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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OF WEST VIRGINIA

Maynard, Justice, dissenting:

I would have affirmed the circuit court's dismissal of the appellant's lawsuit because I do not believe that a construction of W.Va. Code § 56-1-1(c) that prevents the appellant from bringing his action in Kanawha County violates the Privileges and Immunities Clause.

In *Douglas v. New Haven R. Co.*, 279 U.S. 377, 49 S.Ct. 355, 73 L.Ed. 747 (1929), the Supreme Court considered the constitutionality of a New York statute that provided:

> An 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.

279 U.S. at 386, 49 S.Ct. 355. The plaintiff's injuries in *Douglas* were inflicted in Connecticut where the plaintiff was a citizen and resident, and the defendant was a Connecticut corporation which did business in New York. The plaintiff brought her suit in New York, and the trial court dismissed it under the above statute. The New York appellate courts upheld the dismissal.

On appeal to the Supreme Court, the plaintiff argued that the statute as construed by the trial court "makes a discrimination between citizens of New York and citizens of other States, because it authorizes the Court in its discretion to dismiss an action by a citizen of another State but not an action brought by a citizen of New York." 279 U.S. at 386, 49 S.Ct. at 356. The Supreme Court rejected this argument and affirmed the dismissal. The Court explained:

> It is said that a citizen of New York is a resident of New York wherever he may be living in fact, and thus that all citizens of New York can bring these actions, whereas citizens of other States can not unless they are actually living in the State. But however often the word resident may have been used as equivalent to citizen, and for whatever purposes residence may have been assumed to follow citizenship, there is nothing to prohibit the legislature from using "resident" in the strict primary sense of one actually living in the place for the time, irrespective even of domicile. If that word in this statute must be so construed in order to uphold the act or even to avoid serious doubts of its constitutionality we presume that the Courts of New York would construe it in that way; as indeed the Supreme Court has done already in so many words.
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> Construed as it has been, and we believe will be construed, the statute applies to citizens of New York as well as to others and puts them on the same footing. There is no discrimination between citizens as such, and none between nonresidents with regard to these foreign causes of action. . . . 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.

279 U.S. at 386-387, 49 S.Ct. at 356 (citations omitted); *see also State of Missouri ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1, 4, 71 S.Ct. 1, 2-3, 95 L.Ed. 3 (1950) (indicating that "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").

Douglas was relied upon by the Oklahoma Supreme Court in the case of *St. Louis-San Francisco Ry. Co. v. Superior Court*, 276 P.2d 773 (1954). In that case, the Court was presented with the issue "whether a . . . court of this state can, because of inconvenience to court and parties, dismiss an action brought by a non-resident plaintiff against a foreign corporation on a cause of action arising outside this state." 276 P.2d at 775. In answering this question in the affirmative, the Court, citing *Douglas*, explained:

> [A] state may not, by reason of the privileges and immunities clauses of the federal Constitution, allow suits in its courts by its own non-resident citizens for liability 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 over-crowded courts to deny such access to all non-residents, whether its own citizens or those of other states, it is a choice within its own control.

276 P.2d at 777.[1]

I would construe W.Va. Code § 56-1-1(c) to apply to all nonresidents, both

[1]The majority indicates in footnote 2 of its opinion that there is no distinction for purposes of the Privileges and Immunities Clause between discrimination on the basis of residency and discrimination on the basis of citizenship. It should be noted that my construction of the statute at issue makes no such distinction. Rather, it treats all nonresidents, both citizens and noncitizens, the same for the purpose of applying W.Va. Code § 56-1-1(c).

citizens and noncitizens of West Virginia. In other words, this statute would also prevent a West Virginia citizen who is residing in Ohio for the purpose of employment and who is injured in Ohio by machinery manufactured by a West Virginia company from suing that company in West Virginia. Such a construction, according to the law set forth above, would not offend the Privileges and Immunities Clause.

W.Va. Code 56-1-1(c) serves an important purpose. Specifically, it is designed to give the residents of this State, who after all pay for our courts, ready access to them when needed. This can be effectively achieved only by preventing nonresidents from abusing our courts by flooding them with litigation, not because they do not have a forum elsewhere, but simply because they believe they may achieve a better result here. For example, in the case of *Grimmett v. CSX Transportation, Inc.*, which was recently referred to the Mass Litigation Panel, approximately 71 out of 79 plaintiffs are nonresidents of West Virginia. In fact, these plaintiffs were involved in actions that were originally filed in Gwinnett County, Georgia. These nonresident plaintiffs who may have very legitimate claims are nevertheless expending the time and limited resources of our State court system, to the detriment of resident plaintiffs, when their claims could have been brought elsewhere. Unfortunately, the majority opinion eviscerates a statutory safeguard against this type of abuse.

Accordingly, for the reasons stated above, I dissent.[2]

[2]South Carolina has a similar provision in its venue statute concerning foreign corporations as defendants. According to S.C. Code Ann. § 15-5-150 (1976),

> An action against a corporation created by or under the laws of any other state, government or country may be brought in the circuit court; . . . (2) By a plaintiff not a resident of this State when the cause of action shall have arisen or the subject of the action shall be situated within this State.