Lisa Hoehn treated Kaddarius at the clinic and on May 8, 2006, Dr. Vibha Vig treated Kaddarius at the clinic. (R. 14 at ¶¶ 16-18; R. Exc. Tab 3) Thereafter, Kaddarius Douglas died on May 11, 2006. (R. 14 at ¶ 19; 16 at ¶ 32; R. Exc. Tab 3) The Plaintiffs claim that the acts and/or omissions of the Medical Negligence Defendants caused the infant's death and they assert several claims against the Medical Negligence Defendants including medical negligence and negligent hiring, supervision, and control. (R. 18-24; R. Exc. Tab 3)

The same complaint also alleges that Dr. Steven Hayne ("Dr. Hayne") collected blood and urine samples from Kaddarius Douglas's body while performing an autopsy. (R. 14 at ¶ 20; R. Exc. Tab 3) Dr. Hayne provided a sworn affidavit attesting to the fact that he was the Designated State Pathologist during the time period of Kaddarius's autopsy and that he performed the autopsy at the Rankin County Morgue in Pearl, Mississippi. (R. 222 at ¶¶ 1-3; R. Exc. Tab 4) The samples were forwarded to MedScreens, Inc., which is located in Flowood, Mississippi, under chain of custody. (R. 12 at ¶ 6; 15 at ¶ 21; 222 at ¶ 3; R. Exc. Tabs 3 & 4) On or around May 16, 2006, MedScreens, Inc. then delivered the samples under chain of custody to Expertox in Deer Park, Texas. (R. 12 at ¶ 5; 15 at ¶ 22; 228 at ¶ 4; R. Exc. Tabs 3 & 5)¹

¹ On or about May 16, 2006, a death certificate was issued. The certificate deemed the infant's death as accidental and stated the cause as "rollover death/compression of chest."

Expertox's initial tests on the blood and urine samples indicated a blood alcohol content reading of 0.02g%. (R. 15 at ¶ 24; R. Exc. Tab 3) Subsequent tests by Expertox showed a blood alcohol content reading of 0.04g% and a urine reading of 0.4g%. (R. 15 at ¶ 25; R. Exc. Tab 3) Expertox employee Earnest Lykissa, Ph.D. issued a sworn statement that Expertox forwarded the test reports to MedScreens, Inc. (R. 228 at ¶¶ 1-2 and 5; R. Exc. Tab 5) MedScreens, Inc. then forwarded the reports to Dr. Hayne who reviewed the reports and prepared the final autopsy report in his office located in Brandon, Mississippi. (R. 223 at ¶ 6; R. Exc. Tab 4) The findings of Expertox were incorporated into the final autopsy report. (R. 223 at ¶ 6; R. Exc. Tab 4) No aspect of the post mortem examination, toxicological analysis, or preparation of the autopsy report regarding Kaddarius Douglas occurred in Hinds County, Mississippi. (R. 223 at ¶ 7; R. Exc. Tab 4) In fact, any and all involvement by Dr. Hayne, the Mississippi Crime Laboratory ("MCL"), and the Mississippi State Medical Examiner's Office ("MSME")² (collectively referred to as "State Defendants") occurred in Rankin County, Mississippi. (R. 223 at ¶ 8; R. Exc. Tab 4)

The Plaintiffs assert that the toxicology reports lead to the arrest of Hattie Douglas on the charge of murdering Kaddarius Douglas. (R. 16 at ¶¶ 27-28; R. Exc. Tab 3) Following her incarceration, Hattie Douglas's five remaining children were removed from her custody by the Mississippi Department of Human Services. (R. 16 at ¶ 30; R. Exc. Tab 3) On or about July 10, 2007, Dr. Leroy Riddick ruled that Kaddarius Douglas's death was due to interstitial pneumonia and myocarditis. (R. 16 at ¶ 29; R. Exc. Tab 3) Thereafter and unfortunately after Hattie Douglas had been incarcerated for over a year and a half, she was cleared of all wrongdoing and the murder charge against her was nolle prossed. (R. 16 at ¶ 31; R. Exc. Tab 3) The Plaintiffs claim that the acts and/or omissions of the Wrongful Incarceration Defendants caused Hattie

