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Venue: Florida Rejects Single Publication Rule

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VENUE: FLORIDA REJECTS SINGLE PUBLICATION RULE

Firstamerica Development Corp. v. News-Journal Corp., 196 So. 2d 97 (Fla. 1967)

Petitioner, a Florida land corporation located in Broward County, brought a five million dollar libel action in the Circuit Court for Dade County against respondent, a Volusia County newspaper publisher. Petitioner alleged the the cause of action accrued in Dade County by the circulation there of a series of respondent's articles charging the corporation with dishonest advertising practices in the sale of land in Volusia County. Respondent contended that Florida Statutes, section 46.04,[1] permitted venue to be laid only in Volusia County where the libel originated. The circuit judge held the action could be brought in Dade County, but the Third District Court of Appeal reversed.[2] The Florida Supreme Court accepted certiorari of the case as involving a question of great public interest and HELD, venue of the cause could be laid in Dade County at plaintiff's option since a cause of action accrues in every county into which the newspaper circulated the alleged libel. Judgment reversed.

A cause of action for libel consists of unprivileged publication of defamatory material to a third party.[3] Circulation of newspaper libel logically gives rise to a cause of action for every reading, since publication occurs each time the defamation is read. This concept, known as the "multiple publication rule," was developed at common law,[4] and has been adopted by several United States jurisdictions with respect to venue of libel actions.[5] The effect of the "multiple publication rule" is to give the person libeled a cause of action in every forum in which the newspaper is read.

The "single publication rule" is a fiction developed by courts to require that all causes of action for multiple publication of the same libel be combined in a single action.[6] This concept is codified in the Uniform Single Publication Act,[7] which has been enacted by legis-

1. FLA. STAT. §46.04 (1965).

2. News-Journal v. Firstamerica Dev. Corp., 181 So. 2d 565 (3d D.C.A. Fla. 1966).

3. PROSSER, TORTS §106 (3d ed. 1964).

4. Duke of Brunswick v. Harmer, 14 Q.B. 185, 117 Eng. Rep. 75 (1849).

5. Buck v. James McClatchey Publishing Co., 105 Cal. App. 248, 287 Pac. 364 (3d D.C.A. 1930); Vicknair v. Daily States Publishing Co., 144 La. 809, 81 So. 324 (1919); Oklahoma Press Publishing Co. v. District Court, 129 Okla. 210, 264 Pac. 154 (1928); Hanks v. Beckley Newspapers Corp., 149 W. Va. 552, 142 S.E.2d 727 (W. Va. 1965).

6. Note, *The Single Publication Rule in Libel: A Fiction Misapplied*, 62 HARV. L. REV. 1041, 1042 (1949).

7. 9C UNIFORM LAWS ANN. 171.

latures in seven states.[8] The single publication idea has also been applied in situations involving statutes of limitations, to set the time at which a cause of action arises.[9] In recent years, some courts have used this rule to determine questions of intrastate venue that turn on identification of the situs of the tort.[10] Under the multiple publication rule of venue, the plaintiff has the marked advantage of choosing a forum in which political, social, economic, or religious mores or prejudices are propitious, even though such forum may have no material relation to the litigation. To prevent plaintiffs from enjoying such unconscionable choice of venue, the jurisdictions adopting the single publication rule have held that the act of publication occurs at the place where the newspaper is first printed and generally circulated, and that additional circulation in other counties increases the damages, but does not alter the place of the forum.[11]

The status of the "multiple publication rule" in Florida was at best vague prior to the holding in the principal case. One decision held that a cause of action for trademark infringement accrued in every county in which the offending product was distributed, and that venue could be laid in any of these counties.[12] This interpretation of the venue statute is analogous to the multiple publication concept. A contrary result was reached in *Eberhardt v. Barker*,[13] a criminal libel prosecution, in which the defendant newspaper publisher was held amenable only in the county where the libel was composed and first published. Double jeopardy was the ostensible ground which precluded prosecution in any other county in which the libel was circulated, but it is noteworthy that this protection would prevent multiple prosecutions regardless of which county tried defendant first. The important teaching of this case is that newspapers are considered most naturally accountable for libel in the county of first

8. Arizona, ARIZ. REV. STAT. ANN. §12-651 (1956); California, CAL. CIV. CODE §§3425.1-.5 (Deering 1960); Idaho, IDAHO CODE ANN. §§6-702 to -705 (Supp. 1965); Illinois, ILL. ANN. STAT. ch. 126, §§11-15 (Smith-Hurd 1965); New Mexico, N.M. STAT. ANN. §§40-17-30 to -35 (1953); North Dakota, N.D. CENT. CODE §14-02-10 (1960); Pennsylvania, PA. STAT. ANN. tit. 12, §§2090.1-.5 (Supp. 1966).

