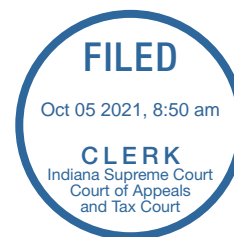


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE
COURT OF APPEALS OF INDIANA

Taggart Insurance Center, Inc.,
Appellant-Defendant,

v.

Aegean LLC d/b/a Public
Agency Training Counsel,
Appellee-Plaintiff

and,

The Ohio Security Insurance
Company,
Appellee-Defendant

October 5, 2021

Court of Appeals Case No.
21A-PL-1378

Appeal from the Marion Superior
Court

The Honorable Heather A. Welch,
Judge

Trial Court Cause No.
49D01-2102-PL-003913

May, Judge.

- [1] Taggart Insurance Center, Inc. (“Taggart”) appeals following the denial of its motion to dismiss or transfer venue to Clark County. Taggart argues its motion should have been granted because Marion County is not a preferred venue. We affirm.

Facts and Procedural History

- [2] Aegean LLC d/b/a Public Agency Training Council (“Aegean”) is an Indiana limited liability company that conducts training seminars for police and fire departments. Aegean’s principal office is in Plainfield, Indiana, and the company has an administrative office in Indianapolis. The seminars primarily

occur at police and fire stations located throughout the country, but some of the seminars take place at Aegean’s Indianapolis location. Beginning in 2017, Aegean used Taggart as its insurance agent, and Aegean purchased a commercial insurance policy underwritten by The Ohio Security Insurance Company (“Ohio Security”). Taggart is a for-profit corporation with its principal office in Jeffersonville, Indiana, and Ohio Security is a New Hampshire insurance company that does business in Indiana.

[3] In late 2019 and early 2020, the COVID-19 coronavirus spread across the world, and most public gatherings in the United States were cancelled, delayed, or moved to an online-only format to contain the spread of the pandemic. Thus, Aegean could not put on many of its seminars. Aegean made a claim under its commercial insurance policy for its business losses, but Ohio Security denied the claim. The denial letter identified Aegean’s commercial insurance policy and noted that it “applies to 5235 Decatur Blvd, Indianapolis, IN[.]” (App. Vol. II at 152.) It also explained Ohio Security’s reason for denying the claim:

The policy provides Business Income coverage when there is a suspension of your operations at the described premises and results from a covered cause of loss. The cancelling of the training seminars by the police and fire departments is not related to any direct physical damage to your business personal property or building. The Civil Authority Additional Coverage is only applicable when access to the described premises is prohibited when there is direct physical damage to other property, not on the described premises, from a covered cause of loss.

(*Id.* at 156.)

[4] On February 4, 2021, Aegean filed suit against Taggart and Ohio Security in Marion Superior Court. Aegean also filed a notice identifying the matter as a commercial court docket case, and the case was assigned to the commercial court docket. Counsel for Taggart appeared on March 3, 2021, and the trial court granted Taggart an extension of time to file a responsive pleading. On April 1, 2021, Aegean filed its first amended complaint. The amended complaint sought: (1) a declaratory judgment that the losses Aegean sustained because of the pandemic were covered by the commercial insurance policy Ohio Security issued to Aegean, and (2) compensation from Ohio Security for the damages Aegean incurred as a result of the insurer's refusal to pay. The amended complaint also alleged that Taggart negligently failed to advise Aegean about the availability of insurance policies that would have covered business losses stemming from COVID-19 or to procure such insurance on Aegean's behalf.

[5] On April 15, 2021, Taggart filed a motion to dismiss pursuant to Trial Rule 12(B)(3) or to transfer venue to Clark County. The motion stated:

6. Marion County is not a preferred venue pursuant to Ind. Trial Rule 75. No party resides in Marion County, no party holds its Principal Office in Marion County, nor does this suit relate to any injurious accident in Marion County.

* * * * *

8. Preferred venue lies in Clark County, Indiana, pursuant to Ind. Trial Rule 75(a)(4) as Clark County, Indiana is “[t]he county where either the principal office of a defendant organization is located or the office or agency of a defendant organization to which the claim relates or out of which the claim arose is located.” Ind. R. Trial P. 75(A)(4).

9. This case must be transferred to Clark County as preferred venue. Marion County is not a preferred venue, and Clark County meets the preferred venue requirements under Ind. Trial Rule 75.

(*Id.* at 10-11.)

