No. 02-30682

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE: HORSESHOE ENTERTAINMENT,

Petitioner.

_____
On Petition for a Writ of Mandamus to the
United States District Court for the Middle District of Louisiana
The Honorable Ralph E. Tyson

_____

MEMORANDUM OF LAW SUBMITTED BY THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
AS AMICUS CURIAE
IN RESPONSE TO JUDICIAL INVITATION

_____

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INTRODUCTION

On September 10, 2002, a split panel of this Court granted the defendant-petitioner's petition for a writ of mandamus and directed the district court for the Middle District of Louisiana to transfer this case to the Western District of Louisiana, Shreveport Division. See In Re: Horseshoe Entertainment, 2002 WL 31012809, *6 (5th Cir., Sept. 10, 2002). The plaintiff petitioned for rehearing en banc, and this Court ordered a response. See Fed. R. App. P. 35(e). On October 10, 2002, this Court invited the Equal Employment Opportunity Commission (EEOC) "to file an amicus memorandum or brief addressing the panel majority opinion's interpretation and application of 42 U.S.C. Section 2000e-5(f)(3), as well as any other aspect of the majority opinion and the dissent on which the Commission cares to comment." Letter of 10/10/02. In response to this Court's invitation, the EEOC submits this memorandum

of law as amicus curiae to assist the Court in its interpretation and application of the special venue provision governing suits brought under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(f)(3) (section 706(f)(3)), and the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. § 12117(a).

BACKGROUND

In April 2001, Caroline Rogers sued her former employer, Horseshoe Entertainment (Horseshoe), under Title VII and the ADA, asserting claims of sex discrimination, sexual and disability-based harassment, failure to accommodate her disability (diabetes), and constructive discharge. See In Re: Horseshoe, at *1. Two months after Rogers filed her complaint in federal district court for the Middle District of Louisiana, Horseshoe moved to transfer the case to the Western District of Louisiana, Shreveport Division. Id. Horseshoe acknowledged that Rogers' "choice of the Middle District of Louisiana appears to be a proper venue" under Title VII, 42 U.S.C. § 2000e-5(f)(3), but maintained that the Western District is "a more convenient forum" and sought a change of venue pursuant to 28 U.S.C. § 1404(a). See Transfer Ruling at 2.

In support of its transfer request, Horseshoe relied on the following uncontested facts: Rogers resides in Caddo Parish, which is within the Shreveport Division of the Western District; Horseshoe's principal place of business is in Bossier City, also within the Shreveport Division; Rogers worked for Horseshoe in Bossier City, where all relevant employment records are maintained, and would have continued to work there, but for the alleged discrimination; each of the unlawful practices alleged by Rogers occurred in Bossier City or the greater Shreveport area; the Bossier City/Shreveport area, where almost all the witnesses for each party reside, is more than 200 miles from the Middle District courthouse in Baton Rouge, and thus beyond the district court's 100-mile automatic subpoena power, see Fed. R. Civ. P. 45(b)(2). See In Re: Horseshoe, at *1-*2.

District Court Decision

On July 2, 2002, the district court denied Horseshoe's motion to transfer. In deciding whether to exercise its discretionary authority to transfer under section 1404(a), the court considered the following factors: "1) the availability and convenience of witnesses; 2) the availability and convenience of the parties; 3) the place of the alleged wrong; 4) the location of books and records; 5) the possibility of delay or prejudice; 6) the location of counsel; and 7) the plaintiff's choice of forum." Transfer Ruling at 3 (citations omitted). The first three of these "relevant factors," the court determined, "militate in favor of the requested transfer" because the parties and "presumably the witnesses, all reside in Caddo Parish," where the alleged discrimination occurred. Id. at 3-4. The court discounted the significance of the location of books and records "in this case because the implements of modern electronic imaging and document transfer and retrieval will greatly reduce, if not eliminate, any inconvenience to the parties in this regard." Id. at 4 n.9. The remaining three factors, the court concluded, "seem to dictate that the requested transfer be denied," given the "possibility of delay or prejudice if transfer is granted," the fact that "both parties are now represented by Baton Rouge counsel," and Rogers' selection of the Middle District as her preferred forum. Id. at 4 & n.8. Having decided that "the relevant factors appear to be evenly divided between the two alternatives," the district court found that Horseshoe "failed to carry its burden of establishing that justice weighs substantially in favor of the requested transfer" and accordingly denied the motion. Id. at 4.

