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SUPREME COURT OF ARKANSAS

No. CV-17-317

Opinion Delivered: April 26, 2018

STATE OF ARKANSAS, ARKANSAS DEPARTMENT OF CORRECTION, ASA HUTCHINSON, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF ARKANSAS; WENDY KELLEY, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE ARKANSAS DEPARTMENT OF CORRECTION
APPELLANTS

V.

MCKESSON MEDICAL-SURGICAL, INC.
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. 60CV-17-1960]

HONORABLE ALICE S. GRAY, JUDGE

CONCURRING OPINION.

SHAWN A. WOMACK, Associate Justice

I join in the court's vote to grant the parties' joint motion to dismiss this case as moot due to the expiration of the State's supply of vecuronium bromide. I write separately to highlight two points. First, to note what I believe to be unacceptable conduct by the circuit court in the handling of this case. Specifically, the blatant disregard for the law shown by this judge in refusing to consider and rule upon the threshold issue of venue. Second, to draw attention to the new mandatory provisions in the law regarding venue in certain actions, as passed by the General Assembly in 2017.

On April 18, 2017, the State filed a motion to change venue pursuant to Act 967 of 2017, which amended Arkansas Code Annotated § 16-60-201(e) to read:

> (1) A defendant in a civil action under § 16-60-104(3) may obtain an order for a change of venue by motion requesting a transfer to one (1) of the following counties:
>
> > (A) Pulaski County;
> >
> > (B) Any county in which one (1) of the plaintiffs, or in the case of a certified class action, any member of the class, resides, conducts business, or maintains a principal place of business; or
> >
> > (C) If no plaintiff is a resident of Arkansas, any county in the state of Arkansas.
>
> (2) The venue of the civil action shall be changed upon a showing that the proposed transferee county is a proper venue as set forth in this subsection.

Act 967 had an emergency clause, and it went into effect on April 5, 2017.

Despite the amended venue statute being in effect and dictating that venue "*shall* be changed" upon satisfaction of its conditions, the circuit court declined to rule on the State's venue-change motion. It instead reached and granted McKesson's request for injunctive relief, leading directly to an interlocutory appeal and later to the appeal we have just dismissed today. After the issue had been briefed, the circuit court finally deigned to hear arguments about venue at a hearing on July 12, 2017. That hearing combined arguments on the venue issue with the State's motion to dismiss on sovereign immunity grounds. When the circuit court denied the motion to dismiss, however, it again declined to address the venue issue. The court claimed that it was "going to take this transfer under advisement and make the decision as soon as possible." No decision has been forthcoming.

Good-faith legal arguments can be had about McKesson's residency for the purposes of the statute, and therefore whether the State satisfied the requirements for securing the statute's mandatory venue transfer. As it happens, those arguments *were* had, both when the State initially moved to change venue at the outset of litigation and when a hearing was finally held several months later. Even if the circuit court had issued its ruling at the July hearing, reaching the foundational issue of venue only after ruling on the merits of the case and generating two separate appeals to this court would have been putting the horse well after the cart. The circuit court's dilatory handling of the State's motion to change venue, whether willful or not, has altered the entire texture of this litigation.