

IN THE SUPREME COURT OF TEXAS

No. 96-0545

FORD MOTOR COMPANY, PETITIONER

v.

SUSAN RENAE MILES, INDIVIDUALLY AND A/N/F OF WILLIE SEARCY AND
JERMAINE SEARCY, MINORS, AND KENNETH MILES, RESPONDENTS

ON APPLICATION FOR WRIT OF ERROR TO THE
COURT OF APPEALS FOR THE SIXTH DISTRICT OF TEXAS

Argued on November 21, 1996

JUSTICE HANKINSON, joined by JUSTICE ENOCH, JUSTICE SPECTOR, and JUSTICE BAKER,
dissenting.

I respectfully dissent from the Court's opinion on the threshold and dispositive issue of
venue.

The Court begins by citing the correct standard of review for venue determinations, but then
fails to apply it properly. A reviewing court must defer to the trial court's venue determination if
any probative evidence supports the trial court's venue ruling, even if the preponderance of the
evidence is to the contrary. *See Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 758 (Tex. 1993). *Ruiz*,
expounding on the seminal case of *Milligan v. Southern Express, Inc.*, 250 S.W.2d 194 (Tex. 1952),
made clear that a necessary condition for maintaining venue against a corporation is the presence in
the county of either an agent or a representative seised of "broad power and discretion to act for the

corporation.” *Ruiz*, 868 S.W.2d at 759.

The Mileses met the standard for maintaining venue in Rusk County by producing evidence that Premier exercised discretion on behalf of Ford in several respects. It promoted and advertised Ford vehicles, incorporated Ford warranties into Premier sales contracts, performed predelivery inspections, recall and safety corrections for Ford, and had final approval of warranty work done for Ford at the dealership. Under the deferential standard of review, this is some probative evidence that Premier retained broad discretion to act in some respects for Ford, and that Ford consequently maintained an agency or representative in Rusk County. *See General Motors Corp. v. Ramsey*, 633 S.W.2d 646, 648 (Tex. App. — Waco 1982, writ dismissed) (sustaining venue on dealer’s contractual duty to inspect vehicles and correct defects); *Shell Oil Co. v. Sealy-Smith Found.*, 624 S.W.2d 643, 644-45 (Tex. App. — Houston [14th Dist.] 1981, no writ) (sustaining venue in part on distributor’s contractual obligation to promote Shell products); *Skelly Oil Co. v. Medart*, 488 S.W.2d 175, 176-77 (Tex. Civ. App. — Waco 1972, no writ) (sustaining venue on sales and promotion of Skelly products); *Allis-Chalmers Mfg. Co. v. Coplin*, 445 S.W.2d 627, 628 (Tex. Civ. App. — Texarkana 1969, no writ) (sustaining venue on dealer’s authority to enter into binding warranty agreement on behalf of manufacturer); *Ford Motor Co. v. Lemieux Lumber Co.*, 418 S.W.2d 909, 910-11 (Tex. Civ. App. — Beaumont 1967, no writ) (sustaining venue on dealer’s provision of warranty).

As with its application of the standard of review, the Court’s analysis of the substantive standard for determining venue fails to give due weight to the particular facts of this case. In rejecting the Mileses’ argument that they produced some probative evidence meeting the appropriate standard, the Court examines in detail only *Colorado Interstate Gas Co. v. Mapco, Inc.*, 570 S.W.2d

164 (Tex. Civ. App. — Amarillo 1978, no writ), and *Rouse v. Shell Oil Co.*, 577 S.W.2d 787 (Tex. Civ. App. — Corpus Christi 1979, writ dismissed), both of which involved employees, not dealerships or other similar business arrangements. The Court does not analyze the dealership cases supporting venue or explain why those cases are less authoritative than *CIG* and *Rouse*, which appear factually distinguishable from the cause before us. Resolution of venue issues perforce requires detailed factual analysis; the Court's failure to give due weight to the facts in this case is thus all the more troubling.

I disagree with the Court's venue decision, and accordingly, I dissent. Because the Court remands for a new trial, it need not reach the jury charge or evidentiary issues JUSTICE OWEN discusses in Parts IV and V of her concurring opinion.

Deborah G. Hankinson
Justice

OPINION DELIVERED: March 19, 1998