Court of Appeals Decision

Horseshoe petitioned this Court for a writ of mandamus, see 28 U.S.C. § 1651, seeking appellate review and reversal of the order denying its motion to transfer venue. A divided panel granted the petition, vacated the district court's transfer ruling, and directed the court to transfer the case to the Western District of Louisiana, Shreveport Division. In re: Horseshoe, at *6.

The panel majority listed four reasons to support its conclusion that the district court erred in finding that the relevant factors were "evenly divided" between the

two alternative venues, and that the plaintiff's choice of forum should therefore be honored. Id. at *4. The first three reasons concerned several of the factors cited by the district court in deciding Horseshoe's transfer motion. First, the majority announced, the location of counsel "is irrelevant and improper for consideration in determining the question of transfer of venue." Id. at *5. Second, the location of books and records, in the majority's view, deserved greater consideration, particularly since Title VII's venue provision permits a suit to be filed in the district where employment records relevant to the alleged unlawful practice are maintained and administered. Id. Third, the "possibility of delay or prejudice if transfer is granted," the majority stated, is an appropriate consideration only "in rare and special circumstances," and "only if such circumstances are established by clear and convincing evidence." Id. Because "no such evidence exists here," the majority concluded, the district court "erred by considering and giving weight to the mere 'possibility' of vague and indefinite circumstances." Id.

Finally, the majority, as its fourth reason for granting mandamus, criticized the district court's interpretation of Title VII's special venue provision, and expressed "serious doubts that the plaintiff's selection of the Middle District of Louisiana was a proper venue choice in this case." Id. at *5. The district court accepted Rogers' argument that "the phraseology of the portion of the special venue statute relating to where the unlawful employment practice occurred permits her to bring suit in any judicial district in the State of Louisiana," but the panel majority found this "novel and ingenious reading of the statutory language" to be "completely inconsistent with the pattern and practice in the general venue statute and in other special venue statutes where venue is set on a judicial district basis depending on the existence of facts or occurrences within that particular judicial district." Id. The majority expressed concern that "[f]ixing venue on a state-wide basis would create a field day for forum shopping by plaintiffs." Id.

The majority concluded that the "special venue factors" identified in Title VII "clearly indicate that Congress thought employment discrimination controversies should be litigated in judicial districts that had direct and immediate connection with the parties, the events and the evidence bearing on their controversy," and therefore rejected "the Middle District Court's interpretation of the statutory language which would support venue in the Middle District of Louisiana." Id. at *6. Because "the statutory venue factors are each and all satisfied by one division of one judicial district," i.e., the Shreveport Division of the Western District, and "the use of a district court's subpoena power could be clearly facilitated in the Shreveport Division," the majority ruled that "the Middle District Court clearly erred and abused its discretion in denying Horseshoe's motion to transfer to that district." Id.

In a dissenting opinion, Judge Benavides disagreed with the majority's interpretation of Title VII's venue provision, and its resort to the "extraordinary remedy of mandamus" where "the district court's analysis and determination not to transfer venue clearly does not rise to the level of abuse of discretion." Id. at *7-*8 (Benavides, J., dissenting). The dissent found that "the plain meaning of the relevant special venue statute, codified at 42 U.S.C. § 2000e-5(f)(3), makes clear that venue is proper in any judicial district in any state in which the alleged discrimination occurred, which, here, includes the Middle District." Id. at *7. "[G]iven the plain meaning of the special venue statute," Judge Benavides explained, "venue is proper in any district in Louisiana, the state in which the alleged discrimination occurred." Id. Contrary to the majority's view, the dissent determined that "[t]his sound result is neither novel nor unprecedented." Id. (citations omitted).

