

RODNEY E. BATE and
KAREN L. FREI, his wife,
Plaintiffs

vs.

HELEN EVRARD, M.D. and
ALLERGY & ASTHMA CARE
OF LEWISBURG, P.C.,

Defendants

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 02-00,245

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: PRELIMINARY OBJECTIONS

Date: October 7, 2002

OPINION and ORDER

Before the Court are Defendants, Helen Evrard, M.D. and Allergy & Asthma Care of Lewisburg. P.C., Preliminary Objections, filed on March 22, 2002, to a Complaint filed by Rodney E. Bate and Karen L. Frei, his wife on February 11, 2002, alleging negligence on the part of the defendant and seeking compensatory damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.). Defendant's Brief in Support of the Preliminary Objections was filed on April 4, 2002. Plaintiff's Response to the Preliminary Objections was filed on April 10, 2002. A subsequent Brief by Plaintiff was filed on April 18, 2002 specific to Defendant's Preliminary Objection to Venue. On April 3, 2002, Defendants filed a reply brief in support of their preliminary objections.

Defendants' Preliminary Objection to Venue will be denied. Defendant Evrard's operation of two clinics in Lycoming County, even though not Defendant's "Principal Place of Business", is sufficient under Pennsylvania Rule of Civil Procedure 2179(a) (2) to constitute a location in "a county where it regularly conducts business." Therefore, venue is proper in Lycoming County.

Facts

According to the original complaint,

1. Plaintiffs Rodney E. Bate and Karen L. Frei are husband and wife adult individuals residing in Lewisburg, Union County, Pennsylvania.
2. Defendant Helen Evrard, M.D., is a medical doctor licensed to practice medicine in the Commonwealth of Pennsylvania and conducts business as a physician in her office in Muncy, Lycoming County Pennsylvania.
3. Defendant Allergy & Asthma Care of Lewisburg, P.C. is a professional corporation providing medical care with offices located in Muncy, Lycoming County.
4. At all times relevant to the case, Defendant Evrard was an agent, apparent agent, employee, and/or servant of Defendant Allergy &

Asthma Care. Defendant Evrard holds herself out as a board certified allergist and asthma specialist.

5. The claimed negligent treatment took place on or about January 23, 2001, when Plaintiff Rodney Bate presented to Defendant's offices¹ for the purposes of undergoing a checkup/consultation and routine pulmonary function tests (PFT).
6. Plaintiff Rodney Bate began the PFT using Defendant's equipment and did the PFT maneuver by briskly inhaling as instructed. As he did the PFT maneuver, Plaintiff Bate felt like he had inhaled something.
7. Plaintiff Bate immediately began to experience powerful hyperventilation, massive bronchial spasms, profuse sweating and an intractable cough.
8. Plaintiff Bate continued to feel pain, extreme discomfort, anxiety, fear, fatigue, shortness of breath and other problems associated with the PFT performed at the Defendant's medical facility.

¹ The Complaint does not specifically state it was the offices in Union County. However, in Plaintiffs' Response to Defendants' Preliminary Objections it was admitted that all treatment provided by Dr. Evrard occurred in Union County.

9. Defendant Evrard told Plaintiff that prior to his visit on January 23, 2001, the patient before him had two small children who were playing with plastic toys in and around Defendant Evrard's equipment.
10. At Defendant's request, Plaintiff Bate, presented to Defendant's offices on January 25, 2001, and after a physical examination, Defendant Evrard declared she no longer had any significant concerns that Plaintiff had inhaled anything, and indicated that she had no explanation for Plaintiff's experience and his continued symptoms.
11. Defendant Evrard assured Plaintiff Bate that his symptoms would resolve and he would be back to normal in no time.
12. In March of 2001, because of continued and in fact worsening symptoms, Plaintiff Bate presented to the Hospital of the University of Pennsylvania where a bronchoscope revealed the presence of a foreign object believed to be a plastic toy football helmet in his left mainstream bronchus, which was then removed.
13. The plastic toy football helmet had almost completely obstructed (95%) Plaintiff Bate's left mainstream bronchus. Plaintiff Bate was essentially

functioning on one lung for more than two months, despite Defendant Evrard's belief that he was fine.

