

SUPREME COURT OF MISSISSIPPI

Rochelle Culbert, et al. v. Johnson & Johnson, Mallan G. Morgan,
M.D., and Sav-On-Drugs of Columbia, Inc.

Culbert · No. No. 2003-IA-00881-SCT; consolidated with No. 2003-IA-00918-SCT · Decided April 16, 2003

SUMMARY

The Mississippi Supreme Court addresses the permissive joinder and venue of thirty plaintiffs alleging injuries from the prescription drug Propulsid. Applying Mississippi Rule of Civil Procedure 20 and related transfer provisions, the Court affirms severance of the plaintiffs' claims, remands for transfer of in-state claims, and directs dismissal without prejudice of out-of-state claims. The Court also orders separate trials for two improperly joined Jefferson County plaintiffs.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Easley, Justice; Cobb, P.J.; Easley, J.; Graves, J.; Smith, C.J.; Waller, P.J.; Carlson, J.; Dickinson, J.; Diaz, J.; Randolph, J.
JURISDICTION	Mississippi
DECIDED	April 16, 2003
DOCKET	No. 2003-IA-00881-SCT; consolidated with No. 2003-IA-00918-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Permission interlocutory appeals and a cross-appeal from orders of the Jefferson County Circuit Court concerning permissive joinder, severance, venue, transfer, and dismissal on forum non conveniens or venue grounds.
STANDARD OF REVIEW	The Court reviewed joinder and venue rulings for abuse of discretion. It would not disturb a plaintiff's choice of venue absent a lack of credible evidence supporting the factual basis for venue.
PRECEDENTIAL VALUE	published opinion
PARTIES	Rochelle Culbert, et al. v. Johnson & Johnson, Mallan G. Morgan, M.D., Sav-On-Drugs of Columbia, Inc.

TOPICS

- joinder
- venue
- forum non conveniens
- interlocutory appeal
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

torts

QUESTIONS PRESENTED

1. Whether the plaintiffs were properly joined under Mississippi Rule of Civil Procedure 20 despite differing times of use, warnings, marketing materials, medical conditions, and alleged injuries.
2. Whether the trial court properly severed the claims of plaintiffs lacking original jurisdiction and venue in Jefferson County.
3. Whether claims filed in the wrong Mississippi county should be transferred rather than dismissed under Mississippi Code section 11-11-17 and Mississippi Rule of Civil Procedure 82(d).
4. Whether the claims of the out-of-state plaintiffs should be dismissed without prejudice on forum non conveniens or venue grounds.
5. Whether the claims of the two Jefferson County plaintiffs were properly joined for trial.

HOLDINGS

1. The plaintiffs' claims were improperly joined because the claims did not satisfy the same-transaction-or-occurrence requirement and the proposed joinder created a substantial risk of undue prejudice and unfairness.
2. Claims of the ten in-state plaintiffs lacking venue in Jefferson County were to be transferred to counties in which they could properly have been filed, rather than dismissed.
3. The claims of the eighteen out-of-state plaintiffs were to be dismissed without prejudice.
4. The claims of Clara Malone and Janice Davis were improperly joined for trial and had to be severed.

KEY QUOTATIONS

“It is imperative we strike a balance in our jurisprudence between the need for fairness to the parties and judicial economy. In the end, the benefits of efficiency must never be purchased at the cost of fairness.” (§6)

“The two prongs of Rule 20 must always be met. While it does not rise to the level of a distinct factor in the joinder analysis, an important consideration is if the joinder will result in undue prejudice to the parties.” (§7)

“When an action is filed laying venue in the wrong county, the action shall not be dismissed, but the court, on timely motion, shall transfer the action to the court in which it might properly have been filed and the case shall proceed as though originally filed therein.” (§8)

FACTUAL BACKGROUND

Thirty plaintiffs alleged injuries from using the prescription drug Propulsid. Two plaintiffs lived in Jefferson County, ten other plaintiffs were Mississippi residents from eight different counties, and eighteen plaintiffs lived outside Mississippi. The plaintiffs took the drug at different times, under different labels and warnings, and in

connection with different marketing materials and medical conditions, leading the defendants to challenge joinder and venue.

PROCEDURAL HISTORY

Thirty plaintiffs sued manufacturers, physicians, pharmacies, and other defendants for injuries allegedly arising from use of Propulsid. The circuit court severed plaintiffs lacking original jurisdiction and venue in Jefferson County, later clarified its order, denied rehearing in part, and declined to certify the case for interlocutory appeal. The Mississippi Supreme Court granted permission for interlocutory appeals and a cross-appeal, affirmed the severance and transfer-related rulings in No. 2003-IA-00881-SCT, and reversed and remanded in No. 2003-IA-00918-SCT.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

For No. 2003-IA-00881-SCT, the trial court was to require transfer of the ten in-state plaintiffs' claims to venues where they could properly have been filed. The eighteen out-of-state plaintiffs' claims were to be dismissed without prejudice. The trial court was also instructed to sever the claims of Clara Malone and Janice Davis for separate trials. No. 2003-IA-00881-SCT was affirmed and remanded; No. 2003-IA-00918-SCT was reversed and remanded.

CASES CITED

- Janssen Pharmaceutica, Inc. v. Armond, 866 So. 2d 1092
- Burgess v. Lucky, 674 So. 2d 506
- Scott v. Janssen Pharmaceutica, Inc., 876 So. 2d 306
- Malcolm v. Nat'l Gypsum Co., 995 F.2d 346
- Janssen Pharmaceutica, Inc. v. Keys, No. 2003-IA-00275-SCT