Turning to the transfer request in this case, Judge Benavides acknowledged that Rogers could have filed suit in the Western District, and that several factors weighed in favor of that forum, i.e., the place of the alleged discrimination; the location of relevant employment records; Rogers' residence; and the residence of most witnesses. Id. at *8. The dissent recognized that other factors, however, supported

the Middle District's decision to retain the case. Id. "Most significantly," Judge Benavides stated, "transferring venue would hinder the plaintiff's ability to choose a forum and may also result in prejudice and delay in this litigation, as some motions in this matter have been disposed of and others are currently pending, including defendant's motion for summary judgment." Id. (footnotes omitted). The dissent further observed that the factors weighed by the district court in its transfer ruling are among those that courts "traditionally have employed" in deciding whether to transfer venue. Id. at n.5.

DISCUSSION

In response to this Court's solicitation of the Commission's views in this case, the EEOC will address both the proper interpretation of Title VII's special venue provision, and the deference owed a district court's exercise of discretion in deciding whether to transfer a Title VII or ADA case pursuant to section 1404(a).

The plain text, legislative history, and judicial interpretation of Title VII's special venue provision all support the construction accepted by the district court and by Judge Benavides in his dissenting opinion: An action under Title VII "may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed . . . ." 42 U.S.C. § 2000e-5(f)(3) (emphasis added). Accord Richardson v. Alabama State Bd. of Educ., 935 F.2d 1240, 1248 (11th Cir. 1991) (holding that section 706(f)(3) allows Title VII plaintiff to sue "anywhere in the relevant state" where discrimination occurred); Garus v. Rose Acre Farms, Inc., 839 F.Supp. 563, 566 (N.D. Ind. 1993) ("[F]or Title VII venue purposes, Congress has determined that no distinction is to be drawn between districts in multi-district states based on the location of the district vis-a-vis the place where the alleged misconduct occurred: location within the same state as the alleged misconduct is sufficient."); Lewis v. Madison County Bd. of Ed., 678 F.Supp. 1550, 1551-52 (M.D. Ala. 1988) ("In a state such as Alabama, this category provides some alternative districts."); Aitkin v. Harcourt Brace Jovanovich, Inc., 543 F.Supp. 987, 988 (W.D. N.Y. 1982) ("[S]everal courts facing this precise issue have adopted the view that the statute means exactly what it says: Venue is not limited to the judicial district in which the alleged unlawful acts occurred, but is appropriate in any judicial district in the state in which the alleged unlawful acts occurred."). Because every act of discrimination alleged by Rogers occurred in Louisiana, Title VII permits her to sue Horseshoe in "any judicial district in the state," 42 U.S.C. § 2000e-5(f)(3), and venue is therefore proper in both the Middle and Western Districts of Louisiana.

The panel majority's suggestion that venue over Rogers' suit is proper only in the Western District of Louisiana reads Title VII to permit a plaintiff to bring suit "in [the] judicial district . . . in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice." See 42 U.S.C. § 2000e-5(f)(3). As the ellipsis and brackets indicate, this interpretation ignores the statutory phrase "any judicial district in the State," and thus conflicts with the fundamental tenet of statutory construction that requires courts, whenever possible, to strive to give effect to every term in a provision and avoid an interpretation that would render superfluous any portion of the text. See Duncan v. Walker, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute. . . . We are thus reluctant to treat statutory terms as surplusage in any setting.") (internal quotation marks and citations omitted); see also Garus, 839 F.Supp. at 566 ("suggest[ion] that this provision restricts venue to the district where the alleged misconduct occurred . . . renders the statute's 'in the state' language surplusage . . . better construction is that '[v]enue is not limited to the judicial district in which the alleged unlawful acts occurred, but is appropriate [under Title VII] in any judicial district [located] in the state in which the alleged unlawful acts occurred.'") (quoting Aitkin, 543 F.Supp. at 988); Gilbert v. General Electric Co.,

347 F.Supp. 1058, 1060 (E.D. Va. 1972) (interpreting section 706(f)(3) to permit suit "only in the particular judicial district . . . treats the phrase 'in the state' as surplusage without syntactical effect" and is therefore rejected).

