STATE OF MICHIGAN

COURT OF APPEALS

LEONORA SLUE and DENISE PAWLINA,

Plaintiffs-Appellees,

v

PROGRESSIVE MARATHON INSURANCE COMPANY and PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendants-Appellants.

UNPUBLISHED
September 23, 2021

No. 353551
Oakland Circuit Court
LC No. 2019-174293-CK

Before: RICK, P.J., and RONAYNE KRAUSE and LETICA, JJ.

PER CURIAM.

Defendants appeal by leave granted[1] the order granting plaintiffs' motion to consolidate their Oakland Circuit Court case with a pending case in the Washtenaw Circuit Court. On appeal, defendants argue that the trial court erred by consolidating the two cases under MCR 2.505(A) and the "one court of justice" clause. For a different reason, we reverse and remand.

I. FACTUAL BACKGROUND

On May 31, 2019, plaintiffs filed a complaint against defendants in Oakland County Circuit Court, alleging that defendants had "systematically underpaid not just [p]laintiffs, but thousands of other putative class members, amounts [defendants] owed their insureds for [actual cash value] (ACV) losses . . . ." On July 18, 2019, Gonzalo E. Ubillus filed a class action complaint against Progressive Marathon Insurance Company (Marathon) in Washtenaw Circuit Court (the *Ubillus* case), similarly claiming that Marathon breached its insurance policy by failing to pay the full

[1] *Slue v Progressive Marathon Ins Co*, unpublished order of the Court of Appeals, entered August 12, 2020 (Docket No. 353551).

ACV amount. After discussions between plaintiffs' counsel and Ubillus's counsel, plaintiffs moved the trial court to consolidate their action with the *Ubillus* case.

The trial court granted plaintiffs' motion in a written order on April 16, 2020.[2] The trial court reasoned that defendants had failed to consider the "one court of justice" clause of the Michigan Constitution, Const 1963, art 6, § 1. The trial court explained:

> Pursuant to the Michigan Constitution, the "trial court of general jurisdiction[,]" i.e., the circuit court, is one "court." The Michigan Court of Appeals recently addressed this constitutional provision in an unpublished opinion.
>
> In *2 Crooked Creek, LLC, v Frye*, [unpublished per curiam opinion of the Court of Appeals, issued March 12, 2020 (Docket No. 341274),] the Court of Appeals acknowledged records filed in the Court of Claims are subject to judicial notice in another circuit court and the Court of Appeals under the "one court of justice" doctrine. Thus, the circuit courts are part of the "one court of justice" under the Michigan Constitution.
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> Having determined MCR 2.505 permits the relief requested, the Court grants [p]laintiffs' motion. [Footnotes omitted.]

This appeal followed.

II. STANDARD OF REVIEW

A trial court's decision to consolidate cases is reviewed for an abuse of discretion. *Bordeaux v Celotex Corp*, 203 Mich App 158, 163; 511 NW2d 899 (1993). An abuse of discretion occurs where the trial court's decision falls outside the range of principled and reasonable outcomes. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). "A trial court necessarily abuses its discretion when it makes an error of law." *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 552; 886 NW2d 113 (2016).

This case involves, in part, a challenge to the trial court's application of MCR 2.505. "We review the interpretation and application of a court rule de novo." *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003). Similarly, questions of law involving the interpretation and application of our state Constitution are reviewed de novo. *Mayor of Cadillac v Blackburn*, 306 Mich App 512, 516; 857 NW2d 529 (2014).

[2] The trial court waived oral argument under MCR 2.119(E)(3).

III. LAW AND ANALYSIS

Defendants argue the trial court erred in consolidating the two different circuit court cases because it lacked authority to do so under MCR 2.505(A), and because the "one court of justice" clause does not make all circuit courts "the court." We agree that the trial court erred in ordering the cases consolidated pursuant to MCR 2.505(A) under the "one court of justice" clause.

