

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

BRIANNA SKROCKI,

Appellant

v.

GAIL ROW AND ERIE INSURANCE A/K/A
ERIE INSURANCE EXCHANGE,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1990 EDA 2012

Appeal from the Orders Entered June 15, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 3826 February Term, 2012

BEFORE: BENDER, J., PANELLA, J., and FITZGERALD, J.*

MEMORANDUM BY BENDER, J.

FILED OCTOBER 17, 2013

Brianna Skrocki (Appellant) appeals from the trial court's orders entered June 14, 2012, that (1) overruled Appellant's preliminary objections, and (2) sustained Appellee Gail Row's preliminary objections and transferred venue to the Court of Common Pleas of Berks County. We affirm in part and reverse in part.

On November 4, 2007, Appellant sustained injuries in a motor vehicle accident while riding as a passenger in a car driven by Joseph Kelly when it was allegedly struck by Row's car as Row drove through a red light. Erie

* Former Justice specially assigned to the Superior Court.

Insurance Exchange provided auto insurance to Kelly and, through a policy issued to her parents, to Appellant as well.

Appellant filed a complaint on March 1, 2012, alleging negligence against Row and seeking underinsured motorist benefits from Erie. Erie filed preliminary objections alleging misjoinder of a cause of action or, in the alternative, a motion to sever the claims against Erie and Row. The trial court did not rule on Erie's preliminary objections but granted its motion to sever on April 23, 2012, directing that Appellant would try her claims separately before different juries. Thereafter, Erie filed a motion to transfer venue for *forum non conveniens* that was denied by the trial court.

On April 27, 2012, Row filed preliminary objections, alleging improper venue following the trial court's severance of Appellant's cause of action against Erie. Appellant responded with preliminary objections of her own, alleging Row's objections were untimely. According to Appellant, she agreed to permit Row a thirty-day extension to answer her complaint but did not agree to an extension so that Row could file preliminary objections. The trial court overruled Appellant's preliminary objections, sustained Row's preliminary objections, and transferred venue to Berks County. Appellant timely appealed and complied with Pa.R.A.P. 1925(b). The trial court issued an opinion.

Appellant raises the following issues:

1. If venue is unquestionably proper at the time the complaint is filed, can subsequent events in the case render venue improper?
2. Does an order severing a plaintiff's claims against two defendants render venue improper as to both defendants, where the claims are severed for purposes of trial only and both claims are maintained under a single docket number even after the claims are severed?
3. Whether preliminary objections must be filed within twenty days of service of the preceding pleading or be waived, especially where the opposing party loses a substantive right solely because the late filing was permitted?
4. Whether a written agreement among counsel should be enforced by the court, particularly where a breach of the agreement will result in an unfair advantage to the breaching party?

Appellant's Brief, at 3.

We exercise appellate jurisdiction under 42 Pa.C.S. § 742.

Generally, this Court reviews a trial court order sustaining preliminary objections based upon improper venue for an abuse of discretion or legal error. Further, the construction of a statute raises a question of law. On questions of law, our standard of review is de novo, and our scope of review is plenary.

Lugo v. Farmers Pride, Inc., 967 A.2d 963, 970 (Pa. Super. 2009)

(citations omitted).

Appellant claims that the trial court erred in sustaining Row's preliminary objections asserting improper venue and transferring this case to Berks County, citing in support **Zappala v. Brandolini Prop Mgmt., Inc.**, 909 A.2d 1272 (Pa. 2006), and **Oswald v. Olds**, 493 A.2d 699 (Pa. Super. 1985). Appellant maintains that Philadelphia County was a proper venue

when her complaint was filed because Erie regularly conducts business there, a fact acknowledged by Erie. **See** Erie's Motion to Transfer Venue, at 3 ¶ 19. According to Appellant, if a claim is filed in a proper venue, it remains proper throughout the litigation. Thus, according to Appellant, the severance of her claims against Erie and Row did not render venue in Philadelphia County improper.

