

In re Texas Prison Litig.

United States District Court for the Western District of Missouri, Central Division
February 16, 1999, Decided ; February 17, 1999, Filed

Master File No. 98-7110-TX-C-5, Case No. 98-4090-CV-C-5, Case No. 98-4091-CV-C-5, Case No. 98-4094-CV-C-5, Case No. 98-4101-CV-C-5

Reporter: 1999 U.S. Dist. LEXIS 11120
In re Texas Prison Litigation

Prior History: [*1] Adopting Magistrate's Document of February 9, 1999, Reported at: [1999 U.S. Dist. LEXIS 11123](#).

Disposition: Defendant Brazoria County's alternative motion to sever denied. Defendant Brazoria County's motion to dismiss or transfer for improper venue denied.

Counsel: For TEXAS PRISONER LITIGATION: Randall D. Thompson, Ensz & Jester, Kansas City, MO.

For TEXAS PRISONER LITIGATION: Henry W. Prejean, Amanda K. Miller, Angleton, TX.

Judges: NANETTE K. LAUGHREY, United States District Judge.

Opinion by: NANETTE K. LAUGHREY

Opinion

ORDER

Plaintiffs are Missouri inmates who were transferred from State of Missouri penal institutions to a jail maintained in Brazoria County, Texas. They were transferred and confined in the Brazoria County Jail pursuant to a contract entered into between the State of Missouri and Brazoria County, Texas. Plaintiffs allege that they are third-party beneficiaries to that contract and that Brazoria County, Texas, has breached the contract. In addition, plaintiffs assert claims under *42 U.S.C. § 1983*, claiming that Brazoria County, Texas, subjected them to cruel and unusual punishment and denied them the opportunity to exercise fundamental constitutional rights.

On December 16, 1998, the United States Magistrate Judge recommended that defendants' motions [*2] to dismiss or transfer for improper venue, and alternate motion for severance, be denied.

The parties were advised they could file written exceptions to the recommendations, pursuant to *28 U.S.C. § 636(b)(1)(C)*. A de novo review of the record, including the exceptions filed by defendant Brazoria County, Texas, convinces the court that the recommendations of the Magistrate Judge are correct and should be adopted.

The court determines that Brazoria County's motion to dismiss or transfer under *28 U.S.C. § 1406(a)* should be denied. Even if the forum selection clause in this case were inapplicable, venue is proper under the general venue statute.

Section 1391(b)(2)

The parties agree that the applicable provision of the general venue statute is *28 U.S.C. § 1391(b)(2)*. *Section 1391(b)(2)* provides that a civil action "wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought . . . in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, . . ."

Venue is closely related to the concepts inherent [*3] in personal jurisdiction. In the instant case, the court has previously noted that the type of personal jurisdiction at issue in this case is specific jurisdiction. The court has further determined that there is specific jurisdiction over Brazoria County because the cause of action arises out of or relates to the county's contacts with the State of Missouri.

The venue analysis is related. To determine whether there is venue, the court must decide whether a substantial part of the events or omissions giving rise to the claim occurred in Missouri. Courts have articulated the test in *section 1391(b)(2)* in this way: "We ask whether the district court the plaintiff chose had a substantial connection to the claim whether or not other forums had greater contacts. Venue is proper if the events in the district were not insubstantial and the forum is a convenient one, balancing the equities and fairness to each party." *Setco Enterprises v. Robbins*, 19 F.3d 1278, 1281 (8th Cir. 1994). By requiring events and omissions in the judicial district to be substantial, *section 1391(b)(2)* preserves the element of fairness so that a defendant is not haled into a remote district having [*4] no real relationship to the dispute. *Cottman Transmission Systems, Inc. v. Martino*, 36 F.3d 291, 295 (3d Cir. 1994). See also *Woodke v. Dahm*, 70 F.3d 983, 985 (8th Cir. 1995). Events or omissions that might only have some tangential connection with the dispute in litigation are not enough. *Cottman*, 36 F.3d at 295. Under *section 1391(b)(2)*, "we no longer ask which district

among two or more political forums is the 'best' venue Rather, we ask whether the district the plaintiff chose had a substantial connection to the claim whether or not other forums had greater contacts." Setco Enterprises v. Robbins, 19 F.3d at 1281.

In analyzing whether substantial events or omissions occurred in Missouri, the court considers not merely the number of events or omissions, but how significant they were to the genesis of the dispute. See, e.g., Magic Toyota v. Southeast Toyota Distributors, 784 F. Supp. 306, 319 (D.S.C. 1992) (court looked to see whether activities in a particular forum were significant for venue purposes).

