STATE OF MICHIGAN

COURT OF APPEALS

MARCUS YONO, LIVINGSTON BUILDING COMPANY, L.L.C., and SUTTONS POINTE DEVELOPMENT, L.L.C.,

Plaintiffs-Appellants,

v

ERIC CARLSON and LEELANAU ENTERPRISE, INC.,

Defendants-Appellees.

FOR PUBLICATION
April 28, 2009
9:05 a.m.

No. 281268
Livingston Circuit Court
LC No. 07-022810-CA

Before: Owens, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiffs appeal by delayed leave granted from the trial court's order granting defendants' motion for change of venue. We affirm.

The facts submitted established that plaintiff Yono is a resident of Livingston County. He is also the sole member of plaintiff Livingston Building Company, L.L.C., a construction company based in Livingston County, and is a member and manager of plaintiff Suttons Pointe Development, L.L.C. Livingston Building Company is currently building a project called Bay View in Suttons Bay in Leelanau County. Further, defendant Carlson is a reporter for the Leelanau Enterprise, a weekly newspaper located in Leelanau County and owned by defendant Leelanau Enterprise, Inc. The newspaper is printed solely in Leelanau County, does not advertise in Livingston County, and mails by subscription to no more than 19 addresses in Livingston County.

The complaint in this action arises out of several alleged defamatory statements concerning plaintiffs' Bay View project that were published in defendants' newspaper. In light of such publication, plaintiffs allege that their reputation has been damaged in Livingston County, which has impugned their business integrity and raised concerns about their financial solvency. Plaintiffs further allege that as a result of the damage to their reputation, they have suffered economic loss in that some people have cancelled their purchase agreements for condo units in the Bay View project. Upon defendants' motion, the trial court transferred venue from Livingston County to Leelanau County because it found that the original injury occurred in Leelanau County.

Plaintiffs claim that because the original injury occurred in Livingston County, venue is proper there so the trial court erred in transferring venue to Leelanau County. We disagree. A trial court's ruling in response to a motion to change improper venue is reviewed for clear error. *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* However, this case involves the interpretation of a statute, which is a question of law calling for review de novo. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995). The primary objective of statutory interpretation is to ascertain and give effect to the intent of the Legislature from the plain language of the statute. *Lash v Traverse City*, 479 Mich 180, 186-187; 735 NW2d 628 (2007).

MCL 600.1629 provides, in relevant part:

> (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.

The Michigan Supreme Court recently held that "the location of the original injury is where the first *actual* injury occurs that results from an act or omission of another, not where a plaintiff contends that it first relied on the act or omission that caused the injury." *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 620; 752 NW2d 37 (2008) (emphasis in original). The Court explained, "Reliance creates only a *potential* injury, which is insufficient to state a negligence cause of action . . . ." In a medical-malpractice case, where death allegedly resulted from a misdiagnosis leading to a ruptured aneurysm, this Court held that "venue rests with the county where the injury resulting in death occurred, and not the place where the death itself took place." *Karpinski v St John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 544; 606 NW2d 45 (2000). Further, in another medical-malpractice case, which concerned an injury attributed to the misreading of an X-ray, this Court held that "the plaintiff's injury is the corporeal harm *that results from* the defendant's alleged failure to meet the recognized standard of care." *Taha v Basha Diagnostics, PC*, 275 Mich App 76, 79; 737 NW2d 844 (2007) (emphasis in original). The plaintiffs attempt to extend the reasoning of these cases to one alleging defamation by claiming that the publication of statements creates the mere potential for injury, and thus the injury does not occur in fact until the defamed party actually suffers some concrete, adverse consequence of that publication.

However, this is a case of defamation per se, where damages are presumed, and therefore it is only logical to equate presumed damages with the initial publication in Leelanau County. Michigan law distinguishes between defamation per se whereby a defamatory statement is actionable "irrespective of special harm" and defamation per quod, which involves "the existence of special harm caused by publication . . . ." *Frohriep v Flanagan (On Remand)*, 278

Mich App 665, 680; 754 NW2d 912 (2008). Words are defamatory per se if they, "by themselves, and as such, without reference to extrinsic proof, injure the reputation of the person to whom they are applied." Black's Law Dictionary (6th ed, 1990), p 417. "Whether nominal or substantial, where there is defamation per se, the presumption of general damages is well settled." *Burden v Elias Bros Big Boy Restaurants*, 240 Mich App 723, 728; 613 NW2d 378 (2000), lv den 463 Mich 989 (2001).

Because this Court has never addressed the issue of original injury in a defamation per se case, it is appropriate to examine other jurisdictions for persuasive authority[1]. According to 50 Am Jur 2d, Libel, § 402, "Under a statute which prescribes venue in the county where the cause of action accrued, in a case of defamation, the cause of action accrues in the county where the defamation was first published, which in the case of a newspaper is where the newspaper is prepared, edited, and disseminated." Further, "[s]tatutory provisions requiring venue . . . to be laid in the county in which . . . the injury occurred . . . have been construed as allowing venue of an action for libel in a periodical or newspaper to be laid only in the county in which it was first printed and issued, and not in every county in which it was circulated." *Id.*, § 403.

Defendant Leelanau Enterprise, Inc., has its corporate registered office in Leelanau County. It also prepares and prints its newspaper solely in Leelanau County. In fact, even though plaintiffs claim that the people who cancelled their purchase agreements for the Bay View project were not located in Leelanau County, such project is located in Leelanau County and that is where the economic loss was first experienced. Thus, the original injury occurred in Leelanau County.

Finally, after determining that the original injury occurred in Leelanau County, we must apply in descending order the subparagraphs of MCL 600.1629 that apply to this particular case. See *Massey*, *supra*. MCL 600.1629(1)(a) designates venue in the county where the original injury occurred and where, "(i) [t]he defendant resides, has a place of business, or conducts business in that county," or where "(ii) [t]he corporate registered office of a defendant is located in that county." Defendants are solely located and have their registered office in Leelanau County. But, in *Massey*, *supra,* the Supreme Court found that the definite article, "the," in MCL 600.1629(1)(a)(i) demonstrates the Legislature's intent to define the phrase "[t]he defendant" as meaning one single defendant. See *Massey*, *supra* at 382-385. Therefore, since there are multiple defendants in this case, MCL 600.1629(1)(a)(i) does not apply.

Moreover, under the same reasoning above, defendants fall within MCL 600.1629(1)(a)(ii) because there are multiple defendants. Accordingly, venue is proper in Leelanau County under MCL 600.1629(1)(a)(ii) because the original injury occurred there when

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[1] However, as the *Michigan Legal Milestone* case of Theodore Roosevelt v George Newett reveals, even the former President of the United States pursued and prosecuted his libel claim against a Michigan defendant in Marquette County in 1913, where the defamatory words were printed. State Bar of Michigan, *Michigan Legal Milestones*<http://www.michbar.org/programs/milestones.cfm> (accessed March 10, 2009).

the allegedly defamatory words were printed, and it is also the location of defendant Leelanau Enterprise, Inc.'s corporate registered office.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jane E. Markey