MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lucy Chindia, Firstaround Consulting, LLC, Galaxy Healthcare Services, LLC, Daouda (David) Ganiou, and Bolaji Gbadamosi,

Appellants-Defendants,

v.

Uniquehab Solutions, LLC,

Appellee-Plaintiff.

March 9, 2023

Court of Appeals Case No. 22A-PL-2270

Appeal from the Allen Superior Court

The Honorable Andrew S. Williams, Judge

Trial Court Cause No. 02D02-2109-PL-365

Memorandum Decision by Judge Riley
Chief Judge Altice and Judge Pyle concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellants-Defendants, Galaxy Healthcare Services, LLC (Galaxy Healthcare), FirstAround Consulting, LLC (FirstAround), Daouda Ganiou (Ganiou), Bolaji Gbadamosi (Gbadamosi), and Lucy Chindia (Chindia) (collectively, Appellants), appeal the trial court's Order, determining Allen County, Indiana, to be the appropriate venue for bringing Appellee-Plaintiff's, UniqueHab Solutions, LLC (UHS), cause of action.

[2] We affirm.

ISSUE

[3] Appellants present this court with one issue on appeal, which we restate as: Whether the trial court abused its discretion by denying Appellants' motion to transfer venue and by concluding that the appropriate venue for the cause of action between the parties is located in Allen County, Indiana.

FACTS AND PROCEDURAL HISTORY

[4] UHS is in the business of providing residential support services for individuals with physical and developmental disabilities. Its principal place of business is located in Fort Wayne, Allen County, Indiana, with a second facility located in Hamilton County, Indiana. Galaxy Healthcare is in the business of providing administrative services to residential habilitation support companies and has its principal place of business in Hamilton County, Indiana. FirstAround is in the

business of providing residential support services for individuals with physical and developmental disabilities, with its principal place of business in Hamilton County, Indiana. Galaxy Healthcare and FirstAround are owned by Gbadamosi, Ganiou, and Chindia. Ganiou and Chindia are residents of Hamilton County, Indiana, while Gbadamosi is a resident of Marion County, Indiana.

[5] In late 2018, Gbadamosi and Chindia approached UHS about jointly opening an office in Indianapolis. Sometime in 2019, the parties began work to open the new office. At that time, there was no written agreement. On June 18, 2019, John Musili (Musili), vice-president of UHS, sent a proposed Management Services Agreement (MSA) to Gbadamosi and Chindia for their review and comment. That same day, Chindia, by email, indicated to Musili that there were a "couple of items" missing from the MSA. (Appellants' App. Vol. II, p. 135). Later that day, Musili requested that Chindia "[h]ighlight the missed items so that we can review & incorporate in order to have final draft on hand when we come down next week." (Appellants' App. Vol. II, p. 135). On June 20, 2019, Chindia sent a highlighted copy of the MSA in response. The highlighted terms were: (1) the date of execution, (2) Chindia's and Gbadamosi's proposed compensation, (3) the use of an operating account, and (4) the effective period of the MSA with the procedure for termination of the agreement. One of the provisions of the MSA that Appellants did not highlight was paragraph 10.13, the Venue Selection Provision, which stated:

> ***Governing Law and Venue***. This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance, or otherwise by the laws of the State of Indiana. The parties stipulate and agree that exclusive jurisdiction and venue for any cause of action arising between the parties shall be in the Indiana or federal courts having subject matter jurisdiction, located in Allen County, Indiana.

(Appellants' App. Vol. II, pp. 143-44).

[6] On June 24, 2019, the parties conducted a meeting to discuss the terms of the MSA. Prior to the meeting, Chindia drafted and distributed an agenda with topics to be discussed by the parties, which included: (1) the effective period of the agreement, (2) "UHS—Indy Status: employees, clients, trainings, expenses, income, book of accounts, etc.", (3) signing of the agreement, (4) compensation and profit sharing, (5) management structure, and (6) financial operations. (Appellants' App. Vol. II, p. 178).

[7] UHS asserts that the MSA was executed by the parties during the June 24, 2019 MSA meeting and a copy of the MSA was stored at the Indianapolis office. This executed copy was missing from the office after Appellants' employment ended. Chindia, Gbadamosi, and Ganiou claim that they never signed the MSA. While they maintain that there never was an executed agreement, Chindia, Gbadamosi, and Ganiou worked for UHS under an "oral agreement" until February 19, 2021. (Appellants' App. Vol. II, p. 179).

