No. 26422 -- State of West Virginia ex rel. Dollie Huffman, Administratrix of the Estate of Kayla Rene Huffman v. Honorable Booker T. Stephens, Judge of the Circuit Court of McDowell County; Joseph P. Nieto, D.O.; Laboratory Corporation of America Holdings, a non-resident corporation; and Princeton Community Hospital Association, Inc., a West Virginia corporation.

FILED
December 15, 1999
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED
December 17, 1999
DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, dissenting:

I dissent in this case because I do not believe that Laboratory Corporation of America Holdings ("LabCorp") is subject to venue in McDowell County. Because the circuit court correctly determined that venue would be proper in the Circuit Court of Mercer County and ordered transfer of the action there, this Court should have denied the writ of prohibition prayed for by the petitioner.

One interesting thing about the majority opinion is what it does not tell the reader about the facts of this case. Specifically, it does not mention that the petitioner and plaintiff below, Dollie Huffman, is a resident of Mercer County; Ms. Huffman's doctor, Joseph P. Nieto, D.O., lives and practices medicine in Mercer County; all of the events at issue occurred in Mercer County including all of the treatment and services provided to Ms. Huffman by Dr. Nieto; the Princeton Community Hospital where Ms. Huffman's labor and delivery occurred is located in Mercer County; LabCorp is a Delaware Corporation with its principal offices in North Carolina; and LabCorp's analysis of the specimen at issue was

performed in Marion County and reported to Dr. Nieto in Mercer County. The fact is that nothing about this case involved McDowell County.

The majority finds, however, that LabCorp "does business" in McDowell County in that it "performs tests and/or provides test results to McDowell County hospitals and clinics, and LabCorp maintains accounts for these organizations." This is far too thin a reed to support venue. The test is not whether a corporation has *any* contacts in a given county but whether the sufficiency of the corporation's minimum contacts demonstrates that it is doing business, "as that concept is used in W.Va. Code, 31-1-15." *Kidwell v. Westinghouse Electric Co.*, 178 W.Va. 161, 163, 358 S.E.2d 420, 422 (1987). This standard requires that "a foreign corporation must have such minimum contacts with the forum that the maintenance of the action in the forum does not offend traditional notions of fair play and substantial justice." *Kidwell*, 178 W.Va. at 163, n. 5, 358 S.E.2d at 422, n. 5 (citation omitted). Certainly, allowing the underlying action to be tried in McDowell County is offensive to these notions.

Further, it is clear that prohibition is not appropriate here. Judge Stephens committed no substantial, clear-cut legal errors which were plainly in contravention of a clear statutory, constitutional, or common law mandate. *See Ellis v. King*, 184 W.Va. 227, 400 S.E.2d 235 (1990).

In conclusion, one can only conclude that Ms. Huffman's lawyer filed the underlying action in McDowell County, a venue which had nothing to do with the events and parties in this case, because he was forum shopping. He is obviously quite certain that his chances of winning a large verdict in McDowell County are much greater than in Mercer County. This type of calculation is rightly discouraged by our law concerning venue. Unfortunately, the majority errs in wrongly applying this law. Judge Stephens was right. Accordingly, I dissent.