In Torchmark Corp. v. Rice, 945 F. Supp. 172, 179 (E.D. Ark. 1996), [*5] the court considered "whether the district the plaintiff chose had a substantial connection to the claim." In the instant case, venue is proper in the State of Missouri because the State of Missouri has a substantial connection to the claims in this case. It cannot seriously be argued that Brazoria County is being haled into a remote district having no relationship to the dispute. Defendant entered into a contract, in Missouri, to house Missouri prisoners in Texas. The contract is sufficiently related to the claims asserted by the plaintiffs to subject defendant to venue in Missouri. Plaintiffs claim that they were denied adequate medical care, denied legal access, denied adequate housing, care and nutrition, denied adequate protections for their safety and welfare and subjected to excessive use of force. The contract relates to various aspects of plaintiffs' care and confinement. Specifically, the contract provides for their housing, care, confinement, medical needs, discipline, welfare and safety, and legal and religious needs. Accordingly, the contract is related to the claims asserted by the plaintiffs. Plaintiffs specifically assert that defendant's actions constituted a breach [*6] of the contract entered in Missouri. There is a sufficient nexus between the contract executed in Missouri, its specific provisions relating to inmates' care and confinement, and plaintiffs' claims arising from that care and confinement.

Missouri has a substantial connection to the claims because the contract itself provided not for casual and fortuitous contacts but for an ongoing, substantial relationship between Brazoria County and the State of Missouri. Based on the contract, Missouri inmates were involuntarily transferred from Missouri to Texas and inmates were removed from the care, confinement and supervision of the State of Missouri and assigned to the care, confinement and supervision of a municipality in Texas. Brazoria County undertook, by way of the contract, to confine and supervise Missouri inmates assigned to its care and custody. Brazoria County agreed to undertake an important governmental function on behalf of the State of

Missouri by agreeing in the contract to provide housing, care, meals, medical services, rehabilitative services, and religious and legal access for Missouri inmates. The contract contemplated an ongoing, substantial relationship between the State [*7] of Missouri and Brazoria County. For example, the county was to make regular reports to Missouri; it was required to request written authorizations for nonemergency medical, dental and psychiatric care for Missouri inmates not covered under enumerated routine services; it was required to provide Missouri officials with detailed accurate reports of disciplinary actions; and it agreed to allow Missouri officials to inspect, at any reasonable time, county sites housing inmates. The county also received continuing payments from Missouri for the housing and supervision of Missouri inmates.

Brazoria County appears to argue that the court should disregard any connection between the contractual agreement in Missouri and plaintiffs' claims because there is an explicit clause in the contract expressing the parties' intent not to create any enforcement rights in favor of Missouri inmates. The parties cannot restrict, by means of a contractual provision, what interpretation the court can give to the statutory language of section 1391(b)(2). Specifically, the parties cannot restrict, by contractual language, the interpretation to be given to the "judicial district in which a substantial part of [*8] the events or omissions giving rise to the claim occurred."

In its exceptions, Brazoria County argues that the contract itself did not cause the mistreatment and abuse that allegedly occurred at the Brazoria County correctional facility and, therefore, is not a relevant event. Brazoria County argues: "Obviously, it was possible that the Brazoria County--Missouri contract could have been performed without alleged incidents of mistreatment or abusive conditions." (Doc. 320, p.10.) Defendant construes "events" and "omissions" too narrowly. In Setco Enterprises v. Robbins, 19 F.3d at 1281, the Eighth Circuit considered a case in which Setco Enterprises filed an action for fraudulent inducement and fraudulent transfer of property. Defendants, the Robbins, argued that venue was improper because none of the parties resided in Missouri and because the fraudulent acts occurred in Texas and Oklahoma. The Eighth Circuit held that issuance of a bankruptcy order in the Western District was an event giving rise to Setco's claim. The court held: "In light of the importance of the order to Setco's suit, we believe it was a substantial part of the series of events giving rise to the [*9] fraud claim." *Id.* Obviously, in Setco, the bankruptcy court order did not itself cause the fraudulent activities but the Setco court determined that it was an important factor to consider for venue. If Brazoria County's interpretation of section 1391(b)(2) were correct, then this court would be forced to conclude that the Setco court improperly

based venue on the issuance of the bankruptcy court order because the bankruptcy court's order could have been issued without being violated. In *Setco*, the Eighth Circuit also looked at such factors as where records were located and the bankruptcy court's jurisdiction over defendants' assets. None of these factors in themselves involve the fraudulent acts but they have a significant connection to the dispute. Likewise, in the instant case, the contract has a significant connection to the dispute.

In *Andrean v. Secretary of U.S. Army*, 840 F. Supp. 1414, 1422 (D. Kan. 1993), the district court, when interpreting the phrase "substantial part of the events or omissions giving rise to the claims," stated: "The court may consider all the events giving rise to [the] claim, not just the actions of the officials [*10] named in the suit, in order to determine whether plaintiff has shown that a substantial part of the events giving rise to [the] claim occurred in [the forum state]. . . . The court must decide whether the forum activities played a substantial role in the circumstances leading up to the plaintiffs' claim." *Andrean*, 840 F. Supp. at 1422. As is clear from the discussion above, activities in the State of Missouri played a substantial role in the circumstances leading up to the plaintiffs' claims.