The panel majority's interpretation is particularly untenable in view of the legislative history of Title VII's venue provision. As originally proposed, the draft of the venue provision contained in the House bill provided that actions under Title VII "may be brought either in the judicial district in which the unlawful employment practice is alleged to have been committed or in the judicial district in which the respondent has his principal office." See H.R. Rep. No. 914, 88th Cong., 1st Sess. 12 (1963) (text of H.R. 7152, sec. 707(d)). The Senate subsequently amended that language, and substituted the current version that was ultimately passed by Congress. Senator Humphrey explained the change as follows:

Section 706(f) revises the venue provision of section 707(d) of the House bill. The House bill provided for suit in either the district in which the unlawful employment practice occurred or in the district of the respondent's principal office. Section 706(f) provides that suit may be brought in any district in the State in which the practice occurred, in the district in which the relevant employment records are kept, or in the district in which the plaintiff would have been employed but for the alleged discrimination. Furthermore, in the rare case where the respondent cannot be served in any of these districts, suit may be brought in the district of his principal office.

110 Cong.Rec. 12723, col.3 (June 4, 1964).

The panel majority's view that Rogers was required to sue in the district where the alleged discrimination occurred reads section 706(f)(3) as if the House bill's original language were enacted without amendment. The legislative history clearly demonstrates, however, that Congress deliberately expanded the choice of venues available to a Title VII plaintiff beyond what was initially contemplated in the version drafted by the House. The majority's refusal to recognize that "the statutory language . . . permits the fixing of venue on a state-wide basis," see In re: Horseshoe, at *5, effectively narrows the plaintiff's venue options in a manner that conflicts directly with the plain language of the statute and with clearly evident legislative intent.

In rejecting a state-wide choice of venue under Title VII, moreover, the panel majority improperly relied on "the pattern and practice in the general venue statute and other special venue statutes where venue is set on a judicial district basis." In re: Horseshoe, at *5. It is well established that a special venue statute applicable to a particular type of action, like section 706(f)(3), supersedes the general venue statute, 28 U.S.C. § 1391(b). See Time, Inc. v. Manning, 366 F.2d 690, 696 n.7(5th Cir. 1966); see also Johnson v. Payless Drug Stores Northwest, Inc., 950 F.2d 586, 587 (9th Cir. 1991) ("[G]iven the conflict between two statutes, well settled principles of statutory construction dictate that the later, specific venue provision (section 2000e-5(f)(3)) applies rather than the earlier, general venue provision (section 1391(b))."") (quoting Bolar v. Frank, 938 F.2d 377, 379 (2d Cir. 1991) (per curiam)). This Court has long recognized that "Congress may, of course, establish different venue requirements for various kinds of cases, depending on its estimation of the relative inconvenience of requiring a defendant to litigate in a particular forum." Time, Inc., 366 F.2d at 697. Congress's enactment of more restrictive, district-specific special venue provisions to govern other types of actions thus only reinforces the argument that courts must give effect to the legislative decision to establish a distinctive, more expansive rule for venue in Title VII suits.

In addition to the language that broadened venue options available under Title VII, the amended provision passed by Congress also inserted an express reference to the federal statutes providing for change of venue, 28 U.S.C. §§ 1404(a) and 1406(a). See 28 U.S.C. § 2000e-5(f)(3) ("For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought."). In so

doing, Congress manifested its intention that a plaintiff's choice of venue, while expanded to include a state-wide forum-selection clause, would not be absolute. See Lewis, 678 F.Supp. at 1552 (amendment to expressly reference venue transfer statutes shows Congress did not intend "to place the venue provisions of Title VII outside the purview" of discretionary transfers under section 1404(a)); EEOC v. Parish Water Works, 415 F.Supp. 124, 125-26 (E.D. La. 1976) (same). Rather, Title VII suits are subject to a change of venue "[f]or the convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a).

