United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Robert M. Dow, Jr.	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	11 C 4177	DATE	1/18/2012
CASE TITLE	Walker vs. Three Angels Broadcasting Network, Inc., et al.		

DOCKET ENTRY TEXT

For the reasons set forth below, the Court denies without prejudice Defendant Three Angels Broadcasting Network, Inc.'s motion to dismiss for lack of subject matter jurisdiction or, in the alternative, for improper venue [10], but orders that this case be transferred to the Southern District of Illinois in the interests of justice. The Court denies as moot Plaintiff's motion to exclude Defendant's declarations and incorporated memorandum of law [17].

■[For further details see text below.] Docketing to mail notices.

STATEMENT

I. Background

This case arises from the alleged sexual abuse of Plaintiff (while under the age of 18), by Tommy Shelton, a pastor and employee at an international television and radio corporation devoted to Christian-based programming, Three Angels Broadcasting Network, Inc. ("3ABN"). The complaint alleges that Shelton sexually abused Plaintiff in Virginia and Southern Illinois, during two distinct time periods: in 1997, while Shelton was working for 3ABN and as a church pastor in Virginia, when the Plaintiff was 11 years old; and again in 2001, while Shelton and Plaintiff both were working at 3ABN in Illinois. According to the complaint, the abuse took place more than a decade after 3ABN officials, including Tommy Shelton's brother and 3ABN President, Danny Shelton, first learned that Tommy Shelton was accused of sexually abusing other children. Federal subject matter jurisdiction is founded solely on Count IV of the complaint, directed at Tommy Shelton, which alleges that he crossed state lines to engage in illicit sexual conduct in violation of 18 U.S.C. § 2423. Plaintiff also brings a state law claim for negligence against 3ABN, as well as state law claims for sexual assault and battery and intentional infliction of emotional distress against Tommy Shelton. Defendant 3ABN moves to dismiss Plaintiff's complaint for lack of subject matter jurisdiction (Rule 12(b)(1)), failure to state a claim (Rule 12(b)(6)), and improper venue (28 U.S.C. § 1391).

II. Analysis

Federal Rule of Civil Procedure 12(b)(3) allows for a motion to dismiss due to improper venue. See *Cont'l Ins. Co. v. M/V Orsula*, 354 F.3d 603, 606-07 & n.2 (7th Cir. 2003). The district court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought," any case filed in the wrong venue. 28 U.S.C. § 1406(a). Venue statutes serve the purpose of "protecting a defendant from the inconvenience of having to defend an action in a trial court that is either remote from the defendant's

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residence or from the place where the acts underlying the controversy occurred." *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1576 (Fed. Cir. 1990). Plaintiff bears the burden of establishing that venue is proper. *Grantham v. Challenge-Cook Bros., Inc.*, 420 F.2d 1182, 1184 (7th Cir. 1969). In ruling on a motion to dismiss for lack of venue, the court should take all allegations in the complaint as true (unless contradicted by affidavit), draw all reasonable inferences in favor of plaintiff, and may examine facts outside the complaint. See *ISA Chicago Wholesale, Inc. v. Swisher Intern., Inc.*, 2009 WL 3152785, at *3 (N.D. Ill. Sept. 25, 2009) (citations omitted).

Defendants contend that venue is not proper in the Northern District of Illinois, and that this case should be transferred to the Southern District of Illinois. In a federal question case, venue is governed by 28 U.S.C. § 1391(b), which provides:

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b)(1)-(3). Section 1391(b)(2), the provision relied upon by Defendant, provides that venue is proper in a district where a substantial part of the events or omissions giving rise to the claim occurred. The test is not whether a majority of the activities pertaining to the case were performed in a particular district, but whether a substantial portion of the activities giving rise to the claim occurred in the particular district. See *Pfeiffer v. Insty Prints*, 1993 WL 443403, at *2 (N.D. Ill. Oct. 29, 1993).

Generally, courts in this and other circuits focus on the activities of the defendant, not the plaintiff, in making venue decisions under § 1391(b)(2). See *Woodke v. Dahm*, 70 F.3d 983, 985 (8th Cir. 1995) (stating that courts should "focus on relevant activities of the defendant, not of the plaintiff," in making venue decisions); *Moran Industries, Inc. v. Higdon*, 2008 WL 4874114, at *5 (N.D. Ill. June 26, 2008) (citing *Woodke*) (same); *PKWare, Inc. v. Meade*, 79 F. Supp. 2d 1007, 1016 (E.D. Wis. 2000) ("In determining where substantial parts of the underlying events occurred I focus on the activities of the defendant and not those of the plaintiff."). While that concern is not explicitly stated in (b)(2), it comports with the general theory that "[v]enue under 28 U.S.C. § 1391 usually respects defendants' interests." *Board of Trustees, Sheet Metal Workers' Nat. Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031, 1036 (7th Cir. 2000). The test for venue under § 1391 looks not to the defendant's contacts with the forum, but rather to the location of the events giving rise to the cause of action. See *Cottman Transmission Sys., Inc. v. Martino*, 36 F.3d 291, 294 (3d. Cir. 1994). Even focusing on the relevant activities of the defendant, fairness still is insured by the requirement that the events in the district be "substantial."

