2021 PA Super 23

QUIERA DOCKERY, Appellant v. THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC.; THOMAS JEFFERSON UNIVERSITY HOSPITAL; JEFFERSON HEALTH; JEFFERSON HEALTH SYSTEM; MERCY FITZGERALD HOSPITAL; MERCY HEALTH SYSTEM; MERCY FITZGERALD HOSPITAL, D/B/A MERCY CATHOLIC MEDICAL CENTER; MERCY HEALTH SYSTEM OF SOUTHEASTERN PENNSYLVANIA; CATHOLIC HEALTH EAST, INC.; TRINITY HEALTH CORPORATION; JEFFERSON UNIVERSITY PHYSICIANS; JEFFERSON HEALTH PRACTITIONER SERVICES; JEFFERSON NEUROSURGERY AT MERCY; MERCY NEUROSURGICAL SPECIALISTS; MERCY NEUROLOGY ASSOCIATES AT MERCY HOSPITAL; MERCY NEUROLOGY ASSOCIATES; MERCY PHYSICIAN NETWORK; PHILIP MEAD, MD; AYESHA MAHMOOD, MD; HENRY KESLER, MD	:	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 611 EDA 2020

Appeal from the Order Entered November 4, 2019,
in the Court of Common Pleas of Philadelphia County
Civil Division at No(s): November Term, 2018 No. 997

BEFORE: KUNSELMAN, J., NICHOLS, J., and PELLEGRINI, J.*

OPINION BY KUNSELMAN, J.: **FILED: FEBRUARY 22, 2021**

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* Retired Senior Judge assigned to the Superior Court.

Twenty years ago, the General Assembly and the Supreme Court of Pennsylvania determined that medical-malpractice plaintiffs were increasingly suing healthcare workers and medical enterprises in urban counties, even when the alleged malpractice occurred elsewhere. The General Assembly and Supreme Court jointly studied the problem and enacted complimentary tort-reform measures to limit the forums in which medical-malpractice plaintiffs could sue members of the healthcare industry. The legislature passed Act 127 of 2002, codified as 42 Pa.C.S.A. § 5101.1; the Supreme Court promulgated an identical Rule of Civil Procedure at Pa.R.C.P. 1006(a)(1). Both the statute and the Rule mandate that "a medical-professional-liability action may be brought against a healthcare provider for a medical-professional-liability claim only in the county in which the cause of action arose." 42 Pa.C.S.A. § 5101.1; Pa.R.C.P. 1006(a)(1).

In this appeal, Quiera Dockery claims the Court of Common Pleas of Philadelphia County erred by refusing to declare the law and the Rule unconstitutional. Because she did not fully explain how Pa.R.C.P. 1006(a)(1) violates the state and federal Equal Protection Clauses, we affirm.

Ms. Dockery filed this medical-malpractice action in Philadelphia County although she alleged the underlying tortious conduct occurred in Delaware County. The various Healthcare-Provider Defendants filed preliminary objections, challenging venue under the aforementioned medical-malpractice statute and Rule. Ms. Dockery agreed the language of the statute and Rule applies, but she argued that the two enactments are unconstitutional.

The trial court disagreed, sustained the preliminary objections, and transferred the case to Court of Common Pleas of Delaware County. This timely, permissible, interlocutory appeal of the order transferring venue followed.

In her brief, Ms. Dockery raises three issues. However, they are really only two claims of error, which we have reordered for ease of disposition:

1. Is Pa.R.C.P. 1006(a)(1) constitutional?
2. Is 42 Pa.C.S.A. § 5101.1 constitutional?

Dockery's Brief at 5.

This appeal challenges an order transferring the case due to improper venue. Trial courts enjoy "considerable discretion when ruling on such a motion, and if there exists any proper basis for the trial court's decision to transfer venue, the decision must stand." ***Bratic v. Rubendall***, 99 A.3d 1, 8 (Pa. 2014). An "abuse of discretion exists if the trial court renders a judgment that is manifestly unreasonable, arbitrary, or capricious; or if it fails to apply the law; or was motivated by partiality, prejudice, bias, or ill will." ***Ambrogi v. Reber***, 932 A.2d 969, 974 (Pa. Super. 2007).

Ms. Dockery claims an abuse of discretion occured, because she believes the trial court misapplied constitutional law. Whether the trial court correctly interpreted the state and federal constitutions presents a pure question of law, for which our standard of review is *de novo*, and our scope of review is plenary. ***Robinson Township v. Commonwealth***, 147 A.3d 536, 572 (Pa. 2016).

