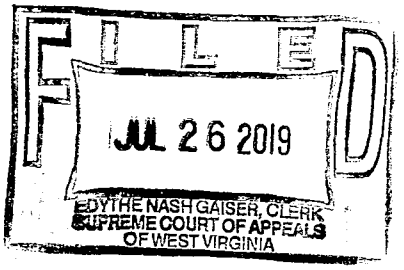
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,
MICHAEL B. FERRELL, AMERICAN
STAFFING, INC., SHANNON L. WELLS,
and THE CHESTNUT GROUP, INC.,

Petitioners,

v.



No. 19-0658

The Honorable WARREN R. McGRAW,
Judge of the Twenty-seventh Judicial Circuit,
and EMPLOYERS' INNOVATIVE NETWORK, LLC
and JEFF MULLINS (real parties in interest),

Respondents.

PETITION FOR WRIT OF PROHIBITION

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QUESTION PRESENTED

The Circuit Court exceeded its legitimate powers by continuing to retain this case in Wyoming County when the Circuit Court is without proper venue.

STATEMENT OF THE CASE

1. Statement of Facts

No party to this case is a resident of Wyoming County. App. 14-15. No party in this case has a principal office in Wyoming County. *Id.* Every party except one is a resident of Kanawha County or has its principal office in Kanawha County.[1] *Id.*

The dispute between the parties centers on various contract claims. App. 15-19. All the contracts were executed in Kanawha County, and all activities between the parties occurred in Kanawha County.[2] App. 15-17. The contracts were executed in March 2018, and were broken on December 3, 2018. App. 15-16. All these events happened in Kanawha County. *Id.*

Neither of the individual Petitioners have been alleged to have any presence in Wyoming County. App. 14-15. No evidence has been brought forward by Respondents that the acts contained in the slander or "outrage" claims occurred in Wyoming County. App. 42-43 & 47.

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[1] Shannon Wells is a citizen of the Commonwealth of Kentucky. App. 15.

[2] At the hearing, Respondents' counsel discussed a company called "High Voltage" which is alleged to be present in Wyoming County. App. 60. That company is not a party to this case and thus has no bearing on the question presented. The same non-party company was also mentioned by the Circuit Court in its Order, again with no connection to the actual parties or the matter before the Court. App. 2. The Circuit Court apparently was confused about who the parties to the case were, incorrectly stating at the hearing that High Voltage was a party to the case. App. 63. High Voltage is not listed in the style of the case.

Respondent Employers' Innovative Network (hereinafter, "Innovative") and Petitioner American Staffing, Inc. (hereinafter, "American Staffing") are Professional Employer Organizations ("PEO"), companies that provide administrative support to other businesses. App. 14. This includes such tasks as handling payroll, taxes, and benefits programs. App. 58-59. Essentially, a small or medium-sized business can outsource a number of human resources services to a PEO and save itself the cost, time, and manpower of these necessary business functions. *Id.* The business contracts with a PEO for the desired services, and the business's employees then become, in a sense, the PEO's co-employees. App. 59. The PEO then "leases" the employees back to the business. *Id.* The employees' jobs do not change. *Id.* The employees' paychecks come from the PEO and the PEO becomes the employer of record. *Id.* In exchange, the PEO collects a fee **from the business**. App. 72. The business, as opposed to processing payroll, taxes, and benefits plans for multiple employees, now simply pays a fee to the PEO. *Id.*

The Complaint alleges four claims arising from a contract between some of the parties that took place in Kanawha County.[3] App 17-19. The nature of the sale and the gravamen of the Complaint are that the Respondent PEO arranged to purchase the clients and good will of Petitioner American Staffing. App. 15. Respondents allege that after the sale was consummated, American Staffing reneged on their agreement and somehow, along with the other Petitioners, caused American Staffing's former clients to disengage with Innovative. App. 15-18. Respondents also assert a slander claim and a

[3] The individual parties, both Petitioners and Respondent, are not parties to the contract. App. 15-16.

claim of "outrage" based on comments some Petitioners allegedly made, but they do not allege where the comments took place, and did not provide any evidence on the subject in response to the Motion. App. 18 & 47.

Respondents assert in their Complaint that venue is proper in Wyoming County because "Plaintiffs and Defendants have conducted business in Wyoming County, West Virginia." App. 15. There is no other mention of Wyoming County or reference to the business conducted there in the Complaint. App. 14-20. None of the parties—individual or entity—are alleged to be residents of or located in Wyoming County. App. 15-16.

