Ark. Code Ann. § 16-55-213: Tort Reform Brings Sweeping Changes to Venue Law in Arkansas

By Kelly W. McNulty

Venue is one of the earliest tenets of civil procedure that we all learn as first year law students. The names and faces of the professors teaching that lesson have changed, yet Arkansas venue law has remained relatively stable for almost a century and a half. While most other facets of the law have been transformed dramatically during this stretch of time, "the underlying rule of venue in Arkansas since 1869 has been that every defendant should be subject to suit only in his own residence or place of business unless for policy reasons, the legislature has indicated otherwise."[1]

With the tide of tort reform at the turn of the century, Arkansas's venue laws took a sharp turn. In 2003, the Arkansas Legislature enacted the Civil Justice Reform Act of 2003 (the "Act").[2] While primarily presented as a tort reform law, the Act included various other provisions, which, from a practical standpoint, affected many different aspects of the law.[3] Specifically, Ark. Code Ann. § 16-55-213 (the "New Law"), which provides venue for "all civil actions," was included within the Act. The focus of this article is to discuss how Ark. Code Ann. § 16-55-213 transformed venue law in Arkansas.

The article will begin with a brief overview of the old venue law, Ark. Code Ann. § 16-60-101, *et seq*. (the "Old Law")[4], then move to a detailed examination of the New Law and how it has been interpreted by Arkansas courts, and then a comparison of the changes between the old and new. This article will conclude with a discussion of the possible effects of the new venue law.

The Old Law

Prior to 2003, Arkansas venue law generally held that a person was only subject to a lawsuit in the county (1) of his or her residence or principal place of business, (2) where the action occurred, or (3) in Pulaski County for certain actions involving this government.[5] Of course, the Old Law also provided certain variations from this general rule.[6]

For actions affecting real property in more than an incidental way, the Old Law required the action to be brought in the county where the property was located.[7] Under Ark. Code Ann. § 16-60-104, a domestic corporation must be sued in the county in which it is situated or has its principal office or business, or in which its chief officer resides, or in a county where it has a branch office or other place of business.[8] Similarly, Ark. Code Ann. § 16-60-105 set venue in an action against a corporation, foreign or domestic, in a county where the corporation elects to establish a place of business or branch office.[9]

In personal injury or wrongful death cases, venue was proper under the Old Law in the county where the accident causing the injury or death occurred, or where persons injured or killed resided at the time of injury.[10] This would include a wide variety of causes of action, such as actions for battery, medical malpractice, or injury caused by a motor vehicle accident.[11]

Finally, a "catchall" venue statute existed that governed when a venue statute for a specific cause of action did not govern.[12] According to this "default" statute, venue is generally

