280 So.3d 391
Supreme Court of Alabama.

EX PARTE MAYNARD, COOPER & GALE, P.C.
(In re: Oleg Sirbu and AAL USA, Inc.
v.
Maynard, Cooper & Gale, P.C.)

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|
December 21, 2018

Synopsis

Background: Client, which was a corporation, and client's majority shareholder brought legal-malpractice action against law firm and particular attorneys based on allegation that attorneys improperly assisted in a takeover of client orchestrated by client's chief executive officer and chief financial officer. The Circuit Court, Jefferson County, No. CV-17-905393, Michael G. Graffeo, J., denied law firm's motion for a change of venue. Law firm petitioned for a writ of mandamus.

The Supreme Court, Bryan, J., held that change of venue to county in which client's headquarters were located was warranted.

Petition granted; writ issued.

***392 PETITION FOR WRIT OF MANDAMUS (Jefferson Circuit Court, CV-17-905393)**, Michael G. Graffeo, J.

Attorneys and Law Firms

Michael L. Bell, Wesley B. Gilchrist, and Amie A. Vague of Lightfoot, Franklin & White, L.L.C., Birmingham; and G. Rick Hall and J. Michael Tanner of Hall Tanner Hargett, PC, Tuscumbia, for petitioner.

Richard A. Freese and Calle M. Mendenhall of Freese & Goss, PLLC, Birmingham, for respondents.

Opinion

BRYAN, Justice.

Maynard, Cooper & Gale, P.C. ("MCG"), petitions this Court for a writ of mandamus directing the Jefferson Circuit Court ("the circuit court") to vacate its July 30, 2018, order denying MCG's motion for a change of venue and to enter an order transferring the underlying action to the Madison Circuit Court on the basis of the doctrine of forum non conveniens. For the reasons set forth below, we grant the petition.

Facts and Procedural History

On December 28, 2017, AAL USA, Inc. ("AAL"), a Delaware corporation doing business in Alabama, and Oleg Sirbu, a resident of Dubai, United Arab Emirates ***393** (hereinafter referred to collectively as "the plaintiffs"), sued MCG, asserting a claim of legal malpractice pursuant to the Alabama Legal Services Liability Act, § 6-5-570 et seq., Ala. Code 1975 ("the ALSLA"), and seeking, among other relief, disgorgement of all attorney fees paid by the plaintiffs to MCG.

At all times relevant to this action, Sirbu was the majority shareholder of AAL, Paul Daigle was a vice president and then chief executive officer, and Keith Woolford was its chief financial officer. AAL maintains, repairs, and overhauls helicopters through various government contracts or subcontracts on United States military bases. According to the plaintiffs, MCG represented the plaintiffs from some point in 2014 through October 28, 2016.[1] The complaint specifically names two MCG attorneys –- Jon Levin and J. Andrew Watson III -- as shareholders of MCG whose allegedly wrongful conduct was performed within the line and scope of their employment with MCG. The complaint alleged that MCG generally, and Levin and Watson specifically, "played an integral role in engineering, implementing and finalizing a scheme orchestrated by Daigle and Woolford to takeover [sic] AAL ... and cause substantial financial injury to [the plaintiffs]." The bulk of the complaint concerns an asset-purchase agreement ("the APA") entered into between AAL and Black Hall Aerospace, Inc. ("BHA"). The complaint alleges that in May 2015 MCG began drafting corporate-formation documents for BHA, an entity owned, at least in part, by Daigle and Woolford, a fact allegedly not disclosed to the plaintiffs. At some point before the formation documents for BHA were completed, MCG referred the corporate-formation work to Sirote & Permutt, P.C., which completed the formation of BHA.