We begin with Ms. Dockery's challenge to Pennsylvania Rule of Civil Procedure 1006(a)(1). She asserts that the Rule violates the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States and Article I, § 26 of the Constitution of the Commonwealth of Pennsylvania. ***See*** Dockery's Brief at 14. The Fourteenth Amendment provides, in pertinent part, "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amnd. XVI, § 1. Similarly, the state constitution dictates Pennsylvania shall not "discriminate against any person in the exercise of any civil right." Pa. Const. art. I, § 26.

Ms. Dockery concedes that, in raising an equal protection challenge, she receives no greater protection under Article I, § 26 than under the Fourteenth Amendment. "Challenges under both the federal and Pennsylvania Equal Protection Clauses are analyzed using the same standard set by the United States Supreme Court." Dockery's Brief at 15 (citing ***Commonwealth v. Albert***, 758 A.2d 1149 (Pa. 2000); ***McCusker v. W.C.A.B.***, 639 A.2d 779 (Pa. 1964); ***Love v. Borough of Strousburg***, 597 A.2d 1137 (Pa. 1991)). Thus, she does not provide an ***Edmunds*** analysis. ***See Commonwealth v. Edmunds***, 586 A.2d 887, 390 (Pa. 1991) (announcing the "New Federalism" and four factors litigants should analyze if asserting novel claims under the Pennsylvania constitution).

Initially, Ms. Dockery asserts the Rule imposes a venue requirement on medical-malpractice plaintiffs that does not apply to any other plaintiffs in Pennsylvania. ***See*** Dockery's Brief at 16. Although clearly a member of that

class, she admits that medical-malpractice plaintiffs are not a suspect class (such as race) or a semi-suspect class (such as gender); nor does she claim that Rule 1006(a)(1) implicates any fundamental right. Ms. Dockery therefore agrees with the trial court and the Healthcare-Provider Defendants that the rational-basis test governs her equal-protection claim. ***See id.***

Ms. Dockery next identifies another class that the Rule disfavors. She claims Pa.R.C.P. 1006(a)(1) "also serves to create a subclass of individuals and entities within the general defendant population by providing special provisions for where medical defendants may be sued for their conduct." Dockery's Brief at 16. In other words, she asserts the Pennsylvania Rules of Civil Procedure now discriminate in favor of healthcare-provider defendants at the cost of all other defendants, because non-medical-malpractice defendants may still be sued in counties where their allegedly tortious actions did not occur. Thus, Ms. Dockery attempts to assert the equal-protection rights of all non-medical-malpractice defendants. However, she does not belong to this case.

Under the jurisprudence of the Supreme Court of the United States, a litigant must have standing to bring a Fourteenth Amendment challenge to a State's discriminatory treatment of persons. "In essence, the question of standing is whether the litigant is entitled to have the court decide the merits . . . of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." ***Warth v. Seldin***, 422 U.S. 490, 498 (1975). Regarding the prudential limits of an

equal-protection challenge, the High Court said, "even when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement . . . the plaintiff generally must assert ***his own*** legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." ***Id.*** at 499 (emphasis added).

Ms. Dockery is not a civil defendant; she is a civil plaintiff. Thus, she may not assert that the Pennsylvania Rules of Civil Procedure inflict an equal-protection violation upon non-medical-malpractice defendants by requiring them to satisfy the common law of *forum non convenienes* or other Rules to transfer their cases to different venues. We may not consider whether the Rules of Civil Procedure irrationally discriminate against non-medical-malpractice defendants, because Ms. Dockery lacks standing to advance the constitutional rights of those defendants.

Regarding the class to which she does belong — medical-malpractice plaintiffs — she does not make a constitutional argument that the Supreme Court of the Pennsylvania lacked a rational basis for promulgating the Rule. Instead, her argument focuses the trial court's justification to uphold the Rule comports with the enumerated powers of the Supreme Court of Pennsylvania under the state constitution.

The trial court opined that the joint effort of the Supreme Court and the General Assembly indicated that they shared state interests for passing the medical-malpractice-venue statute and Rule. "These reforms were part of many reforms instituted by Pennsylvania's MCARE Act. The purpose of this

legislation [and Rule 1006(a)(1)] was to ensure that medical care is available in this Commonwealth through a high-quality healthcare system and to ensure that medical-professional-liability insurance was available at a reasonable cost." Trial Court Opinion, 3/10/20, at 5. The trial court found that this was a legitimate state interest. ***Id.*** at 6.

Ms. Dockery's appellate argument singularly focuses on the trial court's reasoning. She relies upon Article V, § 10(c) of the Constitution of the Commonwealth of Pennsylvania[1] to contend that the state charter "explicitly limits the permissible purpose of [venue] rules." Ms. Dockery's Brief at 19. In her view, the interests the trial court relied upon are matters of public policy and substantive law (rather than procedural concerns) that must be left to the

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[1] That clause provides, in relevant part, as follows:

> The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the Judicial Branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose.

Pa. Const. art. V, § 10(c).

