

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**John A. Jewell, Administrator of the Estate of
Beverly D. Jewell, Plaintiff Below, Petitioner**

vs) No. 11-1354 (Kanawha County 10-C-1817)

**Bruce Petersen, D.O.; Lora Keaveny, D.O.; and
Petersen Clinic, PLLC, A West Virginia Corporation
Defendants Below, Respondents**

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner John A. Jewell, Administrator of the Estate of Beverly D. Jewell, plaintiff below, appeals the Circuit Court of Kanawha County's order of July 27, 2011, dismissing his lawsuit without prejudice because of improper venue. Petitioner is represented by Matthew C. Lindsay and Richard D. Lindsay. Respondents Bruce Petersen, D.O., Lora Keaveny, D.O., and Petersen Clinic, PLLC, defendants below, are represented by Rob J. Aliff and Rodney Stieger.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no prejudicial error and determines that a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner alleges that respondents committed medical malpractice resulting in the wrongful death of his mother, Beverly D. Jewell. More specifically, petitioner alleges that despite treating Ms. Jewell's complaints of chronic cough, fatigue, shortness of breath, and chest pain for approximately one year, respondents negligently failed to diagnose that Ms. Jewell had lung cancer.

In paragraph 5 of his Complaint, petitioner alleges that respondents provided care to Ms. Jewell in Oak Hill, Fayette County, West Virginia. In paragraph 14 of his Complaint, petitioner alleges that Ms. Jewell was admitted to Beckley ARH Hospital, where her advanced lung cancer was diagnosed. Paragraphs 2 and 14 of his Complaint allege that Ms. Jewell was transferred to Charleston Area Medical Center in Kanawha County, where she died from lung cancer three days after her diagnosis.

The portion of the West Virginia Venue Statute that is relevant to this case provides that a civil action may be brought in the circuit court of any county "[w]herein any of the defendants may reside or the cause of action arose[.]" W.Va. Code § 56-1-1(a)(1). Petitioner filed his Complaint in the Circuit Court of Kanawha County, which is the county where Ms. Jewell died. However, respondents argued that all of the medical care they provided to Ms. Jewell, including

any and all alleged instances of medical malpractice, occurred only at Petersen Clinic in Fayette County, thus, the cause of action arose in Fayette County. Moreover, the individual respondents assert that they do not reside in Kanawha County.

Upon respondents' motion the circuit court dismissed the Complaint on the basis that venue properly lies in Fayette County, not Kanawha County. The case was dismissed without prejudice so that petitioner could re-file in Fayette County.¹

We review a circuit court's order granting a motion to dismiss a complaint under a de novo standard of review. Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W.Va. 770, 461 S.E.2d 516 (1995). Upon a review of the allegations in Petitioner's Complaint, we agree that under the specific facts as alleged therein, any cause of action against these respondents arose in Fayette County. Because respondents are not residents of Kanawha County, and because the cause of action did not arise in Kanawha County, dismissal was proper.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: November 16, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

Dissenting:

Justice Brent D. Benjamin

¹ The record on appeal does not indicate whether the Complaint was re-filed in Fayette County.