The events giving rise to this litigation began on September 23, 2016, when AAL received a "base-debarment" letter

notifying it that it no longer had access to certain military bases outside the continental United States. Woolford forwarded this letter to MCG, and, according to the plaintiffs, MCG "immediately embarked in a central role in Daigle's and Woolford's scheme to steal the assets of AAL." The details of this scheme are set forth in detail over numerous paragraphs in the plaintiffs' complaint. For purposes of this petition, it is sufficient to state that the complaint alleged that Levin worked closely with Woolford and Daigle to draft the APA pursuant to which BHA, Daigle, and Woolford would purchase all of AAL's assets, as a way to cure the base-debarment problem. The plaintiffs alleged that MCG knew that the APA would "gut" the plaintiffs –- its current clients –- while simultaneously benefiting Daigle, Woolford, and BHA –- other clients of MCG -- and that this "clear and irreconcilable conflict of interest ... was never disclosed to [the plaintiffs]." The plaintiffs further alleged that, while the specific terms of the APA were being negotiated, Levin was in negotiations with Daigle about going to work at BHA; that Levin would be granted shares in "the new BHA (post-AAL sale)"; that Levin failed to disclose this fact to the plaintiffs; and that Levin put his own financial interests above those of the plaintiffs. Additionally, the plaintiffs alleged that MCG knew that the terms of the APA were unfair to the plaintiffs, yet it failed to provide legal counsel to the plaintiffs on the specific terms of the APA; instead, they alleged, Watson actively counseled Daigle and Woolford regarding the APA, against the interest of the plaintiffs. The plaintiffs further alleged that Levin used ***394** his contacts at the commercial bank regularly used by AAL to override the bank's security procedures to wrongfully transfer millions of dollars from AAL to BHA without authorization or approval from Sirbu. On October 25, 2016, four days after Levin allegedly accepted an employment agreement with BHA, Levin sent Sirbu a document detailing the steps needed to complete the transfer of assets from AAL to BHA; the plaintiffs allege that Levin still did not disclose his employment with BHA at this time and that he provided "deceptive" legal advice to the plaintiffs in order to quickly finalize the sale of assets to BHA.

In addition to the legal work related to BHA and the APA, the plaintiffs alleged that MCG began, in August 2015, communicating with only Woolford and Daigle, to the exclusion of the plaintiffs, on issues that directly and negatively affected the plaintiffs. For example, the plaintiffs alleged that MCG assisted Woolford and Daigle in factoring an AAL account payable without advising the plaintiffs, which left AAL in significant debt to its parent corporation. Also, in September 2015, MCG began assisting Woolford and Daigle in the formation of DAGDA Aerospace, LLC, a direct competitor of AAL. The plaintiffs alleged that MCG failed to disclose this information to the plaintiffs or to obtain their consent for MCG's representation of a direct competitor; the plaintiffs also alleged that "MCG billed all legal services performed for the creation of DAGDA to AAL..., accepted payment from AAL ... for the legal services to create DAGDA, but intentionally or negligently failed to disclose this information to Sirbu or obtain his consent for such payments." Additionally, the plaintiffs alleged that MCG aided Daigle and Woolford in the incorporation of Corvis Arrow, LLC, which was wholly owned by Daigle and Woolford, for the purpose of transferring ownership of an airplane from AAL to Corvis. The plaintiffs alleged that MCG knew that AAL funds were being "diverted for the purchase" of the airplane but that the plaintiffs had no knowledge that AAL funds were being used to purchase the airplane and never consented to the use of AAL funds to purchase the airplane. The plaintiffs further alleged that, by these actions, MCG aided and abetted Woolford and Daigle in embezzling money from the plaintiffs and that the legal services provided by MCG for the incorporation of Corvis and the purchase and transfer of ownership of the airplane were billed to and paid by the plaintiffs, without the plaintiffs' knowledge of or consent to the transactions. Finally, the plaintiffs alleged that MCG provided legal services to Daigle and Woolford in forming Hindsight Coffee, LLC, which was owned by BHA and another individual who intended to run the day-to-day operations of a retail coffee company. The plaintiffs alleged that all legal services provided by MCG related to the formation of Hindsight Coffee were billed to and paid by AAL, without the plaintiffs' knowledge, which, they said, resulted in MCG aiding and abetting Woolford and Daigle in embezzling funds from the plaintiffs.

