

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

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ESTATE OF DENICE BROGAN-GENTA, by  
CRAIG WRIGHT, Special Personal Representative,

UNPUBLISHED  
April 30, 2020

Plaintiff-Appellee,

v

LOU PAUL GENTA,

No. 346766  
Genesee Circuit Court  
LC No. 18-111427-NI

Defendant-Appellant.

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Before: BORRELLO, P.J., and O’BRIEN and CAMERON, JJ.

PER CURIAM.

In this interlocutory appeal, defendant appeals by leave granted<sup>1</sup> the trial court’s order denying his motion for change of venue under MCL 600.1629. For the reasons set forth in this opinion, we reverse.

**I. BACKGROUND**

Plaintiff filed this wrongful-death action against defendant, who was the decedent’s husband, in the Genesee Circuit Court on August 13, 2018. The complaint alleged that the decedent died in a single-vehicle crash while a passenger in a motor vehicle driven by defendant and that the decedent’s death was the result of defendant’s negligence. Relevant to the issue of venue, the complaint alleged that the motor vehicle accident occurred in Gladwin County, Michigan and that defendant and the decedent resided in Genesee County, Michigan. In his answer, defendant admitted that he and the decedent resided in Genesee County at the time of the accident.

Defendant moved to change venue from Genesee County to Gladwin County, arguing that venue was improper in Genesee County or, in the alternative, that the change in venue to Gladwin

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<sup>1</sup> *Brogan-Genta Estate v Genta*, unpublished order of the Court of Appeals, entered April 17, 2019 (Docket No. 346766).

County was warranted under the doctrine of forum non conveniens. An affidavit, in which defendant averred that he resided in Gladwin County at the time that plaintiff filed this lawsuit and that he had not resided in Genesee County at any time since the lawsuit was filed, was attached to defendant's motion. Defendant argued that the residence of a party, for venue purposes, is determined based on the time when the lawsuit is filed rather than the time when the incident giving rise to the action occurred. Defendant further argued that venue was therefore proper in Gladwin County under MCL 600.1629(1)(a)(i) because the accident occurred in Gladwin County and defendant resided in Gladwin County at the time that the lawsuit was filed. Alternatively, defendant maintained that Gladwin County was the most convenient forum because "the accident occurred there, the accident was investigated by the Gladwin County Sheriff's Department, the expert mechanic retained by the police department is located in Gladwin County, the autopsy of the Decedent was conducted in that county, and there [was] no nexus between this case and Genesee County whatsoever."

Plaintiff opposed this motion, arguing that venue was proper in Genesee County under MCL 600.1629(1)(c) because defendant resided in Genesee County, where the personal representative representing the plaintiff estate also had a place of business, and there also was no venue that fully satisfied the conditions of MCL 600.1629(1)(a) or (b). Plaintiff contended that defendant's affidavit was insufficient to establish defendant's residency in Gladwin County because the affidavit did not indicate when defendant became a resident of that county and defendant did not submit any supporting documentation proving his residency in Gladwin County. Additionally, plaintiff argued that a transfer of venue was not warranted under the doctrine of forum non conveniens because defendant had failed to demonstrate that he was inconvenienced or prejudiced by plaintiff's choice of venue for a host of reasons, including the fact that defendant still owned the home in Genesee County where he and the decedent had lived. Plaintiff attached records showing property tax and water bill information from summer 2018 for the property in Genesee County where defendant and the decedent had lived and which showed defendant as the current owner. Plaintiff also attached documentation purporting to show that defendant's registered voting address as of October 31, 2017, was the Genesee County address.

At the first hearing on the motion, the trial court noted the conflicting evidence regarding defendant's county of residence that had been presented by each party and ordered supplemental briefing to address the level of proof needed to decide the issue of residence for venue purposes.

Plaintiff's supplemental brief focused only on the doctrine of forum non conveniens, reiterating the argument that defendant had failed to sufficiently demonstrate inconvenience or prejudice from plaintiff's choice of venue and further arguing that plaintiff's choice of forum should accordingly be given deference. However, in the context of these arguments, plaintiff continued to maintain that defendant had not demonstrated that he currently resided in Gladwin County. Plaintiff included further evidence that defendant had mortgaged the Genesee County property in May 2018 and had claimed a homestead exemption on this property. Plaintiff acknowledged that defendant had two houses, one in Genesee County and one in Gladwin County, but argued that the Genesee County house was defendant's principal residence because an individual may only have one homestead at a time and second homes or cottages do not qualify as a homestead.

