

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

TIERA McCLARIN	:	CIVIL TRIAL DIVISION
Appellants,	:	
	:	FEBRUARY TERM, 2007
v.	:	No. 186
	:	
ACE DISPOSAL/PORTABLES, INC and	:	
RAND WHITELY	:	Superior Court Docket No.
Appellees	:	2311 EDA 2007
	:	

OPINION

Tereshko, J.

PROCEDURAL HISTORY

Plaintiff, Tiera McClarin appeals from the Order dated August 21, 2007, wherein the trial Court granted Defendants' Motion to Transfer Venue to Chester County Pennsylvania.

FACTUAL BACKGROUND

On or about June 13, 2006, at approximately 11:50 a.m., Plaintiff Tiera McClarin (hereinafter Plaintiff) was operating her motor vehicle on Blair Mill Road/Hatboro/Horsham Road, Montgomery County, Pennsylvania, when she was struck by a vehicle driven by Defendant Rand Whitley (hereinafter Whitley), causing injuries to Plaintiff. (Complaint, ¶7). At the time of the accident Whitley was acting within the scope of his employment and operating Defendant ACE Disposal/Portables, Inc.'s (hereinafter ACE, collectively known as Defendants) motor vehicle. (Complaint, ¶5-6).

The Plaintiff is alleged to have sustained injuries to her back, left knee along with left lower extremity radiculitis. (Complaint, ¶9).

As a result of this incident, Plaintiff filed this cause of action on February 6, 2007 alleging that her injuries were caused by Whitely's negligent operation of ACE's motor vehicle. (Complaint, ¶9). In her Complaint, Plaintiff did not include a cause of action against ACE for negligent entrustment of the vehicle to Whitely. In fact, Plaintiff asserts no cause of action whatsoever against ACE. (See Complaint).

Both Whitely and ACE were served in Chester County, Pennsylvania. (See Affidavits of Service).

On March 8, 2007, Defendants filed their Preliminary Objections and Motion to Determine Preliminary Objections. (See Docket). Plaintiff filed her Response to the Preliminary Objections on March 28, 2007. (See Docket). By Order dated April 23, 2007, the Honorable Paul Panepinto ordered that Defendants' Preliminary Objections were held under advisement, with both parties given forty-five (45) days to engage in discovery on the limited issue of venue. (See Docket) The parties were then ordered to file supplemental briefs on the limited issue of venue no later than June 15, 2007. Defendants filed their supplemental brief on June 14, 2007 and Plaintiff filed her response on June 19, 2007.

By Order dated August 21, 2007 the Trial Court granted Defendants Preliminary Objections and transferred the case to Chester County. (See Docket). Plaintiff filed her Notice of Appeal on September 5, 2007 and issued her 1925(b) Statement of Matters accordingly.

The sole issue to be determined on appeal is whether the Trial Court abused its discretion or committed an error of law in granting the Preliminary Objections and transferring the case to Chester County.

LEGAL ANALYSIS

In Pennsylvania, the Trial Court is vested with broad discretion to determine whether or not to grant a Petition to transfer venue. Masel v. Glassman, 689 A.2d 314 (Pa. Super. 1997). Provided that the Trial Court's decision to transfer venue is a reasonable one in light of the record it will not be overturned. Monaco v. Montgomery Cab Co., 208 A.2d 252, 256 (Pa. 1965).

Plaintiff argues that Defendants' Preliminary Objections were improperly filed because they filed the wrong Motion, citing the wrong rules, with unverified facts. (Plaintiff's Response to Defendants' Preliminary Objections, pg.2).

Defendant correctly cites and argues that Philadelphia County is an inappropriate venue to bring this cause of action pursuant to the Pennsylvania Rules of Civil Procedure. Pa.R.C.P. 1006(a) specifically addresses the issue of venue as it pertains to individuals:

Except as otherwise provided by subdivisions (a.1), (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which

(1) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law.

“An individual may be served in any county where he is personally present and a copy of the original process is handed to him, where he resides, or at any office/usual place of business.” *Gilfor v. Altman*, 770 A.2d 341 (Pa. Super. Ct. 2001).