² According to the affidavit of Dr. Hayne, no employee from the MCL or the MSME performed any toxicological analysis on the blood or urine specimens obtained from Kaddarius Douglas. (R. 223 at ¶ 4; R. Exc. Tab 4)

Douglas to be wrongfully incarcerated leading to the unjust removal of custody of her remaining children as well as unimaginable pain, embarrassment, public ridicule, and other damages to Hattie Douglas and Kevin Hamlin. (R. 14-16 at ¶¶ 20-22, 25-26, 28; 17-18 at ¶¶ 36-39; R. Exc. Tab 3) The Plaintiffs seek miscellaneous damages from the Wrongful Incarceration Defendants for various tort claims. (R. 18, 21-24; R. Exc. Tab 3)

The Plaintiffs assert that venue as to all Defendants is proper in the First Judicial District of Hinds County, Mississippi pursuant to Miss. Code Ann. § 11-11-3 and any and all other statutes or constitutional provisions. (R. 13 at ¶ 14; R. Exc. Tab 3) Their position is premised on the fact that the principal places of business for the MCL and the MSME were in Hinds County at the time of the incident 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

Pursuant to Mississippi Rule of Civil Procedure 20(a) and Miss. Code Ann. § 11-46-13(2), the Circuit Court abused its discretion in denying the Wrongful Incarceration Defendants’ motion to sever and transfer venue. To properly join defendants, Rule 20(a) requires (1) the different causes of actions asserted against the defendants must respect or arise out of the same transaction, occurrence, or series of transactions or occurrences; and (2) a question of law or fact common to all defendants will arise in the action.

The transaction or occurrence referenced in the first prong requires a distinct litigable event linking the defendants. The event concerning the Medical Negligence Defendants is the medical treatment rendered to Kaddarius Douglas by personnel at the Sunshine Medical Clinic while he was living. These Defendants are faced with legal issues of medical negligence surrounding their alleged failure to properly diagnose, treat, or prevent pneumonia and/or myocarditis thereby leading to the death of Kaddarius Douglas.

Conversely, the event concerning the Wrongful Incarceration Defendants is the performance of an autopsy, collection of bodily fluids, and the storage and analysis of those fluids. These Defendants are faced with legal issues of ordinary negligence concerning their acts and/or omissions, which allegedly lead to the wrongful incarceration of Plaintiff Hattie Douglas. Consequently, any findings of liability with respect to the Medical Negligence Defendants have no bearing on any liability findings against the Wrongful Incarceration Defendants, and vice versa. Further, the different injuries, different damages, different defensive posture will make the management of these cases impractical. For these reasons, the Plaintiffs cannot satisfy the first prong. For these same reasons, the second prong cannot be satisfied and severance is warranted.

Transfer of the case to Rankin County is also warranted. Contrary to the Plaintiffs' belief, Miss. Code Ann. § 11-46-13(2) governs venue of cases where the State or its employees are sued under the Tort Claims Act. This statute requires suits to be brought in the county where the cause of action occurred or took place to the exclusion of any other venue statute. Accordingly, the general venue statute in Miss. Code Ann. § 11-11-3 is inapplicable and Rankin County is the proper venue.

ARGUMENT

I. Standard of Review

One of the goals of an interlocutory appeal is to “[r]esolve an issue of general importance in the administration of justice.” M.R.A.P. 5(a). The severance and transfer issue before the court is important and is rightfully the subject of an interlocutory appeal. A trial court’s decision regarding a motion to sever and transfer is reviewed for abuse of discretion. *Hegwood v. Williamson*, 949 So.2d 728, 730 (Miss. 2007)(citing *Wyeth-Ayerst Labs v. Caldwell*, 905 So.2d

1205, 1207 (Miss. 2005)). See also *Wyeth Labs v. James*, 918 So.2d 1243, 1245 (Miss. 2005)(citing *Janssen Pharmaceutica, Inc. v. Armond*, 886 So.2d 1092, 1095 (Miss. 2004)).

