

IN THE SUPREME COURT OF TEXAS

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No. 97-0884
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IN RE MASONITE CORP., ABITIBI-PRICE CORP., AND MG BUILDING MATERIALS,
INC., RELATORS

- consolidated for oral argument with -

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No. 97-0885
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IN RE MASONITE CORP., ABITIBI-PRICE CORP., AND MG BUILDING MATERIALS,
INC., RELATORS

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ON PETITIONS FOR WRITS OF MANDAMUS
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Argued on October 20, 1998

JUSTICE ENOCH delivered the opinion of the Court, in which JUSTICE HECHT, JUSTICE OWEN, JUSTICE ABBOTT, and JUSTICE CHEW¹ join.

JUSTICE BAKER filed a dissenting opinion in which CHIEF JUSTICE PHILLIPS, JUSTICE O'NEILL, and JUSTICE GONZALES join.

JUSTICE HANKINSON did not participate in the decision.

We are asked to mandamus a trial judge who, in the face of the plaintiffs' concession that venue was improper and the defendants' properly pleaded and proven venue transfer motions, denied the motions but then "on its own motion" transferred hundreds of claims to multiple counties none of which were forums requested in the transfer motions. We conditionally grant the writ.

Hundreds of homeowners filed suit in Jim Hogg County against Masonite Corporation, Abitibi-Price Corporation, and MG Building Materials, Inc. (sometimes collectively "Masonite")

¹ Hon. David Wellington Chew, Justice, Court of Appeals for the Eighth Court of Appeals District, sitting by commission of Hon. George W. Bush, Governor of Texas, pursuant to Section 22.005 of the Texas Government Code.

alleging the defendants' use of defective building materials. (A fourth defendant, Nu-Air Manufacturing, Inc., is not a party to this proceeding.) On the same day, hundreds more plaintiffs filed a similar suit against the same defendants in Duval County. The homeowners contended that venue was proper under section 15.002 of the Texas Civil Practice and Remedies Code because the allegedly defective building materials were installed in their homes in the counties of suit.² But in neither the Jim Hogg County suit nor the Duval County suit were all the homeowners residents of the respective counties.

Because of this, Masonite filed motions to transfer venue of the non-resident homeowners' claims to Dallas County, the county of its principal Texas office.³ Abitibi-Price and MG Building also moved to transfer venue to the counties of their principal offices or, in the alternative, to Dallas County.

In response, the homeowners filed amended petitions and motions to sever, acknowledging that venue was proper in the counties of suit only for those who resided in those counties. In the Jim Hogg suit, the homeowners asserted that all homeowners were residents of either Jim Hogg or Jim Wells County. They pleaded that venue was proper in Jim Hogg County for those homeowners residing in that county, and in Jim Wells County for those residing in that county. And they asked that the trial court sever the claims, sending the non-resident homeowners to their county of residence. Similarly, in the Duval suit, the homeowners asserted that they were residents of Duval, Bee, Bexar, Brooks, Cameron, Dimmit, Hidalgo, Kleberg, Live Oak, Moore, Nueces, San Patricio, Webb, or Wilson County, that venue was proper in Duval County for the Duval County residents, and in the respective counties of residence for the homeowners residing in those counties. Again,

² See TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

³ See TEX. CIV. PRAC. & REM. CODE § 15.002(a)(3).

the homeowners asked the trial court to sever these claims and send the non-resident homeowners to their respective home counties.

The trial court denied both the motions to transfer venue and the motions to sever, but then "on its own motion," severed the claims of the non-resident homeowners and transferred them to the counties of their respective residences. None of these counties was the county selected by Masonite. Thus, two suits with hundreds of homeowners have been divided into sixteen cases that will be tried in sixteen different counties. (We note that the same trial judge presided over both of the cases considered in this opinion, and that the orders at issue are virtually identical in all respects relevant to our disposition of this consolidated mandamus proceeding.)

From this action, Masonite appealed to, and petitioned for writ of mandamus from, the court of appeals. That court consolidated and disposed of these matters in a single opinion.⁴

The appeals were based on section 15.003 of the Civil Practice and Remedies Code, which provides for an interlocutory appeal of a trial court's decision allowing or denying intervention or joinder.⁵ But the court of appeals, concluding that the orders were venue orders, not severance orders, dismissed the interlocutory appeals for want of jurisdiction. That disposition is the subject of two petitions for review, which, in light of this opinion, we dismiss as moot.

The mandamus petitions were predicated on the trial court's orders being void. The court of appeals denied the requested writs of mandamus. It held that though the trial court may have exceeded its authority by entering the orders, the subject matter of those orders was within the jurisdiction of the trial court. Consequently, the orders were not "void." Because the orders were not void, the court of appeals then looked to see whether Masonite had an adequate remedy by appeal

⁴ 951 S.W.2d 812.