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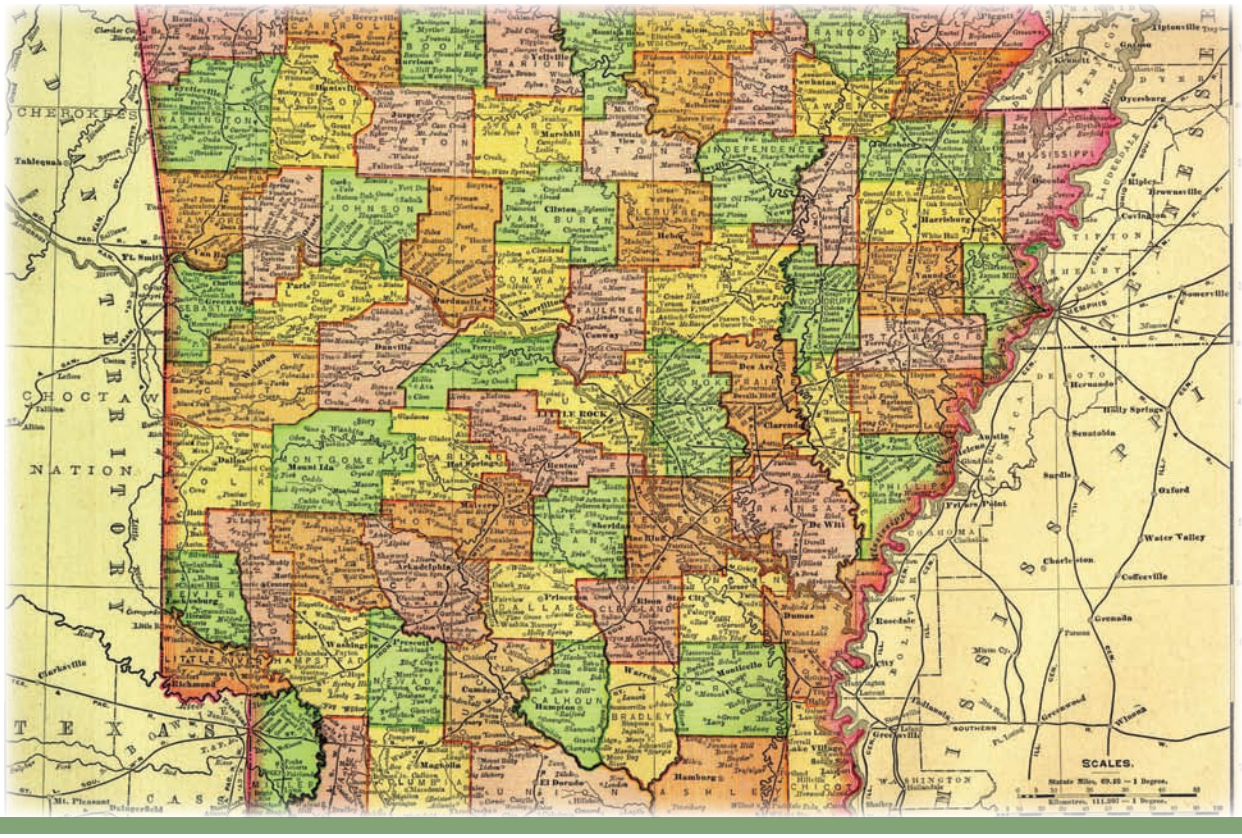

proper in the county where the defendant resided or where the defendant received a summons.[13] This "catchall" or "default" venue statute applied "in the absence of another statute to the contrary."[14] In their treatise, Justice Newbern and Professor Watkins state that "[b]y focusing on residence, this 'default' venue statute reflects a desire to protect defendants from oppressive forum choices by plaintiffs."[15] This is quite interesting because as will be explained, the New Law essentially disregards this "desire" and ushers in a new "default" venue statute.[16]

The New Law

The Civil Justice Reform Act of 2003 dramatically changed Arkansas's venue law. Arkansas law now provides that "all civil actions," other than those six specifically excluded venue statutes,[17] "must" be brought in "any" of the following counties:

> (1) The county in which a substantial part of the events or omissions giving rise to the claim occurred;
> (2) (A) The county in which an individual defendant resided.
> (2) (B) If the defendant is an entity other than an individual, the county where the entity had its principal office in this state at the time of the accrual of the cause of action; or
> (3) (A) The county in which the plaintiff resided.
> (3) (B) If the plaintiff is an entity other than an individual, the county where the plaintiff had its principal office in this state at the time of the accrual of the cause of action.[18]

For class actions, Ark. Code Ann. § 16-55-213(b)(1) provides that the "residence of any properly joined named class representative or representatives," but not "putative" or non-named class members, "may be considered in determining proper venue in a class action."[19] "Any action for medical injury brought under § 16-114-201 *et seq.* against a medical care provider, as defined in § 16-114-201(2), shall be filed in the county in which the alleged act or omission occurred."[20]

The Arkansas Court of Appeals recognized that this Act "significantly altered [Arkansas's] 'venue landscape.'"[21] The Act is applicable to all causes of action accruing on or after March 25, 2003.[22] In general, this new venue statute allows an individual plaintiff to file a lawsuit, other than in those actions which are specifically excluded, in the county of his or her residence, rather than just the county of an individual defendant. For corporations, limited liability companies and all other entities other than individuals, venue is no longer only proper in the county where the corporate defendant maintains its principal place of business or main office. Now, Ark. Code Ann. § 16-55-213(a)(3)(B) provides for venue in the county where the corporate plaintiff "had its principal office" at the time the cause of action accrued. No longer is a defendant only subject to suit in his or her own residence or place of business.

