IN THE SUPREME COURT OF TEXAS

NO. 04-1129

IN RE PIRELLI TIRE, L.L.C., RELATOR

ON PETITION FOR WRIT OF MANDAMUS

Argued November 29, 2005

JUSTICE O'NEILL announced the Court's disposition and delivered an opinion joined by JUSTICE HECHT, JUSTICE BRISTER, and JUSTICE MEDINA.

JUSTICE WILLETT delivered a concurring opinion joined as to Part I by JUSTICE WAINWRIGHT.

JUSTICE JOHNSON delivered a dissenting opinion joined by CHIEF JUSTICE JEFFERSON.

JUSTICE GREEN did not participate in the decision.

In this case, we consider the limits of a trial court's broad discretion when deciding whether to dismiss on forum-non-conveniens grounds an action brought by a claimant who is not a legal resident of the United States. We conclude that, though by its terms the forum-non-conveniens statute is permissive, the deference it affords trial courts is not without bounds. As with other discretionary rulings, a trial court abuses its discretion if its forum-non-conveniens ruling is arbitrary, unreasonable, and without reference to guiding principles. In this case, absent any significant connection between the incident and the Texas forum, and considering the private and public

interests involved, we hold that the trial court clearly abused its discretion in denying the defendant's motion to dismiss based on forum non conveniens.

I. Background

Valentin Hernandez Aran and Juan Benitez Mendoza, both Mexican citizens, were transporting a heavy load of seafood in a fourteen-year-old GMC pickup on a Mexican highway when the truck rolled over, killing Aran. The accident report filed by the Mexican police indicates that Aran was driving, but in light of evidence indicating Aran did not know how to drive the parties speculate that Mendoza, who was not present when the police arrived, may have been driving the truck when it rolled over and subsequently fled the scene. According to the report, the truck was speeding on a level two-lane road when the right rear tire failed and the truck rolled over.

R. Garza Motors of Brownsville, Texas, purchased the truck two years before the accident at an auction in Arkansas. Eleven days after the purchase, Garza Motors in Cameron County sold the truck to a Mexican citizen, who imported it into Mexico the same day. The truck was used, maintained, and serviced in Mexico from the time it was sold by Garza Motors until the date of the accident. The tire which allegedly failed was manufactured by Pirelli Tire in Des Moines, Iowa, in March 1994. Pirelli is incorporated in Delaware, and its principal place of business is Georgia.

In March 2003, Aran's wife, Maria Magdalena Meza Aran, his son, Damian Hernandez Meza, and later his mother, Felipa Aran Limas (collectively "the Arans"), all citizens of Mexico, sued Pirelli in Cameron County. They alleged that Pirelli negligently designed and manufactured the tire, and also asserted strict liability claims.[1] Less than a month later, Pirelli filed its Original

[1] The plaintiffs also sued Rolando Garza, d/b/a R. Garza Motors, the Brownsville dealer who sold the truck, but agreed to nonsuit Garza in exchange for Pirelli's agreement not to remove the suit to federal court.

Answer, as well as a Motion to Dismiss on Grounds of Forum Non Conveniens. In March 2004, Pirelli filed an expanded Motion to Dismiss on Grounds of Forum Non Conveniens and a Motion to Apply the Law of Mexico. The trial court denied Pirelli's motions, and the court of appeals denied mandamus relief. We granted oral argument on Pirelli's Petition for Writ of Mandamus to consider the parameters of the trial court's discretion in deciding the dismissal motion.

