IN THE SUPREME COURT OF MISSISSIPPI

NO. 2011-IA-00273-SCT

LAUREL FORD AND KIA and
KIA MOTORS AMERICA, INC. **APPELLANTS/DEFENDANTS**

V.

LARRY BLAKENEY **APPELLEE/PLAINTIFF**

BRIEF OF THE APPELLANTS

On Appeal from the Circuit Court of Smith County, Mississippi
Civil Action No. 2010-305

(ORAL ARGUMENT NOT REQUESTED)

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CERTIFICATE OF INTERESTED PERSONS

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

1. Larry Blakeney, Appellee
2. Eugene C. Tullos, Esquire
3. Rebecca B. Cowan, Esquire
4. Joseph W. Gill, Esquire
5. Currie Johnson Griffin Gaines & Myers, P.A.
6. Jeremy S. Gaddy, Esquire
7. Huie, Fernambucq & Stewart, LLP

SO CERTIFIED, this the 15th day of August, 2011.

Rebecca B. Cowan (MSB#[redacted])
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STATEMENT OF THE ISSUE

Whether the trial court abused its discretion in determining that a substantial alleged act or omission occurred in Smith County, Mississippi, while denying the Motions for Change of Venue filed by Defendants/Appellants in this action seeking a transfer of venue for the Complaint filed by Plaintiff/Appellee from Smith County, Mississippi, to Jones County, Mississippi?

STATEMENT OF THE CASE

On September 22, 2010, Plaintiff/Appellee, Larry Blakeney (hereinafter referred to as "Blakeney"), a resident of Smith County, Mississippi, filed his Complaint in the Circuit Court of Smith County against Defendants/Appellants, Laurel Ford Lincoln-Mercury, Inc. (hereinafter referred to as "Laurel Ford") and Kia Motors America, Inc. (hereinafter referred to as "Kia Motors"). (CP. 001-002A). The Complaint alleges that a 2008 Kia Optima Blakeney purchased from Laurel Ford in Jones County was defective in materials and workmanship; that Laurel Ford and Kia Motors failed to repair the vehicle in Jones County; and that, on one occasion, Laurel Ford and Kia Motors refused to let him remove the vehicle from Laurel Ford's place of business in Jones County unless he signed a "Release." (CP. 002-002A).

On November 5, 2010, Laurel Ford filed its Motion for Change of Venue of the case from Smith County, Mississippi, to Jones County, Mississippi. (CP. 023-024; RE. 10-11). Likewise, on December 15, 2010, Kia Motors filed its Motion for Change of Venue from Smith County to Jones County. (C.P. 031-033; RE. 12-14).

On January 28, 2011, both Motions for Change of Venue were heard by the trial court. (CP. 034-037; RE. 1-9). At the conclusion of the hearing, the trial court denied both Motions for Change of Venue. (T. 3-4; RE. 6-7). Thereafter, on February 8, 2011, the trial court entered an Order holding that venue was proper in Smith County because "a substantial alleged act or omission . . . complained of in [Blakeney's] complaint" occurred there. (CP. 068; RE. 15). That order was filed on February 9, 2011. (CP. 068; RE. 15). Laurel Ford and Kia Motors subsequently filed their Petition for Interlocutory Appeal and for Stay of Trial Court Proceedings, which this Court granted. (CP. 041-049, 069).

STATEMENT OF THE FACTS

On September 22, 2010, Blakeney, a resident of Smith County, Mississippi, filed his Complaint against Laurel Ford and Kia Motors, alleging that a 2008 Kia Optima he purchased from Laurel Ford was defective in materials and workmanship. (CP. 001-002A). Laurel Ford has its principal place of business in Laurel, Jones County, Mississippi. (CP. 012, 023; T. 2). Kia Motors is a foreign corporation registered to do business in the State of Mississippi. (CP. 031; T. 2). Blakeney sued Laurel Ford and Kia Motors for the breach of certain express warranties he received the day he purchased his car in Laurel, Jones County, Mississippi, and for failing to repair his car properly when he took his car to Laurel, Jones County, Mississippi, on several occasions after it experienced mechanical problems. (CP. 002). Blakeney also sued Laurel Ford and Kia Motors for refusing on one occasion to allow him to remove his car from Laurel Ford's place of business in Laurel, Jones County, Mississippi, unless he signed a "Release." (CP. 002-002A).