⁵ See TEX. CIV. PRAC. & REM. CODE § 15.003(c).

and concluded Masonite did.⁶ But we conclude that appeal is not an adequate remedy under the exceptional circumstances created by the trial court's orders.

Our mandamus standards are well-established. Mandamus is an extraordinary remedy available only when there is an abuse of discretion and no adequate appellate remedy.⁷ Generally, an appellate remedy is adequate even though it involves delay and more expense than obtaining an extraordinary writ.⁸ Accordingly, venue determinations as a rule are not reviewable by mandamus.⁹

But on rare occasions an appellate remedy, generally adequate, may become inadequate because the circumstances are exceptional.¹⁰ Specifically, a trial court's action can be "with such disregard for guiding principles of law that the harm . . . becomes irreparable."¹¹ That is the case here.

Texas venue law is established. The plaintiff has the first choice to fix venue in a proper county; this the plaintiff does by filing the suit in the county of his choice.¹² If a defendant, through a venue transfer motion, objects to the plaintiff's venue choice, the plaintiff must prove that venue is proper in the county of suit.¹³ Where there are multiple plaintiffs joined in a single suit, each

⁶ 951 S.W.2d at 820-21.

⁷ See *Walker v. Packer*, 827 S.W.2d 833 (Tex. 1992).

⁸ See *id.* at 842; see also *CSR Ltd. v. Link*, 925 S.W.2d 591, 597 (Tex. 1996).

⁹ See *Polaris Inv. Mgmt. Corp. v. Abascal*, 892 S.W.2d 860, 862 (Tex. 1995); *Bell Helicopter Textron, Inc. v. Walker*, 787 S.W.2d 954, 955 (Tex. 1990).

¹⁰ See, e.g., *CSR*, 925 S.W.2d at 596-97; *National Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769, 776 (Tex. 1995).

¹¹ *National Indus. Sand*, 897 S.W.2d at 771 (quoting *Canadian Helicopters Ltd. v. Wittig*, 876 S.W.2d 304, 308 (Tex. 1994)); see also *Deloitte & Touche, LLP v. Fourteenth Court of Appeals*, 951 S.W.2d 394, 398 (Tex. 1997).

¹² See *Wilson v. Texas Parks & Wildlife Dept.*, 886 S.W.2d 259, 260 (Tex. 1994).

¹³ See TEX. R. CIV. P. 87-2(a); *Wilson*, 886 S.W.2d at 260.

plaintiff, independently of the others, must establish proper venue.¹⁴ With some exceptions not relevant here, "[a]ny person who is unable to establish proper venue may not join or maintain venue for the suit as a plaintiff."¹⁵ If the plaintiff fails to establish proper venue, the trial court must transfer venue to the county specified in the defendant's motion to transfer, provided that the defendant has requested transfer to another county of proper venue.¹⁶ On this point, the defendant has the burden to provide prima facie proof.¹⁷

Because the homeowners conceded venue was not proper for the non-residents, all Masonite needed to do was to offer prima facie proof that Dallas County was a proper venue. This Masonite did.

The trial court, in ordering these cases transferred to counties other than that proved to be proper venue, ignored the pleadings, the facts, and the law. This was a clear abuse of discretion.¹⁸ Functionally, the nonresident plaintiffs asked the trial court to fix their mistake and transfer their claims to another county *of their choice*, not Masonite's. The trial court had no discretion to, in effect, grant the plaintiffs a transfer of venue; the plaintiffs had the first choice, but not the second, of a proper venue.¹⁹

¹⁴ See TEX. CIV. PRAC. & REM. CODE § 15.003(a).

¹⁵ *Id.*

¹⁶ See TEX. CIV. PRAC. & REM. CODE § 15.063; *Wilson*, 886 S.W.2d at 260 n.1; *Maranatha Temple, Inc. v. Enterprise Prods. Co.*, 833 S.W.2d 736, 741 (Tex. App.—Houston [1st Dist.] 1992, writ denied); *cf. Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 758 (Tex. 1993).

¹⁷ See *GeoChem Tech Corp. v. Verseckes*, 962 S.W.2d 541, 543 (Tex. 1998); *Wilson*, 886 S.W.2d at 260 n.1; TEX. R. CIV. P. 87(2)(a), 87(3).

¹⁸ See *City of La Grange v. McBee*, 923 S.W.2d 89, 90 n.1 (Tex. App.—Houston [1st Dist.] 1996, writ denied); *WTFO, Inc. v. Braithwaite*, 899 S.W.2d 709, 716 (Tex. App.—Dallas 1995, no writ); *Tenneco, Inc. v. Salyer*, 739 S.W.2d 448, 449 (Tex. App.—Corpus Christi 1987, orig. proceeding); *Robertson v. Gregory*, 663 S.W.2d 4, 5 (Tex. App.—Houston [14th Dist.] 1983, orig. proceeding).

¹⁹ See *WTFO*, 899 S.W.2d at 716; *Tenneco*, 739 S.W.2d at 449.

