IN THE SUPREME COURT
OF THE STATE OF FLORIDA

WILLIE E. BROWN and
BRENDA BROWN, husband and wife,

Petitioners,

CASE NO.: SC10-868
FOURTH DCA CASE NO.: 4D09-4140

v.

KIM J. NAGELHOUT, individually,
HELENA CHEMICAL CO., INC., a foreign corporation,
and CSX TRANSPORTATION, INC., a foreign corporation,

Respondents.

RESPONDENT CSX TRANSPORTATION, INC.'S

ANSWER BRIEF

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PRELIMINARY STATEMENT

In this brief, Willie E. Brown and Brenda Brown, the Plaintiffs below and Petitioners here, will be referred to as “Petitioners” or "Plaintiffs," as appropriate. CSX Transportation, Inc., the Defendant below and Respondent here, will be referred to as “Respondent” or "CSXT." Helena Chemical Co., Inc., Co-Defendant below, will be referred to as “Helena Chemical.” Kim Nagelhout, Co-Defendant below, will be referred to as “Mr. Nagelhout.” The decision of the Fourth District Court of Appeal was left out of the record and therefore will be referenced herein by its Southern Reporter citation, Brown v. Nagelhout, 33 So.3d 83 (Fla. 4th DCA 2010). References to the Index to the Briefs prepared by the Fourth District Court of Appeal will be abbreviated “R” followed by the applicable section and page numbers. For example, “R3:2,” refers to section three, page two.

STATEMENT OF THE CASE AND FACTS

Petitioners' Statement of the Case and Facts is generally accepted as it applies to the venue issues discussed therein, as is Petitioners' Procedural History.

ISSUE ON APPEAL

Whether the Fourth District’s opinion below interpreting the Joint Residency Rule is in conflict with this Court’s decision in Enfinger and/or other District Court cases applying Enfinger.

SUMMARY OF ARGUMENT

The Joint Residency Rule is an exception to Plaintiffs' general choice of venue found in Florida Statute § 47.021. This rule establishes that when there are multiple defendants in a case and one of them is a corporation and one is an individual, if the corporation and individual share a residence, then venue is proper only in that shared residency. Enfinger v. Baxley, 96 So.2d 538 (Fla. 1957); Walden Leasing, Inc. v. Modicamore, 559 So.2d 656, 657 (Fla. 4th DCA 1990). Applying this rule to the facts at hand, the trial court properly granted and the Fourth District properly affirmed the granting of Helena Chemical and Mr. Nagelhout's Motion to Transfer since Pasco County is the shared residence of both Helena Chemical and Mr. Nagelhout. (R2:43-45).

Petitioners' contention that the Fourth District's interpretation of the Joint Residency Rule below, as well as in Walden Leasing and Sinclair Fund, is in conflict with the Supreme Court's decision in Enfinger and with the other District Courts of Appeals' decisions is without merit. Enfinger does not hold, as Petitioners suggest, that the Joint Residency Rule only applies if all defendants share the same residency. Instead, the Joint Residency Rule stands for the proposition that when an individual defendant shares a residence with a corporate defendant, venue must lie in that county of shared residence, regardless of where any additional corporate defendant resides.

STANDARD OF REVIEW

Because the order on review involves a matter of law, the standard of review is de novo. Fla. Div. of Pari-Mutuel Wagering of the Fla. Dep't of Prof. Reg. v. Fla. Standardbred Breeders & Owners Assoc., Inc., 983 So.2d 61, 62 (Fla. 4th DCA 2008).

ARGUMENT

I. The Fourth District properly applied the joint residency rule as expressed in Enfinger, which holds that when an individual defendant shares residence with a corporate defendant, venue must lie in that county of shared residence, and thus there is no conflict between Brown v. Nagelhout and Enfinger.

The seminal case deciding the issue of venue that is presented herein is Enfinger v. Baxley, 96 So.2d 538 (Fla. 1957). In Enfinger, the plaintiff sued Enfinger, an individual, and his employer Atlantic Coast Line Railroad Co. for injuries received on the job as a result of defendant, Enfinger's, negligence. Id. at 539. Enfinger's county of residence was Polk County. Id. His employer, Atlantic Coast Line Railroad Co., had an agent and did business in both Polk County and Duval County. Id. The plaintiff brought suit in Duval County and the defendant, Enfinger, moved to dismiss for improper venue arguing that it should have been brought in Polk County. Id. The trial court denied the motion and the defendant, Enfinger, appealed. Id. The Florida Supreme Court reversed finding venue proper in Polk County and in so doing set forth the Joint Residency Rule, as it is referred

to today, as an exception to Florida Statute § 47.021. Under this Rule, when a natural person is sued along with a corporate defendant and there is a county in which they both reside, venue is proper only in that county of joint residence. Heartland Organics, Inc. v. MC Developments, LLC, 8 So.3d 1227 (Fla. 1st DCA 2009) citing to Enfinger, 96 So.2d at 540-41.