On February 2, 2018, MCG moved for a change of venue of the action from Jefferson County to Madison County pursuant to § 6-3-21.1, Ala. Code 1975, Alabama's forum non conveniens statute. MCG argued that both the interest of justice and the convenience of the parties and witnesses required a transfer.[2] MCG presented evidence ***395** indicating that the plaintiffs' action arises from legal services provided in Madison County, by MCG attorneys who worked and resided in Madison County, to their former client, AAL, which has its principal place of business in Madison County. In contrast, MCG argued, its "mere presence" in Jefferson County –- where MCG's principal place of business is located –- is "the hallmark of a 'weak connection to the

case.' " (Quoting Ex parte Engineering Design Grp., 200 So.3d 634, 642 (Ala. 2016).)

To rebut the allegation in the plaintiffs' complaint that the officers of MCG direct, control, and coordinate the firm activities from MCG's principal place of business in Jefferson County, MCG presented evidence indicating that it has offices in several counties in Alabama, including a Huntsville office in Madison County; that management of MCG is spread throughout the firm's offices; and that the Huntsville office has its own managing partner. MCG also has "practice group leaders" located in various offices, and the "two practice groups most relevant to the matters in this action" –- the corporate-securities-and-tax practice group and the government-solutions practice group –- "are both headed out of [MCG]'s Huntsville office."

MCG also presented evidence indicating that all the events related to the legal services provided by MCG related to the allegations in the plaintiffs' complaint took place in Madison County and that, in addition to Levin and Watson, who work in MCG's Huntsville office and reside in Madison County, an additional six current and former MCG Huntsville attorneys worked on matters at issue in the complaint, and each of those individuals still practices law in Madison County. Additionally, MCG presented evidence indicating that both Daigle and Woolford were located at AAL's headquarters in Huntsville at all relevant times set forth in the plaintiffs' complaint; that BHA, DAGDA, and Hindsight Coffee are all located in Madison County; that MCG referred BHA's corporate-formation transaction to Sirote & Permutt's Huntsville office for completion; and that the purchase price for AAL used in the APA was based on information received from an accounting firm located in Huntsville.

Levin testified that he was the "primary billing attorney and was responsible for sending bills to AAL ... for work performed by MCG. All activity related to generating, editing, and issuing bills to AAL ... took place under [his] supervision in MCG's Huntsville office." Levin was also the primary billing attorney responsible for sending bills to BHA for work performed by MCG. Levin further testified that, in relation to the alleged wrongful transfer of funds from AAL's commercial bank, he contacted two individuals in Huntsville to facilitate that transfer. In addition to the fact that AAL's headquarters is located in Huntsville, Levin testified that, although Sirbu was a resident of Dubai, the contact information that Sirbu provided to the federal government was a telephone number and an address in Huntsville.

Watson, who was co-chair of MCG's government-solutions practice group during the relevant time set forth in the plaintiffs' complaint, testified that all events related to the legal services MCG provided to the plaintiffs and to the entities mentioned in the plaintiffs' complaint took place in Madison County; that all documents related to MCG's services set forth in the complaint are located in Madison County; and that all witnesses with potentially relevant information related to the transactions at issue in the complaint are in Madison County, with the exception of Sirbu, who lives in Dubai, and Woolford, who lives ***396** out-of-state. Watson further testified that none of the events related to MCG's legal services described in the plaintiffs' complaint took place in Jefferson County and that he was not aware of any witnesses or documents related to this action that are located in Jefferson County.

On February 26, 2018, the plaintiffs filed an amended complaint. The amended complaint included additional allegations of fact to support new allegations of breaches of the standard of care related to MCG's alleged failure to properly supervise, monitor, or train its attorneys regarding ethical rules and obligations that apply to dual representation of adverse parties in corporate transactions. Specifically, the plaintiffs alleged that MCG set various firm policies through its leadership structure, which is based "almost exclusively" in Jefferson County at MCG's Birmingham office; that "almost all" members of MCG's board of directors are based in Birmingham; that the function and implementation of MCG's conflicts policies is run through a database in Birmingham; that a conflicts report is generated in Birmingham; that MCG either ignored or wholly failed to employ its conflicts policy in relation to its representation of the plaintiffs; and that the failure to require, implement, or follow the firm's conflicts-of-interests policies occurred "in substantial part" in Birmingham.

