

STATE OF MICHIGAN
COURT OF APPEALS

COMMUNITY RESOURCE CONSULTANTS,
INC.,

UNPUBLISHED
January 24, 2003

Plaintiff-Appellee,

v

No. 233848
Macomb Circuit Court
LC No. 00-005194-NZ

WESTFIELD INSURANCE COMPANY,

Defendant-Appellant.

Before: Zahra, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Defendant appeals, by leave granted, from the trial court's order denying its motion for change of venue. We reverse.

Plaintiff, a duly formed Michigan corporation with its principal place of business in Macomb County, provides case management services to injured persons. Defendant, a foreign corporation, is an automobile insurance carrier, which maintains an office in Grand Rapids, Kent County, Michigan, and does business in Muskegon County. Dale Degner, a resident of Kent County,¹ sought first-party insurance benefits from defendant, his no-fault insurance carrier.

Degner was injured in an automobile accident and filed a claim with defendant. Defendant provided Esther VanderKolk of ASU/Recovery Unlimited to serve as Degner's medical case manager. On November 23, 1999, Degner sent written communication to defendant indicating that he had retained plaintiff to serve as his medical case manager and that plaintiff would bill defendant for its services. In May 2000, plaintiff's representative sent a letter of introduction to defendant with Degner's authorization for release of medical information by defendant to plaintiff. In July 2000, defendant notified Degner that the appointment of a second medical case manager was neither necessary nor compensable. This correspondence was sent by defendant's representative located in Kent County. Plaintiff alleged that Degner terminated his contract with plaintiff following the notice that defendant would not pay for its services. Plaintiff further alleged that Degner feared that his no-fault benefits would be terminated if he insisted on using plaintiff's services as medical case manager, thereby causing him to terminate

¹ At oral argument, it was noted that, contrary to the written pleadings, Degner's residence is located in Kent, not Muskegon County.

their contract. Consequently, plaintiff filed this litigation in Macomb County, alleging tortious interference with a contract and tortious interference with an advantageous business relationship.²

Defendant moved for change of venue, alleging that venue was proper in Muskegon County, the location of its business office. Alternatively, defendant alleged that Kent County was proper venue, the location of its representative who sent the correspondence denying any entitlement to a second case manager. The trial court denied defendant's motion for change of venue, concluding that plaintiff's impairment in carrying out the terms of its contract with Degner occurred in Macomb County. We granted defendant's application for leave to appeal.

Defendant alleges that the trial court erred in denying its motion for change of venue. We agree. An appellate court reviews the trial court's ruling regarding a motion for change of venue under the clearly erroneous standard. *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000). When a reviewing court is left with a definite and firm conviction that a mistake has been made, clear error occurs. *Id.* A plaintiff has the burden of demonstrating that its choice of venue was proper. *Karpinski v St John Hospital-Macomb Center Corp*, 238 Mich App 539, 547; 606 NW2d 45 (1999).

MCL 600.1629 governs venue in a tort action. MCL 600.1629 provides a hierarchy of criteria for determining venue in tort actions. See *Massey, supra* at 381-385. The first choice is the county where the original injury occurred and in which the defendant either resides, has a place of business or conducts business, or where the defendant's corporate registered office is located. MCL 600.1629(1)(a). If there is no county that satisfies the criteria in subsection (1)(a), *Massey, supra*, the next choice is the county in which the original injury occurred and in which the plaintiff resides, has a place of business or conducts business, or where the plaintiff's corporate registered office is located. MCL 600.1629(1)(b). If there is no county that satisfies that criteria, the next choice is the county where both the plaintiff and the defendant reside, have a place of business or conduct business, or where their corporate registered offices are located. MCL 600.1629(1)(c). If there is no county that satisfies that criteria, the final choice is a county that satisfies the criteria under the more general venue statutes, MCL 600.1621 and 1627. MCL 600.1629(1)(d).

In *Karpinski, supra*, this Court evaluated the determination of an "original injury" in the context of a wrongful death case. The plaintiff's decedent, Gregory Serafin, was examined by a Macomb County hospital and released after being diagnosed with a urinary tract infection. Five days later, Serafin returned to the hospital and suffered a seizure. He was unresponsive, and a palpable pulse was not detected. Serafin was diagnosed with a ruptured abdominal aortic aneurysm and was transferred to a Wayne County hospital to determine the proper course of treatment. Serafin was pronounced dead on arrival at the Wayne County hospital. *Id.* at 540.

² Plaintiff did not delineate each alleged cause of action. However, plaintiff's complaint alleged that embarrassment, humiliation, and damage to reputation occurred as a result of defendant's conduct. Plaintiff's appellate pleadings characterize these allegations as a claim for defamation. The sufficiency of the pleadings with respect to any claim of defamation was not raised and addressed below and is not an issue on appeal.

To determine the appropriate venue, this Court examined dictionary definitions to conclude that, although not defined by statute, the term “original injury” referenced the first or beginning of any wrong or damage to another. *Karpinski, supra* at 543-544. This Court rejected the proposition that an ongoing event or the continuation of an injury would allow venue to be established in any county where the plaintiff suffers an injury. Consequently, the *Karpinski* Court concluded that the “original injury,” for purposes of a wrongful death action, occurred at the location of the injury leading to death. *Id.* at 546-547.

In the present case, plaintiff alleged theories of liability based on tortious interference. The elements of tortious interference with a contract are: “(1) a contract, (2) a breach, and (3) an unjustified instigation of the breach by the defendant.” *Mahrle v Danke*, 216 Mich App 343, 350; 549 NW2d 56 (1996). The elements of tortious interference with business relationship are: (1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy on the part of the defendant; (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) consequential damage to the plaintiff. *BPS Clinical Laboratories v Blue Cross & Blue Shield (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996).

Review of the allegations of the complaint reveals that defendant’s correspondence with Degner allegedly caused him to terminate his contractual relations with plaintiff. This correspondence was sent from defendant’s representative located in Kent County to Degner’s residence, also located in Kent County. Therefore, the first or beginning of the damage allegedly suffered by plaintiff occurred in Kent County. See *Karpinski, supra*. The first choice of venue is the county where the original injury occurred and in which defendant has a place of business. MCL 600.1629(1)(a); *Massey, supra*. Because the original injury and defendant’s business office are located in Kent County, the trial court clearly erred by denying defendant’s motion for change of venue. The fact that the impairment of plaintiff’s contract will manifest in Macomb County is not the appropriate inquiry. *Karpinski, supra*.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood