

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, THIRD DIVISION

Braun v. Aspid Medical

2020 IL App (1st) 200131 · No. 1-20-0131 · Decided November 4, 2020

SUMMARY

The Illinois Appellate Court affirmed the denial of BG Medical, LLC's motions to transfer four product-liability cases from Cook County to Lake County. The court held that venue was proper under the transactional pathway because BG Medical's marketing and promotional activities concerning Surgimesh were conducted from Cook County when the plaintiffs were implanted with the product. The court did not resolve how an Illinois limited liability company should be treated for venue-residency purposes because the transactional basis independently supported venue.

CASE DETAILS

COURT	Appellate Court of Illinois, First District, Third Division
WRITING FOR THE COURT	Justice Burke; Justice McBride; Justice Ellis
JURISDICTION	Illinois
DECIDED	November 4, 2020
DOCKET	1-20-0131
DISPOSITION	affirmed
PROCEDURAL POSTURE	BG Medical appealed the circuit court's denial of its motions to transfer venue from Cook County to Lake County. The Illinois Appellate Court granted leave to appeal under Illinois Supreme Court Rule 306(a)(4).
STANDARD OF REVIEW	The appellate court reviews the circuit court's factual findings for manifest error and its ultimate legal determination regarding venue de novo.
PRECEDENTIAL VALUE	published and precedential
PARTIES	BG Medical, LLC v. Johnna Braun, David Cheney, Kathy Van Ryswyk, Natasha Stanley

TOPICS

venue

appellate jurisdiction

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standard of review

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether venue in Cook County was proper under the Illinois transactional venue provision because part of the transaction from which the plaintiffs' product-liability claims arose occurred in Cook County.
2. Whether BG Medical was a resident of Cook County for venue purposes when the plaintiffs filed their actions.
3. Whether the circuit court properly denied BG Medical's motions to transfer venue to Lake County.

HOLDINGS

1. Venue was proper in Cook County because part of the transaction from which the plaintiffs' claims arose occurred there. The plaintiffs' allegations concerning BG Medical's marketing, promotion, and failure to warn could have originated from BG Medical's Cook County office while the plaintiffs were implanted with Surgimesh.
2. The court declined to resolve the open question of which statutory residency definition applies to an Illinois limited liability company because the transactional pathway independently established proper venue in Cook County.
3. The circuit court properly denied the motions to transfer venue because BG Medical failed to establish a clear right to transfer and the record supported venue in Cook County.

KEY QUOTATIONS

“Proper venue is an important statutory privilege” (¶ 16)

“Under section 2-101 of the Code (735 ILCS 5/2-101 (West 2018)), there are two pathways to proper venue: (1) the residency pathway and (2) the transactional pathway.” (¶ 18)

“The phrase should be interpreted broadly and liberally.” (¶ 29)

FACTUAL BACKGROUND

Aspide Medical, a French corporation, designed and manufactured Surgimesh, a surgical mesh used to repair hernias, and BG Medical, an Illinois limited liability company, served as its exclusive United States distributor. The plaintiffs, residents of Arkansas, New York, Washington, and West Virginia, were implanted with Surgimesh between August 2015 and January 2018 and allegedly suffered additional injuries requiring further medical procedures. They sued in Cook County for strict liability, negligence, breach of express warranty, and breach of implied warranties, alleging defective design and manufacture, inadequate warnings, and misleading marketing. BG Medical's office was located in Cook County during the relevant implantation period, although it moved its office to Lake County in December 2018.

PROCEDURAL HISTORY

The plaintiffs filed individual product-liability actions in the Circuit Court of Cook County against Aspide Medical and BG Medical. The cases were consolidated with other hernia-mesh cases for discovery and pretrial purposes only. BG Medical moved to transfer the cases to Lake County, asserting that neither defendant resided in Cook County and that no part of the relevant transactions occurred there. The circuit court denied the motions, and the appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- Bucklew v. G.D. Searle & Co., 138 Ill. 2d 282, 288, 291-94 (1990)
- Corral v. Mervis Industries, Inc., 217 Ill. 2d 144, 153-55 (2005)
- Weaver v. Midwest Towing, Inc., 116 Ill. 2d 279, 285 (1987)
- Wilson v. Central Illinois Public Service Co., 165 Ill. App. 3d 533, 537 (1988)
- Ex Parte Miller, Hamilton, Snider & Odom, LLC, 942 So. 2d 334, 336-37 (Ala. 2006)
- Baltimore & Ohio R.R. Co. v. Mosele, 67 Ill. 2d 321, 329-30 (1977)
- Remington Rand, Inc. v. Knapp-Monarch Co., 139 F. Supp. 613, 617 (E.D. Pa. 1956)
- Gardner v. International Harvester Co., 113 Ill. 2d 535, 540-42 (1986)
- Stambaugh v. International Harvester Co., 102 Ill. 2d 250, 259 (1984)
- Reynolds v. GMAC Financial Services, 344 Ill. App. 3d 843, 848 (2003)
- Rensing v. Merck & Co., 367 Ill. App. 3d 1046, 1050-51 (2006)
- Williams v. Illinois State Scholarship Comm'n, 139 Ill. 2d 24, 68-70 (1990)
- People ex rel. Carpentier v. Lange, 8 Ill. 2d 437, 441 (1956)
- Christopher v. West, 345 Ill. App. 515, 528 (1952)
- Winn v. Vogel, 345 Ill. App. 425, 431-32 (1952)
- La Ham v. Sterling Canning Co., 321 Ill. App. 32, 44 (1943)
- Lake County Riverboat L.P. v. Illinois Gaming Board, 313 Ill. App. 3d 943, 952-53 (2000)
- Terada v. Eli Lilly & Co., 2015 IL App (5th) 140170, ¶ 23
- Board of Education of Nippersink School District 2 v. Koch, 2012 IL App (2d) 120132, ¶ 13
- Boxdorfer v. DaimlerChrysler Corp., 339 Ill. App. 3d 335, 344 (2003)
- Mikolajczyk v. Ford Motor Co., 231 Ill. 2d 516, 543 (2008)
- Hammond v. North American Asbestos Corp., 97 Ill. 2d 195, 206 (1983)
- Calles v. Scripto-Tokai Corp., 224 Ill. 2d 247, 270 (2007)
- Lewis v. Lead Industries Ass'n, 342 Ill. App. 3d 95, 100 (2003)
- Innovative Garage Door Co. v. High Ranking Domains, LLC, 2012 IL App (2d) 120117, ¶ 4 n.1
- Kaiser v. Doll-Pollard, 398 Ill. App. 3d 652, 656 (2010)
- Jackson v. Reid, 363 Ill. App. 3d 271 (2006)

- **Peterson v. Monsanto Co.**, 157 Ill. App. 3d 508 (1987)

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