2. Procedural History

Respondents filed their Complaint in the Circuit Court of Wyoming County, West Virginia on February 4, 2019. App. 14. The sole legal reasoning stated for venue in Wyoming County was "Plaintiffs and Defendants have conducted business in Wyoming County, West Virginia." App. 15.

On March 15, 2019, Petitioners jointly moved to dismiss, pursuant to West Virginia Rule of Civil Procedure 12(b)(3), for lack of venue. App. 21-41. The motion pointed out that the "conducting business" clause of West Virginia Code § 56-1-1(a)(2) is only applicable when a corporation or other corporate entity does not have its principal office in West Virginia and its chief officer does not reside in West Virginia, going on to argue that none of the other provisions of W.Va. Code § 56-1-1(a) provided venue. App. 29-33.

Respondents asserted a new reason for venue in their response to the motion to dismiss, claiming that their breach of contract and slander claims arose in Wyoming County, but failed to support this assertion with evidence. App. 44 & 47. Respondents theorized that their damages were incurred in Wyoming County because the allegations in the Complaint caused them to lose fees that would have been collected from the paychecks of unnamed persons who are not parties to the case but who were employed in Wyoming County. App. 45-47. Those paychecks were issued in Kanawha County. App. 43. Respondents did not advance any evidence that any slander occurred in Wyoming County, stating only they needed discovery on that issue. App. 47.

The Circuit Court heard the motion on April 17, 2019. At the hearing the Circuit Court specifically had this Court's opinion from *State ex rel. Galloway Grp. v. McGraw*, 227 W.Va. 435, 711 S.E.2d 257 (2011) brought to its attention. App. 66-67. The required notice from *State ex rel. Mass. Mutual v. Sanders*, 228 W.Va. 749, 760, 724 S.E.2d 353, 364 (2012), requesting the Circuit Court enter detailed findings of fact and conclusions of law because Petitioners intended to seek a writ of prohibition in this Court was duly given to the Circuit Court during the hearing. App. 65.

The Circuit Court eventually entered an order denying the motion to dismiss on June 10, 2019. App. 1-7.

Petitioners' Motion to Stay Proceedings pending the filing and consideration of this Petition is currently pending in the Circuit Court, with oral argument set for August 21, 2019. *See* App. 98 & 106. No further activity has occurred in the case.

SUMMARY OF ARGUMENT

When none of the parties has a presence in the county, venue is controlled by *State ex rel. Galloway Grp. v. McGraw*, 227 W.Va. 435, 711 S.E.2d 257 (2011), where this Court held that venue based on where the "cause of action arose" under West Virginia Code § 56-1-1(a)(1) is where the parties incurred any loss, not where some non-party to the action might be found.

This case is indistinguishable from *Galloway*. Both have the plaintiff seeking to establish venue from loss of fees from non-parties in a county where no party is found, and all the actions between the parties happen at their offices. The Circuit Court's order in this case directly contravenes this Court's rule from *Galloway*, and therefore exceeds the legitimate powers of the Circuit Court.

For the slander claim, the Circuit Court relied solely on Respondent's unsupported request for discovery. Respondents have no evidence of where the alleged slander occurred, but stand on their claim they may someday be able to have someone say where it occurred. This is insufficient to establish venue and would allow Respondents to avoid their burden of establishing venue by competent evidence when challenged.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This case is appropriate for oral argument under West Virginia Rule of Appellate Procedure 19(a) because it involves the application of settled law. This case is not appropriate for memorandum decision, as W.Va. Rule App. Pro. 21(d) suggests that

memorandum decisions reversing the decision of a circuit court are only issued in limited circumstances.

ARGUMENT

STANDARD OF REVIEW

Prohibition is appropriate to resolve whether venue lies in a circuit court. *State ex rel. Riffle v. Ranson*, 195 W.Va. 121, 124, 464 S.E.2d 763, 766 (1995); *see also* W. Va. Code § 53-1-1 ("The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.").

This Court has noted a preference for "resolving this issue [venue] in an original action" given the "inadequacy of the relief permitted by appeal." *Riffle,* 195 W.Va. at 124, 464 S.E.2d at 766; *accord, State ex rel. Huffman v. Stephens,* 206 W.Va. 501, 503, 526 S.E.2d 23, 25 (1999)(recognizing that concerns regarding litigants being placed at unwarranted disadvantage and inadequate appellate relief compel exercise of original jurisdiction in venue matters). In deciding whether to grant a writ of prohibition in cases where the lower court is acting within its jurisdiction but alleged to have exceeded its authority, the Court must examine the factors set forth in syllabus point four of *State ex rel. Hoover v. Berger,* 199 W.Va. 12, 483 S.E.2d 12 (1996): "(1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or

manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression)."

