

Cite as 2018 Ark. 228
SUPREME COURT OF ARKANSAS
No. CV-18-395

CINDY GILLESPIE, DIRECTOR,
ARKANSAS DEPARTMENT OF HUMAN
SERVICES, IN HER OFFICIAL
CAPACITY

PETITIONER

V.

PLANNED PARENTHOOD OF
ARKANSAS & EASTERN OKLAHOMA,
INC. D/B/A PLANNED PARENTHOOD
GREAT PLAINS; AND WASHINGTON
COUNTY CIRCUIT COURT, FROM
WASHINGTON COUNTY CIRCUIT
COURT

RESPONDENTS

Opinion Delivered: June 21, 2018

PETITION FOR WRIT OF MANDAMUS,
PROHIBITION, CERTIORARI, OR A
SUPERVISORY WRIT, OR OTHER
APPROPRIATE RELIEF
[WASHINGTON COUNTY CIRCUIT
COURT, NO. 72CV-18-591]

DISSENTING OPINION.

SHAWN A. WOMACK, Associate Justice

Because I believe that an extraordinary writ is the only way to vindicate the petitioner's right to a change of venue granted by the General Assembly in Act 967 of 2017, I must dissent from this court's denial of that relief.

Act 967 of 2017 amended Arkansas's venue laws to create a mandatory right for state actor defendants to change the venue of a proceeding to "any county in the state of Arkansas" if "no plaintiff is a resident of Arkansas." See Ark. Code Ann. § 16-60-201(e). See also *State of Arkansas et al. v. McKesson Medical-Surgical, Inc.*, 2018 Ark. 154 (Womack, J., concurring). The defendant below, as the director of the Arkansas Department of Human

Services, is indisputably a state actor. The plaintiff below, as an Oklahoma corporation with headquarters in Kansas, is not a resident of Arkansas under this court's interpretation of corporate residency. *See, e.g., Citicorp Industrial Credit, Inc. v. Wal-Mart Stores, Inc.*, 305 Ark. 530, 534–35, 809 S.W.2d 815, 817 (1991) (summarizing our interpretation that a corporation is a “resident of the state under the laws of which it was created” and that “foreign corporations do not become Arkansas residents by registering to do business here.”).

The state defendant, having satisfied the only requirements of section 16-60-201(e), invoked the provision to transfer venue in this action from Washington County to Faulkner County. The Washington County Circuit Court denied the motion without explanation, refusing to provide the legislatively mandated remedy to which the petitioner was entitled.

The respondents correctly note that a writ of mandamus is not appropriate to control the circuit court's exercise of discretion. *See, e.g., Tyson v. Roberts*, 287 Ark. 409, 410, 700 S.W.2d 50, 51 (1985). Further, motions for change of venue often involve the sort of discretionary balancing and consideration that would render mandamus relief wholly inappropriate. *See, e.g., Taylor v. State*, 334 Ark. 339, 344, 974 S.W.2d 454, 458 (1998). That general treatment of venue does not apply here, however, where the petitioner satisfied the requirements of a statute with mandatory effect. Instead, the petitioner has asked the circuit court to fulfill the sort of purely ministerial—rather than discretionary—

duty for which mandamus relief is appropriate. See, e.g., *Russell v. Pope*, 2015 Ark. 199, at 1, 461 S.W.3d 681, 682.

The circuit court was required to grant the petitioner's motion to change venue. This court's denial of mandamus relief to correct that failure leaves the petitioner without an effective method of vindicating her right under section 16-60-201(e).

I respectfully dissent.

WOOD, J. joins.