The materials before this Court indicate that the parties engaged in limited, venue-related discovery governed by an order of the circuit court; that order, however, is not included in the materials before this Court. On June 12, 2018, the plaintiffs filed their response in opposition to MCG's motion for a change of venue with evidence attached to support their opposition. The plaintiffs argued that the connection to Jefferson County was strong because MCG's principal place of business is there; because MCG's conflict-of-interest check system and policies were developed in Jefferson County; because the conflict-of-interest policies

were drafted by individuals in MCG's Birmingham office; because two attorneys in the Birmingham office are the members of MCG's ethics and loss-prevention committee; because invoices for legal services were mailed to the plaintiffs from the Birmingham office; and because payments from the plaintiffs were deposited in a bank in Jefferson County. The plaintiffs also argued that a judgment in their favor for disgorgement of attorney fees would affect the MCG Birmingham office because it has "seven times more shareholders than the number of MCG shareholders in Madison County." The plaintiffs also argued that "[t]he vast majority of the harms in this case are felt in Dubai where [the] plaintiffs ... suffered catastrophic economic and reputational damage." [3]

On July 17, 2018, MCG filed its reply in support of its motion for a change of venue. MCG argued that neither the fact that its principal place of business was in Jefferson County nor the new allegations in the plaintiffs' amended complaint were sufficient to create a strong connection of the case to Jefferson County. MCG attached additional evidence, including affidavits and excerpts from deposition testimony, to rebut the evidence submitted by the plaintiffs in their motion opposing the change of venue. The same day, the plaintiffs filed an emergency motion to strike seven affidavits that were attached to MCG's reply, arguing, among other things, that MCG deprived them of the opportunity to depose the individuals who had submitted affidavits, which, they said, was in contravention of what the parties had agreed to and the circuit court approved.

***397** After conducting a hearing on July 19, 2018, the circuit court entered an order on July 30, 2018, granting the plaintiffs' motion to strike and denying MCG's motion for a change of venue. The circuit court concluded that neither the interest of justice nor the convenience of the parties and witnesses required a transfer of the action to Madison County. MCG timely petitioned this Court for a writ of mandamus.

Standard of Review

> " 'The proper method for obtaining review of a denial of a motion for a change of venue in a civil action is to petition for the writ of mandamus. Lawler Mobile Homes, Inc. v. Tarver, 492 So.2d 297, 302 (Ala. 1986). "Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court." Ex parte Integon Corp., 672 So.2d 497, 499 (Ala. 1995). "When we consider a mandamus petition relating to a venue ruling, our scope of review is to determine if the trial court abused its discretion, i.e., whether it exercised its discretion in an arbitrary and capricious manner." Id. Our review is further limited to those facts that were before the trial court. Ex parte American Resources Ins. Co., 663 So.2d 932, 936 (Ala. 1995).' "

Ex parte Benton, 226 So.3d 147, 149–50 (Ala. 2016) (quoting Ex parte National Sec. Ins. Co., 727 So.2d 788, 789 (Ala. 1998)).

> "Although we review a ruling on a motion to transfer to determine whether the trial court exceeded its discretion in granting or denying the motion, [Ex parte Indiana Mills & Mfg., Inc., 10 So.3d 536, 539 (Ala. 2008)], where 'the convenience of the parties and witnesses or the interest of justice would be best served by a transfer, § 6–3–21.1, Ala. Code 1975, compels the trial court to transfer the action to the alternative forum.' Ex parte First Tennessee Bank Nat'l Ass'n, 994 So.2d 906, 912 (Ala. 2008) (emphasis added)."

