

## PREFERRED VENUE AND *R&D TRANSPORT*

Michael B. Langford\*  
A. Jack Finklea\*

---

In *R&D Transport v. A.H.*,<sup>1</sup> the Indiana Supreme Court rejected three decades of Indiana case law that authorized plaintiffs to claim preferred venue in personal injury actions based solely on the usual location of the plaintiffs' personal property damaged in the accident. While the 3-2 supreme court decision is noteworthy on several fronts, some background on the Indiana's preferred venue rule and the facts of *A.H.* are first necessary.

The Indiana Trial Rules relating to venue seek to balance the competing principles of a plaintiff's right to choose the venue and the defendant's right to defend an action in its home county. As such, T.R. 75 allows a plaintiff to maintain an action in any county that meets the "preferred venue" provisions enumerated in the rule, even over the objection of the defendant. If, however, the action is not filed in a county of preferred venue, the defendant may transfer the case to a county of preferred venue. Not surprisingly, the desire to reach the most advantageous forum has enticed many personal injury plaintiffs to include a claimed injury to personal property, thereby providing preferred venue in the place the personal property is kept—usually the plaintiff's home county.

In *R&D Transport*, the car in which A.H., a minor, was a passenger collided with a tractor-trailer owned by R&D Transport, Inc. and driven by Joseph Hazel. The accident occurred in Dearborn County, which is in southeastern Indiana. R&D Transport and Hazel were domiciled in Hendricks County in west central Indiana and A.H. resided in Porter County in northwestern Indiana. A.H., injured in the accident, filed a lawsuit in Porter County based on T.R. 75 (A)(2), which, according to A.H., provides for preferred venue in cases alleging injury to personal property in the county in which the personal property is regularly kept. In her complaint, A.H. specifically alleged injury to "orthotic devices, clothing, and other chattels" she had with her in the automobile and which she regularly kept at her home in Porter County.

---

\* Michael B. Langford is a partner and A. Jack Finklea is an associate attorney with the Indianapolis office of Scopelitis, Garvin, Light and Hanson. They represented R&D Transport, Inc. and Joseph Hazel in the case. Mr. Langford is a member of the Defense Trial Counsel of Indiana.

<sup>1</sup> 859 N.E.2d 332 (Ind. 2006).

R&D Transport moved to transfer venue from Porter County to either Dearborn County, the location of the accident, or Hendricks County, the domicile of both of the defendants. The trial court and then the court of appeals in an unpublished decision denied R&D Transport's motion, finding that no priority exists among the preferred venue provisions and that the language of T.R. 75(A)(2) unambiguously provided for venue in the county in which damaged personal property was regularly kept. The court of appeals relied on several previous court of appeals cases the court deemed analogous. The Indiana Supreme Court thereafter accepted transfer.

In its December 28, 2006, decision, the supreme court recognized that the court of appeals had consistently provided for venue in the county in which the personal property was kept. The court cited two cases in particular, *Swift v. Pirnat*<sup>2</sup> and *Halsey v. Smeltzer*,<sup>3</sup> for such a proposition and acknowledged that the cases were analogous to the present case. Even so, the supreme court found that the cases were wrongly decided.

The court rejected the plaintiff's attempt to maintain venue in her home county for three reasons. First, the court stressed the focus of the venue provision relating to personal property is the location of the property or activity giving rise to the claim; that is, *in rem* relief. Quite simply, the language of T.R. 75(A)(2) not only connected real property with personal property, but the language also included examples of the types of personal property cases in which preferred venue would exist under that provision.

Second, the court recognized that T.R. 75 has always contained special venue rules for automobile accidents. Both before and after the 1970 amendments to T.R. 75, preferred venue for an automobile collision existed in the county in which the accident occurred or the county in which the defendant resided.

Finally, the court noted that the trial rules discouraged the use of the plaintiff's home county as one of preferred venue. Indeed, T.R. 75(A)(10) provides the only instance in which preferred venue may be based on the plaintiff's home county, and that provision expressly limits its application as a last resort in the event no other preferred venue provision applies. The court, recognizing that a party injured in an automobile accident will almost always have personal property (*e.g.*, the automobile) that is regularly kept in the party's home county, refused to allow the plaintiffs to bypass the clear intent of the rule's overall text.

In his dissent, Justice Dickson, joined by Justice Rucker, stated that the plain language of T.R. 75(A)(2) unambiguously indicates that a plaintiff alleging injury to personal property may maintain an action in the county in which the personal property was regularly kept. Justice Dickson also indicated that the majority opinion elevated the status of an automobile acci-

<sup>2</sup> 828 N.E.2d 444 (Ind. Ct. App. 2005).

<sup>3</sup> 722 N.E.2d 871 (Ind. Ct. App. 2000), *trans. denied*.

2006]

*Preferred Venue and R&D Transport*

213

dent in a way not explicitly provided in T.R. 75 and overturned thirty years of court of appeals precedent in rendering its decision. According to Justice Dickson, the proper means of effecting the court's substantive rule change is through the administrative procedure for amending the trial rules and not through a judicial opinion.

Practitioners can take away several significant principles from *R&D Transport*. First, this case effectively abolishes the popular practice of obtaining preferred venue in a personal injury action in the plaintiff's home county based on damage to personal property regularly kept in that county. Defense attorneys should thwart such future efforts by filing motions to transfer, relying on the *R&D Transport* decision.

Second, the supreme court has the ability and is willing to interpret the Indiana Trial Rules through judicial opinion as well as through the process of amendment. This may especially be the case if the supreme court deduces that the spirit of the rules are being frustrated by an overly literal interpretation of the rules by lower courts. Finally, the supreme court is increasingly willing to address issues that it has not yet decided, even if those issues previously involved decades of consistent interpretations by the Indiana Court of Appeals.