II. Timeliness of Pirelli's Motion

As a threshold matter, the Arans contend the trial court did not abuse its discretion in denying the motion to dismiss because Pirelli's motion was untimely under subsection (d) of the forum-non-conveniens statute, section 71.051 of the Texas Civil Practice and Remedies Code,[2] *enacted by* Act of May 29, 1997, 75th Leg., R.S., ch. 424, § 1, 1997 Tex. Gen. Laws 1680, 1680. Under that provision, a request for a stay or dismissal on forum-non-conveniens grounds must be filed within 180 days of the time for filing a motion to transfer venue. The Arans acknowledge that Pirelli filed a motion to dismiss concurrently with its answer, but they maintain that motion was inadequate because it consisted of only three paragraphs and contemplated that Pirelli would later file a supplemental brief more fully explaining Pirelli's contentions. In contesting the timeliness of Pirelli's motion, the Arans focus solely on the expanded motion to dismiss that Pirelli filed in February 2004, well after the time allowed under section 71.051(d) had expired.

We disagree that Pirelli's motion to dismiss was untimely. It is undisputed that Pirelli apprised the trial court of its claim that Cameron County was an inappropriate forum within the time allowed under section 71.051(d). Pirelli's original dismissal motion contended Cameron County had

[2] The statute has since been amended; all references to section 71.051 in this opinion are to the version in effect when the case was filed.

no connection with the accident, Mexico was a more appropriate forum, Mexican law provided the Arans an adequate remedy, and the balance of public and private interests weighed in favor of dismissal. Pirelli's second motion merely expanded on those contentions and identified specific events and circumstances supporting them. That Pirelli later supplemented its initial argument is entirely consistent with section 71.051(d), which allows a trial court to rule on a forum-non-conveniens motion only after a hearing with at least twenty-one days' notice to the parties. The statute further requires the court to provide the parties "ample opportunity" to obtain discovery relevant to the motion prior to the hearing. Thus, the statute contemplates that a motion may be filed and then supplemented in light of discovery. Pirelli's motion was not untimely.

III. The Forum-Non-Conveniens Statute

A. Trial Court Discretion

Section 71.051 of the Civil Practice and Remedies Code governs motions to dismiss based on forum non conveniens. Subsection (a) governs suits, like this one, brought by claimants who are not legal residents of the United States. It provides:

> With respect to a plaintiff who is not a legal resident of the United States, if a court of this state, on written motion of a party, finds that in the interest of justice a claim or action to which this section applies would be more properly heard in a forum outside this state, the court may decline to exercise jurisdiction under the doctrine of forum non conveniens and may stay or dismiss the claim or action in whole or in part on any conditions that may be just.

TEX. CIV. PRAC. & REM. CODE § 71.051(a).

Pirelli contends a trial court's discretion to dismiss on forum-non-conveniens grounds "in the interest of justice" is not unfettered. Citing our decision in *In re Smith Barney*, 975 S.W.2d 593, 598 (Tex. 1998), Pirelli argues dismissal is warranted when an action has no significant connection

with Texas. Pirelli further contends that the factors listed in section 71.051(b) of the forum-non-conveniens statute, which apply to cases brought by claimants who are legal residents of the United States, should guide a court in determining whether a case will be dismissed under subsection (a). Those factors are whether:

> (1) an alternate forum exists in which the claim or action may be tried;
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> (2) the alternate forum provides an adequate remedy;
>
> (3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;
>
> (4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;
>
> (5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and
>
> (6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

TEX. CIV. PRAC. & REM. CODE § 71.051(b).[3]

The Arans, on the other hand, contend section 71.051(a) confers virtually unlimited discretion on the trial court to decide whether a motion to dismiss should be granted on forum-non-conveniens grounds because the trial court's authority is described in permissive terms. According to the Arans, a reviewing court may reverse a decision denying a motion to dismiss under section

[3] In 2003, the Legislature eliminated any distinction between the claims of citizens and noncitizens. It repealed former section 71.051(a). Act of June 1, 2003, 78th Leg., R.S., ch. 204, § 3.09, 2003 Tex. Gen. Laws 847, 855. The statute now provides that, if a court finds that "in the interest of justice and for the convenience of the parties [a case] would be more properly heard in a forum outside this state, the court *shall* decline to exercise jurisdiction under the doctrine of forum non conveniens and *shall* stay or dismiss the claim or action." TEX. CIV. PRAC. & REM. CODE § 71.051(b) (emphasis added). That the Legislature has now mandated dismissal or a stay if a trial court finds that a case would be more properly heard in another forum does not mean that the discretion courts formerly exercised was limitless, however.