[8] On September 13, 2021, UHS filed its Complaint for damages and injunctive relief in the Allen Superior Court, contending that venue was proper based on

the venue clause included in the MSA. On November 8, 2021, Appellants filed a "motion to dismiss or transfer – improper venue," asserting that pursuant to Trial Rule 75(A)(1), preferred venue of this matter rested in Hamilton County, Indiana. (Appellants' App. Vol. II, p. 41). On July 15, 2022, UHS filed a response to Appellants' motion. On August 12, 2022, the trial court conducted a hearing on Appellants' motion and entered an Order on August 25, 2022, concluding, in pertinent part:

> The [Appellants] seem to believe a determination of whether the MSA was signed is the only path for discovering the intent of the parties regarding venue. However, the [Appellants] concede that there was an oral agreement, and they worked and were compensated under the terms of the oral agreement. Thus, regardless of whether the MSA was signed, the [Appellants] concede there was an agreement between the parties. The terms of the agreement, whether oral or written, can be found in the correspondence between the parties in June 2019.
>
> The evidence submitted to the [c]ourt shows the parties exchanged drafts of the MSA on June 19 and 20, 2019 through a string of emails. The June 20, 2019 version sent by Chindia to UHS had several highlighted provisions which the [Appellants] wanted to discuss with UHS. However, the provisions not highlighted were accepted by the [Appellants]. These non-highlighted provisions included the Venue Selection Provision. This is strong evidence that the [Appellants] agreed to the Venue Selection Provision.
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> The [Appellants'] agreement to be bound by the Venue Selection Provision is further evidenced by the fact that the agenda for the June 24, 2019 meeting (which was prepared by Chindia) consisted of a laundry list of objectionable provisions of the

> MSA. There was no mention of the Venue Selection Provision. Therefore, it must be concluded [that] the parties, more likely than not, agreed to the Venue Selection Provision designating Allen County, Indiana as a preferred venue.

(Appellants' App. Vol. II, pp. 180-81).

[9] Appellants now appeal. Additional facts will be provided if necessary.

DISCUSSION AND DECISION[1]

[10] Appellants contend that the trial court erred in denying their motion to transfer venue based on the existence of an oral agreement, as there is a complete absence of facts that Appellants agreed to all essential terms of the alleged oral agreement. We review factual findings on an appeal from a ruling on a motion for transfer of venue for clear error and review conclusions of law *de novo*. *Am. Family Ins. Co. v. Ford Motor Co.*, 857 N.E.2d 971, 973 (Ind. 2006). Where factual determinations are made from a paper record, however, those determinations are also reviewed *de novo*. *Id*. Typically "[v]enue is governed by Indiana Trial Rule 75. When parties consent to venue in a contract, that agreement overrides the preferred venue analysis set forth in Trial Rule 75." *Indianapolis-Marion Cnty. Pub Library v. Shook, LLC*, 835 N.E.2d 533, 540 (Ind. Ct. App. 2005). "[C]ontractual provisions, even those occurring in form

[1] Although it appears from the appellate briefs that both parties are already partially litigating the underlying issues raised by UHS' Complaint, our jurisdiction is limited to the appealed trial court's Order, *i.e.,* the preferred venue for this cause of action.

contracts, that seek to limit the litigation of future actions to particular courts or places are enforceable if they are reasonable and just under the circumstances and there is no evidence of fraud or overreaching such that the agreeing party, for all practical purposes, would be deprived of a day in court." *Mechanics Laundry & Supply, Inc. v. Wilder Oil Co., Inc.*, 596 N.E.2d 248, 252 (Ind. Ct. App. 1992), *trans. denied*.

[11] Appellants maintain that "[w]hile parties are free to negotiate and include venue selection clauses in their contracts, there must be a clear indication that all parties are agreeing to be bound by it and in most cases, such indication is in the form of a written and signed agreement." (Appellants' Br. p. 21). As there is no clear indication that the parties agreed to all essential terms of an underlying oral contract, Appellants claim that no contract was formed between the parties.

[12] Generally, oral agreements are enforceable. *Vernon v. Acton*, 732 N.E.2d 805, 809 (Ind. 2000). A meeting of the minds of the contracting parties is essential to the formation of a contract. *Wallem v. CLS Indus., Inc.*, 725 N.E.2d 880, 883 (Ind. Ct. App. 2000). Our inquiry thereof does not focus on each party's subjective intent but focuses on each party's outward manifestation of intent. *Centennial Mortg., Inc. v. Blumenfeld*, 745 N.E.2d 268, 277 (Ind. Ct. App. 2001). Thus, a party's assent to the terms of a contract may be expressed by acts which manifest acceptance. *DiMizio v. Romo*, 756 N.E.2d 1018, 1022 (Ind. Ct. App. 2001), *trans. denied*. As such, a court does not examine the hidden intentions in the secretive heart of a person; rather it examines the final expression found in

conduct, which requires an examination of all the circumstances. *See Ochoa v. Ford*, 641 N.E.2d 1042, 1045 (Ind. Ct. App. 1994).