9. *E.g.*, Ogden v. Association of United States Army, 177 F. Supp. 498 (D.D.C. 1959); Wolfson v. Syracuse Newspapers, Inc., 254 App. Div. 211, 4 N.Y.S.2d 640 (1938), *aff'd mem.*, 279 N.Y. 716, 18 N.E.2d 676 (1939).

10. *E.g.*, Age-Herald Publishing Co. v. Huddleston, 207 Ala. 40, 92 So. 193 (1921); Rives v. Atlanta Newspapers, Inc., 220 Ga. 485, 139 S.E.2d 395 (1964); O'Malley v. Statesman Printing Co., 60 Idaho, 326, 91 P.2d 357 (1939); Forman v. Mississippi Publishers Corp., 195 Miss. 90, 14 So. 2d 344 (1943); Litzinger v. Pulitzer Publishing Corp., 356 S.W.2d 81 (Mo. 1962).

11. Age-Herald Publishing Co. v. Huddleston, 207 Ala. 40, 92 So. 193, 197 (1921).

12. Luckie v. McCall Mfg. Co., 153 So. 2d 311 (1st D.C.A. Fla. 1963).

13. 104 Fla. 535, 140 So. 633 (1932).

publication. In *Eberhardt,* the Florida Supreme Court adopted the "single publication rule" as applicable to criminal venue under section 11, Declaration of Rights, of the Florida Constitution, which provides in part that the accused shall be tried "in the county where the crime was committed. . . ." Both of the above decisions are factually distinguishable, but serve to illustrate the lack of binding precedent for the present case.

The applicable Florida venue statute provides that a domestic corporation may be sued ". . . only in *the* county . . . where *the* cause of action accrued . . . ."[14] The terms of this statute control the issue of venue, and must be construed to prevent venue from being "hauled from county to county like a sack of potatoes."[15] This statute is phrased in the singular, and apparently contemplates only one county in which venue can be properly laid when based on the accrual of the cause of action. This strict construction is inconsistent with the multiple publication idea that the same cause of action may accrue in several different counties.

There are serious constitutional questions which inhere in a multiplicity of suits against a newspaper for one intrastate libel,[16] and the court in the instant case conceded the soundness of limiting a plaintiff to one all-encompassing cause of action.[17] The court nonetheless declined to rule on this issue, limiting itself to deciding that Dade County venue was proper.[18] The necessary implication of the decision, however, is that a cause of action accrues in every jurisdiction into which the defendant circulates its newspapers. This is the only ground upon which Dade County venue can be predicated. Neither the decision nor the statute creates any limitation on the number of suits which a plaintiff may bring under such a "multiple publication rule."

The court could have avoided this potential multiplicity of actions by interpreting the venue statute to require that the cause of action can properly accrue in only one county. Under such a construction, it is reasonable to assume that the county in which the alleged libel originated would be considered the most appropriate. The court held this interpretation restrictive, and concluded that a

14. FLA. STAT. §46.04 (1965). (Emphasis added.)

15. Richard Bertram & Co. v. Barrett, 155 So. 2d 409, 412 (1st D.C.A. Fla. 1963).

16. See U.S. CONST. amend. I; FLA. CONST. Decl. of Rights §13. *Cf.* Ross v. Gore, 48 So. 2d 412, 415 (Fla. 1950), which held that the preservation of American democracy depends on keeping the press free from "unreasonable restraints."

17. 196 So. 2d 97, 99 (Fla. 1967).

18. *Id.* at 104. Plaintiff-petitioner stipulated that it would bring only one suit, so the issue of multiple suits was not squarely presented.

cause of action could accrue in any county of plaintiff's choice from those in which the libel was circulated.

