No. 32751 *Jeremiah "Bart" Morris v. Crown Equipment Corporation, a foreign corporation, and Jefferds Corporation, dba Homestead Materials Handling Company, a West Virginia Corporation.*

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Benjamin, Justice, concurring in result only:

I agree with the majority's decision to reverse the trial court's dismissal of this matter and remand the case for further proceedings. I do so, however, not upon the constitutional analysis invoked by the majority, but upon far simpler grounds. In my opinion, the plain terms of W. Va. Code § 56-1-1(c) (2003), require reversal of the trial court's dismissal of this action and a remand to resolve the factual question of whether "all or a substantial part of the acts or omissions giving rise to the claim occurred in this state" based upon the allegations contained in the amended complaint and upon Jefferds Corporation's ["Jefferd"'s] status as a West Virginia corporation.[1] If a factual basis is confirmed for Morris' allegations regarding Jefferds' West Virginia operations and acts related to his claim, venue is proper in West Virginia pursuant to W. Va. Code § 56-1-1(c) (2003). Thus,

[1]As referenced in n. 4, *supra*, of the majority's opinion, it is not readily apparent from the record why Morris' motion to amend his pleadings was denied. Rule 15(a) of Rules of Civil Procedure provides that leave to amend shall be freely given when justice requires. However, trial courts should also insure that parties not abuse our Rules with fraudulent or deliberately exaggerated pleadings. In such cases, it is expected that trial courts will use the full panoply of sanctions available, beginning with Rule 11 of the West Virginia Rules of Civil Procedure.

resolution of this matter does not now necessitate addressing the constitutionality of West Virginia's venue statute.

This Court has repeatedly stated that it will avoid invalidating a statute on constitutional grounds where reasonably possible. In 1965, this Court held that:

> [i]n considering the constitutionality of a legislative enactment, courts must exercise due restraint, in recognition of the principle of the separation of powers in government among the judicial, legislative and executive branches. Every reasonable construction must be resorted to by the courts in order to sustain constitutionality, and any reasonable doubt must be resolved in favor of the constitutionality of the legislative enactment in question. Courts are not concerned with questions relating to legislative policy. The general powers of the legislature, within constitutional limits, are almost plenary. In considering the constitutionality of an act of the legislature, the negation of legislative power must appear beyond reasonable doubt.

Syl. Pt. 1, *State ex rel Appalachian Power Co. v. Gainer*, 149 W. Va. 740, 143 S.E.2d 351 (1965); *see also*, Syl. Pt. 2, *State ex rel Riley v. Rudloff*, 212 W. Va. 767, 575 S.E.2d 377 (2002) (quoting *Gainer*). Indeed, "[t]he well settled general rule is that in cases of doubt the intent of the Legislature not to exceed its constitutional powers is to be presumed and the courts are required to favor the construction which would consider a statute to be a general law." Syl. Pt. 8, *State ex rel Heck's Inc. v. Gates*, 149 W. Va. 421, 141 S.E.2d 369 (1965). More recently, this Court summarized its duty in addressing the constitutionality of statutes by stating:

> Only when it can be said beyond a reasonable doubt that a law violates the Constitution of this State will we invalidate a legislative enactment on constitutional grounds. Thus, [w]hen the constitutionality of a statute is questioned every reasonable construction of the statute must be resorted to by a court in order to sustain constitutionality, and any doubt must be resolved in favor of the constitutionality of the legislative enactment. In this regard, [c]ourts will never impute to the legislature intent to contravene the constitution of either the state or the United States, by construing a statute so as to make it unconstitutional, if such construction can be avoided, consistently with law, in giving effect to the statute, and this can always be done, if the purpose of the act is not beyond legislative power in whole or in part, and there is no language in it expressive of specific intent to violate the organic law.