Ex parte Wachovia Bank, N.A., 77 So.3d 570, 573 (Ala. 2011).

Analysis

MCG first argues that the circuit court exceeded its discretion in denying its motion for a change of venue because, it says, the interest-of-justice prong of § 6-3-21.1 requires a transfer. [4]

***398** Section § 6-3-21.1 provides, in pertinent part:

> "(a) With respect to civil actions filed in an appropriate venue, any court of general jurisdiction shall, for the convenience of parties and witnesses, or in the interest of justice, transfer any civil action or any claim in any civil action to any court of general jurisdiction in which the action might have been properly filed and the case shall proceed as though originally filed therein."

It is undisputed that both Jefferson County and Madison County are proper venues for the plaintiffs' action. See Ala. Code 1975, § 6-3-7(a) and (b). " 'When venue is appropriate in more than one county, the plaintiff's choice of venue is generally given great deference.' " Ex parte Engineering Design Grp., 200 So.3d at 638 (quoting Ex parte Perfection

Siding, Inc., 882 So.2d 307, 312 (Ala. 2003)). MCG, as the party moving for a change of venue, has the burden of showing that the transfer is required in the interest of justice. Ex parte Indiana Mills & Mfg., Inc., 10 So.3d 536, 539 (Ala. 2008).

> "The 'interest of justice' prong of § 6–3–21.1 requires 'the transfer of the action from a county with little, if any, connection to the action, to the county with a strong connection to the action.' Ex parte National Sec. Ins. Co., 727 So.2d [788,] 790 [(Ala. 1998)]. Therefore, 'in analyzing the interest-of-justice prong of § 6–3–21.1, this Court focuses on whether the "nexus" or "connection" between the plaintiff's action and the original forum is strong enough to warrant burdening the plaintiff's forum with the action.' Ex parte First Tennessee Bank Nat'l Ass'n, 994 So.2d 906, 911 (Ala. 2008). Additionally, this Court has held that 'litigation should be handled in the forum where the injury occurred.' Ex parte Fuller, 955 So.2d 414, 416 (Ala. 2006). Further, in examining whether it is in the interest of justice to transfer a case, we consider 'the burden of piling court services and resources upon the people of a county that is not affected by the case and ... the interest of the people of a county to have a case that arises in their county tried close to public view in their county.' Ex parte Smiths Water & Sewer Auth., 982 So.2d 484, 490 (Ala. 2007)."

10 So.3d at 540 (emphasis added).

> " 'Although it is not a talisman, the fact that the injury occurred in the proposed transferee county is often assigned considerable weight in an interest-of-justice analysis. See Ex parte Autauga Heating & Cooling, LLC, 58 So.3d 745, 748 (Ala. 2010) (" '[T]his Court has held that "litigation should be handled in the forum where the injury occurred." ' " (quoting Ex parte Indiana Mills, 10 So.3d at 540)); Ex parte McKenzie Oil, Inc., 13 So.3d 346, 349 (Ala. 2008) (same).'
>
> "Ex parte Wachovia, 77 So.3d at 573–74."

Ex parte Tier 1 Trucking, LLC, 222 So.3d 1107, 1113 (Ala. 2016).

> " 'Historically, the plaintiff has had the initial choice of venue under the system established by the legislature for determining venue. Before the enactment of § 6–3–21.1 by the Alabama Legislature in 1987, a plaintiff's choice of venue could not be disturbed on the basis of convenience to the parties or the witnesses or in the interest of justice. With the adoption of § 6–3–21.1, trial courts now have "the power and the ***399** duty to transfer a cause when 'the interest of justice' requires a transfer." Ex parte First Family Fin. Servs., Inc., 718 So.2d 658, 660 (Ala. 1998) (emphasis added). In First Family, this Court noted that an argument that trial judges have almost unlimited discretion in determining whether a case should be transferred under § 6–3–21.1 "must be considered in light of the fact that the Legislature used the word 'shall' instead of the word 'may' in § 6–3–21.1." 718 So.2d at 660. This Court has further held that "Alabama's forum non conveniens statute is compulsory." Ex parte Sawyer, 892 So.2d 898, 905 n. 9 (Ala. 2004).' "

Ex parte Manning, 170 So.3d 638, 640 (Ala. 2014) (quoting Ex parte Autauga Heating & Cooling, LLC, 58 So.3d 745, 748–49 (Ala. 2010)).