II. The Hinds County Circuit Court Erred in its Refusal to Sever the Wrongful Incarceration Claims from the Medical Malpractice Claims

The Plaintiffs improperly joined the Medical Negligence Defendants and the Wrongful Incarceration Defendants in this suit. Permissive joinder of parties is governed by Mississippi Rule of Civil Procedure 20(a). Rule 20(a) provides that “[a]ll persons may be joined in one action as defendants 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, and if any question of law or fact common to all defendants will arise in the action.” M.R.C.P. 20(a). Simply stated, there are two requirements for joinder of parties: (1) a right to relief must be asserted by or against each . . . defendant relating to or arising out of the same transaction or occurrence; and, (2) some question of law or fact common to all the parties will arise in the action.” *Crossfield Products Corp. v. Irby*, 910 So.2d 498, 500 (Miss. 2005). See also comment to Rule 20(a)(“Rule 20(a) imposes two specific requisites to the joinder of parties: (1) a right to relief must be asserted . . . against each . . . defendant relating to or arising out of the same transaction, occurrence, or the same series of transactions or occurrences; and (2) some question of law or fact common to all the parties will arise in the action.”). “Both prongs of Rule 20(a) must be met in order to deny a motion for severance.” *Hegwood v. Williamson*, 949 So.2d 728, 730 (citing *Wyeth-Ayerst Labs v. Caldwell*, 905 So.2d 1205, 1207 (Miss. 2005)). See also comment to Rule 20 (“Both of these requirements must be satisfied in order to sustain party joinder under Rule 20(a).”). Because the Plaintiffs failed to satisfy either prong, their joinder of the defendants violated Rule 20(a) and the trial court’s ruling constituted an abuse of discretion. Severance is required.

A. The First Prong of Rule 20(a)'s Two-Part Test is Not Satisfied

For an alleged “transaction or occurrence” to satisfy the first prong of Rule 20(a), there must be a “distinct litigable event linking the parties.” *Wyeth-Ayerst Labs v. Caldwell*, 905 So.2d 1205, 1207-08. *See also comment to Rule 20* (“The phrase “transaction or occurrence” requires that there be a distinct litigable event linking the parties.”).

There is no distinct litigable event linking the Medical Negligence Defendants with the Wrongful Incarceration Defendants. However, the Plaintiffs ask the Court to extend Rule 20 to allow them to sue unconnected Defendants regarding unconnected claims. Specifically, the Plaintiffs assert that the Medical Malpractice Defendants are liable for the wrongful death of Kaddarius Douglas by failing to properly diagnose, treat, or prevent pneumonia and/or myocarditis. According to the complaint, the various acts of medical negligence are alleged to have occurred on October 15, 2005, December 17, 2005, and May 8, 2006, when the decedent was treated as a patient by the Medical Malpractice Defendants. (R. 14, ¶¶ 16-19; 16-17 at ¶¶ 32-35; R. Exc. Tab 3) The medical negligence claim involves the type and manner of treatment rendered to Kaddarius during his three visits to the Sunshine Medical Clinic.

Conversely, the claims against the Wrongful Incarceration Defendants concern the performance of an autopsy, collection of bodily fluids, and the storage and analysis of those fluids. The Plaintiffs seek various damages relative to the incarceration of Hattie Douglas on a charge of murder in connection with the Wrongful Incarceration Defendants’ alleged acts and/or omissions. (R. 14-16 at ¶¶ 20-22, 24-25, 28; 17-18 at ¶¶ 36-39; R. Exc. Tab 3). This litigation involves two separate causes of action which occurred on separate dates and against two sets of defendants. There is no distinct litigable event linking the parties.

In the trial court, the Plaintiffs argued that Kaddarius Douglas’s death is the distinct litigable event linking the Medical Negligence Defendants to the Wrongful Incarceration