We agree. In **Zappala**, the plaintiff brought negligence claims in Philadelphia County against numerous defendants, some from Chester County and others from Philadelphia County. **See Zappala**, 909 A.2d at 1275. Following the dismissal of all Philadelphia County defendants, the remaining Chester County defendants moved to transfer the case to Chester County, asserting improper forum. **Id.** at 1277. The trial court granted the motion, concluding that venue was no longer proper following the dismissal of the Philadelphia County defendants. **Id.** at 1278. This Court reversed, finding that Pa.R.C.P 1006(e) provides the exclusive method for raising improper venue, and pursuant to the mandatory language of the rule, improper venue must be raised by preliminary objection or be waived. **Id.** The Pennsylvania Supreme Court affirmed, holding that the "question of improper venue is answered by taking a snapshot of the case at the time it is initiated: if it is 'proper' at that time, it remains 'proper' throughout the litigation." **Zappala**, 909 A.2d at 1281; **see also Oswald**, 493 A.2d at 700-01 ("The fact that the [defendant who established proper venue] was

subsequently dropped from the case is of no import vis-à-vis venue, as venue is evaluated from the point when service is properly or improperly made.”).¹

There is no question that Philadelphia County was a proper venue when Appellant filed her complaint. Erie admitted as much when it acknowledged that it conducts business in Philadelphia County. The severance of Appellant’s claims against Row and Erie does not render her choice of forum improper. Accordingly, the trial court erred as a matter of law, and we reverse its order sustaining Row’s preliminary objections and transferring venue to Berks County. **Zappala**, 909 A.2d at 1281; **Oswald**, 493 A.2d at 700-01.²

We will briefly address Appellant’s third and fourth issues. Appellant asserts that she entered into an agreement with Row that permitted Row to untimely file an answer to Appellant’s complaint. Further, she claims the scope of this agreement did not include permission for Row to file preliminary objections. According to Appellant, Row’s untimely preliminary

¹ We note that in reaching the opposite conclusion, the trial court misstates this Court’s holding in **Gale v. Mercy Catholic Med. Ctr. Eastwick, Inc., Fitzgerald Mercy Div.**, 698 A.2d 647 (Pa. Super. 1997), which reversed the trial court’s decision to sustain defendants’ preliminary objections asserting improper venue. **See Gale**, 698 A.2d at 652 (“[T]he moving parties ... have not satisfied their burden of showing that Appellant’s original choice of venue [was] improper.”).

² Our decision does not preclude Row from filing a motion to transfer venue asserting *forum non conveniens* or the inability to obtain a fair and impartial trial. **See Zappala**, 909 A.2d at 1284; Pa.R.C.P. 1006(d)(1), (2).

objections violated their agreement and were unfairly prejudicial. Thus, Appellant concludes the trial court erred in considering them.

We review a trial court's decision to permit a late filing of a pleading for an abuse of discretion.

Although Rule 1026(a) of the Pennsylvania Rules of Civil Procedure states that all pleadings subsequent to the complaint must be filed within 20 days after service of the preceding pleading, this Rule has been interpreted as permissive rather than mandatory. It is left to the sound discretion of the trial court to permit a late filing of a pleading where the opposing party will not be prejudiced and justice so requires.

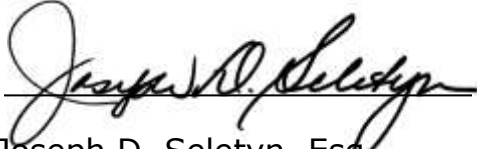
Gale, 698 A.2d at 649 (quotations and citations omitted). Prejudice "includes any substantial diminution [in Appellant's] ability to present factual information in the event of trial," or, as in this case, in opposition to Row's venue challenge. *Id.* at 650 (quoting **Am. Bank & Trust Co. v. Ritter, Todd & Haayen**, 418 A.2d 408, 410 (Pa. Super. 1980)). In our view, Appellant's ability to counter Row's venue challenge was not adversely affected by the untimely filing. Thus, we discern no abuse of the trial court's discretion.

The trial court's order sustaining Row's preliminary objections and transferring venue to the Berks County Court of Common Pleas is reversed. Conversely, the court's order overruling Appellant's preliminary objections is affirmed.

J-A19012-13

Order sustaining preliminary objections and transferring venue reversed. Order overruling preliminary objections affirmed. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/17/2013