In deciding a motion to transfer under section 1404(a), "[t]he trial court must consider all relevant factors to determine whether or not on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum." 15 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure: Jurisdiction and Related Matters § 3847, at 370 (2d ed. 1986) (quoted in Peteet v. Dow Chemical Co., 868 F.2d 1428, 1436 (5th Cir. 1989)). Because "[t]he three factors mentioned in the statute, convenience of parties and witnesses and the interest of justice, are broad generalities that take on a variety of meanings in specific cases . . . much necessarily must turn on the particular facts of each case." Id. This Court has accordingly emphasized that "[t]he determination whether the circumstances warrant transfer of venue is 'peculiarly one for the exercise of judgment by those in daily proximity to these delicate problems of trial litigation.'" Time, Inc., 366 F.2d at 698. Hence, a trial court's ruling on a motion to transfer "can only be overturned for a clear abuse of discretion." Howell v. Tanner, 650 F.2d 610, 616 (5th Cir. 1981). "Appellate review is limited," this Court has explained, "because it serves little purpose to reappraise such an inherently subjective decision." Id. Under this highly deferential standard, for example, this Court upheld the district court's discretion in denying transfer, notwithstanding "several impressive contentions" offered by the defendant in support of its motion for transfer from Louisiana to New York: relevant business records and many witnesses were in New York, plaintiff's claim might require application of New York law, and the large backlog of cases in the Eastern District of Louisiana ensured a "quicker trial in New York." Time, Inc., 366 F.2d at 698.

"The plaintiff's statutory privilege of choosing his forum is a factor, held in varying degrees of esteem, to be weighed against other factors in determining the convenient forum." Time, Inc., 366 F.2d at 698. In this Circuit, the "'[p]laintiff's privilege to choose, or not to be ousted from, his chosen forum is highly esteemed.'" Id. (quoting Menendez Rodriguez v. Pan Am. Life Ins. Co., 311 F.2d 429, 434 (5th Cir. 1962), vacated on other grounds, 376 U.S. 779 (1964)); see also Peteet, 868 F.2d at 1436. Consequently, "[t]he plaintiff's choice of forum should not be disturbed unless it is clearly outweighed by other considerations," Howell, 650 F.2d at 616, which the defendant bears the burden to demonstrate. Time, Inc., 366 F.2d at 698.

The breadth of Title VII's special venue provision, moreover, evinces a congressional intent that the plaintiff's choice of forum, while not absolute, should be accorded substantial weight in balancing the relevant factors under section 1404(a). See Richardson, 935 F.2d at 1248 ("Some courts have concluded that [Title VII's] broad provision for alternative forums was necessary to support the desire of Congress to afford citizens full and easy redress of civil rights grievances."); see also Gilbert, 347 F.Supp. at 1060 (allowing Title VII plaintiffs "a particularly wide latitude in choosing the situs of their litigation . . . affords greater convenience to plaintiffs and enables them to avoid potential local economic and political pressures which might be believed to serve to hinder a trial judge's efforts to maintain an unfettered impartial atmosphere"); cf. American Telephone and Telegraph Co. v. EEOC, 270 F.3d 973, 976 (D.C. Cir. 2001) (affirming dismissal of employer's declaratory judgment action to challenge EEOC policy guidance because suit would "preempt the Commission's discretion to allocate its resources . . . as well as its ability to choose the venue for its litigation, as [Title VII] contemplates").

In granting mandamus to reverse the district court's transfer ruling, the panel

majority departed from well settled standards in this Circuit governing the level of deference owed to the trial court's exercise of discretion under section 1404(a), and the high degree of esteem owed Rogers' privilege to select a venue for her Title VII action. The majority's reassessment of the various factors considered by the district judge, moreover, amounts to an improper and "unrealistic" effort to "limit the discretion conferred on the trial court" in a manner entirely inconsistent with the case-specific analysis contemplated by section 1404(a). See Federal Practice and Procedure § 3847, at 370-71. While the trial judge acknowledged that the location and convenience of parties and witnesses favored transfer to the Western District, for instance, see Transfer Ruling at 3-4, these factors deserve less weight where the distance between two alternative venues is "relatively short" and can be "traveled easily." See Federal Practice and Procedure § 3854, at 470-72 (factor relevant to convenience of parties and witnesses "is the distance for which the transfer is sought. It has been held that Section 1404(a) should not be invoked for transfer between two courts if there is only a relatively short distance between them and it can be traveled easily.") (citing cases). The convenience of witnesses, moreover, is a relevant factor "only to the extent that the witnesses may actually be unavailable for trial in one of the fora," Jumara v. State Farm Ins. Co., 55 F.3d 873, 880 (3d Cir. 1995), and therefore transfer properly may be denied "when they are employees of a party and their presence can be obtained by that party." Federal Practice and Procedure § 3851, at 420-23 (citing cases).

