

Chapter 3: The Judicial System

Internet Tip (textbook p. 136)

Excerpt from Michigan Statutes Annotated 27A. 1629(1)(a) (1) In an action based on tort . . . seeking damages for . . . wrongful death, all of the following apply:
(a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action: (i) The defendant resides, has a place of business, or conducts business in that county.
(ii) The corporate registered office of a defendant is located in that county.

Excerpt from Michigan Statutes Annotated 27A. 1629(1)(c) (1) In an action based on tort . . . seeking damages for . . . wrongful death, all of the following apply: * *
* (c) If a county does not satisfy the criteria under subdivision (a) or (b), a county in which both of the following apply is a county in which to file and try the action: (i) The plaintiff resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county. (ii) The defendant resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.

Maureen Massey v. Joanne Mandell
614 N.W.2d 70
Michigan Supreme Court

July 11, 2000 TAYLOR, J. We granted leave to appeal to consider defendants Camp Niobe's and Joanne Mandell's claim that the trial court had erred in denying their motion to change venue from Wayne County to Lapeer County. Because we conclude that venue in Wayne County was proper, we affirm the judgment of the trial court.

I. Facts and Proceedings Below. Plaintiff's decedent, nine-year-old Jeremy Massey, was a foster child in Detroit. On June 28, 1998, Jeremy participated in an outing sponsored by the Children's Center of Detroit at Camp Niobe in Lapeer County. Tragically Jeremy drowned while in the swimming area at the camp. Maureen Massey filed a lawsuit in Wayne County as personal representative of Jeremy's estate. The lawsuit named as defendants the Children's Center and one of its employees, Lisa Dilg, and Camp Niobe and some of its employees, including Mandell.

The camp and Mandell filed a motion for change of venue, arguing that venue in Wayne County was improper and that, pursuant to MCL 600.1629(1)(a); MSA 27A.1629(1)(a) venue in Lapeer County was proper because the camp was located and conducts business in Lapeer County and the drowning took place in Lapeer County. Plaintiff opposed the motion, arguing that the criteria under subd (1)(a) and (b) of the statute did not apply, but that venue in Wayne County was proper pursuant to subd (1)(c) n2 because plaintiff resided there and the Children's Center did business there.

The trial court denied the motion to change venue on the basis that both the plaintiff and the Children's Center were in Wayne County. Camp Niobe and Mandell filed an application for leave to appeal, a motion for immediate consideration, and a request for a stay with the Court of Appeals. The Court of

Appeals granted immediate consideration and denied the application and stay "for lack of merit in the grounds presented." The camp and Mandell then filed a motion for immediate consideration, an application for leave to appeal, and a motion for stay with this Court. This Court granted immediate consideration and granted a stay and leave to appeal.

II. Standard of Review. This Court reviews a trial court's ruling in response to a motion to change improper venue under the clearly erroneous standard. *Shock Bros, Inc v Morbark Industries, Inc*, 411 Mich. 696, 698-699; 311 N.W.2d 722 (1981). Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Kurylczyk*, 443 Mich. 289, 303; 505 N.W.2d 528 (1993).

III. Principles of Statutory Construction. In examining a statute, it is our obligation to discern the legislative intent that may reasonably be inferred from the words expressed in the statute. *White v Ann Arbor*, 406 Mich. 554, 562; 281 N.W.2d 283 (1979). One fundamental principle of statutory construction is that "a clear and unambiguous statute leaves no room for judicial construction or interpretation." *Coleman v Gurwin*, 443 Mich. 59, 65; 503 N.W.2d 435 (1993). Thus, when the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is to apply the terms of the statute to the circumstances in a particular case. *Turner v Auto Club Ins Ass'n*, 448 Mich. 22, 27; 528 N.W.2d 681 (1995). Concomitantly, it is our task to give the words used by the Legislature their common, ordinary meaning. MCL 8.3a; MSA 2.212(1).

IV. The Statute. MCL 600.1629; MSA 27A.1629 in full provides: (1) Subject to subsection (2) *in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply: (a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action: (i) The defendant resides, has a place of business, or conducts business in that county. (ii) The corporate registered office of a defendant is located in that county. (b) If a county does not satisfy the criteria under subdivision (a), the county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action: (i) The plaintiff resides, has a place of business, or conducts business in that county. (ii) The corporate registered office of a plaintiff is located in that county. (c) If a county does not satisfy the criteria under subdivision (a) or (b), a county in which both of the following apply is a county in which to file and try the action: (i) The plaintiff resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county. (ii) The defendant resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county. (d) If a county does not satisfy the criteria under subdivision (a), (b), or (c), a county that satisfies the criteria under section 1621 or 1627 is a county in which to file and try an action. (2) Any party may file a motion to change venue based on hardship or inconvenience. (3) For the purpose of this section only, in a product liability action, a defendant is considered to conduct business in a county in which the defendant's product is sold at retail. [Emphasis added.]*

V. Analysis. The parties agree that the original injury for purposes of construing §§ 1629 was the drowning and that the drowning occurred in Lapeer County.