[6] Ohio Security objected to Taggart’s motion on the basis that Marion County qualified as a preferred venue under Trial Rule 75(A)(2) because Ohio Security’s commercial insurance policy insured Aegean’s Indianapolis location and Aegean sought coverage under the policy for that location. Aegean also opposed Taggart’s motion for change of venue. Aegean asserted that venue was proper pursuant to Trial Rule 75(A)(2) and that Taggart irrevocably consented to the commercial court docket by failing to file a notice of refusal to consent to the commercial court docket within thirty days of appearing in the case as required by Indiana Commercial Court Rule 4. Without conducting a hearing on Taggart’s motion, the trial court issued an order denying it on June 21, 2021. The trial court explained:

While Taggart contends that this action has no nexus with the Indianapolis Location at all, the Court disagrees. . . the insurance policy at issue was issued to Aegean which is located in Indianapolis, IN, and Aegean is seeking recovery under this

policy due to cancelled seminars at the Indianapolis Location as well as at police and fire stations around the country. The Court finds that, in accordance with Indiana Trial Rule 75(A)(2), Marion County is the county where the land is located and the Complaint includes a claim relating to the land, and therefore is a preferred venue.

(*Id.* at 183-84.) The trial court also found that Taggart consented to placement of the case on the commercial court docket because it did not timely file a notice of refusal to consent to the commercial court docket. Taggart then filed the instant interlocutory appeal as a matter of right pursuant to Indiana Appellate Rule 14(A)(8).

Discussion and Decision

[7] We review a trial court’s denial of a motion for change of venue for an abuse of discretion. *Myers v. State*, 887 N.E.2d 170, 181 (Ind. Ct. App. 2008), *reh’g denied, trans. denied*. “An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the trial court, or when the trial court has misinterpreted the law.” *Muneer v. Muneer*, 951 N.E.2d 241, 243 (Ind. Ct. App. 2011). However, we apply a de novo standard of review when the case presents a pure question of law. *Id.*

[8] Indiana Trial Rule 75(A) provides that “[a]ny case may be venued, commenced and decided in any court in any county, except” that if the case is filed in a county that is not a preferred venue, a party may file to transfer the case to a

preferred venue. Trial Rule 75 lists ten ways a county may qualify as a preferred venue, and it is possible that more than one county will qualify as a preferred venue. *Painters Dist. Council 91. v. Calvert Enter. Electronic Serv., Inc.*, 906 N.E.2d 254, 257 (Ind. Ct. App. 2009). However, “[i]f the county where the Complaint was filed is a preferred venue, transfer to another county based on venue is improper.” *Freeman v. Timberland Home Ctr. Inc.*, 148 N.E.3d 321, 326 (Ind. Ct. App. 2020).

[9] Trial Rule 75(A)(2) provides that one way a county qualifies as a preferred venue is if it is

the county where the land or some part thereof is located or the chattels or some part thereof are regularly located or kept, if the complaint includes a claim for injuries thereto or relating to such land or such chattels, including without limitation claims for recovery of possession or for injuries, to establish use or control, to quiet title or determine any interest, to avoid or set aside conveyances, to foreclose liens, to partition and to assert any matters for which in rem relief is or would be proper[.]

Taggart contends the trial court erroneously found Marion County was a preferred venue pursuant to Trial Rule 75(A)(2) because “Aegean’s claims against both Ohio Security Insurance Company and Taggart do not include claims of injuries to or relate to any land, including land in Marion County.” (Appellant’s Br. at 9.)

[10] However, a claim may be related to land for purposes of Trial Rule 75(A)(2) without necessarily involving an injury to the land. *Diesel Const. Co., Inc. v.*

Cotton, 634 N.E.2d 1351, 1353 (Ind. Ct. App. 1994). For instance, in *Storey Oil Company, Inc., v. American States Insurance Company*, a coverage dispute arose regarding whether an insurer, American States, had a duty to defend and indemnify its insured, Storey, when two individuals bought a parcel of Indianapolis real estate from Storey and sued Storey after discovering that the parcel was contaminated with petroleum. 622 N.E.2d 232, 233 (Ind. Ct. App. 1993). American States initiated a declaratory judgment action against Storey in Marion County, but Storey argued that Marion County was not a preferred venue in the coverage dispute action and moved to transfer the case to Jackson County, where Storey had its principle office. *Id.* We observed that even though the issue involved interpreting the provisions of an insurance policy to determine if coverage existed, the land in Indianapolis played a central role in the dispute because it was the focal point of the lawsuit the buyers filed against Storey and “without the alleged injury to the land, there would be no cause of action between Storey and American States.” *Id.* at 235. Therefore, Marion County was a preferred venue. *Id.*; see also, *Diesel Const. Co., Inc.*, 634 N.E.2d at 1354 (agreeing “with *Storey*’s broad interpretation of T.R. 75(A)(2) that where a complaint alleges a claim related to land, preferred venue lies in the county where the land is located”).

