

DA 19-0043

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 183

DAVID W. BETTS, individually and through his
conservator, the Western Montana Chapter for
the Prevention of Elder Abuse, and JENNIFER
BETTS and DAVID W. BETTS II, as Co-Trustees
of the David William Betts Trust,

Plaintiffs and Appellees,

v.

REED J. GUNLIKSON, individually and as former
Trustee of the David William Betts Trust and DOES 1-10,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV-18-1236
Honorable Leslie Halligan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Mark S. Williams, Tyler C. Smith, Williams Law Firm, P.C.,
Missoula, Montana

For Appellee David W. Betts:

William E. McCarthy, Worden Thane P.C., Missoula, Montana

For Appellee Jennifer Betts:

Julie R. Sirrs, Boone Karlberg P.C., Missoula, Montana

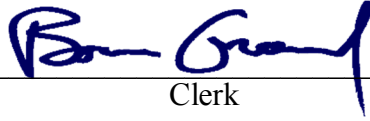
For Appellee David W. Betts II:

Michael L. Hayes, Hays & Hayes, PLLP, Hamilton, Montana

Submitted on Briefs: June 12, 2019

Decided: August 6, 2019

Filed:


Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Reed Gunlikson appeals from a Fourth Judicial District Court order denying his Motion to Transfer Venue. We affirm.

¶2 We address the following issue on appeal:

Whether the District Court erred when it held that the venue provisions of the Montana Uniform Trust Code controlled.

PROCEDURAL AND FACTUAL BACKGROUND

¶3 David W. Betts is the trustor and sole current beneficiary of the David William Betts Trust (Trust). As alleged in the complaint, in 2010, David's mental and physical condition began to deteriorate, and he sought to appoint a successor trustee. Following a meeting between David's children, his attorney, and his accountant, Reed Gunlikson, David decided to resign and appoint Gunlikson as successor trustee. David officially resigned on January 1, 2011. In 2017, two of David's children, Jennifer Betts and David W. Betts II (David II), who are remainder beneficiaries, grew concerned with Gunlikson's management of the Trust. Jennifer and David II decided to remove Gunlikson and appoint a successor trustee, as allowed under the terms of the Trust. They chose the Western Montana Chapter for the Prevention of Elder Abuse, a nonprofit entity located in Missoula, Montana, and Jennifer filed a petition in Missoula County requesting that the court enforce the nonprofit's appointment.

¶4 Gunlikson opposed his removal and challenged venue, arguing that because the Trust's principal place of administration was located in Flathead County, the matter should be litigated there. The District Court held Missoula County was the proper venue,

considering that county was where the Trust’s principal place of administration would be located once Gunlikson transferred the Trust’s assets. Following the District Court’s order, Gunlikson agreed to step down as trustee.

¶5 After reviewing Gunlikson’s actions during his time as trustee, Jennifer and David II were appointed as co-trustees for the limited purpose of pursuing a return of funds from Gunlikson on behalf of the Trust. Following their appointment, the Trust petitioned the court, within the same initial trust proceeding, for an order compelling Gunlikson to compensate the Trust for damages resulting from his alleged tortious conduct. The court denied the Trust’s request, holding that because the petition alleged several tort claims for breach of fiduciary duty against the Trust’s former trustee, the claims could only be pursued if Jennifer and David II were to commence a separate civil action against Gunlikson. The court clarified, “[b]ecause the Petition is making tort claims against the former Trustee—who now sits in the position of a third party in relationship to the Trust—this is neither an ‘internal matter’ or a petition ‘to determine the existence of the trust[,]’” pursuant to § 72-38-213(2)(e) and (l), MCA.

¶6 On September 4, 2018, the Trust filed a separate action in Missoula County District Court. The complaint set forth five independent grounds for relief including allegations that Gunlikson breached his fiduciary duty and his duty as trustee, and that he was liable for professional negligence, negligent misrepresentation, and constructive fraud. Gunlikson filed a motion for change of venue to Flathead County. The District Court denied the motion. Gunlikson appeals.

STANDARD OF REVIEW

¶7 Whether a county is the proper venue for trial is an issue of law involving the application of the venue statutes to the pleaded facts. *Farmers Union Ass’n v. Paquin*, 2009 MT 305, ¶ 5, 352 Mont. 390, 217 P.3d 74; *Rosendale v. Victory Ins. Co.*, 2018 MT 299, ¶ 6, 393 Mont. 428, 432 P.3d 114. This Court’s review of a district court’s grant or denial of a motion for change of venue is plenary, and we review the district court’s ruling for correctness. *Paquin*, ¶ 5; *Rosendale*, ¶ 6.

