

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120968-U

NO. 4-12-0968

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 16, 2013
Carla Bender
4th District Appellate
Court, IL

HAWORTH HOMES, INC., an Illinois Corporation,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
MICHAEL WON,)	No. 12SC692
Defendant-Appellee.)	
)	Honorable
)	Charles McRae Leonhard,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The Coles County circuit court did not err by granting defendant's motion to transfer venue and (2) the Champaign County circuit court erred by denying plaintiff's motion to vacate judgment.

¶ 2 In January 2012, plaintiff, Haworth Homes, Inc., an Illinois corporation, filed a small-claims complaint in the circuit court of Coles County against defendant, Michael Won, for conversion. Defendant argued venue was improper and moved to transfer the case to Champaign County. The Coles County circuit court granted defendant's motion to transfer venue to Champaign County.

¶ 3 In August 2012, the circuit court of Champaign County conducted a bench trial on the merits of plaintiff's complaint, with plaintiff *in absentia*. The court found in favor of defendant and against plaintiff. In October 2012, the court denied plaintiff's motion to vacate the

judgment, finding plaintiff's complaint was without legal basis.

¶ 4 Plaintiff appeals, arguing (1) the Coles County circuit court erred by granting defendant's motion to transfer venue and (2) the Champaign County circuit court erred by denying plaintiff's motion to vacate judgment. We affirm the Coles County circuit court's order granting defendant's motion to transfer venue, and we reverse the Champaign County circuit court's order denying plaintiff's motion to vacate the judgment.

¶ 5 I. BACKGROUND

¶ 6 On January 3, 2012, plaintiff filed a small-claims complaint in the circuit court of Coles County against defendant for conversion. In a letter attached to the complaint, plaintiff alleged a former employee, Tabitha Benningfield, forged endorsements on three checks payable to defendant and, therefore, defendant possessed stolen funds totaling \$5,430.

¶ 7 On January 26, 2012, defendant filed a motion for transfer of venue stating he had no contact with Coles County, Illinois, and moved to transfer venue to Champaign County. In an affidavit supporting the motion, defendant stated he owned property in Champaign County and rented the property to Benningfield. Benningfield delivered to defendant the three checks upon which plaintiff based its claim and defendant deposited the checks in banks in Champaign County or Cook County. Following a hearing, the Coles County circuit court granted defendant's motion to transfer venue to Champaign County.

¶ 8 Following a hearing on July 13, 2012, the Champaign County circuit court set the case for a bench trial on August 23, 2012. On August 3, 2012, defendant filed an answer to plaintiff's complaint, including an affirmative defense. Defendant asserted he was a holder in due course pursuant to section 3-302 of the Illinois Uniform Commercial Code (810 ILCS 5/3-

302 (West 2012)). On August 23, 2012, plaintiff failed to appear in person and did not appear through counsel. The court proceeded to bench trial, after which it entered judgment in favor of defendant and against plaintiff.

¶ 9 On August 27, 2012, plaintiff filed a motion to vacate the judgment, stating that on July 13, 2012, counsel inadvertently recorded the date the circuit court set the case for bench trial as August 28, 2012, and not August 23, 2012. Following a hearing, the court acknowledged plaintiff made a simple calendaring error but denied plaintiff's motion to vacate the judgment because the court found plaintiff's complaint was without legal basis.

¶ 10 On October 15, 2012, plaintiff filed a notice of appeal from the Champaign County circuit court's order entered on October 10, 2012, denying plaintiff's motion to vacate the judgment. On October 26, 2012, plaintiff filed an amended notice of appeal from the Champaign County circuit court's order, and from the Coles County circuit court's order entered on April 27, 2012, granting defendant's motion to transfer venue to Champaign County.

¶ 11 II. ANALYSIS

¶ 12 Plaintiff first argues that the Coles County circuit court erred by granting defendant's motion to transfer venue from Coles County to Champaign County. Plaintiff argues that venue is proper in Coles County because "this is the place where the funds in question were removed from [plaintiff's] bank account."

¶ 13 "The determination of proper statutory venue raises separate questions of fact and law because it necessarily requires a trial court to rule on the legal effect of its factual findings." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 153-54, 839 N.E.2d 524, 530 (2005). A trial court's findings of fact will not be disturbed on review unless those findings are against the

manifest weight of the evidence. *Corral*, 217 Ill. 2d at 154, 839 N.E.2d at 530. We review a trial court's conclusions of law *de novo*. *Corral*, 217 Ill. 2d at 154, 839 N.E.2d at 530.