Similarly, while the panel majority faulted the district court for discounting the location of books and records as a factor, the trial judge's determination that in this case modern means of duplication and electronic transfer eliminated any inconvenience associated with that factor is entirely well founded. See id. § 3853, at 435-38 ("Many records are easily transported and their location is entitled to little weight, and this is particularly true with the development of xerography and the easy availability of copies.") (citations omitted). Finally, the district court was entitled to consider the possibility of delay or prejudice in transferring the case once discovery had been completed and a motion for summary judgment was pending. While the district court did not specify the potential delay or prejudice it had identified in this case, it may have properly considered the administrative inefficiency and duplication of judicial effort that a transfer would entail at this stage of the litigation. Judicial economy would certainly appear to be an appropriate factor in deciding whether transfer is in the "interest of justice." Cf. Jumara, 55 F.3d at 879 ("relative administrative difficulty in the two fora resulting from court congestion" is appropriate factor to consider in weighing "public interests" under § 1404(a)); Coffey v. Van Dorn Iron Works, 796 F.2d 217, 221 (7th Cir. 1986) ("The 'interest of justice' analysis relates, then, to the efficient functioning of the courts, not to the merits of the underlying dispute.").

CONCLUSION

Venue in this case is proper in the Middle District of Louisiana because Title VII permits a plaintiff to file an action in "any district in the State" in which alleged discrimination occurred. 42 U.S.C. § 2000e-5(f)(3). Given the substantial weight due a plaintiff's choice of forum, the district court did not clearly abuse its discretion in weighing various relevant factors and denying the motion to transfer this case to the Western District of Louisiana

Respectfully submitted,

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1. 42 U.S.C. § 2000e-5(f)(3) provides that a Title VII action "may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought." The ADA incorporates by reference Title VII's enforcement procedures, including the special venue provision. See 42 U.S.C. § 12117(a).

2. Because this Court has invited the Commission to comment on the panel majority and dissenting opinions on the petition for mandamus, the EEOC has limited its consideration of the record in this case to the appellate decision and the district

court's Ruling on Motion to Transfer, entered July 2, 2002 (Transfer Ruling). The EEOC has had no contact with counsel for either party, and has not reviewed any other portion of the record in the case.

3. Section 1404, entitled "Change of Venue," provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a).

4. Even Horseshoe "acknowledges . . . that plaintiff's choice of the Middle District appears to be a proper venue." See Transfer Ruling at 2. A motion to transfer pursuant to 28 U.S.C. § 1404(a) "presupposes that the court in which suit was filed is a proper venue." 15 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure: Jurisdiction and Related Matters § 3842, at 322 (2d ed. 1986). A motion to dismiss or transfer a suit filed in an improper venue is governed by a different statutory rule, 28 U.S.C. § 1406(a). See Time, Inc. v. Manning, 366 F.2d 690, 698 n.12 (5th Cir. 1966) (where venue was proper under both general and special venue statutes potentially applicable to plaintiff's claim, motion to dismiss or transfer under section 1406(a) was "unavailable" to defendant).

5. While "the better practice" is for a trial court to explain "the specific facts and circumstances on which it relied" in ruling on a transfer motion, this Court "decline[d] to impose an inflexible rule requiring district courts to file a written order explaining their decisions" under § 1404(a). Peteet, 868 F.2d 1436 (affirming denial of transfer even though "trial court inexplicably did not articulate its reasons" for its ruling). There is no precedent for the panel majority's statement that potential delay or prejudice is a factor to be considered only in "rare and special circumstances," or for the imposition of a heightened "clear and convincing evidence" standard to govern a trial court's consideration of this factor in deciding a transfer motion. See In re Horseshoe, at *5.