General Assembly under the doctrine of the separation of powers. ***See id.*** at 19-23.

Even assuming that Ms. Dockery is correct in that regard, her theory has no bearing upon the question of whether the Rule survives rational-basis review under the Fourteenth Amendment. The reasons that the trial court cited can be rational for equal-protection purposes, even if the Supreme Court of Pennsylvania should not have considered them under the state charter. More importantly, this Court is not bound by the reasoning of the trial court, and "we may affirm the trial court's order on any valid basis." ***Plasticert, Inc. v. Westfield Ins. Co.***, 923 A.2d 489, 492 (Pa. Super. 2007). Thus, the trial court's identification of two State interests is not dispositive of whether the Rule passes the rational-basis test. Ms. Dockery's preoccupation with the trial court's stated reasoning is therefore misplaced.

Instead of trying to undermine interests upon which the trial court relied pursuant enumerated powers under the state constitution, a party bringing an equal-protection challenge must demonstrate that there were no legitimate interests for any State to pursue or that the government actor failed to logically link the classification to the State interest. In other words, the challenging party needs to show that there was no legitimate rationale (including rationales we might hypothesize) for the adoption of the Rule. As the Supreme Court has explained, "In undertaking its analysis, the reviewing court is free to hypothesize reasons the [State] might have had for the classification." ***Albert***, 758 A.2d 1149, 1152. "A classification, though

discriminatory, is not arbitrary or in violation of the Equal Protection Clause if any state of facts reasonably can be conceived to sustain that classification." ***Id.*** at 1151-52. Under an equal-protection challenge the question is not whether the Rule treats one groups of people differently; the question is whether that different treatment is logical. Ms. Dockery does not pursue this line of injury in her brief.

She does not dispute that the interests the trial court identified are legitimate ones for Pennsylvania to pursue under the Equal Protection Clauses. She likewise fails to consider a myriad of other reasons that the Supreme Court may have considered when it promulgated the Rule. Indeed, the Supreme Court listed no reasoning in its comments to Pa.R.C.P. 1006(a)(1) to justify the Rule. Thus, neither she nor this Court has any way of truly knowing why the Supreme Court adopted it.

Having failed to articulate that the Supreme Court lacked a rationale basis for adopting Rule 1006(a)(1), Ms. Dockery's appellate argument does not accomplish its intended goal. And we may not pursue this inquiry for her, lest we risk developing the constitutional claim on her behalf. "When an appellant's argument is underdeveloped, we may not supply [her] with a better one." ***Commonwealth v. Pi Delta Psi, Inc.***, 211 A.3d 875, 884–85, *appeal denied*, 221 A.3d 644 (Pa. 2019). Ms. Dockery fails to contend (much less convince us) that the Supreme Court of Pennsylvania lacked any reasoned basis for discriminating against medical-malpractice plaintiffs on the question of venue.

On this record and based on Ms. Dockery's undeveloped brief, we cannot say with any certainty whether Rule 1006(a)(1) violates or comports with the Equal Protection Clauses. Hence, this issue affords her no appellate relief.

Because Ms. Dockery did not properly mount a constitutional attack against the Rule, the trial court's order transferring venue under the Rule must be affirmed. Thus, whether the trial court erroneously upheld the statute as being constitutional becomes a moot issue. As such, we dismiss Ms. Dockery's second claim of constitutional error on the grounds of mootness and under the doctrine of constitutional avoidance.[2]

Order of transfer affirmed. Case remanded to the Court of Common Pleas of Delaware County for further proceedings. Jurisdiction relinquished.

Judge Pellegrini joins the Opinion.

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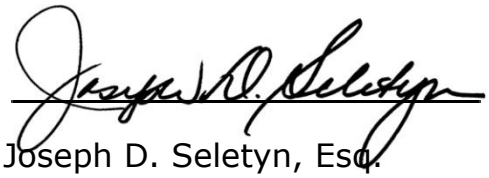
[2] Notably, a member of this panel expressed a similar sentiment when the question of this statute's constitutionality was before the Commonwealth Court of Pennsylvania. He stated:

> Because the [Supreme] Court [of Pennsylvania] has provided the same restriction on venue in medical professional liability cases as the General Assembly provided in the provision of Act 127 being challenged here, I believe any decision as to the constitutionality of that provision of Act 127 pursuant to Article V, Section 10(c) could be held in abeyance until the Supreme Court changes Pa. R.C.P. No. 1006 in a way that the venue provision relating to medical professional liability claims no longer exists.

North-Central Pennsylvania Trial Lawyers Ass'n v. Weaver, 827 A.2d 550, 563 (Pa. Cmwlth. 2003), *as amended* (June 25, 2003) (Pellegrini, J. concurring and dissenting). We agree.

Judge Nichols concurs in the result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/22/21