Carvey v. State Bd. of Educ., 206 W. Va. 720, 727, 527 S.E.2d 831, 838 (1999) (internal quotations and citations omitted). This mandated exercise of judicial restraint in addressing a challenge to the constitutionality of legislation should have, in my opinion, resulted in the majority resolving this matter through application of plain statutory language. Morris' appeal of the dismissal of his lawsuit may properly be resolved by applying the plain language of W. Va. Code § 56-1-1, without addressing the constitutionality of W. Va. Code § 56-1-1(c).

Morris brought his product liability suit against Crown Equipment, an Ohio corporation and the manufacturer of the forklift at issue, and Jefferds, a *West Virginia* corporation and the forklift's distributor/seller and maintenance service provider. Pursuant to our venue statute, a civil action may be brought against a West Virginia corporation in any

county where its principle office is located or where its president or chief officer resides. W. Va. Code § 56-1-1 (a)(2).[2] Morris alleged in his complaint that Jefferds' principle office was located in Kanawha County, the county in which he filed his lawsuit. Jefferds denies in its brief before this Court that its principle office is located in Kanawha County. However, in its order of November 24, 2004, the circuit court found that Jefferds' "officers" live in

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[2]W. Va. Code § 56-1-1 (a)(2) provides:

> Any civil action or other proceeding, except where it is otherwise specifically provided, may hereafter be brought in the circuit court of any county:
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> . . .
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> If a corporation be a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it be a corporation organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located shall have jurisdiction of all actions at law or suits in equity against the corporation, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management[.]

Under this statutory provision, venue is proper in any county where a corporate defendant's principle place of business is located. Where a West Virginia corporation has its principle place of business in another state, our venue statute then imposes a secondary requirement that the cause of action arose in this state for the establishment of proper venue. As Jefferds is a West Virginia corporation with its principle place of business in West Virginia, Morris was not, under this statutory provision, also required to demonstrate that his cause of action against Jefferds arose in West Virginia.

Kanawha County. Without resolving the conflict regarding the location of Jefferds' principle office in Kanawha County, the trial court's finding regarding Jefferds' officers' residence demonstrates venue was properly established in Kanawha County, as to Jefferds, pursuant to W. Va. Code § 56-1-1 (a) (2).

The circuit court, however, dismissed Morris's suit due to the 2003 enactment of W. Va. Code § 56-1-1(c), which provides, in relevant part, that "a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state[.]" Finding Morris was a resident of Virginia and the forklift accident at issue occurred in Virginia, the circuit court found that Kanawha County, West Virginia, was an improper venue for Morris' claims against Jefferds. The circuit court's order reflected that it considered the allegations against Jefferds contained in Morris' proposed amended complaint, although the circuit court did not permit the amendment of Morris' complaint.

In the proposed amended complaint, Morris set forth numerous allegations of conduct occurring in West Virginia giving rise to his claims against Jefferds.[3] If true, these allegations may indeed satisfy W. Va. Code § 56-1-1(c)'s requirement that "all or a substantial part" of the acts underlying Morris' claims against Jefferds occurred in West

[3] *See*, *supra*, n.4, majority opinion.

Virginia. In my opinion, the circuit court prematurely dismissed Morris' claims. Morris should have been given the opportunity to conduct limited discovery on the venue issue. If discovery revealed that "all or a substantial part" of Jefferds' acts or omissions occurred in West Virginia, as alleged, venue is proper in Kanawha County. Therefore, I would reverse and remand this matter for the purpose of conducting limited discovery to resolve the crucial factual dispute as to whether the requirements of W. Va. Code § 56-1-1(c) are met in this matter. Fundamental fairness requires more than a resident defendant's mere denial of a non-resident's allegation of proper venue and the factual allegations supporting such venue before access to our courts is denied under W. Va. Code § 56-1-1(c). If Morris were able, upon remand, to properly establish venue as to Jefferds, a West Virginia corporation, in Kanawha County, he likewise establishes proper venue for his entire lawsuit.[4] The majority, however, has relieved Morris of this obligation by simply invalidating W. Va. Code § 56-1-1(c).

