

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES W. PICKERING, individually and as
Personal Representative of the Estate of
SUZANNE PICKERING, Deceased,

UNPUBLISHED
March 23, 2006

Plaintiff-Appellee/Cross-Appellee,

v

No. 258143
Wayne Circuit Court
LC No. 03-335426-NH

LAKELAND REGIONAL HEALTH SYSTEM,

Defendant-Appellant/Cross-
Appellee,

and

ROBERT MICHAEL STEPHEN, M.D., and ST.
JOSEPH EMERGENCY PHYSICIANS, P.C.

Defendants-Appellants,

and

MARTHA L. GRAY, M.D., and PARTNERS IN
INTERNAL MEDICINE, P.L.L.C.,

Defendants-Cross-Appellants.

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendants each appeal a Wayne Circuit Court order denying their motions for change of venue. This appeal is before the Court pursuant to our Supreme Court's order remanding the case for consideration as on leave granted. *Pickering v Lakeland Regional Health System*, 471 Mich 888; 687 NW2d 296 (2004). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent ("Pickering") sought and obtained medical treatment from defendant Dr. Martha Gray on November 14, 2001, at the medical office of defendant Partners in Internal Medicine, P.L.L.C., in Washtenaw County. Pickering presented with shortness of breath and

back pain. Dr. Gray recommended that Pickering schedule a cardiology consult, but did not arrange for an immediate workup. On November 23, 2001, Pickering sought and obtained treatment by defendant Dr. Robert Stephen, an employee of defendant St. Joseph Emergency Room Physicians, P.C., at a hospital in Berrien County operated by defendant Lakeland Regional Health System. Pickering complained of experiencing burning sensation with activity and pain with respirations. She was not admitted to the hospital. On November 28, 2001, Pickering suffered a heart attack at her home in Wayne County. She was pronounced dead at Garden City Hospital, which is also in Wayne County. The autopsy report states that her “coronary arteries revealed far advanced arteriosclerosis with near complete occlusion of the right coronary artery . . .” It concluded that she “died of arteriosclerotic coronary artery disease with evidence of a recent myocardial infarction within the posterior left ventricular wall.”

Plaintiff subsequently filed this wrongful death action against defendants in the Wayne Circuit Court, alleging that defendants were liable for failing to diagnose and treat Pickering. Defendants filed motions to change venue, asserting that the “original injury” as alleged in plaintiff’s complaint did not occur in Wayne County, but rather in either Berrien County or Washtenaw County where the allegedly negligent treatment occurred. The trial court ruled that the “original injury” occurred when Pickering suffered a fatal heart attack, not when she was treated by defendants in Berrien County and Washtenaw County.

This Court reviews a 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); *Karpinski v St John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 542; 606 NW2d 45 (1999).

MCL 600.1629 governs venue for tort actions seeking damages for wrongful death. MCL 600.1641(2). MCL 600.1629 sets forth various criteria by which the appropriate venue is determined. The first two options are based on the location of the “original injury.” MCL 600.1629(1)(a) and (b) state:

(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.
[Emphasis added.]

This Court addressed the meaning of “original injury” for purposes of MCL 600.1629 in *Karpinski, supra*. In that case, the plaintiff’s decedent was treated in Macomb County on July 1 and 6, 1995. On the latter date, while in the emergency room, he suffered a ruptured aortic aneurysm. He was transferred to a hospital in Wayne County, where he was pronounced dead on arrival. The plaintiff’s complaint alleged that the failure to properly and timely diagnose and treat the aneurysm resulted in the decedent’s death. The plaintiff maintained that the action was properly filed in Wayne County because that was the location of the death, whereas the defendants argued that venue was proper in Macomb County because that was where the decedent suffered the ruptured aneurysm. *Id.*, p 542. This Court referenced the definition of “injury” from Black’s Law Dictionary (6th ed), p 785, as “any wrong or damage done to another, either in his person, rights, reputation, or property.” The Court also noted that the wrongful death statute distinguished death from the injuries resulting in death. The Court concluded that “in a wrongful death action, the word ‘injury’ in the venue statute refers to the injury resulting in death, rather than the death itself.” *Id.*, p 544.

Karpinski makes clear that the location of the death is not determinative of venue for a wrongful death action. In addition, the discussion in that case indicates that the Court treated the ruptured aneurysm as the “original injury.” For example, the Court stated, “Here, even assuming that [the decedent] did not die until after he was transported to Wayne County, plaintiff has presented no evidence that his death was an ‘original injury’ in its own right, rather than the continuing effect of the ruptured abdominal aortic aneurysm that initially occurred in Macomb County.” *Id.*, pp 547-548. The Court also noted, “In this case, [the decedent’s] death does not appear to be separate and distinct from the ruptured abdominal aortic aneurysm that initially occurred in Macomb County.” *Id.*, p 546 n 2. *Karpinski* does not suggest that the Court considered the location of the misdiagnosis relevant to the analysis.

The thrust of defendants’ arguments is that plaintiff’s action actually involves the loss of an opportunity to survive. Even if we were to credit this characterization, however, defendants would not be entitled to reversal. Our Supreme Court’s decision in *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60-61; 631 NW2d 686 (2001), indicates that the “injury” in a case involving a claimed loss of opportunity to survive occurs at death; until death, there is only a potential future injury. Thus, if this Court credits defendants’ characterization of plaintiff’s theory, *Wickens* indicates that the “injury” did not occur until Pickering’s death. Because Pickering’s death, as well as the heart attack, occurred in Wayne County, an argument premised on characterizing plaintiff’s theory as one involving the loss of opportunity to survive affords defendants no basis for relief.

We conclude that the circumstances in the present case are comparable to those in *Karpinski, supra*. Just as the Court in *Karpinski* focused on the location of the ruptured aneurysm to determine the location of the “original injury,” the trial court here correctly focused on the location of Pickering’s heart attack. Defendants have not suggested any basis for distinguishing the undiagnosed medical conditions (the aneurysm and arteriosclerosis) or events culminating in death (ruptured aneurysm and heart attack) in the two cases. Therefore, the trial court did not clearly err in denying defendants’ motions.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra