STATE OF MICHIGAN

COURT OF APPEALS

JOHN E. REEVES, EDWIN R. HARLIN, and WILLIAM T. MERRIWEATHER,

Plaintiffs-Appellees,

v

INTERNATIONAL BUSINESS MACHINES, a/k/a IBM, CHRIS SCHADE, and CHARLES CHILDRESS,

Defendants-Appellants.

UNPUBLISHED
July 15, 1997

No. 191111
Wayne Circuit Court
LC No. 93-304132-CZ

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Defendants appeal by leave granted the circuit court's denial of their motion to change venue from Wayne County to Oakland County. We reverse.

Plaintiffs filed suit in Wayne County against their former employer, IBM, and two individual supervisors. Plaintiffs alleged defendants violated the Civil Rights Act, MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*., by discriminating against them on the basis of their race when it came to things such as assigning sales territories, promotions, and pay increases.

Defendants sought to change venue to Oakland County.[1] In opposing the motion, plaintiffs argued that venue was proper in Wayne County because defendant IBM's registered corporate office and agent were in Wayne County and both individually named defendants resided in Wayne County. In addition, plaintiffs argued that they had all serviced accounts and, at times, been stationed in Wayne County. The trial court denied defendants' motion and ruled that venue was proper in Wayne County because "it is possible that adverse employment decisions were made" there, and because the two individually named defendants reside there. On appeal, we review the trial court's ruling on the motion to change venue for clear error. *Vermilya v Carter Crompton Site Development Contractors, Inc*, 201 Mich App 467, 471; 506 NW2d 580 (1993).

According to MCL 37.2801(2); MSA 3.548(801)(2), "[a]n action commenced pursuant to [the civil rights act] may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has his principal place of business." Plaintiffs have the burden to establish that the county chosen is the proper venue, *Johnson v Simongton*, 184 Mich App 186, 188; 457 NW2d 129 (1990), and they must present some credible factual evidence that the venue chosen is proper, *Marsh v Walter L. Couse & Co*, 179 Mich App 204, 208; 445 NW2d 204 (1989). The choice of venue must be based on fact, not mere speculation. *Id.*

In *Barnes v IBM*, 212 Mich App 223; 537 NW2d 265 (1995), the plaintiff brought a civil rights act claim against IBM in Wayne County. As in the case at bar, IBM sought a change of venue to Oakland County. The plaintiff argued that venue was proper in Wayne County because "that is where he experienced at least some of the effects of defendants' decisions and where he suffered resulting damages." *Id*. at 225. This Court disagreed with the plaintiff and held that he had failed to carry his burden of establishing that venue was proper in Wayne County. The Court opined that venue for civil rights act claims is proper where the alleged violation occurred, not where its effects were felt or where the damages occurred. The Court concluded that the alleged violations were "adverse employment decisions," and although "plaintiff performed some work in Wayne County, he has provided no credible factual evidence that any of the allegedly discriminatory decisions were made in Wayne County, as distinguished from their effects being felt there," *Id*. at 226. The Court then noted that "the actions allegedly giving rise to liability are the corporate decisions themselves and therefore the place of corporate decision making is an appropriate forum." *Id*. at 226 n 3. As mentioned by the Court, IBM's corporate headquarters in Michigan are located in Oakland County. *Id*. at 225.

We too conclude that plaintiffs have failed to carry their burden to show that venue is proper in Wayne County. The trial court clearly erred in denying defendants' motion for a change of venue.

The trial court ruled that because it was "possible" that adverse employment decisions were made in Wayne County, venue was proper. However, plaintiffs' choice of venue must be based on fact, not speculation or possibility, and as in *Barnes*, although plaintiffs worked in Wayne County, they have provided no credible factual evidence that any allegedly discriminatory decisions were made in Wayne County, as opposed to merely their effects being felt there. In other words, plaintiffs have not shown that Wayne County is where the alleged violations of the civil rights act occurred. Plaintiffs did submit a negative evaluation of plaintiff Reeves by defendant Schade to the trial court as evidence of discrimination. Although the evaluation was given after the filing of the original complaint in this action, the trial court ruled that "the evaluation, whenever done, can well reflect negative attitudes – including ones based on discrimination – that have existed for some time, including time before the case was filed." In our opinion, a finding of the existence of potential negative, discriminatory, attitudes prior to the start of this action, based on an evaluation received after the action began can be based on nothing but speculation, and not credible, factual evidence of such attitudes. To the extent the trial court relied on this evaluation to find venue in Wayne County, it clearly erred.

Venue in Wayne County was also justified with the fact that defendants Schade and Childress reside in Wayne County. Defendants argued that Schade and Childress were joined in bad faith merely

to control venue. Defendants referred to MCR 2.225(A), which states that "venue must be changed on a showing that the venue of the action is proper only because of the joinder of a codefendant who was not joined in good faith but only to control venue." However, the trial court stated that "while we acknowledge that defendants have submitted some evidence in support of their claim of procedural bad faith here, we cannot hold this evidence to be enough." In our opinion, the evidence in support of bad faith on plaintiffs' part was sufficient to prevent plaintiffs from satisfying their burden and renders the trial court's decision clearly erroneous.

Defendants Schade and Childress were selected, without explanation, from among nearly forty other managers named in the complaint. Other individual managers, not joined as codefendants, appear to have been at higher management levels, and were managers of the plaintiffs for longer periods of time. In addition, six managers, also not named as codefendants, managed all three plaintiffs at one point or another during their employment at IBM. Defendants have presented evidence that of all the managers named in the complaint, only defendant Schade lives in Wayne County, and she never managed plaintiffs Merriweather or Harlin, and only managed plaintiff Reeves for six months. Contrary to plaintiffs' claim, evidence also indicates that while defendant Childress' mailing address is Wayne County, he actually resides in Oakland County. Plaintiffs have offered no credible justification for selecting these two individual managers to join as codefendants, and the evidence indicates that the only possible justification was to control venue. Therefore, the trial court clearly erred in denying defendants' motion for change of venue.

Although not addressed by the trial court, plaintiffs also argue that venue is proper in Wayne County because defendant IBM's corporate registered office and agent, for service of process purposes, are located in Wayne County. Plaintiffs argue that because of this, defendant IBM "resides" in Wayne County. We disagree.

As previously indicated, venue is proper for civil rights act purposes where the alleged violation occurred, or where the defendant resides or has his principal place of business. This is different from the general venue provision for tort actions that states that venue is proper in the county where the injury occurred and where the defendant either "resides, has a place of business, or conducts business," or has a "corporate registered office." MCL 600.1629(1)(a); MSA 27A.1629(1)(a).[2] To the extent that plaintiffs equate where defendant IBM "resides" to where defendant IBM's corporate registered office is located, their claim must fail. We must presume from the general venue statute's differentiating between where a defendant resides, conducts business and has a corporate registered office, that the legislature intended, at least for purposes of the general venue statute for tort actions, each phrase to have a separate meaning, see *Frank v Kibbe & Associates, Inc*, 208 Mich App 346, 350-351; 527 NW2d 82 (1995), and we have not been persuaded that we should treat the phrases as equivalent for civil rights act purposes.

In addition, we do not consider the location of the corporate registered office and agent to be sufficient to independently satisfy the civil rights act's venue requirements. The civil rights act's venue statute does not list such a location as sufficient, and we cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there. See *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210;

501 NW2d 76 (1993). Moreover, where the Legislature lists items in a statute, it is the general rule that express mention of one thing implies the exclusion of

other similar things. See *USF&G v Amerisure Ins. Co*, 195 Mich App 1, 6; 489 NW2d 115 (1992). In our opinion, the Legislature simply did not intend the location of the corporate registered office and agent to be sufficient grounds on which to base venue.

In other words, we conclude that it would be improper to equate the location of defendant IBM's registered corporate office and agent with where defendant IBM "resides" for civil rights act's venue purposes, and we decline to infer that such a location is independently sufficient in light of the fact that it is not listed as grounds for venue in the civil rights statute.

Reversed.

/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie
/s/ William B. Murphy

[1] This appeal is actually from a renewed motion for change of venue. Defendants' original motion was denied without opinion. However, after this Court's decision in *Barnes v IBM*, 212 Mich App 223; 537 NW2d 265 (1995), discussed *infra*, defendants' renewed their motion. It is after the denial of this renewed motion that the instant appeal was taken.

[2] The general venue statute for tort actions also provides for alternatives in case the requirements in subsection (1)(a) cannot be met. See MCL 600.1629(1)(b) - (1)(d); MSA 27A.1629(1)(b) - (1)(d).