The instant case involves three Defendants: two corporations and one individual, and the accident occurred in Pasco County, Florida. (R2:47-49). Defendant Kim Nagelhout resides only in Pasco County, Florida; Defendant Helena Chemical has a business residence in Pasco County, Florida, and a registered agent in Broward County, Florida; and, Defendant CSXT has its corporate headquarters for Florida in Duval County with its registered agent in Leon County, and several other places of business throughout Florida, including Broward County[1]. (R2:43-45). Plaintiffs reside only in Broward County, Florida. (R2:43-45; R2:47).

Since Helena Chemical and CSXT, both foreign corporations, do not share a residence, Florida Statute § 47.021 becomes operational in the case at hand. Florida Statute § 47.021 states, "[a]ctions against two or more defendants residing in different counties may be brought in any county in which any defendant

[1] While CSX Transportation, Inc. does not have an office or agent in Pasco County, its tracks and trains operate throughout Pasco County, and that is where the subject accident occurred.

resides." It is under this statute that Petitioners argue that Broward County, as their choice of venue, is proper. However, the Joint Residency Rule, as an exception to this statute trumps plaintiff's choice of venue when an individual defendant shares a common venue with a corporate defendant. Under this rule, since Helena Chemical, as a corporate defendant, and Mr. Nagelhout, as an individual defendant, both reside in Pasco County, Pasco County is the only proper venue for this case. (R2:43-45); Enfinger, 96 So.2d at 540-41; Walden Leasing, 559 So.2d at 657; Sinclair Fund, Inc. v. Burton, 623 So.2d 587-88 (Fla. 4th DCA 1993); Twigg v. Watt, 558 So.2d 194 (Fla. 4th DCA 1990).

Enfinger established that if sued alone, a defendant corporation would have no greater right under § 46.04 to be sued in Duval County than in Polk County since it has an agent in both counties, but the individual defendant if sued alone would have the privilege under § 46.01, now § 47.011, of being sued in Polk County. Id. at 540. Section 47.011, Fla. Stat., provides that "[a]ctions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located…." Thus, the Enfinger Court did not believe that § 46.02, now § 47.021, should be applied to give the plaintiff a right to choose the forum in which to bring his suit. Id. The Supreme Court in Enfinger, after reviewing the Florida Statutes pertaining to venue, determined that

in the situation such as this where there is an individual defendant and a corporate defendant, and both share a county of residence, suit must be brought in that common county of residence.

> We hold therefore that where an individual defendant is joined as a party defendant with a foreign corporation defendant and the corporate defendant has an agent in the county in which the individual defendant resides, § 46.02 [now § 47.021] cannot be applied to defeat the individual defendant's venue privilege granted by § 46.01 [now § 47.011].

Id. at 540-41. The right of a plaintiff to have an action tried in a county other than that in which the defendant has his residence is exceptional and if the plaintiff would claim such a right, he must bring himself within the terms of the exception. Id. (quoting Brady v. Times Mirror Co., 106 Cal. 56 (Cal. 1895)).

Petitioners, contrarily, contend that the opinion below affirming the Order Transferring Venue to Pasco County is in express and direct conflict with Enfinger. However, Petitioners misapprehend the Joint Residency Rule established in Enfinger as requiring all defendants to share a common county of residence for the rule to apply. First, Enfinger did not involve a third corporate defendant, such as the case herein. Secondly, the reasoning underlying the Enfinger decision is that in situations where a corporate defendant resides in two counties, one of which the individual defendant also resides in, plaintiff's general choice of venue as afforded under § 47.021, Fla. Stat., cannot defeat the individual defendant's venue privilege

afforded him had he been sued alone. Accordingly, there is no conflict, simply a situation wherein Petitioners have misconstrued this Court's holding in Enfinger.