[11] Likewise, in *R & D Transport, Inc. v. A.H.*, an automobile accident occurred in Dearborn County, but one of the drivers filed suit in Porter County, her home county. 859 N.E.2d 332, 333 (Ind. 2006). The driver argued that venue in Porter County was proper pursuant to Trial Rule 75(A)(2) because she regularly

kept some of the property damaged in the accident in Porter County. *Id.* at 334. However, our Indiana Supreme Court rejected the driver’s argument. *Id.* The Court explained that “the focus of T.R. 75(A)(2) is the location of the property or activity that gives rise to a claim.” *Id.* In *R & D Transport, Inc.*, that location was not Porter County, and the Court directed the trial court to transfer the case to a preferred venue. *Id.* at 337.

[12] Here, Aegean’s Indianapolis location is the listed address on the relevant insurance policy, and the policy stated that in the event of physical damage to the Indianapolis location the insurer would compensate the insured for business losses. (*See* App. Vol. II at 89 (“We will pay for the actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration’. The ‘suspension’ must be caused by direct physical loss of or damage to property at premises which are described in the Declarations[.]”)). There is a debate among the parties over whether the COVID-19 pandemic triggered the commercial insurance policy’s business loss provision and whether the business loss provision limited recovery to only the losses sustained at the Indianapolis location,¹ but none of the parties dispute

¹ Taggart makes much of Aegean’s allegation in the first amended complaint that when Ohio Security denied Aegean’s claim, “Ohio Security claimed, among other reasons, that the Policy does not afford coverage for business income losses due to the cancelling of training seminars held at locations other than the Indianapolis location.” (App. Vol. II at 29.) Taggart contends that this statement shows that “the hegemon of Aegean’s claims do not even relate to the Indianapolis Location at all.” (Appellant’s Br. at 12.) However, as Aegean notes in its brief, “Ohio Security denied Aegean’s entire business loss claim, including the Indiana[polis] Location. Nothing in Aegean’s complaint removes the business losses suffered at the Indianapolis Location from the claims against Taggart.” (Aegean’s Appellee’s Br. at 16) (internal citation omitted).

that some of the cancelled seminars were scheduled to take place at the Indianapolis location.² Thus, while Aegean seeks to recover for damages sustained above and beyond its forced cancellation of seminars at the Indianapolis location, there is a sufficient nexus between that location and Aegean’s claims to make Marion County a preferred venue.³ *See Trs. of Purdue Univ. v. Hagerman Const. Corp.*, 736 N.E.2d 819, 821 (Ind. Ct. App. 2000) (holding lawsuit about whether a contract between general contractor and university included a duty to indemnify was properly venued in county where the building that was the subject of the contract was constructed), *trans. denied*.

Conclusion

[13] Aegean’s allegations against Ohio Security and Taggart are sufficiently related to Aegean’s Indianapolis location that Marion County qualifies as a preferred venue under Indiana Trial Rule 75(A)(2). The relevant insurance policy listed Aegean’s Indianapolis location as the covered location and some of the seminars that did not occur because of the COVID-19 pandemic would have taken place at the Indianapolis location. Therefore, we affirm the trial court.

² According to the first amended complaint, Aegean “hosts approximately 750-800 seminars per year all over the country, the vast, overwhelming majority of which are held at police and fire stations,” but the Indianapolis location hosts some small percentage (“less than 10%”). (App. Vol. II at 27 & 31.)

³ Because we hold that Marion County was a preferred venue, we do not reach the issue of whether Taggart consented to venue in Marion County by failing to file a notice of refusal to consent to the commercial court docket. *See Majors v. State*, 735 N.E.2d 334, 340 n.3 (Ind. Ct. App. 2000) (choosing not to reach secondary issue when primary issue was dispositive).

[14] **Affirmed.**

Kirsch, Sr. J., and Vaidik, J., concur.