

PA Superior Court Imposes Heavy Burden on Defendants to Challenge Propriety of Venue

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Efforts by defendants to challenge venue in Philadelphia took another backwards step this week when the Superior Court of Pennsylvania reversed a Philadelphia Court of Common Pleas' order transferring venue to Bucks County. Although the *pro se* plaintiff did little to buttress claims of proper venue in Philadelphia, the Superior Court nevertheless remanded the case for additional venue discovery on the grounds that the defendants did not satisfy their burden of proof that venue was improper in Philadelphia. The implication of this opinion appears to be that even a boilerplate assertion of proper venue is sufficient to shift the burden to defendants to rebut the plaintiff's choice of venue.

In *Mazzuca v. Abreu*, a case involving alleged dental malpractice, the trial court granted the defendant dentist's preliminary objections and transferred the case from Philadelphia to Bucks County on the grounds that all of the care at issue was rendered in Bucks County and the defendant physician's dental practice was located there. On appeal, the Superior Court held that it was not the plaintiff's burden to prove why her choice of venue was appropriate; rather, she was only required to produce "some evidence" to support her venue choice. The Superior Court did not evaluate the sufficiency of the evidence but, based on the allegation in the complaint that the defendant also sometimes practiced dentistry in Philadelphia, remanded the case back to the trial court for further discovery and fact-finding.

Mazzuca serves as a reminder that, notwithstanding the fact that a plaintiff has the initial burden to allege venue, very little is required to shift the burden to defendants to disprove the propriety of that chosen venue. Accordingly, regardless of the strength of a plaintiff's allegations, defendants serious about challenging venue in a given county need to be prepared to make a detailed factual record in order to prevail on preliminary objections and to sustain the transfer of venue on appeal.

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