By its terms, the New Law does not however repeal other inconsistent venue statutes. As one commentator predicted, "[s]ince courts do not favor repealing legislation by implication, the courts will presumably try to read new statutes in conjunction with old, inconsistent statutes."[23] As explained below, it does in fact appear that Arkansas courts are attempting to avoid repealing the Old Law by implication.[24]

Most practitioners would argue that, pursuant to the Old Law, an action on a debt, account or note must be brought in the county where the defendant resided at the time the cause of action arose pursuant to Ark. Code Ann. § 16-60-111(a). Most lawsuits regarding contracts and suits on debts are in fact filed in the county where the defendant resides. Under Ark. Code Ann. § 16-55-213(a)(3)(A),

Based on the limited interpretation provided thus far, it is clear that courts are going to attempt to "harmonize" the different venue statutes, New and Old.

however, this same type of suit can now be brought in the county where the plaintiff resides.[25]

An example may help show the issues which may arise from this new venue statute. Party A resides in Sebastian County, Arkansas, and Party B resides in Bradley County, Arkansas. Party A sells $20,000 worth of widgets to Party B. Following the delivery of the widgets by Party A, Party B fails to pay as promised. Under Ark. Code Ann. § 16-55-213(a)(3)(A), Party A can now sue Party B in Sebastian County, whereas under Ark. Code Ann. § 16-60-111(a), the proper venue for the lawsuit was in Bradley County. From this example one can see how this new venue statute is substantially different.[26]

The Courts Weigh In

The Arkansas Supreme Court recently interpreted Ark. Code Ann. § 16-55-213. In *Wright v. Centerpoint Energy Resources Corp.* ("*Wright*"), the primary issue was the interpretation of the Old Law and the New Law, and "whether they are in conflict."[27] At the time of her death, the decedent in *Wright* resided in Craighead County, Arkansas, and her estate was opened in that county.[28] Her ex-husband filed a wrongful death action in the county of his residence, Crittenden County, pursuant to Ark. Code Ann. § 16-55-213(a)(3)(A), "claiming that, as personal representative . . . he was a plaintiff who resided in Crittenden County . . ." at the time of the death.[29] The Defendants argued that venue was proper only in the decedent's county of residence at the time of her death pursuant to § 16-60-112(a).[30] The trial court agreed with the Defendants and dismissed the matter. [31]

The issues presented by the parties on appeal in *Wright* are essentially the arguments that will be raised in all lawsuits where proper venue is raised. The personal representative in *Wright* argued that the New Law applied and that he could bring the suit in Crittenden County because that is "the county in which the plaintiff resided."[32] In addition, the appellant argued that because the two venue statutes are in conflict, the New Law "*impliedly* repealed" § 16-60-112 and "that the 2003 venue statute takes up anew and covers the entire ground of venue in civil actions."[33] He asserted that the New Law is "a comprehensive law that established venue in '*all* civil actions' other than the six venue statutes that were expressly excepted, and § 16-60-112 is not specifically excepted."[34]

The Arkansas Supreme Court began its analysis by considering "basic rules of statutory construction to determine which statute gives full effect to the General Assembly's intent when it enacted § 16-55-213 in 2003."[35] As to the issue of repeal by implication, the Court stressed the "universal principle" that "the repeal of a law merely by implication is not favored and will not be allowed unless the implication is clear and irresistible."[36]

Based on these principles, the Court refused to hold that § 16-55-213(a)(3)(A) impliedly repealed § 16-60-112(a).[37] In attempting to harmonize the two statutes and avoid "absurd consequences," the Court found that the "repugnancy" between the two statutes was not "abundantly clear."[38] Despite this holding that the New Law did not impliedly repeal the Old Law, the Court noticeably applied § 16-55-213(a)(3)(A) to the facts at hand.[39] In applying the New Law to the appeal, the Court focused on the use of the word "resided" in a past-tense reference.[40] The Court held,

> In reviewing the statute as a whole, there are only three counties where a wrongful-death action can be brought: (1) where a substantial part of the events or omission giving rise to the claim *occurred*, (2) where an individual defendant *resided*, and (3) where the plaintiff *resided*. *See* §16-55-213(a)(1), (a)(2)(A), & (a)(3)(A) (emphasis added). Given the past-tense language in subsection (a)(1) referring to the county "in which a substantial part of the events or omissions giving rise to the claim occurred," we similarly construe the General Assembly's use of the past tense in subsections (a)(2)(A) and (a)(3)(A) to mean that venue is fixed where the plaintiff or defendant *resided at the time of the events giving rise to the cause of action*.[41]

Thus, while the Court held that the New Law did not impliedly repeal the old wrongful death venue statute, it nevertheless applied § 16-55-213. What does this mean? The Court's emphasis on "harmonizing" the two statutes seems to imply that courts will apply the New Law, except where it would lead to "absurd consequences that are contrary to legislative intent."[42] The decision in *Wright* is even arguably limited to the specific facts of that case and wrongful death actions.[43] Nevertheless, the Court analysis in *Wright* gives excellent insight into the issues which will be raised in most every lawsuit where venue is an issue, and how courts will resolve those issues. The few other cases in which courts have had an opportunity to review the New Law give only limited guidance to this proposition.

The proper venue for lawsuits involving corporations was examined by the Court of Appeals prior to the *Wright* decision. In *JB Wayne, Inc. v. Hot Springs Village Property Owners' Association ("JB Wayne")*,[44] the Court labeled Ark. Code Ann. § 16-55-213 the "new default venue statute," and examined the differences between the old and new corporate venue statutes.[45] While ultimately determining that the New Law did not apply because the cause of action arose prior to the enactment of the Act, much like the *Wright* case, the Court emphasized the different tenses of the verbs used in the statutes.[46] Prior to the enactment of the Act, venue for actions against corporations was generally proper in the county where the corporate defendant "resides," "has" its principal place of business or "is situated."[47] On the other hand, Ark. Code Ann. § 16-55-213 provides that venue is proper where the events "occurred," or where the entity "had" its principal place office.[48] In *JB Wayne*, the corporate defendant was no longer in business at the time the lawsuit was filed and the principals of the corporation (who were also guarantors) lived in a different county.[49] Thus venue under the Old Law was only proper where the principals currently resided (Saline County). Under the New

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Law, venue would only be proper where the events "occurred" or where the entity "had" its principal place office (Garland County).

The proper venue for actions involving fraud was briefly examined in *Centerpoint Energy, Inc. v. Miller County Circuit Court*.[50] Again, the Court sought to "give effect to the legislative purpose set by the venue statutes," and examined both § 16-55-213(a)(3)(A) and § 16-60-113(b).[51] Although not determinative in the case because the plaintiff was ultimately dismissed, the Court did imply that it would apply the New Law and place venue in the county of the plaintiff's residence.[52]

As stated above, the Act's main purpose was tort reform. Noticeably, it was in the area of medical malpractice where the Act restricted, rather than expanded, the possible counties where venue is proper. Under the Old Law, Ark. Code Ann. § 16-60-112, venue was proper for medical malpractice lawsuits in the county where the accident causing the injury or death occurred or where persons injured or killed resided at the time of injury. Now, "[a]ny action for medical injury brought under § 16-114-201 *et seq.* against a medical care provider, as defined in § 16-114-201(2), shall be filed in the county in which the alleged act or omission occurred."[53] Thus, by its own terms, the Act prohibits an injured plaintiff from bringing a medical malpractice action in the county of his or her residence, if that county is different from the county "in which the alleged act or omission occurred."[54] For patients living outside of Pulaski County who receive treatment at any of the several major hospitals located in Pulaski County, Ark. Code Ann. § 16-55-213(e) could have far-reaching effects.[55]

What does this all mean?