The normal deference accorded to a circuit court's decision does not apply where the law is misapplied or where the decision is based on an interpretation of a controlling statute. *See Mildred L.M. v. John O.F.,* 192 W.Va. 345, 350, 452 S.E.2d 436, 441 (1994)("[t]his Court reviews questions of statutory interpretation *de novo* "). Under these circumstances, this Court's review is plenary. *Id.*

QUESTION PRESENTED

The Circuit Court exceeded its legitimate powers by continuing to retain a case in Wyoming Court where the Circuit Court is without proper venue.

1. Law of venue

Venue for breach of contract

Analysis of questions of venue always begin with the statute. W.Va. Code § 56-1-1(a), provides, in its entirety, as follows:

> (a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:
>
> (1) Wherein any of the defendants may reside or the cause of action arose, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered, or some part thereof, is;
>
> (2) If a corporation or other corporate entity is 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 is a corporation or other corporate entity 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 has jurisdiction of all actions at law or suits in equity against the corporation or other corporate entity, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management;
>
> (3) If it is to recover land or subject it to a debt, where the land or any part may be;
>
> (4) If it is against one or more nonresidents of the state, where any one of them may be found and served with process or may have estate or debts due him, her, or them;
>
> (5) If it is to recover a loss under any policy of insurance upon either property, life or health or against injury to a person, where the property insured was situated either at the date of the policy or at the time when the right of action accrued or the person insured had a legal residence at the date of his or her death or at the time when the right of action accrued;
>
> (6) If it is on behalf of the state in the name of the Attorney General or otherwise, where the seat of government is; or
>
> (7) If a judge of a circuit is interested in a case which, but for such interest, would be proper for the jurisdiction of his or her court, the action or suit may be brought in any county in an adjoining circuit.

W.Va. Code § 56-1-1(a).

This Court has previously held that, in a breach of contract claim, the cause of action arises, and thus venue is proper, "within the county: (1) in which the contract was made, that is, where the duty came into existence; or (2) in which the breach or violation of the duty occurs; or (3) in which the manifestation of the breach—substantial damage

occurs." *Wetzel Cty. Sav. & Loan Co. v. Stern Bros.*, 156 W. Va. 693, 694, 195 S.E.2d 732, 734 (1973).

Questions of venue when none of the parties has a presence in the county with alleged venue are controlled by this Court's opinion in *Galloway*. In that case, this Court was confronted with a case from the Circuit Court of Wyoming County. The parties were corporate entities and individuals, all with their residences and principal offices in Cabell County, West Virginia, who were in the midst of a contract dispute, specifically, attorneys who had agreed to share attorney fees generated in litigation involving the UMWA Health & Retirement plan. *Galloway*, 227 W.Va. at 436, 711 S.E.2d at 258. The plaintiffs filed their suit in Wyoming County, claiming that the legal representation of some persons who were residents of Wyoming County generated fees and debts owed between the parties. *Id.* "The circuit court reasoned that venue properly exist[ed] in Wyoming County by virtue of the fact that the parties generated fees in litigation involving [non-parties to the current suit], many [of whose] members reside in Wyoming County." *Galloway*, 227 W.Va. at 437, 711 S.E.2d at 259.

When the matter was brought on writ of prohibition, this Court found the circuit court had improperly relied on the fact that the attorneys represented some UMWA members who resided in Wyoming County in the underlying litigation, and thus some of the litigation fees owed to the attorneys were generated there. This Court rejected the same interpretation of the law as advanced by Respondents here. "In its ruling below, the circuit court reasoned that venue properly exists in Wyoming County by virtue of the fact that the parties generated fees in litigation involving the UMWA Health & Retirement plan, and that many UMWA members reside in Wyoming County."

Galloway, 227 W. Va. at 437-38, 711 S.E.2d at 259-60. This triggered a strong negative response from this Court: "*This reasoning is invalid,*" granting the writ. *Id.* The opinion continued, "[f]irst, the provision regarding UMWA litigation appears in an agreement to which Petitioner Galloway is not a party. Second, even if Galloway had participated in litigation involving the UMWA, our law does not support the conclusion that this fact would establish venue in Wyoming County for purposes of the legal action below. *Galloway*, 227 W. Va. at 437-38, 711 S.E.2d at 259-60 (emphasis added).

