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Summary of Roethlisberger v. McNulty, 127 Nev. Adv. Op. No. 48

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Roethlisberger v. McNulty, 127 Nev. Adv. Op. No. 48 (Aug. 4, 2011)¹
CIVIL PROCEDURE – Venue

Summary

Appeal from a district court order denying a motion for a change of venue in a tort action.

Disposition/Outcome

The Supreme Court of Nevada affirmed the district court’s order, holding that (1) a defendant does not have standing to allege improper venue based on a co-defendant’s residence, and (2) the trial court did not abuse its discretion when it declined defendant’s request to change venue under NRS 13.050(2).

Facts and Procedural History

Plaintiff Andrea McNulty (“McNulty”) filed a complaint in a Washoe County district court against multiple defendants based on events that took place in Douglas County. Of the eight named defendants, only Dave Monroe (“Monroe”) was alleged to reside in Washoe County. Monroe owned a home in Washoe County where he lived two days each week, and a home in Douglas County, where he resided five days a week. His wife and children resided in the Washoe County home permanently, though they vacation with Monroe at his Douglas County home. Monroe’s wife received the complaint and summons at his Washoe County home.

Defendant Ben Roethlisberger (“Roethlisberger”) filed a motion to change the venue to Douglas County on the grounds that venue in Washoe County was improper because no defendant resided there. Monroe also filed a motion to change venue. The remaining defendants either filed their own motions to change venue or joined Roethlisberger’s. The district court denied the motions and Monroe and Roethlisberger appealed. Monroe voluntarily withdrew his appeal, leaving only Roethlisberger’s appeal before the Supreme Court.

Discussion

A Defendant Does Not Have Standing to Allege Improper Venue Based Only on a Co-Defendant’s Residence Under NRS 13.040

Issues of standing are issues of law and are reviewed de novo.² Under NRS 13.040, a plaintiff may file a complaint in any Nevada county if none of the defendants are Nevada residents. However, if a defendant resides in Nevada, then the trial must take place in a county where any one of the defendants resides when the action commences.³ Roethlisberger argued that because co-defendant Monroe resides in Douglas County, the trial should have taken place there. McNulty argued that Roethlisberger lacked standing to request a change of venue under NRS 13.040 because venue is not improper as far as Roethlisberger is concerned, since he resides out-of-state.

¹ By Michael Roche

² *Arguello v. Sunset Station, Inc.*, 127 Nev. Adv. Op. No. 29, 252 P.3d 206, 208 (2011).

³ NEV. REV. STAT. §13.040 (2007).

The Court noted that venue based on one's residence is a privilege personal to each defendant.⁴ It reasoned that to allow a defendant to request a change of venue based on a co-defendant's residence would revoke a co-defendant's right to waive improper venue.⁵ Consequently, a defendant only has standing to allege improper venue based on residence if it pertains to his or her own residence.

The District Court Did Not Abuse Its Discretion When it Declined Defendant's Request to Change Venue Under NRS 13.050(2)

The Court next turned its attention to the district court's denial of the Defendant's motion to change venue under NRS 13.050(2). NRS 13.050(2) allows a district court to change a trial's venue to promote the convenience of witnesses or the ends of justice. The Court reviews rulings under NRS 13.050(2) for abuse of discretion.⁶ It found that in the case at bar, the difference in travel times for witnesses would be minimal. Furthermore, a change of venue would not promote the ends of justice. Consequently, because there was no evidence that compelled a change in venue, the district court did not abuse its discretion in denying Roethlisberger's motion for a change in venue.

Conclusion

Roethlisberger did not have standing to assert improper venue based on residence under NRS 13.040 because he was not a resident of Nevada. Moreover, the district court did not abuse its discretion by denying Roethlisberger's request to change venue because (1) differences in travel times to either the Washoe County or Douglas County district courts are minimal, and (2) it could properly decide that justice would not be promoted by a change of venue.

⁴ Pratt v. Rowland, 769 F. Supp. 1128, 1132 (N.D. Cal. 1991); Mitchell v. Jones, 158 S.E. 2d 706, 709 (N.C. 1968); 77 Am. Jur. 2d Venue § 42 (2006); 92A C.J.S. Venue § 68 (2010).

⁵ NEV. REV. STAT. § 13.050(1) (2007).

⁶ Fabbi v. First National Bank, 62 Nev. 405, 414, 153 P.2d 122, 125 (1944).