Here, the execution of the contract in Missouri; its concomitant establishment of an ongoing significant relationship involving the Missouri Department of Corrections, Missouri inmates and Brazoria County; and the nexus between the provisions of the contract - relating to inmates' housing, medical care, legal rights, nutrition, safety and welfare, and discipline - and the claims asserted in plaintiffs' complaint, are all factors persuading the court that Missouri is a proper forum. The court need not consider whether the Southern District of Texas might also be a district where a substantial part of the events giving rise to the claims occurred. Rather, the court considers [*11] whether the district the plaintiffs have chosen has a substantial connection to their claims. See *Setco Enterprises Corp. v. Robbins*, 19 F.3d at 1281. The Western District of Missouri clearly does.

In its exceptions, Brazoria County attempts to minimize the relationship between the contract and plaintiffs' claims against Texas defendants. First, the court notes that plaintiffs specifically allege as one claim a breach-of-contract claim. If there is a breach-of-contract claim, then obviously the contract itself bears an important relationship to plaintiffs' claim. Where the defendants solicited the contract from the State of Missouri, entered into the contract in the State of Missouri and where the contract clearly contemplated an ongoing, substantial relationship involving the State of Missouri, Missouri inmates and Brazoria County, the execution of the contract in Missouri is an important event for purposes of a venue analysis under section 1391(b)(2).

Brazoria County also argues that the contractual claims and noncontractual claims must be analyzed differently for venue purposes. However, a review of the complaint shows that the same core factual allegations that [*12] are the basis of the contractual claims are also the basis of the section 1983 claims. Plaintiffs allege that by failing to provide constitutionally adequate care, defendants breached provisions of the contract and violated section 1983 claims. Where the inmates became dependent on Brazoria County for constitutional care and confinement as a result of the contract and where the same core factual allegations form the basis of both the contractual claims and the section 1983 claims, it is reasonable to analyze the venue issue in the same way both for the contractual and constitutional tort claims. Further, it does not make sense to have the contract disputes resolved in the State of Missouri and the related matters resolved in the State of Texas.

Accordingly, the court determines that venue is proper under section 1391(b)(2).

In connection with the forum selection clause, Brazoria County contends that the Magistrate Judge misconstrued the district court's holding in *Bailey v. Gregg County, Texas*, No. 98CV7 (E.D. Mo. Sept. 28, 1998). Defendant's objection is misplaced. The Magistrate Judge correctly construed the determination with respect to venue in that case. The district court [*13] in that case held: "The Gregg County defendants freely entered the contract with MDC with full knowledge that they would be bound by the forum selection clause. There has not been any assertion of fraud or overreaching and the court has found that Plaintiffs' claims are within the intended scope of the forum selection clause. Therefore, based on the forum selection clause, venue is appropriate in the present forum." *Bailey v. Gregg County, Texas*, No. 98CV7, Memorandum and Order, p.9 (E.D. Mo. Sept. 28, 1998). The court notes that a motion for reconsideration is pending in that case.

Section 1404(a)

The court agrees with the Magistrate Judge that this case should not be transferred to the United States District Court for the Southern District of Texas based on the doctrine of forum non convenience under 28 U.S.C. § 1404(a). Section 1404(a) provides that a court should consider three factors when deciding whether to transfer: (1) the convenience of the parties; (2) the convenience of the witnesses, and (3) the interests of justice. *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 877-78 (3d Cir. 1995). When considering the convenience of [*14] the parties, the court determines there would be great administrative difficulties and law enforcement burdens involved in moving a large number of plaintiffs, most of whom are in

Missouri prisons, from Missouri to Texas. These burdens greatly outweigh the inconvenience involved in requiring Brazoria County to defend this case in Missouri. Further, the forum selection clause in the contract indicates that Brazoria County did not regard Missouri as an inconvenient forum and had a reasonable expectation that, based on the contract, disputes would be resolved in Missouri.

The court acknowledges that it will be burdensome for witnesses who reside in Texas to travel to Missouri for this litigation. However, the transfer of numerous inmate witnesses, who must remain under guard while being transported and housed during a trial, creates an even heavier burden and this factor does not favor transfer.

The interests of justice must also be considered when deciding whether to transfer venue. Were this case to be tried in Texas, some of the plaintiffs might be returned to Texas during the trial and might be housed in the very jails where they allege they were improperly treated.

The forum has [*15] a strong interest in pursuing the suit here because of the presence of the prisoners here and the interest of the State of Missouri in a proper allocation of blame for any wrongdoing that may have occurred to prisoners for whom the State is responsible. The prisoners

have a strong interest in pursuing litigation here, and this is the most effective place for the resolution of the dispute. Accordingly, the court adopts the recommendations of the Magistrate Judge to deny a transfer under 28 U.S.C. § 1404(a).

Severance

The court has reviewed plaintiff's objections relating to their alternative motion for severance and determines that the Magistrate Judge correctly recommended denial of the motion.

IT IS, THEREFORE, ORDERED that defendant Brazoria County's alternative motion to sever is denied. It is further

ORDERED that defendant Brazoria County's motion to dismiss or transfer for improper venue is denied.

NANETTE K. LAUGHREY

United States District Judge

Dated: 2-16-99

Kansas City, Missouri