For its legal reasoning, this Court focused in *Galloway* on the three prong test from *Wetzel* to determine whether, in a breach of contract claim, the matter arises within the county: (1) it is the county in which the contract was made; or (2) it was the county where the breach occurred; or (3) it was the county in which the manifestation of the breach occurs. *Wetzel*, 156 W.Va. at 698, 195 S.E.2d at 736. The *Galloway* Court recognized that it was the third point, manifestation of the breach at issue in that case. *Galloway*, 227 W.Va. at 437, 711 S.E.2d at 259.

This Court proceeded to explain in the context that just because a non-party, who may have been the source of fees or beneficiary for the underlying contract dispute happens to reside in Wyoming County, this alone was insufficient to establish venue in Wyoming County. *Galloway*, 227 W.Va. at 437-438, 711 S.E.2d at 259-260. The Court found that this is an insufficient as a manifestation of the breach. *Id.* Effectively, this Court found that whatever manifestation of the breach there was, it was to be found where the parties were located, not where non-parties to the case might be found. *Galloway*, 227 W.Va. at 437, 711 S.E.2d at 259 ("[Respondent must] demonstrate that its cause of action arose in Wyoming County...[He] has failed to do this.").

At a minimum, *Galloway* stands for the proposition that in a breach of contract case, it is incumbent upon Respondents when venue is challenged to show some manifestation of the breach in the county whose venue is alleged beyond merely some fees or debts owed involving non-parties.

Venue for slander

It does not appear that this Court has specifically addressed venue for slander claims, but the opinion in *Sprouse v. Clay Communication, Inc.*, 158 W. Va. 427, 429, 211 S.E.2d 674, 679 (1975), addressed libel, a usually related concept. That opinion held that "[v]enue for alleged libel...is properly laid in any county in which the libel was published[.]" Other states have held that venue for slander is proper where the plaintiff or defendant resides. *See*, *e.g.*, *In re Hannah*, 431 S.W.3d 801, 810–11 (Tex. App., 2014)(finding venue for slander proper where plaintiff or defendant resided at the time cause of action accrued); *see also, Fla. Gamco, Inc. v. Fontaine*, 68 So. 3d 923, 928 (Fla. Dist. Ct. App., 2011); *Newson v. Henry*, 443 So. 2d 817 (Miss., 1983).

When a challenge is made to a case where the opposing party claims more discovery is needed to effectively respond, it is incumbent upon Respondents to provide to the Circuit Court more than a bald face claim that more discovery is required. *Cf. Powderidge Unit Owners Ass'n v. Highland Properties, Ltd.*, 196 W. Va. 692, 695, 474 S.E.2d 872, 875 (1996)(holding that to resist dispositive motion under Rule 56 on grounds that additional discovery is needed, opponent of motion "should (1) articulate some plausible basis for the party's belief that specified 'discoverable' material facts likely exist which have not yet become accessible to the party; (2) demonstrate some

realistic prospect that the material facts can be obtained within a reasonable additional time period; (3) demonstrate that the material facts will, if obtained, suffice to engender an issue both genuine and material; and (4) demonstrate good cause for failure to have conducted the discovery earlier"). Failure to do so makes the claim that more discovery is necessary beyond the Circuit Court's authority to examine. To do otherwise would allow a claim of "more discovery" to override a party's legitimate right to legal venue, trapping them in a court improperly with no ability to vindicate their right to the proper forum.

2. Venue does not exist in Wyoming County

Contract claims did not arise in Wyoming County

After the false start in the Complaint, which attempted to invoke W.Va. Code § 56-1-1(a)(2),[4] Respondents now claim venue in Wyoming County under § 56-1-1(a)(1), where "the cause of action arose."

The third prong of *Wetzel* is at issue here. The manifestation of the breach is "where the breach manifests itself and damages are made evident from that breach" or "the physical locale where the damages flowing from the breach are first made evident." *Wetzel*, 156 W.Va. at 698, 195 S.E.2d at 736. This was the same question of law at issue in *Galloway*, and when the two cases are examined together, the facts and circumstances of this case are nearly indistinguishable.

[4] Specifically, the clause of "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". W.Va. Code § 56-1-1(a)(2); App. 8. Respondents abandoned that argument before the Circuit Court. App. 37.

