

PRACTICE & PROCEDURE

Practice & Procedure: Venue Tort Liability & Governmental Immunity: Jurisdiction

Jacksonville Electric Authority v. Clay County Utility Authority,

802 So. 2d 1190 (Fla. Dist. App. 1st 2002)

Absent waiver or the existence of a judicially recognized exception, governmental defendants have the right to be sued in the county in which they are located.

FACTS

In 1997, the Jacksonville Electric Authority (JEA), a local governmental body based in Duval County, acquired all wastewater assets and responsibilities from the City of Jacksonville. JEA subsequently entered into a Utility Service Agreement, giving JEA the right to service an entire development, including portions located in neighboring Clay County.

The Clay County Utility Authority (CCUA) is a governmental body, created by the Florida Legislature under Special Act 94-491, that provides water and sewer services within Clay County. The CCUA sued JEA in Clay County arguing that its Agreement violated several laws, including Special Act 94-491 and the Florida Constitution. JEA moved to have the case transferred to Duval County based on its home venue privilege. The circuit court, however, denied JEA's change-of-venue motion.

ANALYSIS

The home venue privilege provides that absent waiver or the existence of an exception, a governmental defendant has the right to be sued in the county in which it is located. The First District Court of Appeal examined the home venue privilege and its accompanying exceptions to determine whether the circuit court erred when it denied JEA's motion to change venue. The home-venue privilege also has three judicially crafted exceptions. The

first exception is waiver by statute. The second exception allows courts to waive the privilege when a governmental body is sued as a joint tortfeasor. The first two exceptions were clearly inapplicable; therefore, the First District focused on the third.

The third exception, known as the sword-wielder doctrine, allows courts to waive the privilege when a governmental body invades, or threatens to invade, the constitutional rights of another. Consequently, when a person's constitutional rights are in imminent danger, the person may sue in the county in which the invasion is about to occur. The First District, however, held that the sword-wielder doctrine was inapplicable. Even though JEA's actions might have violated Florida Statutes, they did not constitute the type of fundamental constitutional deprivation that supported application of the sword-wielder doctrine.

Although the First District felt constrained to transfer the case, its decision failed to support any of the policy reasons underlying the home venue privilege. For instance, the court's decision did not promote the orderly and efficient use of governmental resources. Additionally, it prevented Clay County courts from deciding which entity best served the residents in Clay County. Based on the foregoing, the First District certified the following question of great public importance to the Florida Supreme Court:

MAY A TRIAL COURT EXERCISE ITS DISCRETION AND
DECLINE TO APPLY THE HOME VENUE PRIVILEGE
WHERE NONE OF THE POLICY REASONS BEHIND THE
APPLICATION OF THE PRIVILEGE EXIST?

Jacksonville Elec. Auth., 802 So. 2d at 1194.

However, before the Florida Supreme Court was able to address the question, the parties voluntarily dismissed the case.

SIGNIFICANCE

This case raises an important question relating to governmental law. It is not entirely clear how the Florida Supreme Court would have decided the issue if given the chance. At least one case suggests that the Court would have answered the certified question in the negative, thus precluding circuit courts from disregarding the home venue privilege even where none of the policy reasons behind the privilege exist. In *Board of County Commissioners of Madison County v. Grice*, the Florida Supreme Court granted lower courts the power to dispense with

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the privilege when a governmental entity is sued as a joint tortfeasor. 438 So. 2d 392, 395 (Fla. 1983). Recognizing that the home venue privilege is not absolute, the Court held that the joint-tortfeasor exception would save public resources by preventing separate and unnecessary proceedings.

Although *Grice* instructs the lower courts to consider issues of justice, fairness, and convenience when deciding whether to disregard the home venue privilege, the opinion is quite narrow. For instance, it appears that the equitable factors apply only when the courts are considering the use of the joint-tortfeasor exception. Consequently, unless a judicially recognized exception exists, courts probably are bound to apply the home venue privilege, regardless of any mitigating factors.

RESEARCH REFERENCES

- *Barr v. Fla. Bd. of Regents*, 644 So. 2d 333 (Fla. Dist. App. 1st 1994).
- 12A Fla. Jur. 2d *Counties and Municipal Corporations* § 339 (1998).
- 56 Fla. Jur. 2d *Venue* §§ 28, 43, 49 (2000 & Supp. 2003).

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