71.051(a) only if the underlying suit has no connection with the forum whatsoever. Because the truck involved in this case was in Texas for eleven days and was sold here, the Arans contend, we have no choice but to sustain the trial court's decision. We disagree.

While application of the forum-non-conveniens doctrine is now codified in Texas, the doctrine has deep roots in the common law. As in section 71.051(a), the common-law doctrine permitted a court possessing jurisdiction over a dispute to decline to exercise it when, "'for the convenience of the litigants and witnesses and in the interest of justice, the action should be instituted in another forum.'" *Exxon Corp. v. Choo*, 881 S.W.2d 301, 302 n.2 (Tex. 1994) (quoting *Sarieddine v. Moussa*, 820 S.W.2d 837, 839-40 (Tex. App.—Dallas 1991, writ denied)). The doctrine of forum non conveniens has always afforded great deference to the plaintiff's forum choice. *Flaiz v. Moore*, 359 S.W.2d 872, 874 (Tex. 1962) (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). But the doctrine also recognizes that the plaintiff's choice must sometimes yield in the public interest, and in the interest of fundamental fairness. *Id.* Further, forum-non-conveniens doctrine generally affords substantially less deference to a nonresident's forum choice. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-56 (1981); *see Owens Corning v. Carter*, 997 S.W.2d 560, 570 (Tex. 1999). The doctrine comes into play when there are sufficient contacts between the defendant and the forum state to confer personal jurisdiction upon the trial court, but the case itself has no significant connection to the forum. *See Gulf Oil*, 330 U.S. at 506. We have recognized that "[i]t is fundamentally unfair to burden the people of Texas with the cost of providing courts to hear cases that have no significant connection with the State." *In re Smith Barney*, 975 S.W.2d at 598. Moreover, while forum-non-conveniens questions differ from due-process inquiries, *see Metro, Life*

Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 575 (2d Cir. 1996), the doctrine touches on similar issues of fundamental fairness, protecting defendants from being forced to litigate in oppressive and vexatious circumstances. *See Flaiz*, 359 S.W.2d at 874 (citing *Gulf Oil*, 330 U.S. at 508).

It is true, as the Arans contend, that trial courts possess broad discretion in deciding whether to dismiss a case on forum-non-conveniens grounds. *Id.* But, as with other discretionary decisions, a trial court's forum-non-conveniens ruling is subject to review for clear abuse of discretion. *See In re Smith Barney*, 975 S.W.2d at 596. "A trial court abuses its discretion if its decision 'is arbitrary, unreasonable, and without reference to guiding principles.'" *Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex. 1997) (quoting *Mercedes-Benz Credit Corp. v. Rhyne,* 925 S.W.2d 664, 666 (Tex. 1996)). And we have granted mandamus relief from orders issued under grants of authority couched in permissive terms comparable to section 71.051(a) when trial courts failed to adhere to guiding principles. For example, in *In re Van Waters & Rogers, Inc.*, 145 S.W.3d 203, 206 (Tex. 2004), we granted mandamus relief from a trial court order consolidating twenty cases for trial in a mass tort case. Under Rule 174 of the Texas Rules of Civil Procedure, trial courts exercise broad discretion in determining whether cases should be consolidated. When cases involve a common question of law or fact, a court "may order a joint hearing or trial of any or all the matters in issue," "may order all the actions consolidated," and "may make such orders . . . as may tend to avoid unnecessary costs or delay." TEX. R. CIV. P. 174(a). Despite Rule 174's permissive language, we concluded that mandamus relief was warranted in *In re Van Waters* because the trial court's consolidation order did not comport with the principles we have articulated that must guide a court's exercise of discretion under the rule. 145 S.W.2d at 210-11.