Defendant argued in his supplemental brief that because he had challenged venue on the basis that venue in Genesee County was improper, plaintiff had the burden to show that the chosen venue was actually proper. Defendant contended that plaintiff was relying on inadmissible evidence in the form of documents that lacked proper foundation to establish their authenticity. Defendant maintained that his sworn, un rebutted affidavit established his residence in Gladwin County and that he was therefore entitled to the transfer of venue because venue in Genesee County was improper pursuant to MCL 600.1629(1)(a). Finally, defendant argued that Gladwin County was also the most convenient forum.

At the second hearing on the motion, the trial court stated that the dispositive question was whether defendant lived in Gladwin County or Genesee County. The trial court denied the motion to change venue, reasoning that that amount of evidence presented by plaintiff showing that defendant lived in Genesee County overcame defendant's affidavit and that venue was thus proper in Genesee County.

## II. STANDARD OF REVIEW

This Court reviews the trial court's ruling on a motion to change venue for clear error. *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.*

"This Court reviews de novo the trial court's interpretation of statutes governing venue." *Shiroka v Farm Bureau Gen Ins Co of Mich*, 276 Mich App 98, 102; 740 NW2d 316 (2007). "The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature." *Id.* (quotation marks and citation omitted). We look first to the language of the statute itself. *Id.* at 102-103. "When the language of a statute is unambiguous, the Legislature's intent is clear, and judicial construction is neither necessary nor permitted." *Dimmitt & Owens*, 481 Mich at 624.

## III. ANALYSIS

"Venue is controlled by statute in Michigan." *Id.* "In a wrongful death action, venue is controlled by MCL 600.1629." *Karpinsky v Saint John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 542; 606 NW2d 45 (1999); see also MCL 600.1629(1).

MCL 600.1629 provides in relevant part as follows:

(1) . . . 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.

(c) If a county does not satisfy the criteria under subdivision (a) or (b), a county in which both of the following apply 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, or has its corporate registered office located in that county.

(ii) The defendant resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.

In this case, plaintiff relied on MCL 600.1629(1)(c) to justify the choice of venue in Genesee County. This provision is only applicable if the criteria in MCL 600.1629(1)(a) or (b) are not met. MCL 600.1629(1)(c); see also *Massey v Mandell*, 462 Mich 375, 383; 614 NW2d 70 (2000). Neither party argues that MCL 600.1629(1)(a)(ii) or (1)(b) is applicable. Hence, we first must only examine MCL 600.1629(1)(a)(i) to determine whether, as defendant argues, this provision indicates that Gladwin County is the proper venue and that Genesee County is an improper venue. See MCR 2.223(A) (providing that the court “shall order a change of venue on timely motion of a defendant” if the venue in a civil action is improper and that under such circumstances, “the action may be transferred only to a county in which venue would have been proper”). If defendant’s argument is correct, then it is irrelevant whether Genesee County could be deemed a proper venue under MCL 600.1629(1)(c) because that provision may only be relied upon *if there is not a venue that satisfies any of the conditions in MCL 600.1629(1)(a) or (b)*. MCL 600.1629(1)(c); *Massey*, 462 Mich at 383.

Relevant to this appeal, venue is proper under MCL 600.1629(1)(a)(i) in the county where the original injury occurred *if* “[t]he defendant resides . . . in that county” as well. MCL 600.1629(1)(a)(i); *Shiroka*, 276 Mich App at 106. There is no dispute that the original injury in this case occurred in Gladwin County. Rather, the dispute centers on whether defendant “resides” in Gladwin County and the meaning of that term in the statute. The statute does not define the term “resides.”

The parties do not dispute that defendant owned two homes: one in Gladwin County and one in Genesee County. Indeed, the materials submitted by the parties in their written filings with the trial court support this conclusion. Defendant submitted an affidavit indicating that he maintained a home in Gladwin County at the time the lawsuit was filed. Plaintiff submitted no evidence suggesting that defendant did not actually own a home in Gladwin County or that otherwise conflicted with defendant’s claim in this respect, instead only submitting evidence purporting to show that defendant’s *primary* residence, was in Genesee County. Moreover,

plaintiff explicitly conceded that defendant owned the homes in each county. “Venue is determined at the time the suit is filed . . .” *Shiroka*, 276 Mich App at 104.

In the trial court, the parties essentially argued about which *one* of defendant’s two homes was the pertinent one to consider for purposes of determining venue with each party attempting to claim that a different home was defendant’s current primary residence. However, the parties misconstrued the meaning of the term “resides” in MCL 600.1629(1)(a)(i), treating this term as if it were synonymous with the concept of domicile. The trial court similarly erred by basing its ruling on the same misconception of the meaning of the statutory language.