As an initial matter, *2 Crooked Creek* is unpublished and therefore might be considered instructive or persuasive, but it is not binding authority. MCR 7.215(C)(1); *Paris Meadows LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010). More importantly, it is not applicable to this matter. The relevant discussion in *2 Crooked Creek* pertained to the power of courts to take judicial notice of each others' records in lieu of, or in addition to, evidence actually admitted in a particular case before the court. *2 Crooked Creek*, slip op at p 12. Although *2 Crooked Creek* cited "the one court of justice concept" in partial support of that discussion, nowhere in *2 Crooked Creek* was there any express or implied discussion of joinder, venue, consolidation, or any other concept of relevance to this matter. Even if it were binding, *2 Crooked Creek* does not support the trial court's decision.

The "one court of justice" clause in our state Constitution provides:

> Except to the extent limited or abrogated by article IV, section 6, or article V, section 2, the judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house. [Const 1963, art 6, § 1.]

This clause is premised on the understanding that "the circuit courts are a division of the state's 'one court of justice.' " *In re Parole of Hill*, 298 Mich App 404, 427; 827 NW2d 407 (2012) (citations omitted). The purpose of the clause is to provide administrative structure and efficiency to the judicial system as a whole, while balancing the need for our Supreme Court to supervise and coordinate the lower courts while not eviscerating the autonomy of the lower courts. See *Grand Traverse Co v State*, 450 Mich 457, 470-471; 538 NW2d 1 (1995). Although in the context of discussing court funding, our Supreme Court explained that the "one court of justice" clause was not intended "to change the traditionally local character of the courts." *Id*. at 473. The "one court of justice" concept pertains to our Supreme Court's overarching supervisory role over all state courts, but each circuit court remains a partially-autonomous subdivision of Michigan's one court of justice. *Judicial Attorneys Ass'n v State*, 459 Mich 291, 295-296, 298-299; 586 NW2d 894 (1998). In essence, the "one court of justice" is a poetic term of art generally referring to the fact that the judicial branch of Michigan's government is one branch of government that is made up of component parts.

In general, venue is not considered jurisdictional. MCL 600.1601. Although venue was historically referred to as being somewhat in the nature of "jurisdictional," see *Twomley v Arnold*, 372 Mich 230, 232-233; 125 NW2d 860 (1964), it was nevertheless not truly jurisdictional because it could be waived. *Edwards v Meinberg*, 334 Mich 355, 359; 54 NW2d 684 (1952). However, we have found no authority establishing that venue may simply be disregarded. The only authority

we have found even hinting otherwise is this Court's statement in *Mich Waste Sys, Inc v Dep't of Natural Resources*, 157 Mich App 746, 756; 403 NW2d 608 (1987), that the trial court erred by refusing to consolidate two cases in different circuit courts. However, that statement is dicta because, as the Court noted, the issue of whether the cases should have been consolidated was not necessary to the resolution of the issues on appeal because "there is little reason at this stage of the proceeding to multiply the 'needless duplication of time, effort, and expense' by remanding the case and ordering consolidation." *Id*. See also *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 557-558; 741 NW2d 549 (2007) ("It is a well-settled rule that statements concerning a principle of law not essential to determination of the case are obiter dictum and lack the force of an adjudication," and are "not binding on this Court.").

One circuit court therefore simply does not have the plenary power to consolidate a case pending before it with a different case pending in another circuit court. Rather, consolidation is governed by MCR 2.505(A), which states:

> (A) **Consolidation.** When actions involving a substantial and controlling common question of law or fact are pending before the court, it may
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> (1) order a joint hearing or trial of any or all the matters in issue in the actions;
>
> (2) order the actions consolidated; and
>
> (3) enter orders concerning the proceedings to avoid unnecessary costs or delay.

The plain language of MCR 2.505(A) requires two or more actions to be pending *before the court*. Venue principles, even if not strictly jurisdictional and despite all circuit courts' membership in the judiciary, remain important partitions between the various circuits. Even if the one court of justice clause permits all the circuit courts in the state to be considered "the court" for MCR 2.505, an order changing venue from one geographical division to another was still required. See *Black's Law Dictionary* (11th ed) (defining "change of venue" as "[t]he transfer of a case from a court in one locale to another in the same judicial system to cure a defect in venue, either to minimize the prejudicial impact of local sentiment or to secure a more sensible location for trial."). But see MCR 2.222 (permitting change of venue even when venue was proper). The trial court recognized this in its order: "The file shall be sent to Washtenaw County Circuit Court." Accordingly, we must consider whether this change of venue was permissible.