It appears fairly certain that courts are going to be hesitant to repeal any of the Old Law by implication. Rather, based on the few decisions by Arkansas courts concerning Ark. Code Ann. § 16-55-213, it appears that courts will examine venue under both sets of venue statutes to "avoid absurd consequences." Unfortunately, we have not been given clear cut examples of what these "absurd consequences" could be.

Nevertheless, the practice which seems to be developing is that if a plaintiff (except for in medical malpractice actions) can establish proper venue under the New Law, *i.e.*, that the lawsuit is brought in (1) the county in which a substantial part of the events or omissions giving rise to the claim occurred; (2) the county in which the defendant resided or maintained its principal office in Arkansas at the time the cause of action accrued; or (3) the county in which the plaintiff resided or maintained its principal office in Arkansas at the time of the accrual of the cause of action, the court will allow the case to be brought in that county.[56] For medical malpractice actions, plaintiffs are resigned to bringing their claim only in the county in which the alleged act or omission occurred.[57] If a lawyer follows these rules, he or she can be confident that venue will not be an issue in the case.

Endnotes

1. Kimberly Frazier, *Arkansas's Civil Justice Reform Act of 2003: Who's Cheating Who?*, 57 Ark. L. Rev. 651, 690-691 (2004).
2. 2003 Ark. Acts 649.
3. Frazier, *supra* note 1, at 690-691.
4. By using the term the "Old Law" this Article is not arguing that Ark. Code Ann. § 16-60-101, *et seq.* is no longer applicable. Rather, the use of "New Law" and "Old Law" is only for convenience.
5. Ark. Code Ann. § 16-60-101, *et seq.*; *see also* Frazier, *supra* note 1, at 690-691.
6. *Id.*
7. Ark. Code Ann. § 16-60-101.
8. Ark. Code Ann. § 16-60-104.
9. Ark. Code Ann. § 16-60-105; see also, *Zolper v. AT&T Info. Sys.,* 289 Ark. 27, 709 S.W.2d 74 (1986).
10. Ark. Code Ann. § 16-60-112.
11. *Shultz v. Young*, 205 Ark. 533, 169 S.W.2d 648 (1943) (suit involving a battery claim); *Bristol-Meyers Squibb Co. v. Saline County Circuit Court*, 329 Ark. 357, 947 S.W.2d 12 (1997) (suit for medical malpractice).
12. Ark. Code Ann. § 16-60-116(a).
13. *Id.*, David Newbern & John J. Watkins, Arkansas Civil Practice and Procedure § 6-2 (4th ed. 2006). *See also*, *Ozark Supply Co. v. Glass*, 261 Ark. 750, 552 S.W.2d 1 (1977); *Universal C.I.T. Credit Corp. v. Troutt*, 235 Ark. 238, 357 S.W.2d 507 (1962).
14. Newbern & Watkins, supra note 13, at 6-2.
15. *Id.*
16. *JB Wayne, Inc. v. Hot Springs Village Property Owners' Association*, 97 Ark. App. 288, 292, 248 S.W.3d 503, 506 (2007) (citing Newbern & Watkins, *supra* note 13, at 9-1).
17. The six statutes are Ark. Code Ann. §§ 16-60-101 to -103, 16-60-107, 16-60-114, and 16-60-115, and subsection (e) of § 16-55-213.
18. Ark. Code Ann. § 16-55-213(a).
19. The New Law also provides that: (c) In any civil action, venue must be proper as to each or every named plaintiff joined in the action unless: 1) The plaintiffs establish that they assert any right to relief against the defendants jointly, severally, or arising out of the same transaction or occurrence; and (2) The existence of a substantial number of questions of law or material fact common to all those persons not only will arise in the action, but also that: (A) The questions will predominate over individualized questions pertaining to each plaintiff; (B) The action can be maintained more efficiently and economically for all parties than if prosecuted separately; and (C) The interest of justice supports the joinder of the parties as plaintiffs in one (1) action. (d) (1) Unless venue objections are waived by the defendant or by unanimous agreement of multiple defendants, if venue is improper for any plaintiff joined in the action, then the claim of the plaintiff shall be severed and transferred to a court where venue is proper. (2) (A) If severance and transfer is mandated and venue is appropriate in more than one (1) court, a defendant sued alone or multiple defendants, by unanimous agreement, shall have the right to select another court to which the action shall be transferred. (B) If there are multiple defendants who are unable to agree on another court, the court in which the action was originally filed may transfer the action to another court.
20. Ark. Code Ann. § 16-55-213(e).
21. Ison Properties, LLC v. Wood, 85 Ark. App. 443, 447, 156 S.W.3d 742, 745 (2004) (citing Newbern & Watkins, *supra* note 13, at § 6-1).
22. Ark. Code Ann. Tit. 16, Subtit. 5, Ch. 55, Subch. 2 Note (2008).
23. Frazier, *supra* note 1, at 690-691.
24. *Wright v. Centerpoint Energy Resources Corp.*, *et al.*, 372 Ark. 330, 2008 Ark. LEXIS 97 (February 14, 2008).
25. Ark. Code Ann. § 16-55-213(a)(3)(A).
26. Of course, issues such as personal jurisdiction over the defendant must also allow for suit in a specific county.
27. *Wright*, 372 Ark. at 330.
28. *Id.* at 331.
29. *Id.* at 331-332.
30. *Id.*
31. *Id.*
32. *Id.* at 332.
33. *Wright*, 372 Ark. at 332 (emphasis in original).
34. *Id.* (emphasis in original).
35. *Id.* at 332; citing *Quinney v. Pittman*, 320 Ark. 177, 895 S.W.2d 538 (1995) ("it is this court's fundamental duty to give effect to the legislative purpose set by the venue statutes").
36. *Id.* The Court did acknowledge that it had previously stated in *Babb v. City of El Dorado*, 170 Ark 10, 278 S.W. 649 (1926), that "even where two acts are not in express terms repugnant, yet if the latter act covers the whole subject of the first, and embraces new provisions plainly showing that it was intended as a substitute toward the first act, it will operate as a repeal of that act."
37. W*right*, 372 Ark. at 333-334.
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Wright*, 372 Ark. at 333-334.
43. *Id.* at 334 ("Thus, in this context, we conclude that venue was where [the decedent] resided at the time the events giving rise to the claim occurred—Craighead County.").
44. 97 Ark. App. 288, 248 S.W.3d 503 (2007).
45. *JB Wayne, Inc. v. Hot Springs Village Property*

