

On August 12, 2013, Dr. Frances Baylson and her husband, Judge Michael Baylson, initiated this litigation in Philadelphia County alleging Wrongful Use of Civil Proceedings. The cause of action was grounded on an underlying lawsuit filed several years ago in Montgomery County. The Defendants filed Preliminary Objections to the Complaint with procedural challenges to venue and substantive challenges to other matters.

On November 26, 2013, this Court heard Oral Argument on the Preliminary Objections. On November 27, 2013, this Court filed an Order and Sustained the Venue Objections, thus transferring the litigation to Montgomery County. Philadelphia County Courts do not have the jurisdiction to hear this Dragonetti Action.

Plaintiffs filed a timely Notice of Appeal. In accordance with Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure, this Court respectfully submits to the Honorable Superior Court the **Order and attached Memorandum**, dated November 27, 2013, collectively attached hereto as Court Exhibit "A", as the reasons for the rulings and Order.

BY THE COURT:

Date: *February 21, 2014*


FREDERICA A. MASSIAH-JACKSON, J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

FRANCES RUTH BATZER BAYLSON, M.D. :
and MICHAEL M. BAYLSON :
Plaintiffs :

vs. :

GENETICS & IVF INSTITUTE, INC. :
d/b/a FAIRFAX CRYOBANK; :
MORRIS AND CLEMM, P.C.; and :
MARK C. CLEMM, ESQUIRE :
Defendants :

MAY TERM, 2013

NO. 0893

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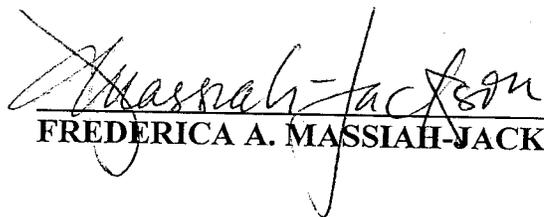
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N. ERICKSON

ORDER

And Now, this 27th day of November, 2013, upon consideration of the Defendants, Morris and Clemm, P.C. and Mark C. Clemm, Esquire's Preliminary Objections to Venue, Plaintiff's Response thereto, and after Oral Argument held November 26, 2013, and for the reasons set forth in Court Exhibit "A", attached hereto, it is hereby **ORDERED** that the instant cause of action is transferred to the Court of Common Pleas of Montgomery County with all costs for the transfer to be incurred by Plaintiffs. The Courts in Montgomery County will rule on the Preliminary Objections to the Complaint.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

Court Exhibit "A"

The Pennsylvania Appellate case law is clear that litigation claims based on Wrongful Use of Civil Proceedings are guided by refined applications of the venue and jurisdiction Rules of Civil Procedure. Specifically, in Kring v. University of Pittsburgh, 829 A.2d 673 (Pa. Superior Ct. 2003), the Superior Court held that in a Dragonetti action, the appropriate consideration when determining venue is the location of the underlying litigation. The Rules relating to forum non conveniens, plaintiff's residence and/or choice of forum, location of business offices, etc. are neither relevant nor determinative when a lawsuit has been filed pursuant to the Dragonetti Act.

In Harris v. Brill, 844 A.2d 567 (Pa. Superior Ct. 2004), the Appellate Court commented on the two part analysis at 571:

“An action for wrongful use of civil proceedings does not arise from the mere institution of an allegedly wrongful action. Rather it requires that: (1) the procurement, initiation, or continuation of civil proceedings be undertaken in a negligent manner or for a wrongful purpose; and (2) the proceedings terminate in favor of the person against whom they were brought.”

In this case, it is undisputed that the underlying action against Dr. Baylson was initiated in Montgomery County. Even assuming arguendo that Dr. Baylson's theory is correct that the underlying proceedings actually terminated in her favor, those proceedings terminated in

Montgomery County and pursuant to Montgomery County Court rulings. Here, as in Kring, the alleged facts which satisfy all of the elements of this cause of action occurred in Montgomery County. Accordingly, venue is proper only in Montgomery County. Venue is not proper in Philadelphia and this Court has no jurisdiction to hear the case.

Because this case will be transferred to Montgomery County, those courts will consider the preliminary objections to the Complaint and matters relating to this litigation. e.g. Rosen v. American Bank of Rolla, 627 A.2d 190 (Pa. Superior Ct. 1993), affirming a Trial Court which sustained preliminary objections dismissing a cause of action where the plaintiff was not a party to the underlying action.

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