On November 5, 2010, Laurel Ford filed its answer, which included a Motion for Change of Venue of the case from Smith County, Mississippi, to Jones County, Mississippi. (CP. 012-013). On that same date, Laurel Ford filed a separate Motion for Change of Venue with the trial court pursuant to *Miss. Code Ann.* § 11-11-3 (Supp. 2004). (CP. 023-024; RE. 10-11).[1] On December 15, 2010, Kia Motors filed its answer, which also raised the issue of improper venue. (CP. 026). Likewise, on that same date, Kia Motors filed its Motion for Change of Venue, seeking a transfer of the case from Smith County, Mississippi, to Jones County, Mississippi. (CP. 031-033; RE. 12-14).

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[1] Laurel Ford also filed a Motion to Compel Arbitration based on an Arbitration Agreement signed by Blakeney when he purchased his car. (CP. 020-022).

On January 28, 2011, both Motions for Change of Venue were heard by the trial court. (CP. 034-037; RE. 1-9). During the hearing, counsel for Blakeney argued that venue was proper in Smith County because "[s]hortly after [Blakeney] got the vehicle home, he started having some problems with it in Smith County, Mississippi." (T. 3; RE. 6). The trial court held that venue was proper in Smith County because "a substantial alleged act or omission . . . complained of in [Blakeney's] complaint" occurred there. (CP. 068; T. 3-4; RE. 6-7, 15).

SUMMARY OF THE ARGUMENT

The trial court abused its discretion in determining that Blakeney's experiencing mechanical problems with his car in Smith County was "a substantial alleged act or omission" making venue proper in Smith County. The trial court failed to follow the holdings by this Court in *Medical Assurance Company of Mississippi v. Myers*, 956 So.2d 213 (Miss. 2007), and *American Family Life Assurance of Columbus v. Ellison*, 4 So.3d 1049 (Miss. 2009). Specifically, under these decisions the trial court should have held that the location where a plaintiff experiences only the **effects or results of an act or omission in a particular county is insufficient to establish venue in that county**. *See Medical Assurance Co. v. Myers*, 956 So.2d at 219-220; *American Family Life Assurance of Columbus v. Ellison*, 4 So.3d at 1051.

Venue under Mississippi Code Annotated § 11-11-3 is proper only in Jones County. Jones County is where Laurel Ford has its principal place of business, it is the county in which Blakeney purchased the allegedly defective vehicle at issue, and it is the only county in which a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred. *See* MISS. CODE ANN. 11-11-3(1)(a).

STANDARD OF REVIEW

"The standard of review for a change of venue is abuse of discretion." *Hayes v. Entergy Miss., Inc.*, 871 So. 2d 743, 746 (Miss. 2004). The trial court's denial of a change of venue should be reversed where "it clearly appears that there has been an abuse of discretion or that the discretion has not been justly and properly exercised under the circumstances of the case." *Id.*

ARGUMENT

Mississippi Code Annotated § 11-11-3 (hereinafter "the venue statute") 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.
>
> (ii) Civil actions alleging a defective product may also be commenced in the county where the plaintiff obtained the product.

MISS. CODE ANN. § 11-11-3(1)(a). The trial court unjustly and improperly applied the provisions of § 11-11-3(1)(a) when it refused to transfer venue of Blakeney's Complaint from Smith County to Jones County. As a result, the trial court's decision amounted to an abuse of discretion.

