

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT DUTKO, Personal Representative of the  
Estate of COLLEEN DUTKO,

Plaintiff-Appellee,

v

CHOON SOO RIM, M.D., and LAKESIDE  
NEUROLOGY, P.C., f/k/a RIM & SUL, M.D.,  
P.C.,

Defendants-Appellants.

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UNPUBLISHED  
April 11, 2006

No. 259388  
Wayne Circuit Court  
LC No. 04-422745-NH

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Defendants appeal by leave granted from the trial court order denying their motion for change of venue. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Dr. Choon Soo Rim is a neurologist practicing in both Macomb and Wayne Counties. Prior to her death, Colleen Dutko (decedent) sought treatment from Rim for unexplained syncope.<sup>1</sup> Rim treated decedent exclusively at his office in Wayne County where he performed various neurological tests on decedent and found them all to be normal. Thereafter, decedent suffered a cardiac arrest while at work in Macomb County. She was transported to a nearby hospital, also in Macomb County, where she died.

Robert Dutko, as personal representative of decedent's estate (plaintiff), commenced the present action in the Wayne Circuit Court. Defendants sought change of venue to the Macomb Circuit Court, which the trial court denied. We granted defendants' application for leave to appeal.

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<sup>1</sup> Syncope is the "brief loss of consciousness associated with an inadequate flow of oxygenated blood to the brain." *Random House Webster's College Dictionary* (1997).

This Court reviews a trial court's ruling in response to a motion to change improper venue for clear error. *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000). A decision is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id.* We review de novo questions of statutory interpretation. *Ayar v Foodland Distributors*, 472 Mich 713, 715; 698 NW2d 875 (2005).

MCL 600.1629 provides, in relevant part, as follows:

(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.

In the present case, the parties do not dispute that defendants conduct business in both Wayne and Macomb counties. Instead, the parties disagree about what constituted the "original injury" for purposes of MCL 600.1629(1)(a). Plaintiff contends that the "original injury" was the misdiagnosis itself. Because the misdiagnosis occurred in Wayne County, where Rim treated decedent, plaintiff concludes that Wayne County is the place where the "original injury" occurred. Defendants counter that the misdiagnosis merely constituted the breach of the applicable duty and not the injury itself. Defendants argue that the injury that decedent suffered was the cardiac arrest, which subsequently resulted in her death. Consequently, defendants contend, the "original injury" occurred in Macomb County. We conclude that venue is proper in Macomb County.

In a wrongful death action, the word "injury", as used in MCL 600.1629, refers to the injury that results in death. *Karpinski v St John Hosp*, 238 Mich App 539, 544; 606 NW2d 45 (1999). Hence, the location of the death is not determinative of venue. Instead, it is necessary to identify the injury suffered by the decedent, which eventually resulted in death. *Id.* at 547.

In the present case, plaintiff alleged that Rim failed to properly diagnose the underlying cause of decedent's symptoms and failed to properly refer decedent to another specialist when no neurological explanation for decedent's symptoms could be found. Stated in another way, plaintiff essentially argues that, had Rim properly diagnosed decedent's underlying condition or transferred decedent to another specialist, decedent could have obtained medical intervention to correct her heart defect. Furthermore, had decedent received corrective treatment, she would not have suffered cardiac arrest and died. Hence, plaintiff concludes, the misdiagnosis constituted the "original injury" for purposes of the venue statute. We do not agree.

Rim's misdiagnosis constituted the breach of the applicable duty and not the injury itself. The misdiagnosis did not result in a present physical injury until decedent suffered her cardiac arrest. See *Karpinski, supra* at 546 n 2, 547-548 (determining that the "original injury" caused

by the misdiagnosis was the ruptured abdominal aortic aneurysm suffered by the decedent and not his death). Until decedent's cardiac arrest, decedent had only a potential future injury. See *Henry v Dow Chemical*, 473 Mich 63, 72-73; 701 NW2d 684 (2005) (holding that a plaintiff must establish the existence of a present physical injury in order to state a claim based on negligence). Furthermore, to the extent that Rim's misdiagnosis deprived decedent of the opportunity to obtain medical intervention, the lost opportunity did not culminate in an injury cognizable at law until she suffered her cardiac arrest. See *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60-61; 631 NW2d 686 (2001) (noting that claims based on the loss of an opportunity to survive only encompass injuries already suffered, which limits recovery to situations where death has occurred). Therefore, decedent's "original injury" for purposes of MCL 600.1629 was her cardiac arrest. Consequently, venue is proper in Macomb County.

Reversed and remanded for entry of an order granting a change of venue to Macomb County. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Donald S. Owens

/s/ Pat M. Donofrio