Owners' Association, 97 Ark. App. 288, 292, 248 S.W.3d 503, 506 (2007) (citing NEWBERN & WATKINS, *supra* note 13, at 9-1).
46. *Id.* It should be noted that there were other venue statutes at issue in *JB Wayne* which are not within the scope of this article.
47. *Id*.
48. ARK. CODE ANN. § 16-55-213(a).
49. *JB Wayne*, at 291, 248 S.W.3d at 505.
50. *Centerpoint Energy, Inc. v. Miller County Circuit Court*, 372 Ark. 343, 2008 Ark. LEXIS 343 (Feb. 14, 2008).
51. *Id*. at 354. The case also involved ARK. CODE ANN. § 16-55-213(b)(1), which provides that venue in "[t]he residence of any properly joined named class representative or representatives may be considered in determining proper venue in a class action." As explained above, however, the Court did not examine this statute in detail because all of the plaintiffs residing in Arkansas had been dismissed.
52. *Id*. at 355-356.
53. ARK. CODE ANN. § 16-55-213(e).
54. *Id.*
55. At the time of this Article, no decisions interpreting ARK. CODE ANN. § 16-55-213(e) had been rendered.
56. ARK. CODE ANN. § 16-55-213(a).
57. ARK. CODE ANN. § 16-55-213(e). ■