The camp and Mandell argue that they satisfy subd (1)(a) of §§ 1629 because the original injury occurred in Lapeer County and they reside, have a place of business, or conduct business in Lapeer County. The plaintiff argues however that when subd (1)(a) is carefully analyzed the argument for mandatory venue in Lapeer County fails.

Subd (1)(a) provides that, using the place of original injury (Lapeer County) as the referent, the inquiry is then if either of the following apply: (i) *The defendant* resides, has a place of business, or conducts business in that county. (ii) The corporate registered office of *a defendant* is located in that county.

Accordingly, subd (1)(a)(i) requires that "the defendant" reside, have a place of business, or conduct business in the county. Here, we have a case with four defendants. The camp and Mandell would satisfy subd (1)(a)(i) if either were the only defendant. Moreover, the Children's Center and Lisa Dilg would not satisfy subd (1)(a)(i) even if they were the only defendant. These circumstances are fatal to the camp's and Mandell's reliance on subd (1)(a)(i).

Having determined that subd (1)(a)(i) does not apply, we next must determine if subd (1)(a)(ii) required venue be established in Lapeer County. Under this subdivision, venue would be required to be in the county where the original injury occurred if a defendant is a corporation and its registered corporate office is in the same county. "A," as the above makes clear, should be understood to cover a case with more than one defendant and one of them is a corporation. In the case at bar none of the defendants has asserted that it is a corporation or that it has its corporate registered office in Lapeer County. Accordingly, subd (1)(a)(ii) is also inapplicable.

The statute next instructs that, if a county does not satisfy the criteria in subd (1)(a), one must look to subd (1)(b). Under subd (1)(b), Lapeer County would be the proper venue if "the plaintiff" resided there, or had a place of business there or conducted business there or if "a plaintiff" had a registered corporate office there. None of these criteria are satisfied. The statute next instructs that if a county does not satisfy subd (1)(a) or (1)(b) that one must look to subd (1)(c). Under subd (1)(c), the county in which the original injury occurred is no longer a consideration. Rather, if there is a county wherein "the plaintiff" resides, or has a place of business, conducts business or has its registered office, *and* at the same time "the defendant" resides or has a place of business or conducts business or has its registered corporate office, then such a county is a county in which to try an action. Plaintiff argues that Wayne County comes within subd (1)(c). We cannot agree. There is no question that plaintiff resides in Wayne County. However, subd (1)(c)(ii) also requires that "the defendant" reside, have a place of business, conduct business, or have its registered office in Wayne County before Wayne County would be "a county in which to file and try the action . . ." MCL 600.1629(1)(c); MSA 27A.1629(1)(c). As before, "the" does not mean "a" and thus the requirements of subd (1)(c)(ii) are not satisfied merely because one or more of the defendants reside or have a place of business or conduct business in Wayne County.

The statute next instructs that if a county does not satisfy subd (1)(a), (1)(b), or (1)(c) one must look to subd (1)(d), which provides: If a county does not satisfy the criteria under subdivision (a), (b), or (c), a county that satisfies the criteria

under section 1621 or 1627 is a county in which to file and try an action. Thus, we are instructed to consult MCL 600.1621; MSA 27A.1621, which provides: Except for actions provided for in sections 1605, 1611, 1615, and 1629, venue is determined as follows: (a) The county in which a defendant resides, has a place of business, or conducts business, or in which the registered office of a defendant corporation is located, is a proper county in which to commence and try an action.

Sections 1605, 1611, 1615 do not apply here. This means we must look to §§ 1629, which by its terms refers us to §§ 1621 or §§ 1627.

Applying §§ 1621 leads to the conclusion that Wayne County was a proper county in which plaintiff was free to file her lawsuit because at least one defendant (The Children's Center) has a place of business and conducts business in Wayne County. Alternatively, applying §§ 1627 (which, with several exceptions, provides that venue shall be in a county where all or a part of the cause of action arose) also supports a Wayne County venue because plaintiff asserts that part of her cause of action arose in Wayne County.

VI. Conclusion. In summary then, because MCL 600.1629; MSA 27A.1629 referred us to MCL 600.1621; MSA 27A.1621 or MCL 600.1627; MSA 27A.1627 and Wayne County satisfies the venue criteria of §§§§ 1621 and 1627, venue in Wayne County was proper. Thus, the trial court's properly denied the camp's and Massey's motion.

WEAVER, C.J., and YOUNG and MARKMAN, JJ., concurred with TAYLOR, J.