

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Schultz v. Brevard County

431 So. 2d 187 (Fla. Dist. Ct. App. 1983) · Decided April 13, 1983

SUMMARY

The Florida Fifth District Court of Appeal affirmed an order transferring a wrongful-death action from Brevard County to Leon County because the state and its agencies had a common-law venue privilege. The court held that the statutory exception permitting suit in the county where a cause of action accrued applied only to causes accruing after October 1, 1981, and therefore did not apply to this action.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Sharp; Cobb; Cowart
JURISDICTION	Florida
DECIDED	April 13, 1983
DISPOSITION	affirmed
PROCEDURAL POSTURE	Schultz appealed an order transferring venue of her tort action from Brevard County to Leon County.
PRECEDENTIAL VALUE	Published Florida Fifth District Court of Appeal opinion; precedential within the scope of applicable Florida appellate precedent.
PARTIES	Schultz v. Brevard County, Department of Health and Rehabilitative Services

TOPICS

- venue
- civil procedure
- statutory interpretation
- municipal law
- negligence

PRACTICE AREAS

- civil procedure
- torts
- statutory interpretation
- municipal law

QUESTIONS PRESENTED

1. Whether the state agency's common-law venue privilege required transfer of the action to the county where the agency maintained its principal headquarters.

2. Whether a court could create an exception to the state-agency venue privilege for joint public tort-feasors when the cause of action accrued before the effective date of the statutory venue exception in section 768.28(1), Florida Statutes.

HOLDINGS

1. At the time this cause of action accrued, the state and its agencies could elect to be sued only in counties where they maintained their principal headquarters.
2. Creating an exception to the state-agency venue privilege for joint public tort-feasors is a legislative matter, not a judicial one.
3. The statutory exception permitting suit against a state agency or subdivision in the county where the cause of action accrued did not apply because it applies only to causes of action accruing after October 1, 1981.

KEY QUOTATIONS

“Although the Grice exception is logical and would indeed be in the public interest, we think the creation of such an exception is properly a legislative matter.” (188)

FACTUAL BACKGROUND

Schultz alleged that Brevard County and the Department of Health and Rehabilitative Services were joint tort-feasors responsible for the death of her minor son. She alleged that the defendants failed to monitor Grant Lake and prevent public swimming there. Grant Lake was located in Brevard County, where Schultz's son contracted primary amoebic meningoencephalitis while swimming.

PROCEDURAL HISTORY

Schultz sued Brevard County and the Department of Health and Rehabilitative Services in Brevard County. The trial court changed venue of the entire action to Leon County. The Fifth District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Smith v. Williams, 160 Fla. 580, 35 So. 2d 844 (Fla. 1948)
- Grice v. Board of County Commissioners of Madison County, 413 So. 2d 88 (Fla. 1st DCA 1982)
- Lake County v. Friedel, 387 So. 2d 514 (Fla. 5th DCA 1980)

OPINION

SHARP, J.

SHARP, Judge. Schultz appeals from an order of the trial court changing the venue of her cause of action, en toto, from Brevard County to Leon County. She sued Brevard County *188 and the Department of Health and Rehabilitative Services in Brevard County. Her complaint alleged they were joint tort-feasors who caused the death of her minor son by failing to monitor and keep the public from swimming in Grant Lake, which is located in Brevard County.

Schultz' son contracted a fatal disease (primary amoebic meningoencephalitis) while swimming in Grant Lake. We affirm. At the time the cause of action accrued in this case, the state and its agencies enjoyed a common law venue privilege in civil actions wherein they could elect to be sued only in the counties in which they maintained their principal headquarters.

Smith v. Williams, 160 Fla. 580, 35 So.2d 844 (Fla.1948). In Grice v. Board of County Commissioners of Madison County, 413 So.2d 88 (Fla. 1st DCA 1982), the court suggested there are exceptional circumstances in which blind adherence to the local venue privilege would defeat the legislative purposes of promoting orderly and uniform handling of state litigation and minimizing the expenditure of state funds and manpower.

The Grice court found as a matter of public policy that there was an exception for joint public tortfeasors, such as in this case. Although the Grice exception is logical and would indeed be in the public interest, we think the creation of such an exception is properly a legislative matter. Lake County v. Friedel, 387 So.2d 514 (Fla. 5th DCA 1980).

The legislature has created such an exception in section 768.28(1), Florida Statutes (1981), which permits a claimant to sue a state agency or subdivision in the county where the cause of action accrues if the agency or subdivision maintains an office in that county for the transaction of its customary business. Unfortunately, this statute applies only to causes of action accruing after October 1, 1981. § 768.-28(14), Fla.Stat.

(1981). The order appealed is therefore AFFIRMED. COBB and COWART, JJ., concur.