Plaintiffs assert that the trial court did not consolidate this case with the *Ubillus* case, but instead, "pursuant to MCR 2.505(A) . . . transferred this action to Washtenaw County for consolidation with *Ubillus* . . . ." This assertion is belied by the trial court's order captioned as regarding a motion for consolidation. The trial court's order begins by framing the issue concerning "[p]laintiffs' motion to consolidate this action with one pending in Washtenaw County Circuit Court . . . . Plaintiffs seek to consolidate this matter into a pending case in Washtenaw County Circuit Court." The trial court then quoted MCR 2.505(A), which addresses consolidation of cases, and "determined [that] MCR 2.505 permits the relief requested," i.e., consolidation of this case with the *Ubillus* case.

Because venue was proper in Oakland Circuit, the relevant court rule is MCR 2.222, which provides, in pertinent part:

> (A) Grounds. The court may order a change of venue . . . for the convenience of parties and witnesses or when an impartial trial cannot be had where the action is pending . . . .
>
> (B) Motion Required. If the venue of the action is proper, the court may not change the venue on its own initiative, but may do so only on motion of a party.

MCR 2.221 provides the instructions for filing a motion for change of venue:

> (A) Time to File. A motion for change of venue must be filed before or at the time the defendant files an answer.
>
> (B) Late Motion. Untimeliness is not a ground for denial of a motion filed after the answer if the court is satisfied that the facts on which the motion is based were not and could not with reasonable diligence have been known to the moving party more than 14 days before the motion was filed.
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> (C) Waiver. An objection to venue is waived if it is not raised within the time limits imposed by this rule.

Plaintiffs correctly assert that, pursuant to MCR 2.222(A), the trial court was empowered to order a change of venue. However, given that venue was proper in Oakland County, the trial court could not have changed venue on its own initiative; it could only have done so "on motion of a party." MCR 2.222(B). This motion had to be filed "before or at the time the defendant files an answer," MCR 2.221(A), unless the trial court was satisfied with the moving party's diligence, MCR 2.221(B).

Plaintiffs further argue that the trial court acted pursuant to its inherent and statutory authority by transferring the case to Washtenaw Circuit Court. Initially, plaintiffs do not provide a statute from which the trial court derived the power to transfer the case. "A party may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, or give issues cursory treatment with little or no citation of supporting authority." *Wolfe v Wayne-Westland Community Sch*, 267 Mich App 130, 139; 703 NW2d 480 (2005). And although a trial court does have an inherent authority to "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases," *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006), such authority does not extend to control the affairs of a different court in a separate circuit.

Nevertheless, the courts may and should consider the substance of matters presented for their attention, not just the formal names and labels given by the parties. *Hartford v Holmes*, 3 Mich 460, 463 (1855); *Wilcox v Moore*, 354 Mich 499, 504; 93 NW2d 288 (1958); *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 582; 808 NW2d 578 (2011). Therefore, it would not have been erroneous for the trial court to have treated plaintiffs' motion to consolidate as also being a motion to change venue. The timeliness of such a motion is questionable: clearly, the

motion to consolidate was filed well after defendants filed an answer, MCR 2.221(B), and counsel in the *Ubillus* case sent plaintiffs' counsel a proposal to consolidate the cases on February 4, 2020, more than 14 days before the motion was filed, MCR 2.221(B).[3] However, it is less obvious that plaintiffs knew enough about the *Ubillus* case at that time to know whether consolidation was in their best interest. Furthermore, critically, nothing in MCR 2.221 or MCR 2.222 appears to *require* a trial court to deny an untimely motion to consolidate. The propriety of doing so would, we think, be better addressed in the trial court.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michelle M. Rick
/s/ Amy Ronayne Krause
/s/ Anica Letica

[3] Although it is a matter of common knowledge that the COVID-19 crisis was developing at around this time, the COVID-19 filing-deadline tolling provisions of Supreme Court Administrative Order 2020-4 became effective on March 24, 2020.