DISCUSSION

¶8 *Whether the District Court erred when it held that the venue provisions of the Montana Uniform Trust Code controlled.*

¶9 If an action is brought in an improper venue, a defendant may move for a change of venue to an appropriate county. Section 25-2-114, MCA. Whether a district court is a proper venue will generally be determined by the venue statutes in Title 25, chapter 2, part 1, of the MCA. *See* §§ 25-2-111 through -131, MCA; *Rosendale*, ¶ 8. However, the Legislature has also established venue provisions outside of the general venue guidelines found in Title 25. It is a well-settled rule of statutory construction that “when a general statute and a specific statute are inconsistent, the specific statute governs, so that a specific legislative directive will control over an inconsistent general provision.” *Whalen v. Mont. Right to Life Ass’n*, 2002 MT 328, ¶ 9, 313 Mont. 204, 60 P.3d 972 (citation omitted). *See also* § 1-2-102, MCA; *State v. Feight*, 2001 MT 205, ¶ 21, 306 Mont. 312, 33 P.3d 623; *Ditton v. DOJ Motor Vehicle Div.*, 2014 MT 54, ¶ 22, 374 Mont. 122, 319 P.3d 1268. Moreover, § 25-2-131, MCA, expressly provides: “The provisions of this part

do not repeal, by implication or otherwise, specific statutes not within this part, designating a proper place of trial, whether or not such a designation is called venue or proper place of trial.”

¶10 Gunlikson asserts that the applicable venue provision is § 25-2-122, MCA, which provides, in part:

(1) Except as provided in subsections (2) through (4), the proper place of trial for a tort action is:

(a) the county in which the defendants or any of them reside at the commencement of the action; or

(b) the county in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county in which the contract was to be performed.

The Trust concedes that if § 25-2-122, MCA, were to control, Flathead County would be the appropriate venue considering the alleged wrongdoing occurred in Flathead County and Gunlikson currently resides there. However, the Trust argues that § 72-38-205(1), MCA, is more specific and is therefore the controlling venue provision, not § 25-2-122, MCA, as Gunlikson contends. Section 72-38-205(1), MCA, part of the Montana Uniform Trust Code (MUTC), provides:

(1) Except as otherwise provided in subsection (2), venue for a judicial proceeding *involving a trust* is in the county of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(Emphasis added.) Thus, while § 25-2-122, MCA, and § 72-38-205(1), MCA, are each generally applicable to the present facts, when applied here they lead to opposite results.

¶11 Gunlikson maintains that because the Trust’s complaint is comprised solely of tort claims, § 25-2-122, MCA, is the more suitable provision. The Trust counters that § 72-38-205(1), MCA, is correct in that this is a proceeding “involving a trust” that is being administered in Missoula County. The District Court disagreed with Gunlikson’s reasoning and found that, although this Court has never specifically defined the “involving a trust” language in § 72-38-205(1), MCA, the Trust’s claims met this threshold. The court concluded that while the claims could also be described as tort claims, the Trust is integral to the complaint, the claims rely predominantly on the MUTC, and “it is inconceivable that provisions of the Trust will not be placed at issue here, such as those regarding the specific duties of the trustee, defenses available to the trustee, or the administration of the Trust itself.” We agree with the District Court’s analysis.

¶12 A brief examination of the Trust’s complaint reveals that the allegations involve a trust as contemplated by § 72-38-205(1), MCA. Without the Trust, the claims would not exist. While some of the claims concern Gunlikson’s actions predating his trusteeship, the bulk of the allegations relate to his alleged failure to manage the Trust responsibly. The District Court correctly determined that the pertinent venue provision is § 72-38-205(1), MCA, and the proper venue is the Trust’s principal place of administration—Missoula. Furthermore, while arguably both Flathead County and Missoula County would be a proper venue, under § 25-2-115, MCA, when there are multiple proper counties for a proceeding and the party initiating the proceeding brings the action in a proper county, “no motion may be granted to change the place of trial

upon the ground that the action is not brought in a proper county” *See also Hovland v. Saylor (In re Parenting of S.C.B.)*, 2015 MT 19, ¶ 12, 378 Mont. 89, 342 P.3d 46.

¶13 Gunlikson alternatively argues that pursuant to § 25-2-201(3), MCA, venue should be transferred to Flathead County in the interest of witness convenience. “The court or judge must, on motion, change the place of trial . . . when the convenience of witnesses and the ends of justice would be promoted by the change.” Section 25-2-201, MCA. Generally, this is a matter reserved to the district court’s discretion. Yet, not only was this issue not raised in the District Court, but denial of a motion for change of venue under § 25-2-201(3), MCA, is not immediately appealable, it must await final judgment. *See M. R. App. P. 6(3)(f); Minervino v. Univ. of Mont.*, 258 Mont. 493, 495, 853 P.2d 1242, 1244 (1993) (holding “[t]his Court will not consider issues or theories of the case raised for the first time on appeal.”).

CONCLUSION

¶14 As the more specific statute in this instance, the MUTC venue provision controls. The District Court did not err when it denied Gunlikson’s motion to transfer venue to Flathead County.

¶15 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ DIRK M. SANDEFUR
/S/ BETH BAKER
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON