

EXAMINERS' ANALYSIS OF QUESTION NO. 11

(1) Venue

The trial court erred by denying David's motion for change of venue to Grand Traverse County.

In Michigan, the court rules and statutory provisions instruct practitioners regarding venue. See *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 309, 313-314 (1999) (opinion by Kelly, J). MCR 2.223 provides, in relevant part:

- (A) Motion; Court's Own Initiative. If the venue of a civil action is improper, the court
 - (1) shall order a change of venue on timely motion of a defendant, or
 - (2) may order a change of venue on its own initiative with notice to the parties and opportunity for them to be heard on the venue question.

If venue is changed because the action was brought where venue was not proper, the action may be transferred only to a county in which venue would have been proper.

MCL 600.1629 governs the determination of venue in personal injury cases, and it provides in relevant part:

- (1) Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:
 - (a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:
 - (i) The defendant resides, has a place of business, or conducts business in that county.

- (ii) The corporate registered office of a defendant is located in that county.

Here, David's motion for change of venue was timely under MCR 2.221(A) and the trial court erred in denying David's motion for change of venue as required by MCR 2.223(A)(1) when venue is improper. Peters claimed damages due to personal injuries suffered in an accident, which occurred in Grand Traverse County. David resides in Grand Traverse County. Accordingly, pursuant to the unambiguous language of MCL 600.1629(1)(a)(i), venue properly rested in Grand Traverse County. The trial court should have transferred venue to Grand Traverse County.

(2) Collateral Estoppel

David was not precluded by collateral estoppel from challenging venue when Peters re-filed his complaint. The trial court erred by holding that its first ruling on venue was binding on David after Peters re-filed his complaint.

Collateral estoppel, also known as issue preclusion, is a doctrine which prevents issues from being relitigated. To apply collateral estoppel, a party must show that (1) the issue was actually litigated and determined by a valid and final judgment, (2) a determination of the issue was necessary to the outcome of the proceeding, and (3) the parties in the prior proceeding are the same as in the present proceeding. *Wells Fargo Bank, NA v Null*, 304 Mich App 508, 520 (2014); *McMichael v McMichael*, 217 Mich App 723, 727 (1996); *Porter v Royal Oak*, 214 Mich App 478, 485 (1995). MCR 7.202(6)(a)(i) provides, in relevant part, that a final judgment "disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order." The Court of Appeals recently explained, "'Final judgments are such as at once put an end to the action by declaring that the plaintiff has either entitled himself, or has not, to recover the remedy he sues for.'" *Wells Fargo*, 304 Mich App at 521, quoting *Wurzer v Geraldine*, 268 Mich 286, 289 (1934). Moreover, "[A] decision is final when all appeals have been exhausted or when the time available for an appeal has passed." *Bryan v JP Morgan Chase Bank*, 304 Mich App 708, 716 (2014), quoting *Leahy v Orion Twp*, 269 Mich App 527, 530 (2006). "To be necessarily determined in the first action, the issue must have been essential to the resulting judgment; a finding

upon which the judgment did not depend cannot support collateral estoppel." *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 377 (1994) (emphasis added).

Here, although the parties in each proceeding are the same, no final judgment was entered in Peters' first-filed action. The venue decision, itself, did not dispose of all the claims and adjudicate the rights and liabilities of the parties and therefore cannot be considered a final judgment. MCR 7.202(6)(a)(i). Moreover, Peters and David agreed to a dismissal of the first action in an effort to resolve the case through an alternative dispute process; that dismissal was voluntary and without prejudice. Because no judgment was entered on the first action, the trial court's first ruling on venue could not have been necessary to the outcome of the proceeding. Therefore, the trial court erred by holding that David was collaterally estopped from challenging venue a second time because of its first venue ruling.