Defendants permitting joinder pursuant to *Miss. R. Civ. P.* 20. (R. 257). The Plaintiffs asserted that but for the death of Kaddarius Douglas, there would be no cause of action against any of the Defendants. In *Hegwood v. Williamson*, this Court rejected similar reasoning. 949 So. 2d 728, 730 (Miss. 2007). *Hegwood* involved an automobile accident between two parties. *Id.* at 729. Both had the same liability insurer—State Farm. *Id.* at 730. The first driver filed a claim for property damage and medical payments under her policy with the insurer and a third-party claim for bodily injury and medical expenses under the other driver’s liability policy. *Id.* This driver also filed a breach of contract and bad faith claims against the insurer. *Id.* The trial court denied without explanation the second driver’s motion to sever. *Id.* This Court found that the trial court abused its discretion and held that severance was proper as the claims did not involve a distinct, litigable event. *Id.* In reaching its conclusion, the *Hegwood* Court explained:

We find that the circuit court should have severed the claims. The third party tort claim against Williamson and the first party breach of contract and bad faith claims involve distinct litigable events. The claims against Williamson and State Farm arise out of separate allegations of wrongdoing occurring at separate times. While it is true that the genesis of both claims arose out of the accident, the two claims involve different factual issues and different legal issues. The car accident raises fact issues of how the accident occurred and legal issues of simple negligence (duty, breach of duty, proximate causation, and damages). The breach of contract and bad faith claims raise fact issues of what occurred between the two insurance adjusters and how they made their decisions and legal issues of interpretation of insurance policies and bad faith under which an award of punitive damages may or may not be appropriate. The negligence claim would be proven by different witnesses (the two drivers, eyewitnesses to the accident, law enforcement, and accident re-enactment experts) from that of the bad faith claim (insurance agents and management).

Hegwood v. Williamson, 949 So. 2d at 731.

The facts of the case *sub judice* are analogous to those in *Hegwood*. In this case, Plaintiffs want to maintain a medical negligence action against a physician, a nurse practitioner, and a medical clinic alongside a wrongful incarceration action against two state agencies, a former state employee, a laboratory, and a laboratory courier service. Like in *Hegwood*, the

claims arise out of separate allegations of wrongdoing occurring at separate times. The allegations against the Medical Negligence Defendants concern the treatment of Kaddarius Douglas for severe respiratory problems while he was alive. (R. 14 at ¶¶ 16-18; R. Exc. Tab 3) The allegations against the Wrongful Incarceration Defendants concern conduction of an autopsy after Kaddarius died. (R. 14 at ¶ 20; 15 at ¶¶ 21-22,24-26; R. Exc. Tab 3) Although the genesis of the claims arise out of the same event, the death of Kadarrius Douglas, the medical negligence suit raises fact issues of whether the Medical Negligence Defendants breached a standard of care causing death; conversely, the wrongful incarceration claims raise fact issues regarding the negligent drawing, storage, and testing of blood samples post-mortem.

The *Hegwood* Court instructed courts to consider the following in determining if a distinct litigable event linking the parties exists:

[w]hether 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 v. Williamson, 949 So. 2d 728, 730 (Miss. 2007)(quoting *Ill. Cent. R.R. v. Gregory*, 912 So.2d 829, 834-35 (Miss. 2005)). Like in *Hegwood*, findings of liability with respect to the Medical Negligence Defendants have no bearing on any liability findings against the Wrongful Incarceration Defendants, and vice versa. Moreover, the claims and proof required for damages against the separate classes of defendants would differ and would require separate evidence and testimony from different witnesses. For instance, proof in support of the medical negligence claims would require testimony from Dr. Vig, Dr. Hoehn, other treating medical personnel, and medical expert witnesses regarding the standard of care. Alternatively, proof against the

Wrongful Incarceration Defendants would include proof from Dr. Hayne, other Mississippi governmental agencies, employees from Expertox and MedScreen, as well as experts regarding the proper standards and protocol for conducting autopsies and preserving and transporting blood and urine samples. Additionally, the Wrongful Incarceration proof will also require testimony and evidence with respect to the interaction between the Mississippi Medical Examiner's Office and various law enforcement agencies in Madison County, including the Madison County District Attorney.

Another important consideration in deciding the appropriateness of joinder is whether the proof presented would confuse the jury due to the multiplicity of the facts. *Hegwood*, 949 So. 2d at 731(citing *Caldwell*, 905 So.2d at 1209). The proof necessary to prevail on each claim and against the Medical Negligence Defendants is voluminous and unlike the requisite proof for the Wrongful Incarceration Defendants. These sets of proof would create a multiplicity of facts certainly leading to the confusion of the jury.

