

COURT OF APPEALS OF GEORGIA

Ross et al. v. Waters

332 Ga. App. 623 (2015) · No. A15A0683 · Decided June 26, 2015

SUMMARY

The Georgia Court of Appeals held that venue for a renewal medical malpractice action was improper in DeKalb County because the defendant corporation had been administratively dissolved and its last registered office was in Fulton County. The court reversed the trial court's denial of the defendants' motion to dismiss or transfer and remanded with direction to transfer the case to Fulton County. Because the DeKalb County court lacked venue, it did not reach the issue of whether the Servicemembers Civil Relief Act tolled the medical malpractice statute of repose.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Miller, J.; Andrews, P. J.; Branch, J.
JURISDICTION	Georgia
DECIDED	June 26, 2015
DOCKET	A15A0683
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants brought an interlocutory appeal from the denial of their motions to dismiss or transfer for improper venue and to dismiss based on the medical-malpractice statute of repose.
STANDARD OF REVIEW	The denial of a motion to dismiss is reviewed de novo; well-pleaded material allegations are accepted as true and doubts are resolved in favor of the plaintiff.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion; precedential within the court's jurisdiction.
PARTIES	Dr. William A. J. Ross, Ross Orthopaedic Wellness Center, P. C. v. Aprile B. Waters

TOPICS

venue medical malpractice professional negligence civil procedure

PRACTICE AREAS

civil procedure

medical malpractice

venue

QUESTIONS PRESENTED

1. Whether venue for Waters's renewal medical-malpractice action against Dr. Ross and the administratively dissolved corporation was proper in DeKalb County.
2. Whether the trial court had authority to rule on defendants' statute-of-repose motion when venue was improper.

HOLDINGS

1. Venue was not proper in DeKalb County because, at the time the renewal action was filed, Ross Orthopaedic had been administratively dissolved and no longer maintained an office or transacted business there. Venue therefore lay in Fulton County, where the corporation had last maintained its registered office before dissolution and where Dr. Ross resided.
2. Because venue was improper in DeKalb County, the trial court lacked authority to rule on the defendants' motion to dismiss based on expiration of the medical-malpractice statute of repose.

KEY QUOTATIONS

“the determination of venue must be based upon the facts as they exist at the time that suit is initiated, not as the facts may have existed at some previous point in time.” (at 3)

“A trial court without venue lacks authority to issue an order or judgment, and any such order or judgment is void.” (at 4)

FACTUAL BACKGROUND

Waters underwent a left total hip arthroplasty performed by Dr. Ross at Ross Orthopaedic in DeKalb County and later underwent a second hip surgery after experiencing severe pain. She alleged that the first surgery was medically unnecessary and deviated from the applicable standard of care. When Waters filed her renewal action in DeKalb County in March 2013, Ross Orthopaedic had been administratively dissolved and no longer maintained an office or transacted business in DeKalb County; its last registered office before dissolution was in Fulton County.

PROCEDURAL HISTORY

Waters initially filed a medical-malpractice action in Fulton County, which was stayed during Dr. Ross's military service and later voluntarily dismissed. She filed a renewal action in DeKalb County after Ross Orthopaedic had been administratively dissolved. The DeKalb County State Court denied defendants' motions concerning venue and tolling of the statute of repose; the Georgia Court of Appeals granted interlocutory review, reversed on venue, and remanded with directions to transfer the case to Fulton County.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The DeKalb County trial court was directed to transfer the case to Fulton County, where the defendants' statute-of-repose argument was to be addressed on the merits.

CASES CITED

- Roberson v. Northrup, 302 Ga. App. 405 (691 S.E.2d 547) (2010)
- Colony Bank Worth v. Caterpillar Fin. Servs. Corp., 281 Ga. App. 397, 398 (636 S.E.2d 119) (2006)
- Savannah Laundry & Machinery Co. v. Owenby, 186 Ga. App. 130, 131-132 (366 S.E.2d 787) (1988)
- Chung v. Hair Trend USA, 322 Ga. App. 429, 432 (745 S.E.2d 681) (2013)
- Coastal Transp., Inc. v. Tillery, 270 Ga. App. 135, 140 (3) (605 S.E.2d 865) (2004)

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