A plain reading of Plaintiff's complaint establishes that the appropriate federal district in Illinois is the Southern District of Illinois, in which a substantial part of the events or omissions giving rise to the claim occurred. 3ABN's principal place of business is in West Frankfort, Illinois, in Franklin County, which is in the Southern District of Illinois. The Southern District is where the alleged 2001 abuse occurred and where 3ABN was allegedly negligent. Furthermore, Plaintiff resides in Crawford County, Illinois, which is part of the Southern District. The Northern District of Illinois has no connection to this lawsuit: not one alleged act occurred here and not a single party or witness can be found here. In sum, Plaintiff's complaint arises from activities occurring in Southern Illinois and Virginia, not in Northern Illinois. **[FN 1]**

[FN 1] Plaintiff argues that § 1391(b)(2) does not apply because it requires "a single judicial district" in

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which a substantial part of the acts and omissions gave rise to the claims, and, here, alleged acts occurred in more than one district (at a minimum, the Southern District of Illinois and a district in Virginia). Plaintiff provides no authority for this position, and the plain language of (b)(2) has no such requirement. "The test is not whether a majority of the activities pertaining to the case were performed in a particular district, but whether a substantial portion of the activities giving rise to the claim occurred in the particular district." *Truserv Corp. v. Neff*, 6 F. Supp. 2d 790, 792 (N.D. Ill. 1998) (noting that a "substantial part" of the events can occur in more than one district). Here, based on the allegations in the complaint, a substantial part of the events occurred in the Southern District.

Plaintiffs insist that venue also is proper in the Northern District of Illinois under § 1391(b)(3). However, § 1391(b)(3) is implicated only when §§ 1391(b)(1) and (2) are not satisfied. See *Algodonera de las Cabezas, S.A. v. Am. Suisse Capital, Inc.*, 432 F.3d 1343, 1345 (11th Cir. 2005) ("[V]enue may be predicated on § 1391(a)(3) only when neither § 1391(a)(1) or (2) are satisfied."); *Ciralsky v. C.I.A.*, 689 F. Supp. 2d 141, 162 (D.D.C. 2010) (plaintiff could not rely on § 1391(b)(3) to establish venue in the District of Columbia, because that section "is only applicable if there is no district in which venue is proper under one of the venue statute's first two provisions"); see also *United Financial Mortg. Corp. v. Bayshores Funding Corp.*, 245 F. Supp. 2d 884, 895-96 (N.D. Ill. 2002); 14D Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 3806.2 (3d ed. 2011) (stating that § 1391(b)(3) is a "safeguard or fallback" provision that can only be used "when, and only when * * * any other applicable venue statutes, fail to make any judicial district an acceptable venue"). As clearly set forth above, venue is proper in the Southern District under § 1391(b)(2) and thus (b)(3) does not apply. **[FN 2]**

[FN 2] Since Defendant Shelton does not reside in Illinois, § 1391(a)(1) does not provide for venue in Illinois.

III. Conclusion

The Court does not believe that dismissal for improper venue is appropriate; rather, the Court concludes that a transfer to the Southern District of Illinois is appropriate under the circumstances. For that reason, the Court denies without prejudice Defendant's motion to dismiss [10], as Defendant seeks *dismissal* for various reasons, including improper venue. 1However, in the interests of justice and in lieu of dismissing this case without prejudice, the Court will transfer this case to the Southern District of Illinois. Because the Court concludes that transfer is appropriate on § 1406(a) grounds **[FN 3]**, the Court declines to address—and expresses no view on—Defendant's additional arguments regarding dismissal. The Court also denies Plaintiff's motion to exclude Defendant's declarations and incorporated memorandum of law [17] because reference to Defendant's declarations and argument regarding dismissal for other reasons was not necessary to assess whether venue is proper. Based solely on the allegations in Plaintiff's complaint, venue clearly is improper in the Northern District and proper in the Southern District. The Court directs the Clerk of the Court to transfer this case to the Southern District of Illinois.

[FN 3] Because the Court determines that transfer to the Southern District of Illinois is appropriate under § 1406(a), the Court need not address any alternative arguments for transfer under 28 U.S.C. § 1404(a). If the Court had found that venue is proper in this district under a § 1406 analysis, it would have addressed the question of whether the Southern District of Illinois nevertheless constitutes a superior forum for litigating this case under a § 1404 analysis. Although the parties did not brief the § 1404 considerations in detail, it appears likely that the Southern District of Illinois would be a superior forum for litigating this case.