Cases that have the same factual scenario as our case, i.e., where an individual defendant and a corporate defendant share a common county of residence but a second corporate defendant does not, have applied Enfinger's joint residency rule and held that venue is proper only in that county of shared residence between the one corporate and individual defendant. The Walden Leasing case is directly on point as it involved multiple corporate defendants and an individual defendant. Walden Leasing, 559 So.2d at 657. The court held that where a corporate defendant resides in the same county as the individual defendant, venue is proper only in that county of joint residency. Id. Even though the other corporate defendant in the Walden Leasing case resided in a different county, the court held that the Joint Residency Rule required venue in the county of the shared residency of the corporate and individual defendants. Id. This same reasoning was correctly applied by the trial and appellate court in our case. In fact, Petitioners concede that Helena resides in Pasco County as well as Broward. See Petitioners' Initial Brief p. 9. Thus, under Walden Leasing and Enfinger, venue is proper only in Pasco County.

In their Initial Brief, Petitioners state that the Fourth District in deciding Brown v. Nagelhout misconstrued Enfinger as creating a trump card[2] for individual defendants in venue selection. This, however, is not a misinterpretation, instead it is precisely what this Court has held in Enfinger by ruling that where an individual defendant shares residence with a corporate defendant, venue must lie in that county of shared residence. Moreover, simply adding a corporate defendant to the mix cannot defeat the individual defendant's venue privilege. Enfinger, 96 So.2d at 540-41. See also Carbone v. Value Added Vacations, Inc., 791 So.2d 1217, 1220 (Fla. 5th DCA 2001); King v. King, 188 So.2d 857, 858-59 (Fla. 4th DCA 1966) citing to Enfinger (holding that the provisions in § 46.02, Fla. Stat., now § 47.021, Fla. Stat., however, have been construed not to authorize the abrogation of the individual defendant's right to be sued in her county of residence). In this scenario, § 47.021, which gives Plaintiff choice of venue amongst multiple defendants residing in different counties, cannot defeat this individual defendant's venue privilege under § 47.011. Enfinger, 96 So.2d 540-41. In footnote 11 of their Initial Brief, Petitioners argue that giving an individual defendant such a privilege as the Fourth District has done in its Brown v. Nagelhout ruling would

[2] Interestingly, the joint residency rule becomes operational when venue is based on residence; it does *not* trump any other legitimate basis for establishing venue. For example, if the cause of action arose in a county other than the county of joint residence of a corporation and a natural person, the plaintiff could properly initiate

render § 47.021 a nullity. This is a specious argument, however, since the Enfinger ruling has clearly created an exception to § 47.021 in cases wherein a corporate defendant and individual defendant share residence. The Fourth District's interpretation of Enfinger and the joint residency rule does not render § 47.021, Fla. Stat., a nullity; instead, it correctly applies the exception that was created to ensure that when an individual defendant is sued alongside a corporate defendant, the individual defendant does not lose his venue privilege under § 47.011, Fla. Stat.

II. There is no conflict between Brown v. Nagelout and the other District Court cases applying the Joint Residency Rule as the cases cited by Petitioners in support of a conflict are factually distinguishable.

Petitioners cite the cases of Reliable Elec., Doonan, Aladdin, and Padin as support for their position that there is a conflict between the Fourth District Court of Appeal's decision and the decisions of the First, Second, and Third District Courts of Appeal applying Enfinger. However, as these cases are clearly distinguishable from the facts in our case, no express or direct conflict exists between the opinion below and the holding in these district courts of appeal.

In Reliable Elec. Distrib. Co., Inc. v. Walter E. Heller & Co. of La., Inc., 382 So.2d 1287 (Fla. 1st DCA 1980), the action was taken in Bay County against three defendants, two of whom were individuals and the other a corporation. Both of the

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the action in the county where the cause of action arose. However, the cause of

individuals undisputedly resided in Bay County, but the corporation claimed it did not. Id. The court of appeal accepted this contention and held that the suit could be brought in any of the counties in which any of the defendants resided. Id. at 1287-88. This is a different situation than the one at hand and therefore inapplicable to our facts. The issue in Reliable Elec. was whether the right of a corporation to be sued in the county where it does business controls over the right of a plaintiff under Florida Statute § 47.021 to bring suit in any county where one of the multiple defendants resides. Id. at 1288. It did not involve a factual scenario such as ours with a corporation and an individual sharing residence while another corporation does not reside in that shared residence. Id. The court held that where two individual defendants share a common county of residence but the corporate defendant does not reside in that county, suit may be brought in any county in which any of the defendants reside. Id.