The materials before this Court make abundantly clear that this action has a very strong connection to Madison County. All the legal work complained of in the plaintiffs' amended complaint was performed by MCG Huntsville attorneys out of MCG's Huntsville office; AAL and its management are located at AAL's headquarters in Huntsville; the entities MCG formed and/or represented that allegedly created a conflict of interest are located in Madison County; to the extent AAL was injured by any act or omission of MCG, the injury occurred where AAL's headquarters were located –- Huntsville; and to the extent MCG Huntsville attorneys failed to do a conflict-of-interest check before they engaged in representation of entities that allegedly had interests adverse to the plaintiffs, their failure to do so occurred in Madison County.

However, the conclusion that the action has a strong connection to Madison County answers only the first part of the question whether this action must be transferred to Madison County in the interest of justice. As set forth above, MCG must also demonstrate that Jefferson County has "little, if any, connection to the action." Ex parte Indiana Mills, 10 So.3d at 540. Thus, we must consider "whether the 'nexus' or 'connection' between the plaintiff[s'] action and the original forum is strong enough to warrant burdening the plaintiff[s'] forum with the action." Id.

In its order denying MCG's motion for a change of venue, the circuit court stated, regarding Jefferson County's connection to the plaintiffs' action:

> "[T]he Court determines Jefferson County has a strong connection to this lawsuit. Inherent in any legal representation is avoidance of any conflict that compromises a client's interest. MCG had an extensive conflict check system as befits a national, and international, law firm. The policy cannot operate in the void of just MCG's Huntsville office. The memorandum to all MCG attorneys dated September 22, 2015, explicitly speaks to the policy to be 'supervised' by lawyers and staff in the Birmingham office. It states[:] 'A formal conflict check must be sent to the entire firm.... If an emergency conflict check is unavoidable, it must be sent to all personnel, not all attorneys. We cannot take shortcuts on conflict checks.... It is not enough to call the shareholder you think regularly represents the new party in other matters and ask them if the adverse representation is okay.'
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> "The court also finds creditable [the plaintiffs]' arguments regarding [their] claim for disgorgement of attorney's fees received from [the plaintiffs]. An Exhibit attached to Kirsch's[5] affidavit shows MCG received $640,346.63 in fees ***400** and expenses from [the plaintiffs], and $46,259.31 from related entities alleged in the amended complaint. It cannot be ignored that should money have to be repaid to [the plaintiffs], it will affect all offices of MCG, not just its Huntsville office.
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> "MCG rightfully enjoys a very significant presence in Jefferson County. Given the magnitude of a malpractice claim against it, it cannot be said that the people of Jefferson County do not have an interest in this case and that this case need not be tried in their public view. As such, this Jefferson County Circuit Court should assume the burden of providing court services and resources necessary for this action to proceed to conclusion. Doing so will not prejudice the court in any manner."

Regarding the September 22, 2015, memorandum referenced in the circuit court's order, MCG argues that the circuit court "misinterpreted" the memorandum by finding that the memorandum "explicitly speaks to the policy to be 'supervised' by lawyers and staff in the Birmingham office." We agree. The memorandum discusses "a few of the procedures that [all attorneys for MCG] must follow" when doing a conflict check, and the memorandum requires a conflict check for "every client engagement and also when engagements change and new parties become involved." After summarizing these procedures, the memorandum provides: "If you are not certain whether a conflict or a potential conflict exists, you must contact one of our Ethics & Loss Prevention Shareholders (Kris Lowry or Jim Bussian)." Thus, although the memorandum could be interpreted as identifying the two ethics and loss-prevention shareholders as having general supervisory authority over ethical questions that arise in any of MCG's offices, that fact provides little, if any, connection between Jefferson County and the present action. Although the ethics and loss-prevention shareholders mentioned in the memorandum work in MCG's Birmingham office, there is no contention by the plaintiffs that any MCG attorney who provided any of the legal services set forth in the plaintiffs' amended complaint ever contacted one of the ethics and loss-prevention shareholders –- or anyone else in Birmingham –- about a potential conflict of interest.