14. In addition, Plaintiff is still unsure as to whether or not all of the foreign object has been retrieved because the toy plastic helmet had holes designed for a removable face mask and said face mask was not found.

Defendant's Preliminary Objection to the Complaint pertains only to an objection to venue in Lycoming County. Defendant asserts that:

1. Plaintiffs reside in Lewisburg, Union County, Pennsylvania
2. Dr. Evrard resides in Northumberland County, Pennsylvania and Dr. Evrard primarily conducts her professional medical practice in Union County, Pennsylvania.
3. Allergy & Asthma Care of Lewisburg, P.C. is a Pennsylvania professional corporation, with its registered office in McEwensville, Northumberland County Pennsylvania, and with its principal place of business in Lewisburg, Union County. Allergy & Asthma Care of Lewisburg, P.C. regularly conducts business in Union County, Pennsylvania.

4. All treatment provided to Plaintiff Bate occurred in Union County, Pennsylvania.
5. The Transaction or occurrence took place in Union County, Pennsylvania.
6. Plaintiffs have filed this action in Lycoming County.

DISCUSSION

Defendant asserts that filing of this action is improper in Lycoming County. Also asserted is that proper venue is Union County, as: both Plaintiff Bate and Defendant Evrard reside in Union County; Defendant Allergy & Asthma Care of Lewisburg, P.C. is a Union County Based Corporation; and all treatment provided to Plaintiff (by Dr. Evrard) was provided in Union County.

Plaintiff asserts that, since at least 1993, Defendants have maintained a medical practice and regularly conducted business in Lycoming County from two different offices, one located in Muncy, Pennsylvania, and the other in Montoursville, Pennsylvania. Plaintiff provides as supporting evidence, letterhead of Defendant Allergy & Asthma Care of Lewisburg, P.C., and an affidavit from one Betty S. Berdanie r, legal secretary at the law firm of Angino & Rovner, P.S., Attorney for the Plaintiff, certifying confirmation of the address of the Muncy, Lycoming County, office , by the office of Allergy & Asthma Care of Lewisburg, P.C.

According to Pennsylvania Rule of Civil Procedure 2179, except as otherwise provided by an Act of Assembly or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in

1. the county where its registered office or principal place of business is located
2. a county where it regularly conducts business
3. the county where the cause of action arose; or
4. a county where the transaction or occurrence took place out of which the cause of action arose

A review of Pa. R.C.P. §2179 clearly shows that establishment of venue under Pa. R.C.P. §2179(a)(1), (a)(3) or (a)(4) is not supported by the filings to date. Allergy & Asthma Care of Lewisburg, P.C. is a Pennsylvania professional corporation with its registered office in McEwensville, Northumberland County, Pennsylvania, and its principal place of business in Lewisburg, Union County, Pennsylvania. While the corporation does maintain a clinic in Muncy, Pennsylvania, this is clearly not the registered office or principal place of business of Allergy & Asthma Care. The action arose in Union County as treatment was provided at Allergy & Asthma Care at their Lewisburg Office. The injury, out of which the cause of action arose, occurred in Union County, not Lycoming County.

Pa. R.C.P. §2179(a)(2), however allows a personal action to be brought against a corporation in “ a county where it regularly conducts business.” Resolution of the action before this Court therefore turns on what constitutes a corporation “regularly conducting business” in a particular county. If Allergy & Asthma Care “regularly conducts business” in Lycoming County, venue in this action is proper. Pa. R.C.P. §2179 does not provide much guidance or definition of what constitutes “regularly conducting business.” However, case law does provide some guidance.