As noted above, I do not believe that the proper resolution of this appeal requires this Court to address the constitutionality of W. Va. Code § 56-1-1(c). However, because the majority hinges its opinion in this case on the constitutionality of this non-resident venue statute, some observations regarding this statute are appropriate in light of

[4]As noted by the majority, West Virginia follows the venue-giving defendant principle which provides that once venue is established for one defendant, it is proper for all defendants. While W. Va. Code §56-1-1(c) requires that each plaintiff independently establish proper venue, it is silent as to independent defendants, a point recognized in the majority opinion at Syllabus Point 3, *supra*. Since the Legislature has not addressed the issue of individual defendant venue, that issue is not now before this Court.

Article IV, Section 2 of the Constitution of the United States, the Privileges and Immunities Clause.[5]

Contrary to the majority's suggestion, the Privileges and Immunities Clause does not categorically bar distinctions based upon residency for venue purposes. In *State of Missouri ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1, 3-4, 71 S.Ct. 1, 95 L.Ed. 3 (1950), Justice Frankfurter recognized that under:

> the Privileges-and-Immunities Clause of the Constitution, a State may not discriminate against citizens of sister States. Art. IV, s 2. Therefore Missouri cannot allow suits by nonresident Missourians for liability under the Federal Employers' Liability Act arising out of conduct outside that State and discriminatorily deny access to its courts to a non-resident who is a citizen of another State. *But if a State chooses to '(prefer) residents in access to often overcrowded Courts' and to deny such access to all nonresidents, whether its own citizens or those of other States, it is a choice within its own control.*

(Emphasis added.) In *Mayfield*, Justice Frankfurter relied upon Justice Holmes's similar opinion in *Douglas v. New Haven Ry. Co.*, 279 U.S. 377, 49 S.Ct. 355, 73 L.Ed. 747 (1929), for the proposition that a state may preclude non-residents from filing claims in state courts without violating the Privileges and Immunities Clause in certain circumstances. In *Douglas*, Justice Holmes, writing for the Court, noted:

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[5] The Privileges and Immunities Clause provides, in pertinent part, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

> A distinction of privileges according to residence may be based upon rational considerations[.] . . .There are manifest reasons for preferring residents in access to often overcrowded Courts, both in convenience and in the fact that broadly speaking it is they who pay for maintaining the Courts concerned.

Douglas, 279 U.S. at 387.[6]

In both *Mayfield* and *Douglas*, the United States Supreme Court recognized that the need to address an overcrowded court system may be a legitimate, rational basis for discriminating between residents' and non-residents' access to a state court. So long as the West Virginia Legislature provides such a rational basis for discriminating between residents and non-residents when enacting, or revising, a venue statute which prohibits certain suits from being filed in this State by non-residents, it arguably should withstand constitutional scrutiny under the Privileges and Immunities Clause.

Overcrowding of West Virginia courts caused by numerous suits filed by nonresidents against foreign corporations has long been a perceived problem in this State.

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[6] In *Douglas*, the Court upheld the constitutionality of a New York statute which provided that "[a]n action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only; . . . 4. Where a foreign corporation is doing business within this State." *Id*. at 386. In so doing, the Court rejected an argument that the statute violated the Privileges and Immunities clause by discriminating between citizens of New York and other states by authorizing the dismissal of suits filed by non-citizens of New York but not of those filed by New York citizens.

The Legislature's enactment of W. Va. Code § 56-1-1(c) in 2003 was perhaps an effort to address this problem. However, because the Legislature failed to articulate a proper rational basis for discriminating between residents and non-residents for purposes of establishing venue in our courts, this Court cannot now, recognizing the limitations of our Constitutional charge, speculate as to the Legislature's intentions. Without such a proper rational basis for enacting a seemingly discriminatory venue statute, a court left to speculate as to both proper and improper rationales for residency discrimination cannot rightly guess in favor of one possible rationale any more than it can in favor of another.[7]

[7] The Legislature might consider setting forth its findings relating to the need for a discriminatory venue section, such as W. Va. Code §56-1-1(c), should it choose to further consider such a venue section in the future.