In Doonan v. Poole, 114 So.2d 504, 505 (Fla. 2d DCA 1959), all three of the defendants were individuals, with no corporate party whatsoever; two resided in St. Lucie County and one resided in Broward. The court held that suit could be brought against the defendants in either Broward or St. Lucie County. Id. at 506. Doonan did not involve a corporate defendant and an individual defendant which was why the Enfinger joint residency exception was not triggered. In fact, in

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action arose in Pasco County, not Plaintiff's preferred Broward County.

Doonan, the court even recognized that Enfinger was a distinguishable case and specifically stated that the rule of law in Enfinger was not determinative of that situation. Id.

In Aladdin Ins. Agency, Inc. v. Jones, 687 So.2d 937, 938-39 (Fla. 3d DCA 1997), there were three different corporate defendants but no individual defendant involved, which makes it completely different from the facts at hand. The Aladdin holding simply applies the rule that where all of the defendants in a case have a common county of residence, the suit is appropriate only in that county. Id. at 939. Therefore, since Reliable Elec., Doonan, and Aladdin are distinguishable from the Fourth District's opinion below, there is no express or direct conflict with the Forth District's holding in Brown v. Nagelhout.

Padin, like Aladdin, can be distinguished from the case at hand because Padin involves a corporation that did not share residency with the two individual defendants. In fact at the September 1, 2009 hearing, the trial court judge stated that Padin stands for the position that regardless of how many defendants there are, if a foreign corporation is involved, it must have an agent or representative in the county where venue is sought to be changed. (R2:85-88); Padin v. Travis, 990 So.2d 1255, 1256 (Fla. 4th DCA 2008). The judge further stated that if the foreign corporation has two residences, the plaintiff can choose. (R2:88). However, the judge correctly ruled in the instant case that since we have the individual

defendant, Mr. Nagelhout, and the corporate defendant, Helena Chemical, both sharing residence in Pasco County, venue is proper only in Pasco County. (R2:43-45).

Lastly, the Fourth District's opinion below is actually consistent with other district court cases involving facts similar to ours. The Fifth District Court of Appeal has held that where a foreign corporation and an individual are properly joined as defendants, and the corporate defendant has an agent in the county in which the individual defendant resides, the venue statute governing actions against defendants residing in different counties cannot be applied to defeat the individual defendant's venue privilege granted by the general venue statute. A-Ryan Staffing Solutions Inc. v. Ace Staffing Mgmt. Unlimited, Inc., 917 So.2d 1000 (Fla. 5th DCA 2005). Enfinger, Walden Leasing, and Sinclair Fund, all controlling herein, hold that where a corporate defendant shares residency with an individual defendant, venue is **proper only** in that shared residence (emphasis added). This is regardless of a second corporation not residing in that same county. Walden Leasing, 559 So.2d at 657. In the case at hand, venue is proper only in Pasco County, the shared residence of Mr. Nagelhout, as an individual, and Helena Chemical, as a corporation. Therefore, there is no conflict and the Fourth District's opinion below should be affirmed.

CONCLUSION

The Fourth District's opinion in Brown v. Nagelhout correctly applied the Joint Residency Rule set forth in Enfinger. As no conflict exists between these cases, the opinion below should be affirmed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail and e-mail to Howard A. Spier/Lincoln Connolly, Esq., ROSSMAN, BAUMBERGER, REBOSO & SPIER, 44 W. Flagler Street, 23rd Floor, Miami, FL 33130 (counsel for Plaintiff); David B. Goulfine, Esq., HIGHTOWER & PARTNERS, 7380 Sand Lake Road, Suite 395, Orlando, Florida 32819 (counsel for Nagelhout & Helena Chemical); and, Richard A. Sherman Sr., Esq., RICHARD A. SHERMAN P.A.,

Suite 302, 1777 South Andrews Avenue, Fort Lauderdale, FL 33316 (Co-Counsel for Nagelhout & Helena Chemical) on January 19, 2011.

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JOSE A. GUTIERREZ

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY the foregoing Brief on Jurisdiction satisfies the requirements of Rules 9.100(1) and 9.210(a)(2), Florida Rules of Appellate Procedure.

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JOSE A. GUTIERREZ