B. The Second Prong of Rule 20(a)'s Two-Part Test is Not Satisfied

The second prong of Rule 20 requires a common question of law or fact. *See Irby*, 910 So.2d at 500. The analysis provided for the first prong evidences that there is not a common question of law or fact in this matter. There are two distinct causes of actions with separate sets of witnesses, and different factual and legal issues which are not dependent on the other. Like in *Hegwood*, the Hinds County Circuit Court abused its discretion and this case must be severed into two separate actions---a medical negligence action and a wrongful incarceration action.

III. The Hinds County Circuit Court Abused Its Discretion in its Refusal to Transfer the Wrongful Incarceration Case Against State Defendants to Rankin County

The Plaintiffs assert that venue as to all Defendants is proper in the First Judicial District of Hinds County, Mississippi pursuant to Miss. Code Ann. § 11-11-3³ and any and all other statutes or constitutional provisions. (R. 13 at ¶ 14; R. Exc. Tab 3) Their position is premised on the fact that the principal places of business for the MCL and the MSME were in Hinds County at the time of the incident and because “the incident in question occurred in whole or in part in Hinds County, Mississippi.” (R. 13 at ¶ 14; R. Exc. Tab 3) However, the Plaintiffs have not specified any particular act that took place in Hinds County.

Notwithstanding the above, the Plaintiffs recognize that the State Defendants are protected by the Tort Claims Act, codified at Miss. Code Ann. § 11-46-1, *et seq.* This Act governs all claims against these State Defendants. (R. 11-12 at ¶¶ 3-4; 13 at ¶¶ 12, 15; R. Exc. Tab 3) Miss. Code Ann. § 11-46-13(2) controls the determination of proper venue in this suit because State Defendants are involved. *See U.S. Fid. & Guar. Co. v. Moss*, 873 So.2d 76, 77 (Miss. 2004)(Miss. Code Ann. § 11-46-13(2) controls the issue of proper venue in cases where a plaintiff files suit against the State or one of its subdivisions.). This code section provides

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

³ Pursuant to Miss. Code Ann. § 11-11-3(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.

may be joined in the suit, and notwithstanding the provisions of any other venue statute that otherwise would apply.

Miss. Code Ann. § 11-46-13(2)(emphasis added).

There is no dispute that the MCL and the MSME constitute “the State” or agencies, instrumentalities, or offices thereof. In fact, the Plaintiffs concede that they both are a “creature of the State of Mississippi” and direct that service of process upon these entities may be accomplished by serving the Attorney General, the chief legal advisor and officer for the State of Mississippi. (R. 11-12 at ¶¶ 3-4; R. Exc. Tab 3) Further, the Tort Claims Act itself explains what the term “state” means as used in its provisions. Section 11-46-1 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). MCL and the MSME are the “State” as contemplated by the Act.

Dr. Hayne was an employee of the state when he performed the autopsy. The Act considers an “employee” to be “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 whether with or without compensation.” Miss. Code Ann. § 11-46-1(j). Dr. Hayne was the Designated State Pathologist, a state employee against which suits are governed by the Act. (R. 222 at ¶¶ 1; R. Exc. Tab 4)

Because the MCL and the MSME are “the State” and because Dr. Hayne was an employee of the state, the first sentence clearly mandates that venue is in the county where the acts, omissions, or events prompting liability occurred. Dr. Hayne provided a sworn affidavit attesting to the fact that he performed the autopsy on Kaddarius Douglas’s corpse at the Rankin

County Morgue in Pearl, Mississippi. (R. 222 at ¶¶ 1-3; R. Exc. Tab 4) Blood and fluid samples were forwarded to MedScreens, Inc., which is located in Flowood, Mississippi, under chain of custody. (R. 12 at ¶ 6; 15 at ¶ 21; 222 at ¶ 3; R. Exc. Tabs 3 & 4) On or around May 16, 2006, MedScreens, Inc. then delivered the samples under chain of custody to Expertox in Deer Park, Texas. (R. 12 at ¶ 5; 15 at ¶ 22; 228 at ¶ 4; R. Exc. Tabs 3 & 5)⁴