The fact that the trial court stated that it was "acting on its own motion" when it transferred venue of the nonresident plaintiffs' claims to the sixteen counties in which they respectively reside does not change, but in fact reinforces our conclusion that the trial court abused its discretion. A trial court has no discretion to transfer venue on its own motion, even to a county of proper venue.²⁰

Relying on cases stating that a trial court "has no authority" to transfer venue on its own motion,²¹ Masonite argues that the trial court's venue transfer orders in this case were "void," and therefore Masonite is entitled to mandamus relief without reference to whether it has an adequate remedy on appeal. The court of appeals, citing our opinion in *Mapco, Inc. v. Forrest*,²² held that the trial court's venue transfer orders were merely "voidable," not "void."²³ The court of appeals is correct. *Mapco* specifically holds that "the mere fact that an action by a court . . . is contrary to a statute, constitutional provision or rule of civil or appellate procedure makes it [not void but] 'voidable' or erroneous."²⁴ That the trial court's venue transfer orders were a clear abuse of discretion does not mean that they were "void."

In any event, Masonite argues that this case presents "exceptional circumstances" that make appeal an inadequate remedy. We agree.

Here, the trial court effectively treated the nonresident plaintiffs' motions to sever as motions to transfer venue and granted them. The trial court's actions showed "such disregard for guiding

²⁰ See *City of La Grange*, 923 S.W.2d at 90 n.1; *Robertson*, 663 S.W.2d at 5.

²¹ See *City of La Grange*, 923 S.W.2d at 90 n.1; *Robertson*, 663 S.W.2d at 5; *Humphrey v. Rawlins*, 88 S.W.2d 776, 776 (Tex. Civ. App.—Dallas 1935, orig. proceeding).

²² 795 S.W.2d 700 (Tex. 1990).

²³ 951 S.W.2d at 820 (citing *Mapco*, 795 S.W.2d at 703).

²⁴ *Mapco*, 795 S.W.2d at 703.

principles of law that the harm . . . is irreparable."²⁵ The effect of the trial court's disregard for the parties' pleadings, the facts, and the law is that the claims of hundreds of plaintiffs, instead of being tried in a proper forum, are now being tried in multiple improper forums — all trials with automatic reversible error. There is no reason for the resources of Texas courts and the parties to be so strained.²⁶

Contrary to the dissent's charge, we do not retreat from *Walker v. Packer's* requirement that there be no adequate appellate remedy before mandamus will issue.²⁷ The dissent views this requirement as inflexible, focusing exclusively on whether the parties alone have an adequate appellate remedy. But *Walker* does not require us to turn a blind eye to blatant injustice nor does it mandate that we be an accomplice to sixteen trials that will amount to little more than a fiction. Appeal may be adequate for a particular party, but it is no remedy at all for the irreversible waste of judicial and public resources that would be required here if mandamus does not issue.

Nor is our holding today "directly contrary to *Canadian Helicopters*."²⁸ There we stated that the mere fact that a trial court has committed reversible error is not sufficient by itself to warrant mandamus relief.²⁹ But we also noted that "truly extraordinary circumstances" might exist that would render an appellate remedy inadequate.³⁰ This case is different from the ordinary situation where a trial court erroneously denies a venue transfer motion. That situation involves only the

²⁵ *National Indus. Sand*, 897 S.W.2d at 771 (quoting *Canadian Helicopters*, 876 S.W.2d at 308).

²⁶ See *CSR*, 925 S.W.2d at 596 ("The most efficient use of the state's judicial resources is [a] factor we consider in determining whether an ordinary appeal would provide an adequate remedy.").

²⁷ See ___ S.W.2d at ___ (Baker, J., dissenting).

²⁸ See ___ S.W.2d at ___ (Baker, J., dissenting) (citing *Canadian Helicopters*, 876 S.W.2d at 308 n.11).

²⁹ See *Canadian Helicopters*, 876 S.W.2d at 308 n.11.

³⁰ *Id.* at 309.

resources of the errant trial court and the parties that remain. And in that case, even though the trial court has committed reversible error, we will not issue mandamus.³¹ But here the trial court has wrongfully burdened fourteen other courts in fourteen other counties, hundreds of potential jurors in those counties, and thousands of taxpayer dollars in those counties. These are "exceptional circumstances" warranting mandamus relief.³²

The trial court abused its discretion in rendering these venue transfer orders. The extreme effects of this abuse render an appellate remedy inadequate. Accordingly, we conditionally grant mandamus. We trust that the trial court will comply with this opinion; the writ will issue only if it fails to do so.

Craig T. Enoch
Justice

Opinion delivered: June 17, 1999

³¹ See *Polaris*, 892 S.W.2d at 862; *Bell Helicopter*, 787 S.W.2d at 955.

³² See *CSR*, 925 S.W.2d at 596-97; *Canadian Helicopters*, 876 S.W.2d at 308-09.