A personal action against a corporation, “may be brought in any county in which it regularly conducts business even though it may not be a ‘substantial’ part of its business. *Smerk v. Philadelphia Suburban Transp. Co.*, 13 D. & C.2d 454 (Pa. Cmwlth. 1958); *Lalone v. Philadelphia Suburban Transp. Co.*, 61 D. & C. 248 (Pa. Cmwlth. 1958). Here, Defendant Evrard claims that at the clinic in Muncy the business conducted is solely limited to patients receiving allergy shots, and Defendant Evrard does not see patients at the Muncy Clinic.

The word “regularly,” as used in Pa. R.C.P. §2179(a)(2) does not mean “principally” and does not necessarily mean that acts must be performed on a fixed schedule. The question is whether acts are being performed within the context of a particular business. *Monaco v. Montgomery Cab Co.*, 208 A.2d 252 (Pa. 1965). Here, the allergy shots provided by

Allergy & Asthma Care at the Muncy Clinic are undisputedly being performed “within the context of Allergy and Asthma Cares business.”

In determining where a corporation “regularly conducts business” a Court must focus on the nature of the acts the corporation allegedly performs in that county; those acts must be assessed both as to their quantity and quality. *Gilfor v. Altman*, 770 A.2d 341, (Pa. Super. 2001); *Masel v. Glassman*, 689 A.2d 314, 456 (1997); *Mathues v. Tim-Bar Corp.*, 652 A.2d 349, (Pa. Super. 1994); *Battuello v. Camelback Ski Corp.*, 598 A.2d 1027, (Pa. Super. 1991). “Quality of acts” means those directly furthering or essential to, corporate objectives; they do not include incidental acts. *Id.*, *Gilfor* 341. Quantity means those acts that are so “continuous and sufficient to be general or habitual...” *Id.* 341 & *Kubik v Route 252 Inc.*, 762 A.2d 1119, (Pa. Super. 2000). According to the record Allergy and Asthma Care have been operating a Muncy Clinic since 1993, providing allergy shots to patients. This would appear to be acts of the quality that directly further or are essential to the corporate objects of a company in the business of alleviating persons with allergies, Asthma, or other respiratory problems. Having provided those shots to patients since 1993, it is clear that that such acts are so “continuous and sufficient to be general or habitual”, and would therefore be of sufficient quantity to constitute “regularly conducting the business” of Dr. Evrard’s Allergy and Asthma Care corporation.

CONCLUSION

Pennsylvania Rule of Civil Procedure 2179(a)(2) provides that a personal action against a corporation may be properly brought in “a county where it regularly conducts business.” Case law clearly defines that a corporation “regularly conducts business” in a county when:

1. it performs acts in the context of the particular business;
2. where such acts are of sufficient “quality i.e. those directly furthering or essential to, corporate objectives; and,
3. where such acts are of sufficient “quantity,” i.e., so continuous and sufficient to be “general or habitual.”

Monaco, 208 A.2d 252; *Gilfor*, 770 A.2d at 341; *Kubic*, 762 A.2d 1119.

While Dr. Evrard’s principle place of business is in fact located in Union County, her maintenance of the two additional offices in Lycoming County, in which allergy shots are provided to her patients, constitutes performance of acts of sufficient “quality” as they further and are essential to the corporate objectives of the business. The dispensing of allergy shots is of sufficient “quantity” to be considered “general or habitual” since Dr. Evrard has provided those shots to patients since 1993. Venue in Lycoming County is therefore proper as Dr. Evrard’s Allergy and Asthma Care Corporation clearly regularly conducts business in Lycoming County.

ORDER

Defendants' Preliminary Objection to Venue in Lycoming County is denied.

BY THE COURT,

William S. Kieser, Judge

cc: James DeCinti, Esquire
4503 North Front Street; Harrisburg, PA 17110
C. Edward S. Mitchell, Esquire
Darryl R. Wishard, Esquire
Judges
Christian Kalas, Law Clerk
Paul J. Petcavage, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)