I. The Relevant Inquiry: Whether a Substantial Alleged Act or Omission Occurred in Smith County

Because Blakeney's Complaint alleges a defective product, venue would be proper **(1)** in the county in which Laurel Ford or Kia Motor has its "principal place of business" or **(2)** "in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred" or **(3)** in the county in where Blakeney obtained the allegedly defective product. *See* MISS. CODE ANN. § 11-11-3(1)(a). It is undisputed that neither Laurel

Ford's nor Kia Motor's principal place of business is located in Smith County, Mississippi. It is also undisputed that Blakeney obtained the allegedly defective vehicle at issue in Jones County, not Smith County. Therefore, venue in Smith County is proper only if "a substantial alleged act or omission" or "a substantial event that caused injury" occurred in Smith County. The trial court determined that "a substantial alleged act or omission" occurred in Smith County. However, as demonstrated below, the trial court's determination was an abuse of discretion.

II. No Substantial Alleged Act or Omission Occurred in Smith County

All of the "substantial alleged act[s] or omission[s]" in this case occurred in Jones County, not Smith County. As stated above, Blakeney's Complaint alleges that Laurel Ford and Kia Motors (1) breached express warranties on the day he purchased his car in Laurel, Jones County, Mississippi; (2) did not repair his car when he took his car to Laurel, Jones County, Mississippi on several occasions; and (3) at one point, refused to release his car from Laurel Ford, which is located in Laurel, Jones County, Mississippi, unless he signed a "Release." (CP. 002-002A).

Smith County only has two connections with any of Blakeney's claims in this case, both of which are insufficient to lay venue in that county. First, Blakeney is a resident of Smith County. This fact is irrelevant where venue can be established under § 11-11-3(1)(a), as is clearly the case here. *See* MISS. CODE ANN. § 11-11-3(1)(b). Second, Blakeney's counsel stated during the hearing on the Motions for Change of Venue, that "[s]hortly after [Blakeney] got the vehicle home, he started having some problems with it in Smith County, Mississippi." (T. 3; RE. 6). As discussed below, this statement by Blakeney's counsel does not justify the trial court's determination that a "substantial alleged act or omission" occurred in Smith County.

In *Medical Assurance Co. v. Myers*, 956 So.2d 213, 219-220 (Miss. 2007), the Mississippi Supreme Court reversed a chancery court's finding that venue was proper in Holmes County, Mississippi, wherein a physician filed a complaint against his malpractice insurance carrier for a failure to renew his malpractice policy. The chancery court based its decision on the fact that the physician filled out his application for the policy in Holmes County, received the policy in Holmes County, paid premiums for the policy in Holmes County, communicated with the carrier regarding the policy in Holmes County, and operated one of his medical clinics in Holmes County. *Id.* at 219.

This Court held that there was no evidence that a "substantial event that caused the injury" to the physician occurred in Holmes County or that a "substantial alleged act or omission" occurred in Holmes County. *Id* at 219. The Court noted that the location of the physician's own actions were irrelevant to the inquiry since the physician was suing the insurance carrier for its "acts or omissions, all of which occurred in Madison County." *Id.* The Court also explained that where the physician's cause of action "accrued" is irrelevant under the current venue statute. The Court concluded by holding that the physician's claim that he was "damaged when he experienced being uninsured in Holmes County" did not establish venue in Holmes County because he had only described the "results" of alleged acts that took place in Madison County, Mississippi. *Id.* (citing *Am. Home Prods. Corp. v. Sumlin*, 942 So. 2d 766, 771 (Miss. 2006) (holding that the place where the plaintiff experiences her injuries is not "substantial" enough to establish venue in a particular county)). *See also Am. Family Life Assur. of Columbus v. Ellison*, 4 So. 3d 1049, 1052 (Miss. 2009) (holding that where defendants had no ties to Smith county venue should be transferred from Smith County to Rankin County and explaining "[w]e previously have held that simply experiencing the effects of an act or omission in a county is

insufficient to establish venue."). While reaching its conclusion, the Court noted that if it followed the plaintiff's "logic, a plaintiff injured in an automobile accident in Madison County could establish venue in every county in which the plaintiff traveled simply by showing that, in each county, his or her injuries worsened." 956 So. 2d at 219.

