



SUPREME COURT OF MISSOURI

en banc

STATE ex rel.
VACATION MANAGEMENT
SOLUTIONS, LLC,

Relator,

v.

THE HONORABLE JOAN L.
MORIARTY,

Respondent.

Opinion issued November 24, 2020

No. SC98323

ORIGINAL PROCEEDING IN MANDAMUS

Vacation Management Solutions, LLC, (“VMS”) seeks a writ of mandamus ordering the circuit court to transfer Kyle Klosterman’s case from the City of St. Louis to St. Charles County or Warren County. Because Klosterman did not reply to VMS’s motion to transfer venue within 30 days as required by Rule 51.045(b), the action must be transferred pursuant to Rule 51.045(c). This Court makes permanent its preliminary writ of mandamus.

Background

Klosterman filed an action against VMS and Innsbrook Properties, Inc., in the Circuit Court of the City of St. Louis, alleging violations of the Missouri Merchandising

Practices Act. Klosterman, using VRBO.com, purchased a vacation package for a condominium owned by Innsbrook Properties. VMS allegedly managed the property. After he bought the package, Klosterman claims his reservation was cancelled and rebooked for a higher price against his wishes.¹ Klosterman later voluntarily dismissed Innsbrook Properties from the suit but proceeded against VMS.

On June 17, 2019, VMS filed both a motion to dismiss and a motion to transfer venue. In its transfer motion, VMS argued the City of St. Louis was an improper venue because no events related to the alleged violations occurred there. VMS further contended venue was proper in either Warren County, where the rental property is located, or in St. Charles County, where VMS's registered agent is located. Klosterman did not file a reply to the motion. In December 2019, the circuit court overruled VMS's motion to dismiss. VMS filed a petition for a writ of prohibition in the court of appeals seeking to prevent the case from moving forward in the City of St. Louis and to compel transfer. The writ petition was denied. This Court subsequently issued a preliminary writ of mandamus. VMS now seeks to make the preliminary writ permanent.

Jurisdiction and Standard of Review

This Court has the authority to issue and determine original remedial writs. Mo. Const. art. V, sec. 4.1. "Mandamus is a discretionary writ that is appropriate where a court has exceeded its jurisdiction or authority and where there is no remedy through

¹ Klosterman further alleged he objected to the change and the package was ultimately cancelled altogether. Because of these difficulties, Klosterman purportedly had to pay significantly more for his trip.

appeal.” *State ex rel. Kauble v. Hartenbach*, 216 S.W.3d 158, 159 (Mo. banc 2007). To be entitled to mandamus, a relator “must allege and prove . . . a clear, unequivocal, specific right to a thing claimed.” *State ex rel. Furlong Cos., Inc. v. City of Kan. City*, 189 S.W.3d 157, 166 (Mo. banc 2006). Extraordinary writs can be used to remedy improper venue decisions before a case is ultimately resolved. *State ex rel. Zellers v. Stacey*, 583 S.W.3d 436, 438 (Mo. banc 2019).

Analysis

VMS argues transfer to Warren County or St. Charles County is required for two reasons. First, VMS alleges transfer must occur pursuant to subdivisions (b) and (c) of Rule 51.045 because Klosterman did not reply to the motion to transfer within 30 days. Second, VMS contends transfer is mandatory based on section 508.010.10, RSMo 2016, as the circuit court did not overrule the motion to transfer venue within 90 days of filing. This Court finds VMS’s first argument dispositive.

In interpreting this Court’s rules, principles similar to statutory interpretation are used. *In re Hess*, 406 S.W.3d 37, 43 (Mo. banc 2013). The plain and ordinary language of the rule is used to discern this Court’s intent. *Id.* If intent is clear based solely on this principle, this Court adopts the plain and ordinary meaning of the rule without resorting to other methods of construction. *Id.*

Rule 51.045 outlines the procedure for seeking transfer based on improper venue. Rule 51.045(a) states that a motion to transfer, which alleges an alternative, proper county and explains the basis for venue there, must be filed by the party alleging improper venue within 60 days of service. Rule 51.045(b) provides the opposing party

can file a reply demonstrating that venue is proper in the current forum or improper in the suggested county or counties within 30 days of filing of the original motion. If good cause is shown, the circuit court can extend the period for filing a reply. Rule 51.045(b). But if no reply is filed, pursuant to Rule 51.045(c), “the court shall order transfer to one of the counties specified in the motion.”

As required by Rule 51.045(a), VMS filed a proper motion to transfer venue. The motion alleged improper venue, suggested potential proper venues, namely Warren County or St. Charles County, and explained why venue was appropriate in those counties. Further, the motion was filed within 60 days of service. Klosterman, however, failed to file a reply within 30 days of VMS’s filing. Consequently, Rule 51.045(c) required the circuit court to order transfer to either Warren County or St. Charles County.²

Klosterman contends Local Rule 33.7.2 of the Twenty-Second Judicial Circuit, the circuit embracing the City of St. Louis, prevents issuance of a permanent writ. Specifically, Klosterman posits Local Rule 33.7.2 requires every motion to be called for a hearing before a ruling can be issued. Contrary to Klosterman’s theory, Local Rule 33.7.2 merely states in what division pretrial motions should be heard, as evidenced by Local Rule 33.7’s general title—Pre-Trial Motions, Where Heard.³ Clearly, Local Rule

² Klosterman cites *State ex rel. Jennings v. Riley*, 236 S.W.3d 630 (Mo. banc 2007), to argue this Court has rejected the argument that transfer must be granted merely because a reply was not filed. In 2011, the language of Rule 51.045 was amended, and the change became effective in 2012. *Jennings* is no longer dispositive.

³ Local Rule 33.7.2 provides:

33.7.2 does not require a hearing to be held on a motion to transfer based on improper venue before a ruling is made. Further, local rules cannot be inconsistent with this Court's rules. Rule 50.01. As a result, Local Rule 33.7.2 cannot alter or prevent the application of Rule 51.045.

For the first time at oral argument, Klosterman argued, based on good cause, he was granted leave to file a late reply. An appellate court will not consider arguments not raised in a party's brief. Rule 84.13(a); *see also Franklin Farms, LLC v. N. Am. Auction Co.*, 554 S.W.3d 497, 499 n.2 (Mo. App. 2018). Klosterman's good cause and grant of leave argument was not raised in his brief; therefore, this Court will not review it.

Conclusion

Because Klosterman did not reply to VMS's motion to transfer alleging improper venue within 30 days, pursuant to subdivisions (b) and (c) of Rule 51.045, the circuit court is required to transfer the case to Warren County or St. Charles County. This Court makes permanent its preliminary writ of mandamus.

Mary R. Russell, Judge

All concur.

All . . . pre-trial motions [besides certain motions addressed in Rule 33.7.1] shall be heard in the division in which the case is pending, except that if the judge in the division in which the case is pending is unavailable, a motion may be heard and determined in Division 1.