First, the only question in both cases is where the breach manifests. *Galloway*, 227 W.Va. at 437, 711 S.E.2d at 259; App. 44. There is no question in either case that neither of the other two prongs from *Wetzel* apply; in each case, both the contracts were made and breached outside of Wyoming County. In *Galloway*, it was Cabell County where the contracts were made and breached, in this case, it is Kanawha County. *Galloway*, 227 W.Va. at 437, 711 S.E.2d at 259; App. 14-17.

Second, in both cases, the plaintiff seeking to establish venue attempted to use the loss of fees or debts from non-parties to the case as evidence of manifestation of the breach. What both parties apparently failed to recognize was that the breach actually manifests completely differently. The breach manifests as the alleged action of the parties, not what happens with some non-party. In both *Galloway* and the case at bar, the breach manifests with the actions of the party who breaches the contract cutting off the fees and debts from the opposing party. *Galloway*, 227 W.Va. at 437-438, 711 S.E.2d at 259-260; App. 14-17. Since those fees and debts were received at the party's principal offices, this is also the location where the breach manifests, not at some amorphous location many counties away, where nothing actually occurs.

Therefore, it is clear that because in this case, just like *Galloway*, the logic of the Circuit Court incorrectly focused on non-parties, rather than what happened with the parties to the case, moving the manifestation of the breach far from where it actually occurred.

Respondents, and the Circuit Court's order, rely on the same invalid reasoning. *Galloway* stands for the proposition that venue is not established just because the fees at the center of a dispute can be traced through a chain to non-party residents of an

otherwise unrelated county. Respondents are not parties to the fee arrangements between Innovative and any employees; all fees are paid by American Staffing to Innovative. Regardless of which way the fee transfer is considered, any lost fees from those clients' manifested where the fees were collected: at Innovative, a Kanawha County business. The alleged damages flowing from the breach in this case were made evident where Innovative and its owner, Jeff Miller, were located, which is Kanawha County.

The Circuit Court exceeded its legitimate powers by holding that the abstract connection between Respondents' damages and non-party individuals in Wyoming County was enough to qualify Wyoming County as a venue where substantial damages occurred. Respondents have not alleged that any of the parties resided in Wyoming County at the time of breach, or that any damages were made evident in Wyoming County. App. 14-16. None of the parties reside or have their principal place of business in Wyoming County, and the cause of action did not arise in Wyoming County. App. 15-16. More specifically, the contract that is the subject of the Complaint was not entered into in Wyoming County, the alleged breach and fraud did not occur there, and the alleged damages did not occur there. App. 15-16.

Respondents' argument that substantial damages occurred in Wyoming County is misplaced. This avenue for venue turns on "where the breach manifests itself and damages are made evident from that breach" or "the physical locale where the damages flowing from the breach are first made evident." *State ex rel. Thornhill Grp., Inc. v. King*, 233 W. Va. 564, 571, n.26, 759 S.E.2d 796, 802, n.26 (2014).

The breach alleged in Respondents' Complaint is based on the agreement for the sale of American Staffing's customer relationships to Innovative. App. 15-19. This sale, and thus breach, occurred in Kanawha County. App. 14-17. Respondents assert they lost money as a result of the breach, but they do not and cannot claim they lost money in Wyoming County. App. 17-19. Innovative is a Kanawha County company, and it processed payroll for employees of Innovative's client companies and collected its fees from American Staffing in Kanawha County. App. 14. Due to the alleged breach, Innovative no longer processes certain clients' employees' payroll, and thus no longer collects that fee from American Staffing. App. 15-17. Innovative's financial benefit from its relationship with American Staffing occurred at Innovative's offices in Kanawha County. Therefore, any loss of that benefit manifested in Kanawha County.

Slander claim did not arise in Wyoming County

Respondents have made no allegation connecting their slander claim to Wyoming County. In this case, none of the parties reside (or operate their principal place of business) in Wyoming County, and the Petitioners' affidavits eliminate any possibility that the allegedly slanderous words were spoken there. Respondents have not even attempted to provide evidence to the contrary. Instead, they assert that they are entitled to discovery on this point. App. 47.