Like *Myers*, Blakeney has sued Laurel Ford and Kia Motors because of "acts or omissions, all of which occurred" at Laurel Ford's business in Jones County, Mississippi. Blakeney's claim that his car experienced mechanical problems in Smith County describes only the **results** of alleged acts or omissions, which occurred solely in Jones County. In fact, he cannot point to a single act or omission that Laurel Ford or Kia Motors committed in Smith County, much less a "substantial . . . act or omission."[2] Like the plaintiff's "logic" in *Myers*, under Blakeney's argument venue would be proper in any and every county in which he drove his vehicle and experienced mechanical problems. Venue is not so easily fabricated under Mississippi law.

III. The Law and Claims Addressed in *Wal-Mart Stores, Inc. v. Johnson*, Are Not Present in Blakeney's Case

Appellants anticipate that Appellees will attempt to rely upon *Wal-Mart Stores*, 807 So.2d 382 (Miss. 2001), in support of the position that venue is proper in Smith County. However, the law applied in *Wal-Mart Stores* does not represent the current state of Mississippi law, and the claims and issues addressed in that case are not present at hand. Thus, *Wal-Mart Stores* should not be applied here.

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[2] Likewise, while the trial court made no determination as to whether "a substantial event that caused the injury occurred" in Smith County, it is clear that just as the physician in *Myers* was unable to show that such an event took place in Holmes County, Blakeney has identified no such substantial "injury-causing event" occurring in Smith County. *See Myers*, 956 So. 2d at 219.

In *Wal-Mart Stores*, 807 So.2d 382 (Miss. 2001), Johnson, a resident of Jefferson County, had her car serviced at a Wal-Mart store in Adams County. When Johnson drove the car home from Wal-Mart, she noticed that "she had to brake more than normal in order to slow the car and that it idled too high." *Id.* at 386. That evening, Johnson decided to take her car to a local repair shop in Jefferson County. As Johnson pulled into the repair shop's parking lot, she lost control of the car, allegedly as a result of Wal-Mart's negligent work, and ran into a parked vehicle. Johnson, and a passenger in her car, brought suit against Wal-Mart in Jefferson County for the personal injuries they suffered during the accident. Wal-Mart filed a motion for change of venue to Adams County where its place of business was located. The trial court denied Wal-Mart's motion to change venue, and the Supreme Court affirmed the trial court's decision, holding that the Johnsons' personal injury causes of action against Wal-Mart accrued in Jefferson County, "the site where the injuries occurred." *Id.* at 387.

Unlike the venue statute applicable to Blakeney's Complaint, the venue statute applicable to the Johnsons' claims against Wal-Mart stated that venue was proper in any "county where the cause of action may occur or accrue." *See Wal-Mart Stores*, 807 So. 2d at 386 (quoting MISS. CODE ANN § 11-11-3 (Supp. 2001)). This language does not appear in the current venue statute. Instead, the Mississippi legislature replaced this language with the provision which states that venue is proper "in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred." *See* MISS. CODE ANN § 11-11-3(1)(a)(i). As a result, under the current venue statute, the county where the cause of action "accrues" is irrelevant. *See id.*; *Myers*, 956 So.2d at 219.

Wal-Mart Stores is also distinguishable from the facts presented in Blakeney's case since the Johnsons asserted claims for bodily injuries which were non-existent until the accident

occurred in Jefferson County. In contrast, the injuries described in Blakeney's Complaint initially occurred at the time of purchase in Jones County. (CP. 002). Thus, Blakeney's claimed injuries are more in-line with the injuries addressed by the Court in *Forrest County General Hospital v. Conway*, 700 So. 2d 324 (Miss. 1997) and *American Home Products Corp. v. Sumlin*, 942 So. 2d 766 (Miss. 2006) (both decided under the prior venue statute).