Here, Plaintiffs have presented no evidence to show that Whitely could be served in any county other than Chester where he was served at work. (See Affidavit of Service). The accident occurred on Blair Mill Road in Horsham Township, Montgomery County and no evidence has been presented to show that the accident arose out of any transaction or occurrence other than the accident in Montgomery County. This Court must conclude that, in accord with Rule 1006, venue in Philadelphia County cannot properly rest upon defendant Whitely. We next will examine venue as it pertains to ACE.

Plaintiff attempts to establish venue in Philadelphia by joining ACE in the action and contending that ACE is a Defendant who regularly conducts business in Philadelphia County. (Plaintiff's Answer to Defendants' Preliminary Objections). However, no allegations or Counts of negligence have been made against ACE, including that of negligent entrustment. Plaintiff's Complaint when read in its entirety is simply a claim against Whitely as the driver of ACE's vehicle. Plaintiff's Complaint, in its only Count, only alleges negligent operation of a motor vehicle by Whitely. Plaintiff's Complaint does not allege a claim for negligent entrustment of the motor vehicle on the part of ACE. Plaintiff does not allege a theory of joint and several liability against Whitely and ACE. The only mention of ACE in Plaintiff's Complaint is that the automobile driven by Whitely was owned by ACE, while Whitely was acting within the scope of his employment. However, these facts do not give rise to a cause of action against ACE. ACE's presence in this action therefore should not factor in this analysis for purposes of venue. Accordingly, the real party in interest is Whitely and as indicated above, venue for an action against Whitely is not properly brought in Philadelphia County.

In the event the appellate Court wishes to include ACE in its analysis, Plaintiff has still failed to provide sufficient evidence that ACE, as a corporate defendant, meets any of the criteria of Pa.R.C.P. 2179 to establish in Philadelphia county as an appropriate venue.

With regard to corporations and similar entities as parties, the Pennsylvania Rules of Civil Procedure state:

- (a) Except as otherwise provided by an Act of Assembly, by rule 1006(a.1) or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in:
 - (1) the county where its register office or principal place of business is located;
 - (2) a county where it regularly conducts business;
 - (3) the county where the cause of action arose; or
 - (4) a county where a transaction or occurrence took place out of which the cause of action arose.

Pursuant to Pa.R.C.P. 2179(a)(1) venue is proper only in Chester County, which is where ACE's has its principal place of business is located. Pursuant to Pa.R.C.P. (a)(3) and (a)(4), venue is proper only in Montgomery County, where the motor vehicle accident occurred.

Plaintiff also has not established pursuant to Pa.R.C.P. 2179(a)(2), ACE "regularly conducts business" in Philadelphia County. This Court by Order dated April 20, 2007 stated "both parties are hereby given 45 days to engage in discovery on the limited issue of venue. However, Plaintiff conducted no discovery in an attempt to establish whether ACE does any business in Philadelphia County, and if so, the quantity and quality of those contacts. Furthermore, Plaintiff, in her Answer to Defendants' Preliminary Objections, never offers any additional facts to support their position that

ACE regularly conducted business in Philadelphia County other than the same bald allegations given in her Complaint. In fact, Plaintiff's Answers to Preliminary Objections do not provide a counter-argument to Whitely and ACE's argument of improver venue. Plaintiff's Answer merely asserts the bald allegation that ACE regularly conducts business in Philadelphia County and that a Defendants forum non conveniens argument cites the improper Rules of Civil Procedure. In the event the appellate Court finds ACE is a proper Defendant in this case for purposes of evaluating venue, insufficient evidence has been produced by Plaintiff to demonstrate that Philadelphia County is an appropriate venue for this action. However, defendants have offered ample evidence that Chester County is an appropriate venue for this action.

CONCLUSION

For the foregoing reasons, this Court respectfully requests that the August 21, 2007 Order granting Defendants' Preliminary Objections and transferring the case to the Chester County Court of Common Pleas be affirmed.

BY THE COURT:

Date

ALLAN L. TERESHKO, J.