There is nothing in the language of MCL 600.1629(1)(a)(i) stating that the defendant is limited to a single residence, or that defendant’s “primary” or “principal” residence is relevant, for purposes of determining venue. The statute uses the term “resides” and does not make any reference to the concept of “domicile.” As our Supreme Court has recognized,<sup>2</sup> there is a distinction between a person’s “domicile”—which is limited to a single place at a given time and is defined as “the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning”—and the concept of “residence,” which may apply to other dwelling places *in addition to* a person’s domicile. *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 493-495; 835 NW2d 363 (2013). As the *Grange* Court explained:

[O]ur common law has recognized that from the time of a person’s birth—from childhood through adulthood—a person can only have a single domicile at any given point in time. Indeed, there are few legal axioms as established as the one providing that every person has a domicile, and that a person may have one—and only one—domicile.

In furtherance of this understanding of domicile, the common law has necessarily distinguished between the concepts of “domicile” and “residence:”

The former, in its ordinary acceptance, was defined to be, ‘A place where a person lives or has his home,’ while ‘[a]ny place of abode or dwelling place,’ however temporary it might have been, was said to constitute a residence. A person’s domicile was his legal residence or home in contemplation of law.

Stated more succinctly, *a person may have only one domicile, but more than one residence*. For purposes of distinguishing “domicile” from “residence,” this Court has explained that “domicile is acquired by the combination of residence and the

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<sup>2</sup> “Normally, this Court will accord an undefined statutory term its ordinary and commonly used meaning. However, where the Legislature uses a technical word that has acquired a particular meaning in the law, and absent any contrary legislative indication, we construe it ‘according to such peculiar and appropriate meaning.’ ” *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 493; 835 NW2d 363 (2013) (citations omitted). Accordingly, we refer to our Supreme Court’s understanding of the concepts of residence and domicile, which have peculiar meanings in the law.

intention to reside in a given place . . . . If the intention of permanently residing in a place exists, a residence in pursuance of that intention, however short, will establish a domicile.” [*Id.* at 494-495 (citations omitted; ellipsis and second alteration in original; emphasis added).]

Additionally, this Court has recognized that although residence is interpreted to mean “domicile” or “legal residence” in the context of statutes conferring “jurisdiction,” the concept of residence is not so narrowly defined for purposes of “venue.” *Curry v Jackson Circuit Court*, 151 Mich App 754, 758; 391 NW2d 476 (1986). “The primary foci of [MCL 600.1629(1)(a)(i)] are to ensure that venue ‘is proper where [the original injury occurred<sup>3</sup>],’ and ‘that the action be instituted in a county where the defendant has *some real presence* such as might be shown by systematic or continuous business dealings inside the county,’ ” *Coleman v Gurwin*, 443 Mich 59, 62; 503 NW2d 435 (1993) (citations omitted; emphasis added), or (as applicable in this case) by showing that the defendant “resides” in that county, MCL 600.1629(1)(a)(i).

When the issue is whether the defendant “conducts business” in the county, which is an alternative means of satisfying MCL 600.1629(1)(a)(i) other than showing residence, we have acknowledged that an entity may conduct business in multiple counties. See, e.g., *Shiroka*, 276 Mich App at 109. However, there must be some “real presence” (i.e. systematic or continuous business dealings) by the defendant in that county to constitute conducting business. See *Coleman*, 443 Mich at 62. A trucking company servicing its regular customers in the county is a quintessential example of systemic or continuous business dealings constituting a real presence in the county, *Schultz v Silver Lake Transp, Inc*, 207 Mich App 267, 271; 523 NW2d 895 (1994), while merely owning stock in a completely separate business entity does not by itself constitute systemic or continuous business dealings evincing a real presence, *Hills & Dales Gen Hosp v Pantig*, 295 Mich App 14, 21-24; 812 NW2d 793 (2011).

In this case, the evidence that defendant owns a home in Gladwin County and stays there—even if it is a second home and not his domicile—demonstrates sufficient contact with Gladwin County to show that he “resides” in Gladwin County for purposes of determining venue under MCL 600.1629(1)(a)(i). Thus, the trial court clearly erred by denying defendant’s motion to change venue because venue was proper in Gladwin County and improper in Genesee County under MCL 600.1629(1)(a)(i).

Accordingly, we reverse and remand this matter for entry of an order transferring venue to Gladwin County.

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<sup>3</sup> *Coleman* involved an earlier version of MCL 600.1629(1)(a)(i) that was based on where “all or part of the cause of action arose” instead of on where “the original injury occurred.” However, that portion of the statute is not at issue in this case where there is no dispute that the original injury occurred in Gladwin County.

Reversed and remanded. We do not retain jurisdiction. No costs are awarded. MCR 7.219(A).

/s/ Stephen L. Borrello  
/s/ Colleen A. O'Brien  
/s/ Thomas C. Cameron