¶ 14 "Proper venue is an important statutory privilege." *Corral*, 217 Ill. 2d at 154, 839 N.E.2d at 530, quoting *Bucklew v. G.D. Searle & Co.*, 138 Ill. 2d 282, 288, 562 N.E.2d 186, 189 (1990). "Statutes relating to venue reflect a legislative determination that a party should not be required to defend an action in a county that has little or no relation to the party or the transaction that is the subject of the suit." *Johnson v. Compost Products, Inc.*, 314 Ill. App. 3d 231, 236, 731 N.E.2d 948, 952 (2000), *abrogated on other grounds in Corral*, 217 Ill. 2d at 150-55, 839 N.E.2d at 528-31. "Venue statutes restrict proper venue to places that are convenient either to the defendant or to potential witnesses." *Lake County Riverboat L.P. v. Illinois Gaming Board*, 313 Ill. App. 3d 943, 951, 730 N.E.2d 524, 530 (2000). If the defendant proves that venue is improper, the trial court must transfer the case to a proper venue. *Lake County Riverboat L.P.*, 313 Ill. App.3d at 951, 730 N.E.2d at 530.

¶ 15 Section 2-101 of the Code of Civil Procedure states in relevant part:
"Except as otherwise provided in this Act, every action must be commenced (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose." 735 ILCS 5/2-101 (West 2010).

The term "transaction" includes every fact that is an integral part of the cause of action.

However, it is not so narrowly interpreted as to include only those immediate facts from which the cause of action arose. *Home Depot, U.S.A., Inc. v. Department of Revenue*, 355 Ill. App.3d 370, 381-82, 823 N.E.2d 625, 634 (2005), *abrogated on other grounds in Corral*, 217 Ill. 2d at 149-55, 839 N.E.2d at 527-31. Under transactional-venue principles, to determine whether a particular venue is proper, a court must examine two factors: (1) the nature of the cause of action and (2) the place where the cause of action sprang into existence. *Lake County Riverboat L.P.*, 313 Ill. App. 3d at 952, 730 N.E.2d at 531. Examples of the latter factor include the place where the parties carried on significant negotiations or signed an agreement or where the agreed-upon action was supposed to be or was performed. This is generally the location where the parties engaged in direct adversarial dealing or where an event occurred that changed the parties' legal relationship. *Home Depot, U.S.A., Inc.*, 355 Ill. App.3d at 382, 823 N.E.2d at 635.

"[P]reparatory or preliminary acts, without more, are insufficient to invoke transactional venue." *Lake County Riverboat L.P.*, 313 Ill. App. 3d at 953, 730 N.E.2d at 532. "However, third-party dealings that have a definite and direct bearing on the cause of action may be considered a part of the transaction out of which the cause of action arose." *Southern & Central Illinois Laborers' District Council v. Illinois Health Facilities Planning Board*, 331 Ill. App. 3d 1112, 1117, 772 N.E.2d 980, 984 (2002), *abrogated on other grounds in Corral*, 217 Ill. 2d at 149-50, 839 N.E.2d at 527-28.

¶ 16 In this case, nothing in the record shows that plaintiff and defendant had any direct dealings with each other in Coles County. It is undisputed that defendant did not reside in or have any contact with Coles County. Additionally, plaintiff filed a complaint in the Coles County circuit court against defendant for conversion. In a letter attached to the complaint,

plaintiff alleged a former employee forged endorsements on three checks payable to defendant and therefore, defendant possessed stolen funds totaling \$5,430. Under Illinois common law, a conversion is an unauthorized assumption of the right to possession or ownership of personal property. *Jensen v. Chicago & Western Indiana R.R. Co.*, 94 Ill. App. 3d 915, 932, 419 N.E.2d 578, 593 (1981). To state a claim for conversion, "a plaintiff must establish that (1) he has a right to the property; (2) he has an absolute and unconditional right to the immediate possession of the property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property." *Loman v. Freeman*, 229 Ill. 2d 104, 127, 890 N.E.2d 446, 461 (2008) (citing *Cirrincone v. Johnson*, 184 Ill. 2d 109, 114, 703 N.E.2d 67, 70 (1998)). Nothing in the record suggests defendant committed in Coles County an act or omission relating to an alleged conversion. In his affidavit supporting his motion to transfer venue, defendant stated he owned property in Champaign County and rented the property to Benningfield. Benningfield delivered to defendant the three checks upon which plaintiff based its claim in Champaign County and defendant deposited the checks in banks in Champaign County or Cook County. Thus, the cause of action sprang into existence in Champaign County. Plaintiff's argument that "[Coles County] is the place where the funds in question were removed from [plaintiff's] bank account" might be relevant in an action against plaintiff's bank, but not in this case. Plaintiff's bank removed funds from plaintiff's bank account, not defendant. Accordingly, the Coles County circuit court did not err by granting defendant's motion to transfer venue to Champaign County.

