

SUPREME COURT OF COLORADO

Spencer v. Sytsma

67 P.3d 1 (Colo. 2003) · No. No. 02SA342 · Decided April 7, 2003

SUMMARY

The Colorado Supreme Court holds that claims against defendants involved in separate accidents may be permissively joined when they arise from a plaintiff's common injury, but venue requirements must nevertheless be satisfied for each defendant when the defendants did not act in concert. The court makes absolute a rule to show cause and orders a change of venue as to defendant Ralph Kuiper. A dissent would have upheld the trial court's determination that joinder and venue requirements were both satisfied.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Martinez; Justice Bender; Chief Justice Mullarkey; Justice Kourlis
JURISDICTION	Colorado
DECIDED	April 7, 2003
DOCKET	No. 02SA342
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding on a petition for a rule to show cause challenging the trial court's denial of a motion for change of venue and severance of claims.
STANDARD OF REVIEW	The court reviewed the trial court's venue and joinder ruling in an original proceeding involving a rule to show cause; permissive joinder is discretionary with the trial court, but venue requirements must be satisfied under the governing venue rule.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Colorado, decided en banc.
PARTIES	Ralph Kuiper v. Lisa M. Spencer, Douglas W. Sytsma

TOPICS

venue joinder civil procedure negligence personal injury

PRACTICE AREAS

civil procedure

torts

QUESTIONS PRESENTED

1. Whether defendants involved in two separate accidents may be permissively joined because the plaintiff suffered a common injury.
2. Whether venue must be independently proper for each defendant when the defendants did not act in concert or engage in the same tortious act.
3. Whether the trial court erred by denying Kuiper's motion for a change of venue and severance.

HOLDINGS

1. The defendants could properly be joined under C.R.C.P. 20(a) because the plaintiff's single injury constituted a common occurrence and common questions of fact would arise concerning the injury and apportionment of damages.
2. When defendants did not act in concert or engage in the same tortious act, venue requirements must be satisfied for each defendant, even if the defendants are properly joined based on a common injury.
3. The trial court erred in denying Kuiper's request for a change of venue because venue was not proper for him in Denver County merely because he was joined with Sytsma.

KEY QUOTATIONS

“Thus, we hold that venue requirements must be satisfied for each defendant when the common occurrence joining the acts was not the defendants' actions together, but was instead merely a result of separate incidents.” (at 7)

“In sum, as defendants did not act in concert, plaintiff must satisfy venue requirements for each defendant.” (at 7)

FACTUAL BACKGROUND

Lisa Spencer alleged that she sustained virtually identical injuries in two separate automobile accidents in Colorado Springs. Douglas Sytsma allegedly caused the first accident by making a U-turn in front of Spencer's vehicle, and Ralph Kuiper allegedly caused the second by rear-ending Spencer's vehicle. Sytsma resided in Denver County, while Kuiper resided in El Paso County. Spencer sued both defendants in Denver County, relying on the common injury to support joinder.

PROCEDURAL HISTORY

Spencer sued Sytsma and Kuiper in Denver County for injuries allegedly resulting from two separate automobile accidents in Colorado Springs. Kuiper moved for a change of venue and severance, arguing that venue was proper for his claim only in El Paso County; Sytsma joined the venue request but opposed severance. The trial court denied the motion, and the Supreme Court of Colorado issued a rule to show cause. The Supreme Court made the rule absolute.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The rule to show cause was made absolute, requiring the trial court to grant the change of venue for Kuiper. The opinion does not provide further remand instructions.

CASES CITED

- Denver Air Center v. District Court, 839 P.2d 1182 (Colo. 1992)
- Sutterfield v. District Court, 165 Colo. 225, 438 P.2d 236 (1968)
- Draper v. School District No. 1, 175 Colo. 216, 486 P.2d 1048 (1971)
- State ex rel. Jinkerson v. Koehr, 826 S.W.2d 346 (Mo. 1992)
- State ex rel. Turnbough v. Gaertner, 589 S.W.2d 290 (Mo. 1979)
- Thomas v. Bobby Stevens Hauling Contractors, Inc., 165 Ga. App. 710, 302 S.E.2d 585 (1983)
- Apache County v. Superior Court, 163 Ariz. 54, 785 P.2d 1242 (Ct. App. 1989)
- Fred's Finance Co. v. Fred's of Dyersburg, Inc., 741 S.W.2d 903 (Tenn. Ct. App. 1987)
- Beattie v. United States, 756 F.2d 91 (D.C. Cir. 1984)
- Smith v. United States, 507 U.S. 197, 113 S. Ct. 1178, 122 L. Ed. 2d 548 (1993)
- Lamar v. American Basketball Association, 468 F. Supp. 1198 (S.D.N.Y. 1979)
- Nine Point Mesa of Nashville, Inc. v. Nine Point Mesa of Lexington, Inc., 769 F. Supp. 259 (M.D. Tenn. 1991)
- General Foods Corp. v. Carnation Co., 411 F.2d 528 (7th Cir. 1969)
- Solow Building Co. v. ATC Associates, Inc., 175 F. Supp. 2d 465 (S.D.N.Y. 2001)
- Travis v. Anthes Imperial Ltd., 473 F.2d 515 (8th Cir. 1973)
- Sadighi v. Daghighfekr, 36 F. Supp. 2d 267 (D.S.C. 1999)
- Millet v. District Court, 951 P.2d 476 (Colo. 1998)
- City of Cripple Creek v. Johns, 177 Colo. 443, 494 P.2d 823 (1972)
- Slinkard v. Jordan, 131 Colo. 144, 279 P.2d 1054 (1955)
- Twin Lakes Reservoir & Canal Co. v. Bond, 156 Colo. 433, 399 P.2d 793 (1965)
- Kirby v. Union Pacific Ry. Co., 51 Colo. 509, 119 P. 1042 (1911)
- Fletcher v. Stowell, 17 Colo. 94, 28 P. 326 (1891)
- Cliff v. Gleason, 142 Colo. 500, 351 P.2d 394 (1960)
- Lamar Alfalfa Milling Co. v. Bishop, 80 Colo. 369, 250 P. 689 (1926)
- International Shoe Co. v. State of Washington, International Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945)
- Hancock v. Boulder County Public Trustee, 920 P.2d 854 (Colo. App. 1996)

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