Expertox affirms that their resulting test reports were forwarded to MedScreens, Inc. (R. 228 at ¶¶ 1-2 and 5; R. Exc. Tab 5) MedScreens, Inc. then forwarded the reports to Dr. Hayne who reviewed the reports and prepared the final autopsy report in his office located in Brandon, Mississippi. (R. 223 at ¶ 6; R. Exc. Tab 4) According to Dr. Hayne's sworn statements, no aspect of the post mortem examination, toxicological analysis, or preparation of the autopsy report regarding Kaddarius Douglas occurred in Hinds County, Mississippi. (R. 223 at ¶ 7; R. Exc. Tab 4) Indeed, all of Dr. Hayne's actions concerning this case occurred in Rankin County and any and all involvement by the MCL and the MSME⁵ occurred in Rankin County, Mississippi. (R. 223 at ¶ 8; R. Exc. Tab 4). No proof has been produced to show otherwise. Rankin County is the proper venue for the Wrongful Incarceration Defendants as a matter of law.

Notwithstanding the fact that other entities that are not the "State" and/or its employees are co-defendants in this matter, Rankin County is the proper venue. The last sentence of Miss. Code Ann. § 11-46-13(2) clearly gives this instruction. It reads as follows:

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.

⁴ On or about May 16, 2006, a death certificate was issued. The certificate deemed the infant's death as accidental and stated the cause as "rollover death/compression of chest."

⁵ According to the affidavit of Dr. Hayne, no employee from the MCL or the MSME performed any toxicological analysis on the blood or urine specimens obtained from Kaddarius Douglas. (R. 223 at ¶ 4; R. Exc. Tab 4)

This sentence also forecloses the Plaintiffs' attempt to use 11-11-3 rather than 11-46-13(2) as a conduit for conferring venue in Hinds County. Section 11-46-13(2) controls and Rankin County is the only proper venue if no severance is allowed.

Even if this Court determines that severance is not warranted, Rankin County remains the proper venue. This position is supported by this Court's decision in *Estate of Jones v. Quinn*, 716 So.2d 624. The parents of Andre Jones filed a wrongful death action against the City of Brandon, its police chief and sergeant, Simpson County and its sheriff, and several Mississippi state defendants and their employees for Andre's death while he was incarcerated in Simpson County Jail. *Id.* The Plaintiffs asserted that venue was proper in Hinds County because of the inclusion of state defendants whose principal place of business was in Hinds County. *Id.* at 627. However, this Court found that venue was properly determined pursuant to Miss. Code Ann. § 11-46-13(2) and not the general venue statute because state defendants were named. *Id.* at 628. The Court ultimately held that venue was proper in Simpson County, the place where the alleged wrongdoing occurred and where the inmate died. *Id.*

Likewise, the venue for the case *sub judice* is the County where the alleged wrongdoings occurred. The autopsy performed on Kaddarius Douglas occurred in Pearl, Mississippi where several blood and urine specimens were obtained. (R. 222 at ¶¶ 1-3; R. Exc. Tab 4) MedScreen received the samples under chain of custody from Dr. Hayne's office in Brandon, Mississippi. (R. 12 at ¶ 6; 15 at ¶ 21; 222 at ¶ 3; R. Exc. Tabs 3 & 4) The samples were then transferred to Expertox in Deer Park, Texas where they were analyzed. (R. 12 at ¶ 5; 15 at ¶ 22; 228 at ¶ 4; R. Exc. Tabs 3 & 5) The toxicology report of examination was sent from Expertox through MedScreen back to Dr. Hayne's office in Brandon where the findings were incorporated into the final autopsy report. (R. 223 at ¶ 6; R. Exc. Tab 4) All of this action, with the exception of Expertox's actions in Texas, occurred in Rankin County. Consequently, this matter must be

transferred to Rankin County. For these reasons, the Plaintiffs cannot in good faith argue that venue in Hinds County is proper. Their reliance upon Miss. Code Ann. § 11-11-3 is totally misplaced and the trial court's ruling was a violation of Mississippi Rule of Civil Procedure 82(d)⁶ and an abuse of discretion.

