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# PA Supreme Court Holds Online Defamation Cases Can Be Brought Almost Anywhere In Pennsylvania

By Jonathan B. Skowron

Confirming that a half-century-old case still applies in the internet age, the Pennsylvania Supreme Court recently held that a lawsuit for defamatory statements made online can be filed almost anywhere in the state. *Fox v. Smith*, Nos. 39 EAP 2019, 40 EAP 2019, 41 EAP 2019, 42 EAP 2019, 2021 Pa. LEXIS 3991 (Pa., Nov. 17, 2021).

## BACKGROUND OF THE CASE

In *Fox*, an unsuccessful candidate for mayor of a town in Delaware County, Pennsylvania, sued her opponent for allegedly defamatory statements made during the 2017 election. Although many of the comments were made online, everyone seemed to agree that the statements originated from Delaware County and were primarily targeted at individuals in Delaware County. And yet, the plaintiff filed her lawsuit not in Delaware County, but in Philadelphia, allegedly due to the fact that one of the plaintiff's friends who had read the online statements resided there. The defendant objected, claiming venue was improper and that the suit should have been brought in Delaware County.

## THE GENERAL RULES OF VENUE

In legal parlance, "venue" means the physical court where a lawsuit may actually be heard. This is related to, but distinct from, "jurisdiction," which means whether a court has authority over a person or case. So, for example, all courts in Pennsylvania have "jurisdiction" (or authority) over a Pennsylvania corporation; but that doesn't mean that the company may be sued in any Pennsylvania court for any lawsuit.

Venue in Pennsylvania is governed by Pennsylvania Rule of Civil Procedure 1006, which generally states that a lawsuit may be brought in any county where the

defendant may be served, where the claim arose, or where the related transaction or occurrence took place. Basically, there has to be a link between the venue and the cause of action; defendants should not be haled into a court on the other side of the state for no good reason. Thus, a native of Pittsburgh who gets into a fender bender in Pittsburgh with another native of Pittsburgh could not usually be sued in Philadelphia because "venue" would be improper – even though the Philadelphia court may technically have "jurisdiction" over the Pittsburgher by virtue of him being a Pennsylvania citizen.

## THE FOX DECISION

At issue in *Fox* was the question of where a cause of action for *online* defamation "arises" under Rule 1006. Under prior precedent from 1967 (*Gaetano v. Sharon Herald Co.*, 231 A.2d 753 (Pa. 1967)), a cause of action for defamation "arises" in any location "where a statement is read by a third person and understood by that individual as being defamatory." Thus, following the *Gaetano* decision, the plaintiff in *Fox* argued that venue was proper in Philadelphia since her friend had read the online statements there.

The defendant in *Fox* argued that the holding in *Gaetano* – while perfectly logical in 1967 – simply no longer made sense in the internet age, where any publication can reach anyone in the world with a simple forwarding of an email or sharing of a link. As the defendant put it, the case was a "dispute among Delaware County residents, arising out of internet and social media posts originated in Delaware County, during a mayoral election in Delaware County." Further, the defendant asserted that *Gaetano* was also distinguishable because in that case the plaintiffs also lived in the

venue, and the defendants had purposefully directed 25 copies of their newspaper to that location; here, on the other hand, there was no dispute that the plaintiff lived in Delaware County, and there was no evidence that the defendant intentionally directed anything to Philadelphia. To uphold *Gaetano* here would therefore be unreasonable, the defendant argued, and allow for unfettered “contrivances and forum shopping.”

But the Pennsylvania Supreme Court was unconvinced, for several reasons. First, the defendant’s claim that venue should only lie where a plaintiff lived or where publications were directed had no basis in the rules or prior law. Second, it was the defendant herself who chose to use such a pervasive and easily shareable medium as the internet and social media; thus, it was “readily foreseeable - - and indeed inevitable - - that defamatory statements repositated there would tarnish [plaintiff’s] reputation in disparate counties.” Third, the Court found the defendant’s reliance on the federal venue rules (which require that a “substantial part” of the events or omissions occur in the venue) unpersuasive since the Pennsylvania state rules contained no such limitation.

Finally, the Court noted that their ruling did not allow for “limitless” venue anywhere in the state for two reasons. Because venue would only lie where the statement is “understood” to be defamatory, venue would be “inherently limited by the plaintiff’s own network of associates.” (That is, if a plaintiff is unknown in Philadelphia, no one there would understand a statement about her to be defamatory, and so there would be no venue.) Also, in the case of a truly burdensome choice of an otherwise proper venue, a defendant could always request a transfer under the legal doctrine of *forum non conveniens* in Rule 1006(d)(1).<sup>1</sup>

Thus, in the end, the Pennsylvania Supreme Court upheld *Gaetano* and concluded that, even in the era of Facebook and Instagram, a publisher of a defamatory statement in Pennsylvania may be sued in any county

where “a third-party recipient understands the statement as being defamatory.”

#### ANALYSIS

What does this decision mean for newspapers, other media outlets, and other individuals and organizations? In a way, *Fox* has not changed anything; it has merely confirmed that the venue rules that have governed defamation claims in Pennsylvania for more than 50 years are still in effect. That said, the implications of such a ruling in 2021 cannot be ignored. Pennsylvania media companies and others should anticipate that lawsuits regarding allegedly defamatory statements may be brought anywhere in the state, and should be prepared either to defend the lawsuits there, or to attempt to move them under the doctrine of *forum non conveniens* if the chosen venue is truly inconvenient or burdensome. Even so, it cannot be denied that *Fox* opens the door for defamation plaintiffs to sue in a much wider array of courts than may have previously been anticipated. ♦

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<sup>1</sup> “For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.”