In *Conway*, the plaintiffs' infant child was negligently misdiagnosed at Forrest County General Hospital, and then was later moved to the University Medical Center in Hinds County where doctors had to amputate her arms and legs in order to save her life. The plaintiffs argued that venue was proper in Hinds County because "the damages first occurred and the cause of action first accrued in Hinds County." 700 So.2d 324. However, the Court disagreed, holding as follows:

> We find that the initial damage in the case *sub judice* occurred and accrued in Forrest County when the doctors allegedly failed to properly diagnose the disease. At that point, the initial damages occurred. The actions at the University Medical Center simply manifested the injury which had already occurred in Forrest County.

Id. at 326-27.

In *Sumlin*, the plaintiff filed suit against a pharmaceutical company for injuries she allegedly sustained as a result of taking Redux. The plaintiff lived in Wayne County at the time she was prescribed the drug, and she received, filled, and took her prescriptions in Wayne County. However, plaintiff argued that venue was proper in Smith County because she was a resident of Smith County when she discovered her alleged injuries, and "because her claims of emotional distress and psychological pain and suffering accrued during her Smith County residency." *Sumlin*, 942 So. 2d at 771. The Court rejected the Smith County connections as bestowing venue in Smith County, holding "the place where the plaintiff experienced her injuries

was not 'substantial' enough to establish venue in a particular county." *Myers*, 956 So. 2d at 220 (discussing *Sumlin*, 942 So. 2d at 771).

Likewise, in the instant case, Blakeney's alleged injuries occurred, if at all, in Jones County (1) where, according to him, the vehicle "was defective in materials and workmanship **from the day of purchase**"; (2) where Laurel Ford and Kia Motors made and breached their alleged "written and expressed Warranty from any and all defects in materials or workmanship"; (3) where Laurel Ford and Kia Motors allegedly failed to repair his vehicle; and (4) where Laurel Ford and Kia Motors allegedly held his vehicle and told him he could not get it back unless he signed a "Release." (CP. 002-002A) (emphasis added). The mere fact that "[s]hortly after [Blakeney] got the vehicle home, he started having some problems with it in Smith County, Mississippi," even if true, is not evidence that his "initial damages" occurred in Smith County. (T. 3). Rather, the mechanical problems he allegedly experienced in Smith County were simply manifestations of the alleged injuries that had already occurred in Jones County. *See Conway*, 700 So. 2d at 326-27. Additionally, his discovery of the vehicle's alleged mechanical problems in Smith County does not bestow venue in Smith County. *See Sumlin*, 942 So. 2d at 771. Therefore, had the location of Blakeney's alleged injury been relevant to the determination of venue under the current venue statute, which it is not, venue in Smith County would still be improper.

CONCLUSION

Pursuant to MISS. CODE ANN § 11-11-3, venue for Blakeney's Complaint is only proper in Jones County, Mississippi. Each alleged act from which Blakeney claims he suffered damages – the breach of express warranties on the day he purchased his car in Laurel, Mississippi; the failure of the repairs made to his car in Laurel, Mississippi; and the incident during which he was

told he could not take his car from the Laurel, Mississippi dealership unless he signed a "Release" – occurred in Jones County, Mississippi. Blakeney does not allege a single act, omission, or injury-causing event that occurred in Smith County, Mississippi, much less a "substantial" one. Any alleged mechanical problems the vehicle experienced in Smith County were only the "effects" of alleged acts and events that occurred exclusively in Jones County. As a result, venue in Blakeney's case is improper in Smith County. Because the only proper venue is Jones County, it was an abuse of discretion for the trial court to deny the Appellants' Motions for Change of Venue. This Court should reverse the decision by the trial court and require that the case be transferred to Jones County, Mississippi.

RESPECTFULLY SUBMITTED,

LAUREL FORD LINCOLN-MERCURY, INC.

BY: _____

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day caused to be mailed and/or hand-delivered, a true and correct copy of the above and foregoing document to:

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THIS, the 18th day of August, 2011.

REBECCA B. COWAN
JOSEPH W. GILL