

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN G. MURRAY,

Plaintiff-Appellee,

v

ITC HOLDINGS CORP., JOSEPH L. WELCH,
and JON E. JIPPING,

Defendants-Appellants,

and

UTILITY LINE CONSTRUCTION SERVICES,
INC., and HARWELL LEON ELLIS,

Defendants,

and

JOHN DOE,

Defendant.

UNPUBLISHED

March 13, 2014

No. 310776

Wayne Circuit Court

LC No. 12-001351 NO

Before: METER, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Defendants ITC Holdings Corp., Joseph L. Welch, and Jon E. Jipping appeal as on leave granted the trial court's order denying their motion for change of venue.¹ We affirm.

¹ Defendants Welch and Jipping are the chief executive officer and chief operating officer, respectively, of ITC Holdings. For purposes of this appeal, these three defendants have the same interests and will be referred to as the ITC defendants. John Doe is an unknown individual who was identified only as an employee of ITC Holdings. Defendants Utility Lines Construction Services, Inc., and Harwell Leon Ellis were added to the lower court case after the ITC defendants' motion for change of venue was denied. They also filed a motion for change of

Plaintiff filed a complaint in Wayne County alleging defamation, tortious interference with contractual relations, and civil conspiracy. Specifically, plaintiff, who worked for the DTE energy company and, as part of his employment responsibilities, went into ITC facilities and oversaw ITC employees, claimed that the ITC defendants wrongly accused him of purposefully setting off transfer trip alarms in the ITC Bloomfield electrical facility, located in Oakland County.² The ITC defendants, at their Novi office, located in Oakland County, then decided to bar plaintiff from ITC facilities and communicated that decision to DTE, in Wayne County. DTE demoted plaintiff.

We review for clear error a trial court's ruling in response to a motion for change of venue. *Dimmitt & Owens Financial, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 624; 752 NW2d 37 (2008). The pertinent parties agree that MCL 600.1629 controls the venue issue and that the only issue here is where the "original injury" occurred.³

The Michigan Supreme Court last addressed venue under MCL 600.1629 in *Dimmitt*, 481 Mich at 621, in which it held that, "for purposes of determining where venue is properly laid, the location of the original injury is where the first actual injury occurred that resulted from an act or omission of the . . . defendants." *Dimmitt* was an accounting malpractice action in which the venue, which the trial court denied, and filed a brief with this Court concurring with the ITC defendants in their appeal. They were not, however, parties to the June 4, 2012, order being appealed here.

² A transfer trip alarm is used to assess and maintain power transmission lines. Purposefully causing a transfer trip alarm to sound without justification is a criminal offense.

³ MCL 600.1629 provides, in 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.

(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.

accounting firm performed work at the client's office in Oakland County, but generated the allegedly improper reports in Wayne County. *Id.* at 620. The *Dimmitt* Court determined that the actual injury occurred when the client could not meet its obligations due to the malpractice and was forced to liquidate its assets, and that that occurred in Oakland County where the client's office was located. *Id.* at 621.

The ITC defendants argue that the original injury occurred at the Bloomfield station where the trip alarm was triggered or at their Novi office where an investigation was conducted regarding the trip alarm, a report was generated regarding the investigation that concluded plaintiff was at fault, a decision was made to bar plaintiff from ITC premises, and the decision was communicated to DTE. Therefore, argue the ITC defendants, the original injury occurred in Oakland County. Plaintiff argues that the original injury occurred in Wayne County, where the ITC defendants communicated the allegedly defamatory statements to DTE and DTE demoted him. Both sides contend that *Dimmitt* supports their position.

We find plaintiff's position more persuasive. The original injury occurred when DTE, located in Wayne County, was apprised of the investigation and lockout and demoted plaintiff.

The *Dimmitt* Court also cited *Taha v Basha Diagnostics, PC*, 275 Mich App 76; 737 NW2d 844 (2007), in reaching its conclusion. *Taha* was a medical malpractice action in which the plaintiff had an x-ray taken in Wayne County. *Id.* at 78. The x-ray was sent to the defendant to be read in Oakland County. *Id.* at 78-79. The defendants allegedly misread the x-ray and the doctor treated the plaintiff in Wayne County based upon the defendants' allegedly negligent reading of the x-ray. *Id.* at 79. The *Taha* Court determined that the plaintiff was injured in Wayne County and that venue was proper there. *Id.* at 79-80. The present matter is comparable to *Taha*. Although the investigation and determination that plaintiff would be barred from defendant's facilities was made in Oakland County, plaintiff was not actually injured until DTE was informed of this and demoted plaintiff. Because DTE is located in Wayne County, plaintiff was actually injured in Wayne County.

The ITC defendants also argue that *Karpinsky v St John Hosp-Macomb Ctr Corp*, 238 Mich App 539; 606 NW2d 45 (1999), and *Yono v Carlson*, 283 Mich App 567; 770 NW2d 400 (2009) support their position. In *Karpinsky*, *id.* at 540, the plaintiff sought treatment at the defendant's facility in Macomb County, was transferred by ambulance to the defendant's Wayne County facility, and was pronounced dead upon arrival at the Wayne County facility. The *Karpinsky* Court found that venue was proper in Macomb County because the original injury (the misdiagnosis) occurred there. *Id.* at 547-548. In doing so, the *Karpinsky* Court relied on its interpretation of the wrongful death statute, which is not at issue here. *Id.* at 543-547. Therefore, *Karpinsky* is not particularly relevant to the current action, and, at any rate, the plaintiff was initially injured in Macomb County.

In *Yono*, 283 Mich App at 568-569, the plaintiff, a builder, alleged defamation by the defendant newspaper reporter. Although the plaintiff was based in Livingston County and alleged that his reputation was damaged in Livingston County, the newspaper office was in Leelenau County and the newspaper was published in Leelenau County. *Id.* Further, the plaintiff claimed that the defamation caused customers to cancel their orders for a building project in Leelenau County. *Id.* at 569. This Court found that venue was proper in Leelenau

County because the action was for defamation per se (where damages are presumed), rather than defamation per quod (where there is special harm caused by the publication), and the statement was first printed and issued in Leelenau County. *Id.* at 570-571. Further, the plaintiff's first economic loss occurred in Leelenau County when the customers cancelled their orders. *Id.* at 572.

Unlike *Yono*, the present defamation case does not have a newspaper as a defendant. Here, although the investigation occurred and the report was prepared in Oakland County, the publication occurred when the statements were made to DTE in Detroit. Further, plaintiff's first economic loss occurred in Detroit as a result of DTE's action in demoting plaintiff. Moreover, *Yono* was also a defamation per se case, whereas here plaintiff argues that his action involves both defamation per se and defamation per quod. The ITC defendants argue that plaintiff should be barred from raising the argument that his claims involve defamation per quod because plaintiff did not argue this before the trial court. It should be noted that defendants raised the *Yono* case in their reply brief and not in their original motion for change of venue and, therefore, plaintiff may not have had sufficient opportunity to raise this issue. Further, the allegations of the complaint appear to refer to both defamation per se and defamation per quod, because special harm allegedly was caused by defendants' publication of the false accusations.

The trial court did not clearly err in finding that, under MCL 600.1629, venue was proper in Wayne County because the original injury occurred in Detroit, where the defamatory statements were made to plaintiff's employer.⁴

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Henry William Saad

⁴ Defendants Utility Line Construction Services, Inc., and Harwell Leon Ellis make an additional argument for change of venue. These defendants were not added as parties until after the issuance of the motion being appealed, and we decline to consider their unpreserved argument.