The plaintiffs argue that this action has a strong connection to Jefferson County because MCG's conflict-check policies were authored by individuals working in the Birmingham office and were disseminated to all MCG offices from the Birmingham office by the chief operating officer of MCG. However, the plaintiffs do not specifically allege in their complaint that MCG's conflict-check policies themselves were defective and caused their injury; instead, they allege that those conflict-check policies were ignored. As noted above, any failure to follow MCG's conflict-check policies or to contact the ethics and loss-prevention shareholders regarding a possible conflict of interest as set forth in the plaintiffs' amended complaint occurred in Madison County by the MCG Huntsville attorneys who represented both the plaintiffs and the competing entities mentioned in the amended complaint. Further, the conflicts alleged in the plaintiffs' complaint did not arise from the failure to run a firm-wide conflict-of-interest check; instead, the plaintiffs conflict-of-interest allegations are based on the same MCG Huntsville attorneys knowingly representing both the plaintiffs and entities with an adverse interest to the plaintiffs. The plaintiffs repeatedly refer to the conflicts of interest set forth in their complaint as "clear"; thus, the plaintiffs appear to allege that the conflicts of interest were obvious, whether or not Levin and Watson performed ***401** a firm-wide conflict check. Thus, although we agree that the MCG conflict-check policies generally "cannot operate in the void of just MCG's Huntsville office," the firm-wide application of MCG's conflict policy has no real bearing on the present case.

Regarding the circuit court's reliance on the effect felt by all MCG offices in the event MCG is ordered to disgorge any fees paid by the plaintiffs, MCG argues that neither the plaintiffs

nor the circuit court cited any authority to support a contention that the location where the effect of a judgment could be felt is a proper consideration in a forum non conveniens analysis. Because of the contingent nature of this factor, we conclude that any connection it provides to Jefferson County is weak and does not " 'warrant burdening the plaintiff's forum with the action.' " Ex parte Indiana Mills, 10 So.3d at 540 (quoting Ex parte Tennessee Bank, 994 So.2d at 911).

Finally, the third factor cited by the circuit court for finding a strong connection to Jefferson County –- that MCG enjoys a significant presence in Jefferson County and that, therefore, the citizens of Jefferson County have an interest in this litigation -- is merely a natural consequence of the fact that MCG's principal place of business is located in Jefferson County. However, this Court has repeatedly held that a defendant's presence in the plaintiff's chosen forum does not provide, in and of itself, a strong connection to the forum. See generally Ex parte Engineering Design Grp., 200 So.3d at 642-43; and Ex parte McKenzie Oil Co., 13 So.3d 346 (Ala. 2008) (holding that the interest of justice required the transfer of an action from Barbour County to Escambia County on the basis that the defendant's corporate headquarters' location in Barbour County provided only "little" connection to that forum, despite the plaintiffs' argument that the citizens of Barbour County had a "significant interest" in the action by virtue of the fact that the defendant's headquarters was located in their county). This Court has held that a "key factor" in determining whether a case should be transferred in the interest of justice is the "interest of the people of a county to have a case that arises in their county tried close to public view in the county." Ex parte Smiths Water & Sewer Auth., 982 So.2d 484, 490 (Ala. 2007) (emphasis added). The present case undoubtedly arose in Madison County; therefore, the citizens of Madison County have a strong interest in seeing this case tried close to public view in their county. Conversely, we conclude that the factors cited by the circuit court provide only "little" connection between the action and Jefferson County.