It is a general principle of law that venue statutes are construed to insure that "litigation be instituted in that forum which will cause the least amount of inconvenience and expense to those parties required to answer and defend the action."[19] The particular forum chosen by petitioner in the present case bore no material relation to the cause of action. Neither party maintained a place of business in Dade County, and circulation of respondent's articles there at the time in question was admittedly "limited."[20] The substantive issue in the suit was the fitness of Volusia County land for its advertised purposes, and trial in Dade County made it highly impractical for the jury to view the land. Respondent incurred extra expense and inconvenience in defending the suit over two hundred and fifty miles from its principal place of business. It is apparent that the size of the damages sought by petitioner bears relation to its selection of Dade County, which is reputed to render the highest tort claim awards in the state.[21] In many states, and in federal courts, a party required to defend under these circumstances would have recourse to the *forum non conveniens* rule by which the trial judge has discretion to change venue.[22] The Florida venue statute makes no such provision for change of inappropriate venue,[23] and so the multiple publication doctrine leaves the Florida press at the mercy of plaintiff's caprice.

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19. Polar Ice Cream & Creamery Co. v. Andrews, 146 So. 2d 609, 612 (1st D.C.A. Fla. 1962).

20. 196 So. 2d 97, 98 (Fla. 1967) (respondent stipulated an average daily circulation in Dade County of 143 issues during the time of the questioned publication).

21. 1 BELLI, MODERN DAMAGES §74, at 371-72 (1959) states that in the early 1950's "Miami took her place beside San Francisco, New York, and Chicago as one of the largest award centers in the United States," and that "most of the large Florida awards have been obtained in the state court in Miami." The five highest tort claim awards in Florida listed by Belli were brought by Dade County juries. 6 BELLI, DAMAGES §296 (1963). The highest award for libel returned by a Florida state court jury came from Dade County. Miami Herald Publishing Co. v. Brautigam, 127 So. 2d 718 (3d D.C.A. Fla. 1961) ($100,000).

22. "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. §1404(a) (1964). "The court, upon motion, may change the place of trial of an action where: (1) the county designated for that purpose is not a proper county; or (2) there is reason to believe than an impartial trial cannot be had in the proper county; or (3) the convenience of material witnesses and the ends of justice will be promoted by the change." N.Y. CIV. PRAC. LAW §510 (McKinney 1963).

23. Atlantic Coast Line R.R. v. Ganey, 125 So. 2d 576 (3d D.C.A. Fla. 1961); Greyhound Corp. v. Rosart, 124 So. 2d 708 (3d D.C.A. Fla. 1960).

CONCLUSION

Since the "multiple publication rule" is now law in Florida,[24] it is incumbent on the legislature to amend the venue statutes to preclude "forum shopping" and multiple suits by plaintiffs. The following provisions afford alternative legislative remedies:[25]

To prevent harassment of the press or communications media by multiple suits, this provision is recommended:

> (1) No person shall have more than one cause of action in this state for damages for libel or slander or invasion of privacy or any other tort founded upon a single publication or exhibition or utterance, such as any one issue of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in such action shall include all damages for any such tort suffered by the plaintiff in all the counties of this state.
>
> (2) A judgment in any other jurisdiction on the substantive merits of any action for damages grounded upon a single publication or exhibition or utterance as described in section (1) shall bar any other action for damages in this state by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance.

The above provision would require a single cause of action, but would not determine the venue of that action. The following clarification of the venue statute is recommended to preclude unconscionable choice of venue by plaintiffs:

> (3) A cause of action originating in this state against a mass communication medium for libel or slander or invasion of privacy shall be deemed to have accrued at the time and place of the first publication or exhibition or utterance in this state, such as the county in which a book or newspaper was first printed and generally circulated or the county from which a radio or television program was broadcast.

The above section would expressly overrule the "multiple publication rule" in Florida as applicable to venue and the statute of limitations. In the event that this is deemed undesirable, the following provision is recommended to permit judicial limitation on plaintiffs'

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24. The decision in the present case was followed in Drummond v. Tribune Co., 193 So. 2d 183 (1st D.C.A. Fla. 1966).

25. These provisions are adapted from the Uniform Single Publication Act.

exploitation of the forum selection advantage of the "multiple publication rule:"[26]

> (4) The trial judge shall have discretion to transfer any civil action to any other county or district where it might have been brought:
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> (a) for convenience of parties and witnesses; or
>
> (b) to make sources of proof or a view of physical premises in litigation more accessible; or
>
> (c) on good cause shown as the ends of justice require to prevent unconscionable and inappropriate selection of venue.

The above provisions are essential to give Florida communications media the protection from inconvenient forum which the venue statute was intended to provide and to arrest the specter of multiple suits for single publications.

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26. This section is an expansion of the Federal Venue provision, 28 U.S.C. §1404(a) (1964).