[13] Here, the record reflects that email communications between the parties identify the proposed MSA sent by Musili, on behalf of UHS, to Ganiou and Chindia. These communications further established the terms of the MSA to be negotiated, as Chindia objected to the draft because there were a "couple of items" missing from the MSA. (Appellants' App. Vol II, p. 135). In response Musili requested that Chindia highlight the terms which required further negotiations. Chindia sent a highlighted copy of the MSA in response—the venue clause was not identified as an objectionable term.

[14] In an email, dated June 25, 2019, the day after the meeting between the parties occurred to discuss the MSA, Gbadamosi noted that he "made [a] mistake [regarding compensation] yesterday trying to beat time," and asked that this mistake be corrected. (Appellants' App. Vol. II, p. 63). Musili responded, noting that "I think its [sic] very important that we don't deviate from what the four of us sat down for over two hours and agreed on" and insisted that compensation would occur "[p]er our agreement." (Appellants' App. Vol. II, p. 62). While we agree with Appellants that this does not amount to evidence that the MSA was actually executed, it is sufficient evidence to establish that an agreement existed based on the negotiations conducted on the terms of the proposed MSA. Thereafter, the parties worked together in a commercial setting for more than a year and a half after the June 2019 meeting. Accordingly, the parties were clearly operating under a mutual agreement or understanding

regarding their business relationship. *See Gerdon Auto Sales, Inc. v. John Jones Chrysler Dodge Jeep Ram*, 98 N.E.3d 73, 80 (Ind. Ct. App. 2018) (Under the objective theory of contracts, the intent relevant in contract matters is not a party's subjective intent but the outward manifestation of it), *trans. denied*.

[15] Moreover, at the hearing on Appellants' motion to transfer venue, Appellants' counsel admitted that the parties agreed to the terms in the draft MSA, except for the highlighted items. Specifically, when questioned by the trial court if there was "an agreement as to what the terms of employment would be," counsel responded that the terms were in the draft MSA. (Appellants' App. Vol. II, p. 203). Asked whether Appellants agreed to the terms in the draft MSA, counsel responded that "[t]hey agreed to some of them. Yes." (Appellants' App. Vol. II, pp. 203-04). After the trial court inquired further, counsel clarified that the items in the draft MSA that were not agreed on were the highlighted terms, of which the venue clause was not a part. We disagree with Appellants' contention that this admission made by their attorney during the hearing on the motion to transfer venue does not amount to evidence and therefore cannot be taken into account. Judicial admissions are voluntary and knowing concessions of fact by a party or a party's attorney occurring at any point in a judicial proceeding. *Franciscan ACO, Inc. v. Newman*, 154 N.E.3d 841, 847 (Ind. Ct. App. 2020). This includes admissions made in stipulations, pleadings, admissions made in open court, and admissions made pursuant to requests to admit. *Id*. Judicial admissions are conclusive and binding on the

trier of fact and "[s]imply put, a judicial admission is a substitute for evidence, in that it does away with the need for evidence." *Id*. at 569 (quotation omitted).

[16] In an attempt to avoid enforcement of the venue clause, Appellants assert that, even assuming a valid oral agreement was reached between the parties, the clause is unenforceable because UHS breached the agreement first. However, Appellants' claim reaches the underlying substantive issues of the cause of action, and such a determination is premature in light of the limited procedural posture of the case.

[17] For a completed oral contract to exist, the parties must agree to all terms of the contract, regardless of whether they anticipated a written contract. *Foster v. United Home Improvement Co., Inc.*, 428 N.E.2d 1351, 1356 (Ind. Ct. App. 1981). Here, the parties agreed to certain terms and further negotiated the disputed terms of the draft MSA—of which the venue clause was not one—by email and in a meeting. They thereafter conducted business manifesting the terms of the agreement for approximately one and a half years. Counsel admitted that an agreement existed that governed the employment relationship. Accordingly, based on the circumstances before us and for purposes of the limited issue of venue, we conclude that the parties agreed to the venue clause of the proposed MSA and venue properly lies with the trial court.[2]

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[2] Referencing Indiana Trial Rule 9.2(B), UHS contends that the execution of the MSA should be presumed as a matter of law. Indiana Trial Rule 9.2(B) provides that when a pleading, such as UHS' Complaint, "is founded on a written instrument, and the original or a copy thereof is included in or filed with the pleading," as is the case here, execution of the instrument "shall be deemed to be established and the instrument, if

CONCLUSION

[18] Based on the foregoing, we conclude that the trial court did not abuse its discretion by denying Appellants' motion to transfer venue.

[19] Affirmed.

[20] Altice, C. J. and Pyle, J. concur

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otherwise deemed admissible, shall be deemed admitted into evidence in the action without proving its execution unless execution be denied under oath in the responsive pleading or by an affidavit filed therewith[.]" However, the record supports that both Chindia and Gbadamosi filed affidavits affirming that the MSA was never executed. Therefore, the presumption of T.R. 9.2(B) does not apply.