

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 13-0438

**STATE OF WEST VIRGINIA, ex rel.
STEVEN O. DALE, ACTING COMMISSIONER
WEST VIRGINIA DIVISION OF MOTOR VEHICLES,**

Petitioner

v.

**HONORABLE JAMES C. STUCKY, JUDGE OF
THE CIRCUIT COURT OF KANAWHA COUNTY;
AND MICHAEL DOONAN,**

Respondents.

**RESPONSE OF MICHAEL DOONAN TO
PETITION FOR WRIT OF PROHIBITION**

Respectfully Submitted,

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GEORGE J. COSENZA, PLLC
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(304) 485-0990
Counsel for Respondent Michael Doonan**

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NOW COMES the Respondent, Michael Doonan, by and through his attorney, George J. Cosenza, and for his response to the Petition for Writ of Prohibition filed by the State of West Virginia, ex rel. Steven O. Dale, states as follows:

I. THE KIND OF PROCEEDING AND NATURE OF THE RULING IN THE LOWER COURT

This is a response to a Petition for Writ of Prohibition filed by the State of West Virginia, ex rel. Steven O. Dale, to prohibit the Circuit Court of Kanawha County, the Honorable James C. Stucky presiding, in Michael Doonan v. West Virginia Division of Motor Vehicles, Civil Action No. 13-MISC-54 from accepting the transfer of an Administrative Appeal from the Circuit Court of Wood County.

II. STATEMENT OF FACTS

On or about July 1st, 2010, Detective S. D. Cook of the Parkersburg Police Department observed a Ford Mustang travelling east on Twenty-Third Street in Parkersburg, West Virginia. The driver of the vehicle, the Respondent, Michael Doonan, was observing the twenty-five mile per hour speed limit and was abiding by all other traffic laws. The police officer followed Mr. Doonan's vehicle as it travelled onto Morningside Avenue and initiated an investigative stop when the vehicle turned right onto Twenty-Sixth Street. Mr. Doonan had a passenger with him, Ms. Jessica Becker Souther. The officer believed Mr. Doonan was driving in excess of the speed limit, however, both Mr. Doonan and Ms. Souther maintained that he was observing the posted speed limit. After observations by the officer and the administration of field sobriety tests, Mr. Doonan was placed under arrest for driving under the influence of alcohol. He timely requested an administrative hearing to contest the revocation of his driving privileges and made

the necessary appearance in Wood County Magistrate Court, in effect, pleading not guilty to the criminal charge of driving under the influence.

The criminal charges against the Respondent were dismissed by motion of the prosecuting attorney. On November 3, 2010, and November 10, 2011, administrative hearings were conducted before the Commissioner of the West Virginia Division of Motor Vehicles to determine whether Mr. Doonan's privilege to drive a motor vehicle in West Virginia would be revoked. Both sides presented evidence and Mr. Doonan's driving privileges were revoked as of December 19, 2012, for a period of one year, and a minimum of two years installation and use of the ignition interlock device on all vehicles owned and operated by Mr. Doonan.

On January 11, 2013, in a timely manner, Mr. Doonan filed a Petition for Review pursuant to West Virginia Code Section 29A-5-4, in the Circuit Court of Wood County, West Virginia, contesting the revocation of his driving privileges. A hearing was held on January 22, 2013, pursuant to Mr. Doonan's motion for a stay of the revocation for a period of 150 days pursuant to West Virginia Code 17C-5A-2. At the time, the petition and motion were filed on Mr. Doonan's behalf, counsel was not informed that Mr. Doonan had changed his residence to the State of Florida. At the hearing, when counsel became aware of Mr. Doonan's new residence, he moved the Court to transfer the case to the Circuit Court of Kanawha County, West Virginia. The Circuit Court granted the Respondent's motion and effectuated the transfer.

III. STATEMENT OF LAW IN SUPPORT OF RESPONSE TO PETITION FOR WRIT OF PROHIBITION

West Virginia Code 29A-5-4(b) provides, in part:

Proceedings for review shall be instituted by filing a petition, at the election of the petitioner, in either the Circuit Court of Kanawha County, West Virginia or in the Circuit Court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within thirty days after the date upon which such party received notice of the final order or decision of the agency....

The Respondent, Mr. Doonan, complied with the portion of the statute which required his petition be filed within thirty (30) days. It was unknown by the undersigned that at the time the petition was filed, he was no longer a resident of Wood County, West Virginia, which would have required that his petition be filed in Kanawha County.

West Virginia Code 56-1-14(b) provides:

Whenever a civil action or proceeding is brought in the county wherein the cause of action arose, under the provisions of subsections (a) of this section, if no defendant resides in such county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county wherein one or more of the defendants resides, and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by such change of venue, the court may grant such motion.

The foregoing code section is the exclusive authority for a discretionary transfer or change of venue and any other transfer or change of venue from one county to another within West Virginia that is not explicitly permitted by the statute is impermissible and forbidden.

State Ex Rel. Riffle v. Ranson 195 W.Va. 121, 464 S.E. 2d 763 (1995).

Pages 9 and 10 of the petition filed in this matter presents the Court an appropriate recitation of Justice Cleckley's analysis of how a case may be transferred from one court to another.

Applying the foregoing principals to the case at bar, it is appropriate to allow the Kanawha County Circuit Court to hear this case on the merits. The inadvertent filing in Wood County should not be a bar to the matter going forward. The Respondent, Michael Doonan, has a case, and it is of little consequence as to which Court considers it.

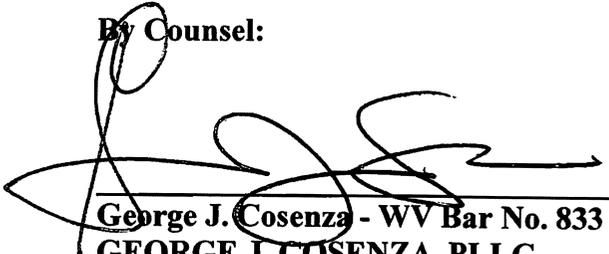
IV. CONCLUSION

Based on the foregoing, the Respondent, Michael Doonan, respectfully requests that the Petition for Writ of Prohibition filed in the above-cited matter be denied.

Dated this 22 day of May, 2013.

MICHAEL DOONAN,

By Counsel:



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CERTIFICATE OF SERVICE

The undersigned counsel for **MICHAEL DOONAN**, hereby certifies that he served the foregoing **RESPONSE OF MICHAEL DOONAN TO PETITION FOR WRIT OF PROHIBITION** by depositing a true copy thereof in the United States Mail, postage prepaid, addressed to the following, on this 22 day of May, 2013:

The Honorable James C. Stucky
Kanawha County Judicial Building
111 Court Street
Charleston, West Virginia 25301

Janet E. James
Senior Assistant Attorney General
DMV - Office of the Attorney General
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