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Summary of Mountain View Recreation, Inc. v. Imperial Commercial Cooking Equipment Co., 129 Nev. Adv. Op. 45

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CIVIL PROCEDURE – TRANSFER OF VENUE

Summary

This is an appeal from a district court order granting respondents' motion to transfer venue from Nye County to Clark County.

Disposition/Outcome

The Court reversed the district court order, concluding that the district court abused its discretion because it (1) lacked sufficient evidence in the record to support transfer under the doctrine of *forum non conveniens*; (2) failed to properly analyze the issues under NRS 3.100(2) and past precedent requiring Nevada counties to provide adequate courtroom facilities; and (3) failed to consider the docket congestion in Clark County before reaching its decision.

Factual and Procedural History

In 2003, the Mountain View Recreation Center located in Pahrump, Nevada, caught fire and was destroyed. In 2005, Mountain View (Petitioner) filed suit against several defendants in connection with the design and maintenance of a deep-fryer that allegedly caused the fire, as well as the center's sprinkler system that failed to douse the fire. The defendants included Heritage Operating, L.P., and Harmony Fire Protection, Inc. (collectively, the Respondents).

In 2010, the Respondents filed a motion to transfer venue from Nye County to Clark County.² The district court declined to authorize the transfer based on the potential inability to select an impartial jury.³ However, the district court granted the transfer "based on the convenience of the witnesses and the promotion of the ends of justice." The "ends of justice" referred in part to the effect of NRCPC 41(e), which requires trial to begin within five years of filing suit. Here, the case would be subject to dismissal for want-of-prosecution in December 2010, but the district court found that Pahrump's courtroom facilities were not adequate or available to hold the trial by that time.

The district court also heard alternative arguments on changing venue to Tonopah, NV, rather than Clark County. Noting that Tonopah is 104 miles further from Pahrump than is Las Vegas, the court authorized the transfer to Clark County. Petitioner, Mountain View, filed a timely appeal.

Discussion

Forum Non Conveniens

NRS 13.050 codifies the doctrine of *forum non conveniens*. NRS 13.050(2)(c) states that "[t]he court may, on motion, change the place of trial . . . [w]hen the convenience of the

¹ By Benjamin Reitz

² Harmony Fire Protection joined the motion filed by Heritage Operating.

³ The Court further clarified that jury selection could not be considered on appeal because the selection must be attempted prior to the appeal.

witnesses and the ends of justice would be promoted by the change." However, courts must give deference to the forum selection made by the plaintiff and the basis for transfer must be supported by affidavits: "[a] specific factual showing must be made."⁴

To support the transfer of venue, Respondents alleged inconvenience and hardship of the parties, counsel, and expert witnesses, most of whom resided in Las Vegas or would have to travel through Las Vegas to reach Pahrump. However, Respondents failed to support such allegations with evidence in the record. Furthermore, the Court noted that the allegations, if supported, would not establish grounds for transfer under *forum non conveniens* because inconvenience of the parties, counsel, and expert witnesses is not a consideration under the doctrine, and generally speaking ease of travel has greatly increased in the modern era. The Court concluded that the record contained insufficient evidence to support transfer under NRS 13.050, and therefore the district court abused its discretion.

Inadequate Courtroom Facilities

NRS 3.100(2) states that "[i]f a room for holding court. . . is not provided by the county, . . . the court may direct the sheriff to provide such room, attendants, fuel, lights and stationery, and the expenses thereof shall be a county charge."

Based on its prior interpretation of NRS 3.100 in *Angell v. Eighth Judicial District Court*, 108 Nev. 923, 839 P.2d 1329 (1992), the Court found that Nye County had a statutory duty to provide adequate facilities and support staff. The Court then expanded on its prior holding to require that when considering whether a change of venue is necessary based on a potential inadequacy of courtroom facilities within a county, a district court must analyze and provide specific findings regarding whether: (1) existing courtroom facilities are adequate or, with comparatively minor expense and effort, can be made adequate; and (2) if existing courtroom facilities are inadequate, whether there are alternative facilities within the county that may be appropriately utilized to accommodate the trial.

The Court noted that the district court failed to cite evidence in the record to establish that facilities in Pahrump were inadequate or that Nye County could not make alternative arrangements.

Congestion of Docket

The Court first acknowledged the Ninth Circuit's comment that *forum non conveniens* should not be a solution for overburdened dockets.⁵ To the contrary, any analysis of court congestion in the decision to transfer should focus on the availability and resources of the transferee venue.⁶ The party seeking to transfer must make a prima facie showing that the suit can be maintained in the transferee venue.⁷ Because the Respondents did not meet such a

⁴ *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 775, 616 P.2d 400, 401 (1980), *overruled on other grounds by* *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

⁵ *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1337 (9th Cir. 1984).

⁶ *Id.*

⁷ *GeoChem Tech Corp. v. Verseeckes*, 962 S.W.2d 541, 543 (Tex. 1998).

showing and the district court did not consider docket congestion in Clark County, the district court abused its discretion.

Conclusion

The record contained insufficient evidence to support transfer under the doctrine of *forum non conveniens*, Nye County had a duty to provide adequate facilities for the trial, and the district court failed to consider court congestion in Clark County. The Court concluded that the district court abused its discretion when it granted Respondents' motion to transfer venue.