IV. The Hinds County Circuit Court Abused Its Discretion By Refusing to Transfer the Medical Negligence Case to Madison County

In the event of severance, venue of the Medical Negligence action lies in Madison County. Again, the Plaintiffs rely on Miss. Code Ann. § 11-11-3 to fix venue in Hinds County. Interestingly, however, the Plaintiffs completely ignore the fact that Miss. Code Ann. § 11-11-3 provides special treatment for medical negligence and/or malpractice actions. Specifically, that statute provides, in pertinent part:

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.**

Miss. Code Ann. § 11-11-3(3)(emphasis added). Because the Medical Negligence Defendants are being sued for negligence and other claims surrounding their alleged acts and/or omissions in treating Kaddarius Douglas for severe respiratory problems, subsection (3) of Miss. Code Ann. § 11-11-3 controls rather than subsection (1) as the Plaintiffs urge. Kaddarius Douglas received treatment from Nurse Practitioner Lisa Hoehn and Dr. Vig when he presented to the Sunshine Medical Clinic, which is located in Canton, Madison County, Mississippi, on three separate occasions. (R. 12 at ¶7; 14 at ¶¶ 16-18; R. Exc. Tab 3) No other treatment was given by the

⁶ Rule 82(d) provides "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." M.R.C.P. 82(d).

Medical Negligence Defendants. In addition, Kaddarius died in Madison County. Thus, the alleged acts or omissions occurred in Madison County.

In *Adams v. Baptist Memorial Hospital-Desoto*, 965 So.2d 652,656 (Miss.2007), this Court specifically stated that "the only proper venue for a suit against medical providers is the county in which the alleged act or omission occurred." The *Adams* Court further stated that when medical providers are in a case, Miss. Code Ann. § 11-11-3(3) negates the language of section 11-11-3(1), and renders that section inapplicable in determining proper venue. *Id.* at 658. See also *Pringle v. Kramer*, 40 So.3d 516 (Miss. 2010)("medical [negligence] actions [are] required by the legislature to be filed in the county where the alleged negligence occurred. Miss. Code Ann. § 11-11-3(3) (Rev. 2004)").

Accordingly, pursuant to Miss. Code Ann. § 11-11-3(3), venue is proper **only** in Madison County for the Medical Negligence Defendants in the event of severance. Again, the trial court abused its discretion.

Conclusion

For the aforementioned reasons, the Circuit Court for the First Judicial District of Hinds County, Mississippi abused its discretion when it denied the Mississippi Crime Laboratory, the Mississippi Medical Examiner's Office, and Dr. Steven Hayne's Motion to Sever and Transfer. Even if this Court opines that severance of the Medical Negligence claims from the Wrongful Incarceration claims is not warranted, venue remains proper in Rankin County only pursuant to the controlling venue statute.

RESPECTFULLY SUBMITTED, this the 2nd day of March, 2011.

THE MISSISSIPPI CRIME LABORATORY, DR. STEVEN
HAYNE, IN HIS OFFICIAL AND PERSONAL CAPACITY
AND THE MISSISSIPPI STATE MEDICAL EXAMINER

BY: Robert A. Givens
One of Their Attorneys

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CERTIFICATE OF SERVICE

I, Robert L. Gibbs, do hereby certify that I have served the foregoing, by placing a true and correct copy of the same in the United States Mail, First Class postage prepaid and properly addressed to the following:

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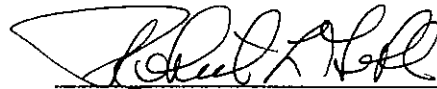
ROBERT L. GIBBS, ESQ.

CERTIFICATE OF SERVICE

I, Robert L. Gibbs, do hereby certify that I have served the foregoing, by placing a true and correct copy of the same in the United States Mail, First Class postage prepaid and properly addressed to the following:

Honorable Winston Kidd
Hinds County Circuit Judge
Post Office Box 327
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SO CERTIFIED, this the 3rd day of March, 2011.

A handwritten signature in black ink, appearing to read 'Robert L. Gibbs', written over a horizontal line.

ROBERT L. GIBBS, ESQ.