Respondents cannot be permitted to dictate venue based on sheer conjecture and hope that discovery may substantiate their theory. They must provide evidence to support venue in response to the Motion to Dismiss. *United Bank v. Blosser*, 218 W.Va. 378, 384, 624 S.E.2d 815, 821 (2005); *Rhododendron Furniture & Design, Inc. v.*

Marshall, 214 W.Va. 463, 466, 590 S.E.2d 656, 659 (2003). "[Plaintiffs have] the burden of establishing proper venue[,]"[5] and there is nothing in the pleadings or Plaintiffs' other submissions to support venue for the slander claim in Wyoming County. *C.H. James & Co. v. Fed. Food Marketers Co.*, 927 F. Supp. 187, 189 (S.D.W.Va., 1996).[6]

3. Circuit Court has exceeded its legitimate powers

Examination of the Circuit Court's order shows numerous errors of law and fact which demonstrates that it is far in excess of its legitimate powers. It appears the Circuit Court has strained to reach a results-oriented decision, without support in the law or facts.

Without citation to any fact, the Circuit Court concludes that "[v]enue is proper in Wyoming County because Plaintiff's breach of contract claim and slander claim arose in Wyoming County." App. 7. When broken down, this statement is manifestly incorrect.

The Order reveals a tortured logic that attempts to rewrite W.Va. Code § 56-1-1(a)(2) to add a new manner to create venue by finding any county touched through a

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[5] Respondents also are bound by the limits of W.Va. Rule Civ. Pro. 11(b). Given their admission that they need discovery to determine the venue for the slander claim, it seems questionable that they have enough evidence to meet the Rule.

[6] Even if discovery were an option, under *Powderidge*, it is incumbent on the proponent of discovery to provide the necessary showing. Respondents made no attempt to meet these requirements. Their only claim to discovery was a bald face statement that they believed further discovery would show there was venue. App. 47.

The only evidence is exactly the opposite. The individual Petitioners (the only parties named in the slander count) have both filed affidavits that they have in no way been within the boundaries of Wyoming County, West Virginia at any time relevant to this case, none of the parties reside (or operate their principal place of business) in Wyoming County, and the Petitioners' affidavits refute any possibility that the allegedly slanderous words were spoken there. App. 14-15, 18, 82-83, & 109-111. Respondents have not even attempted to provide evidence to the contrary. This is insufficient to sustain venue.

rippling connection between allegations in the Complaint to non-parties who have not suffered damages, and have no standing to even join the Complaint.

This is incorrect. First, this completely eviscerates the statute and this Court's holding in *Wetzel*, not to mention directly contravenes *Galloway*. This Court found in *Galloway* that just because there might be some loss of fees or debts from a third party in some county did not mean that the breach manifested itself there. *Galloway*, 227 W.Va. at 437-538, 711 S.E.2d at 259-260. To the contrary, the breach manifests in the location where the actions actually happen, in this case, where the fees or debts are received. In *Galloway*, that was Cabell County. *Galloway*, 227 W.Va. at 437, 711 S.E.2d at 258. Here, it is Kanawha County, where the parties actually conducted the business that resulted in the fees and debts. App. 14-17.

The Circuit Court apparently depended on an incorrect assumption, again without any citation to law or fact, that there were funds flowing from non-parties who live in Wyoming County to Innovative. App. 5. This is incorrect. Innovative, a Kanawha County company, collected fees in Kanawha County from its clients. It is irrelevant where the employees who received the paychecks resided or were employed. App. 73. Nothing in the chain between Petitioners and Respondents ever touches Wyoming County. As all funds that are asserted as damages stayed solely within Kanawha County, there is no connection to Wyoming County factually, and therefore, no manifestation of breach, leaving the allegation of venue without support.

Finally, the Circuit Court wrongly assumed, without any evidence whatsoever, and in fact, in complete derogation of the outstanding evidence, that the alleged slander occurred in Wyoming County. App. 7. This is a complete abdication of this Court's

requirement in *Blosser*, 218 W.Va. at 384, 624 S.E.2d at 821, requiring evidence to support a claim when venue is challenged. In other words, what the Circuit Court is saying is that in an allegation of slander, when Respondents did not specify the hearer, their location, or any other fact whatsoever in support of the slander claim, it may be assumed that the alleged slander occurred in Wyoming County or whatever other venue is claimed. This is standing on its head the requirement of this Court in *Blosser* that in response to a motion to dismiss that evidence must be provided, and making a mockery of the requirement for venue.

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CONCLUSION

In the end, it is apparent that the Circuit Court sought to fashion a decision, outside the law, and thus, outside its legitimate powers, to support forum shopping Respondents. This Court cannot allow this to continue.

Accordingly, Petitioners respectfully request that this Court issue a rule against the Respondents for them to show cause, if they can, as to why this case should not be ordered dismissed for lack of venue, and to issue the requested order to dismiss.

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