¶ 17 Plaintiff next argues the Champaign County circuit court erred "when it incorrectly deemed the affirmative defense of holder in due course to be established because [plaintiff]

did not file a written answer to the affirmative defense." We do not find support in the record for plaintiff's argument.

¶ 18 On August 23, 2012, plaintiff failed to appear for trial in person, and it did not appear through counsel. The circuit court proceeded to a bench trial on plaintiff's small-claims complaint. Defendant offered evidence in support of his affirmative defense. Following the bench trial, the circuit court stated: "So in addition to the claim of procedural default by which this affirmative defense of a holder in due course would be established, the court's of the view, freestandingly, that this claim is simply without a legal basis ***." Contrary to plaintiff's assertion, the court did not find defendant's affirmative defense proved because plaintiff did not file a written answer to the affirmative defense. According to the court, plaintiff committed procedural default where plaintiff failed to appear for trial and defendant offered at trial un rebutted evidence in support of his affirmative defense. Accordingly, the record does not support plaintiff's assertion. We express no opinion regarding the merits of the affirmative defense raised by defendant.

¶ 19 Plaintiff next argues the Champaign County circuit court erred by denying plaintiff's motion to vacate judgment. Plaintiff argues it stated a meritorious conversion claim against defendant.

¶ 20 Plaintiff filed a motion to vacate the judgment on August 27, 2012, stating on July 13, 2012, counsel inadvertently recorded the date the circuit court set the case for bench trial as August 28, 2012, and not August 23, 2012. Following a hearing, the court acknowledged plaintiff made a simple calendaring error. The court made clear it was not denying plaintiff's motion to vacate the judgment because counsel made a calendaring error. The court denied

plaintiff's motion because plaintiff's complaint was without legal basis. Specifically, the court found the "stolen funds" plaintiff seeks are not an identifiable object of property subject to a claim of conversion.

¶ 21 Plaintiff filed its motion to vacate judgment on August 27, 2010, four days after the circuit court entered judgment in favor of defendant and against plaintiff. Section 2-1203 of the Code of Civil Procedure applies to "motions after judgment in non-jury cases" and provides that a party may file a motion to vacate the judgment within 30 days after entry of the judgment. 735 ILCS 5/2-1203(a) (West 2010). "A section 2-1203 motion invokes the sound discretion of the trial court." *Regas v. Associated Radiologists, Ltd.*, 230 Ill. App. 3d 959, 967, 595 N.E.2d 1223, 1229 (1992). Whether a trial court has abused its discretion turns on whether the court's refusal to vacate violates the moving party's right to fundamental justice and manifests an improper application of discretion. See *In re Marriage of King*, 336 Ill. App. 3d 83, 87, 783 N.E.2d 115, 118-19 (2002); *Federal Kemper Life Assurance Co. v. Eichwedel*, 266 Ill. App. 3d 88, 98-99, 639 N.E.2d 246, 253 (1994).

¶ 22 Here, the record shows that plaintiff made a simple calendaring error. The record also shows that immediately after discovering the calendaring error, plaintiff filed its motion to vacate the judgment. Although the circuit court acknowledged that (1) a motion to vacate the judgment where a plaintiff makes a simple calendaring error is "almost invariably granted," (2) it was undisputed that plaintiff made a simple calendaring error, and (3) the calendaring error was not due to plaintiff's culpable negligence, the court denied plaintiff's motion because it determined *sua sponte* that plaintiff's complaint lacked "legal viability." It does not appear defendant challenged the legal sufficiency of the complaint. Defendant could have made such a motion but

did not. Given that Illinois public policy prefers to decide legal issues on their merits, we reverse the Champaign County circuit court's denial of plaintiff's motion to vacate the judgment and remand for further proceedings. See *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 665, 891 N.E.2d 1, 22 (2007) (Illinois public policy prefers to decide cases on their merits instead of dismissing them purely on procedural grounds); *Smith v. City of Chicago*, 299 Ill. App. 3d 1048, 1054, 702 N.E.2d 274, 279 (1998) (stating that "controversies should be determined according to the substantive rights of the parties").

¶ 23

III. CONCLUSION

¶ 24 For the reasons stated, we affirm the Coles County circuit court's order granting defendant's motion to transfer venue, and we reverse the Champaign County circuit court's order denying plaintiff's motion to vacate the judgment and remand for further proceedings consistent with this court's order.

¶ 25

Affirmed in part and reversed in part; cause remanded with directions.