We note that the plaintiffs' amended complaint includes a general allegation that MCG failed to "monitor, train, or assure compliance with the firm's ethical policies," which "occurred wholly or in substantial part in Birmingham." However, we simply cannot conclude that this sweeping allegation creates a nexus to this case that warrants allowing the case to proceed in Jefferson County. Because "virtually none of the events or circumstances involved in this case occurred in or relate to [Jefferson] County," McKenzie Oil, 13 So.3d at 349, we must conclude that the interest of justice compels a transfer of this case to Madison County. All the legal work giving rise to the plaintiffs' legal-malpractice action took place in Madison County, by attorneys practicing in Madison County, out of MCG's Madison County office. All the business entities named in the plaintiffs' complaint were entities located in Madison County, and AAL itself is headquartered in Madison County. Although the plaintiffs were able to identify some connections between this action and Jefferson County, primarily through allegations in their amended complaint, those connections are weak, and the connection with ***402** Madison County is strong. See Engineering Design Grp., 200 So.3d at 641 ("[W]hen the proposed forum's connection to the case is strong, and the original forum's connection is weak, the interest-of-justice prong of § 6-3-21.1 requires transfer of the case to the forum with the stronger connection."). [6]

Conclusion

MCG has carried its burden of showing that Madison County's connection to the action is strong and that Jefferson County's connection to the action is weak. Thus, we conclude that the circuit court exceeded its discretion in refusing to transfer the case to the Madison Circuit Court in the interest of justice. MCG's petition for a writ of mandamus is granted, and the Jefferson Circuit Court is directed to transfer the plaintiffs' action to the Madison Circuit Court.

PETITION GRANTED; WRIT ISSUED.

Stuart, C.J., and Bolin, Parker, Shaw, Main, Wise, Sellers, and Mendheim, JJ., concur.

All Citations

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Footnotes

1 MCG presented evidence indicating that it first represented AAL in 2012.

2 Because we conclude that the interest of justice requires that this case be transferred to the Madison Circuit Court, our discussion is limited to the facts and procedural history relevant to that part of a forum non conveniens analysis.

3 The plaintiffs cited no evidence in support of this argument.

4 In this part of its petition, MCG argues that the circuit court erred in considering the plaintiffs' amended complaint when making its determination about whether the action should be transferred pursuant to § 6-3-21.1. Citing Ex parte Hawkins, 497 So.2d 825 (Ala. 1986), MCG argues that "venue must be determined at the time suit is filed." 497 So.2d at 827 (citing, among other authority, Rule 82(d), Ala. R. Civ. P.). However, the question whether venue is proper at the time the action is filed, which was the issue in Hawkins, is an entirely separate question from the question whether a case should be transferred from one proper venue to another proper venue pursuant to § 6-3-21.1. Our precedent is entirely clear that, as to the former, a determination as to whether venue is proper must be made at the time the action is filed, see Hawkins, supra; MCG has cited no authority that provides that a trial court has no discretion to consider the allegations in a timely filed amended complaint to determine whether a case should be transferred from one proper venue to another proper venue based on the convenience of the parties and witnesses or in the interest of justice. Absent citation to such authority, we will not hold the circuit court in error for considering the plaintiffs' amended complaint when ruling on MCG's motion for a change of venue pursuant to § 6-3-21.1. Notably, when considering whether an action should be transferred pursuant to § 6-3-21.1, this Court has considered, without discussion, allegations in an amended complaint filed after a motion for a change of venue has been filed. See Ex parte Quality Carriers, Inc., 183 So.3d 937 (Ala. 2015); and Ex parte Wachovia Bank, N.A., 77 So.3d 570 (Ala. 2011) (noting, however, that one defendant was added by amendment after the motion for a change of venue was orally argued).

5 Saul Kirsch was a vice president of AAL at the time of the underlying action.

6 Because we conclude that a transfer to Madison County is required in the interest of justice, we pretermit discussion of MCG's argument that a transfer was required for the convenience of the parties and witnesses.