

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

Brown v. Cope Bestway Express, Inc.

99 A.D.3d 746, 952 N.Y.S.2d 220 (N.Y. App. Div. 2012) · Decided October 10, 2012

SUMMARY

The court addresses whether two personal-injury actions arising from the same automobile collision should be consolidated or jointly tried and where venue should be placed. It holds that a joint trial, rather than consolidation, is appropriate because the actions involve different plaintiffs, and directs that venue be placed in Nassau County due to one plaintiff's serious injuries and inability to attend trial in Monroe County.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Dillon, J.R.; Balkin, J.; Belen, J.; Austin, J.
JURISDICTION	New York
DECIDED	October 10, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Samantha Eisenberg appealed from the portion of an order that consolidated two personal-injury actions and transferred the consolidated action from Monroe County to Nassau County.
STANDARD OF REVIEW	Abuse-of-discretion review of consolidation, joint-trial, and venue determinations under CPLR 602(a).
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Samantha Eisenberg

TOPICS

- venue
- civil procedure
- appellate procedure
- personal injury

PRACTICE AREAS

- civil procedure
- personal injury
- appellate procedure

QUESTIONS PRESENTED

1. Whether the two actions arising from the same collision should be consolidated or tried jointly under CPLR 602(a).
2. Whether venue for the coordinated proceedings should be placed in Monroe County, where the first action was commenced, or Nassau County.
3. Whether a joint trial rather than consolidation was appropriate because the actions involved different plaintiffs.

HOLDINGS

1. Because the actions arose from the same incident and involved common questions of law and fact, coordinated proceedings were warranted in the interests of justice and judicial economy, absent prejudice to a substantial right.
2. Venue should be placed in Nassau County because Eisenberg's serious injuries made her unable to attend trial in Monroe County, constituting a special circumstance warranting departure from the usual rule favoring the county where the first action was commenced.
3. A joint trial, rather than consolidation, was the appropriate method because the two actions involved different plaintiffs, and the joint trial would not prejudice Brown's substantial rights.

KEY QUOTATIONS

"Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602 (a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion" (at 747-748)

FACTUAL BACKGROUND

Jessica Brown and Samantha Eisenberg allegedly sustained injuries when an automobile in which they were passengers collided with a truck in Rochester, New York, on February 12, 2010. Brown sued the truck's owner, lessee, and driver in Monroe County, while Eisenberg brought a related action in Nassau County against those parties and the Apaks, the owner and driver of the passenger vehicle. Eisenberg resided in Nassau County and suffered serious injuries that prevented her from attending a trial in Monroe County.

PROCEDURAL HISTORY

Brown commenced an action in Monroe County after a February 2010 automobile-truck collision. Eisenberg later commenced a related action in Nassau County, and Brown amended her complaint to add the Apaks as defendants. The Supreme Court consolidated the actions and transferred the consolidated action to Monroe County; Eisenberg appealed. The Appellate Division held that the matters should proceed by joint trial rather than consolidation and that venue should be in Nassau County.

DISPOSITION

other

REMAND INSTRUCTIONS

The proceedings are to be conducted by joint trial rather than consolidation, with venue placed in Nassau County. The opinion does not expressly state whether the matter was remanded in the source text.

CASES CITED

- Perini Corp. v. WDF, Inc., 33 A.D.3d 605, 606-607 (N.Y. App. Div. 2006)
- Alizio v. Perpignano, 78 A.D.3d 1087, 1088 (N.Y. App. Div. 2010)
- Mas-Edwards v. Ultimate Servs., Inc., 45 A.D.3d 540-541 (N.Y. App. Div. 2007)
- Nigro v. Pickett, 39 A.D.3d 720, 722 (N.Y. App. Div. 2007)
- Gomez v. Jersey Coast Egg Producers, 186 A.D.2d 629, 630 (N.Y. App. Div. 1992)
- Moor v. Moor, 39 A.D.3d 507, 508 (N.Y. App. Div. 2007)
- DeGregorio v. DeGregorio, 251 A.D.2d 366, 366-367 (N.Y. App. Div. 1998)
- Messina v. Upper Hudson Primary Care Consortium, Inc., 26 A.D.3d 698, 699 (N.Y. App. Div. 2006)
- T T Enters. v. Gralnick, 127 A.D.2d 651, 652 (N.Y. App. Div. 1987)
- Whiteman v. Parsons Transp. Group of N.Y., Inc., 72 A.D.3d 677, 678 (N.Y. App. Div. 2010)

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