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by: Colin E. Flora
Associate Civil Litigation Attorney

Indiana Preferred Venue Rules: Is Reputation An Intangible Chattel?

Let me start by welcoming those of you who are reading this on the recently renovated Hoosier Litigation Blog to our new site. As you may have noticed, this transition was part of a larger change in the PavlackLawFirm.com layout. For those of you reading this on our JDSupra channel, you should checkout the newly designed HLB.

Pleasantries out of the way, let us now turn to our short, but interesting topic for the week: venue in Indiana state courts. I know this isn't the sexiest of topics, but there wasn't too awful much of interest in this week's cases—in fact today's discussion focuses on a case from last week—but it is informative nonetheless. It is also fairly brief, compared to the usual HLB topics, and your author needs to hit the road for Chicago this afternoon; leaving one to wonder why your author is listening to the song Atlantic City by The Band while writing this. Turning to today's discussion, we will focus on the recent Indiana Court of Appeals case *Belcher v. Kroczek*.

We have previously discussed the issues of personal jurisdiction and subject matter jurisdiction; the former dealing with whether a court has jurisdiction over the defendant in the case, the latter with whether the court has jurisdiction over the specific type of case. Venue is a close relative of these two issues; in so much as it

pertains to the propriety of a case being decided by a particular court. Where it differs is that the question is not whether the court has jurisdiction over the person or even the subject matter of the case. Rather, the issue is whether this particular court is the one best suited to hear the case.

Indiana is a somewhat quirky beast. Unlike federal courts in which a court either does or does not have venue, every Indiana county trial court has venue. The issue in Indiana, then, is not whether a court has venue; it is whether a court has “*preferred* venue.” That takes us to the problem in the *Belcher* case. There, Dr. Kroczeck, a dentist in Lake County, filed a case against Belcher in Lake County. The origin of the case was a romantic relationship between the parties in early 2012. The fallout of that relationship was a salacious series of events that led Dr. Kroczeck to file suit for defamation.

Belcher sought to transfer venue from Lake County to Marion County, on the basis that Lake County was not a preferred venue. Trial Rule 75(A) provides a list of bases for preferred venue. Mind you, preferred venue can lie in more than one county at any given time. That list states:

Preferred venue lies in:

- (1) the county where the greater percentage of individual defendants included in the complaint resides, or, if there is no such greater percentage, the place where any individual defendant so named resides; or
- (2) the county where the land or some part thereof is located or the chattels or some part thereof are regularly located or kept, if the complaint includes a claim for injuries thereto or relating to such land or such chattels, including without limitation claims for recovery of possession or for injuries, to establish use or control, to quiet title or determine any interest, to avoid or set aside conveyances, to foreclose liens, to partition and to assert any matters for which in rem relief is or would be proper; or
- (3) the county where the accident or collision occurred, if the complaint includes a claim for injuries relating to the operation of a motor vehicle or a vehicle on railroad, street or interurban tracks; or
- (4) the county where either the principal office of a defendant organization is located or the office or agency of a defendant

organization or individual to which the claim relates or out of which the claim arose is located, if one or more such organizations or individuals are included as defendants in the complaint; or

(5) the county where either one or more individual plaintiffs reside, the principal office of a governmental organization is located, or the office of a governmental organization to which the claim relates or out of which the claim arose is located, if one or more governmental organizations are included as defendants in the complaint; or

(6) the county or court fixed by written stipulations signed by all the parties named in the complaint or their attorneys and filed with the court before ruling on the motion to dismiss; or

(7) the county where the individual is held in custody or is restrained, if the complaint seeks relief with respect to such individual's custody or restraint upon his freedom; or

(8) the county where a claim in the plaintiff's complaint may be commenced under any statute recognizing or creating a special or general remedy or proceeding; or

(9) the county where all or some of the property is located or can be found if the case seeks only judgment in rem against the property of a defendant being served by publication; or

(10) the county where either one or more individual plaintiffs reside, the principal office of any plaintiff organization or governmental organization is located, or the office of any such plaintiff organization or governmental organization to which the claim relates or out of which the claim arose is located, if the case is not subject to the requirements of subsections (1) through (9) of this subdivision or if all the defendants are nonresident individuals or nonresident organizations without a principal office in the state.

In short, the list includes 9 bases for venue, and a tenth that acts as a catchall. The two bases at issue here are the first—where the majority of defendants reside—and the second—where the chattel is located. An interesting note on the fourth basis: if the defendant is a corporation, it is deemed to have principal offices in both the county where its actual headquarters is located and where its registered agent is located.

Belcher argued that Marion County (Indianapolis) was the location of preferred venue, because he lived there. Dr. KroczeK argued that T.R. 75(A)(2) applied, rendering Lake County a county of preferred venue—remember, more than one county at a time can have preferred venue—because it was the locus for her reputation that had been defamed. Rule 75(A)(2) applies to chattels—tangible property, such as a car—and land. Thus, the argument was necessarily that a reputation had a tangible existence. It is certainly an interesting argument, and, astonishingly, it worked for the trial judge. Belcher appealed.

In resolving the issue, the appellate court recognized that “the general spirit and policy of the rules governing venue [are] to give the defendant the right to have the action tried in the county of his or her residence.” Nevertheless, if a county other than where defendant resides has preferred venue, then the case can be brought elsewhere. But, there must be preferred venue first, and so the court had to decide whether a reputation constitutes chattel. The court found:

“Chattel” is defined as “[m]ovable or transferable property; personal property; esp[ecially], a physical object capable of manual delivery and not the subject matter of real property.” One type of chattel is a personal chattel, which is defined as “a tangible good or an intangible right (such as a patent).” Trial Rule 75(A)(2) “does not distinguish between tangible and intangible chattels.”

Indiana has identified intangible chattels other than patents in the past: the right of publicity and a money judgment.

Even though intangible items can be chattels under Indiana’s venue rules, there is a defining line. Here, the court determined that the defining line is the transferability of the asset. A patent is readily transferable; so too is a judgment. Less obvious is that the right of publicity may also be sold to someone else. This is more apparent when you think about the likeness rights of a deceased celebrity being transferred to one of his/her heirs. The fact that a reputation cannot be transferred was the death knell to Dr. KroczeK’s argument. Because one cannot transfer his or her reputation—in fact, defamation claims expire upon death of the plaintiff—a reputation does not constitute chattel for the purposes of venue.

A bit of an interesting corollary is that goodwill, unlike reputation, can be chattel, and therefore a basis for venue. Certainly Dr. KroczeK alleged injury to goodwill, but she did not do so with regards to “enterprise goodwill”—i.e., that of goodwill in a company. Enterprise goodwill is often an asset recognized in the sale or evaluation of a business. Alas, Dr. KroczeK’s claim was for personal goodwill,

which is, just like reputation, inexorably tied to the individual and cannot be transferred.

As a result, Dr. Kroczeck will need to pursue her case in Indianapolis, if she desires to proceed with the matter.

Join us again next time for further discussion of developments in the law.

Sources

- *Belcher v. Kroczeck*, --- N.E.3d ---, No. 45A03-1311-CT-436, 2014 WL 3360374 (Ind. Ct. App. July 9, 2014) (Vaidik, C.J.).
- *Am. Family Ins. Co. v. Ford Motor Co.*, 857 N.E.2d 971, 975 (Ind. 2006) (“Accordingly, subsection (4) of Trial Rule 75 establishes preferred venue in the county of the defendant organization's registered office.”).
- Ind. Trial Rule 75.

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