We identified the principles that guide application of the forum-non-conveniens doctrine long ago, when we embraced the analytical framework the United States Supreme Court articulated in *Gulf Oil*. *Flaiz*, 359 S.W.2d at 874 (citing *Gulf Oil*, 330 U.S. at 508). While the *Gulf Oil* test cannot be applied formulaically, the factors

> to be considered are not difficult to name. An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforcibility of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy . . . .
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> Factors of public interest also have place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.

Gulf Oil, 330 U.S. at 508.

There is obviously much overlap between the *Gulf Oil* factors and those contained in section 71.051(b) of the Civil Practice and Remedies Code. But that the Legislature chose to incorporate into section 71.051(b) some of the specific concepts articulated in *Gulf Oil* does not mean that the *Gulf Oil* considerations have no application and may be entirely disregarded when deciding under

section 71.051(a) whether "in the interest of justice" another forum would be more appropriate. To the contrary, the *Gulf Oil* test has guided courts for decades in determining whether a case should be dismissed on forum-non-conveniens grounds. And, because "'[a]ll statutes are presumed to be enacted by the [L]egislature with full knowledge of the existing condition of the law and with reference to it,'" we presume that the Legislature was aware of the test when it empowered courts to dismiss noncitizen suits in the interest of justice. *Am. Transitional Care Ctrs. of Texas, Inc. v. Palacios*, 46 S.W.3d 873, 878 (Tex. 2001) (quoting *McBride v. Clayton*, 166 S.W.2d 125, 128 (Tex. 1943)).[4]

B. The *Gulf Oil* Factors

1. Adequate Alternative Forum

The *Gulf Oil* factors presuppose that an adequate alternative forum would have jurisdiction over the case. *Gulf Oil*, 330 U.S. at 507. Pirelli maintains that Mexico provides an adequate alternative forum because Pirelli has stipulated that it will submit to personal jurisdiction in Mexico and will not assert any statute-of-limitations defense based on time that has elapsed since the Texas lawsuit was filed. The Arans respond that Pirelli has failed to establish that a Mexican forum is available, pointing to their expert's testimony that a law in the state of Tamaulipas, the alternative forum for the Arans' suit, "poses a formidable obstacle" to an agreement renouncing prescriptive rights that have not yet accrued. We note that the Arans nowhere state that prescriptive rights have

[4] Several commentators have observed that the common-law forum-non-conveniens analysis applies to section 71.051(a). *See* James Holmes, *House Bill 4's Impact on Multi-Plaintiff Joinder & Intervention and on Forum Non Conveniens*, 46 S. TEX. L. REV. 775, 820-21 (2005); Carl Christopher Scherz, Comment, *Section 71.051 of the Texas Civil Practice and Remedies Code – The Texas Legislature's Answer to* Alfaro: *Forum Non Conveniens in Personal Injury and Wrongful Death Litigation*, 46 BAYLOR L. REV. 99, 118 (1994).

not yet accrued; if they have not, then limitations would not appear to be an obstacle to the Mexican forum in the first place. But in any event, the contingency that a Mexican court might not accept Pirelli's waiver does not overcome the important public and private interests supporting dismissal that inhere in this case, particularly when the statute authorizes the court to condition a dismissal order on the alternative forum's acceptance of jurisdiction. TEX. CIV. PRAC. & REM. CODE § 71.051(a). The federal courts commonly include such "return jurisdiction" clauses in forum-non-conveniens dismissal orders. *See, e.g.*, *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 681 (5th Cir. 2003) (directing district court to modify dismissal order to include return-jurisdiction clause).

The Arans also contend dismissal is inappropriate here because, even if available, the Mexican forum is inadequate in a number of respects. Although they acknowledge that Mexico provides a cause of action akin to negligence, the Arans contend a Mexican forum is inadequate because it does not afford a cause of action for strict liability. The Arans contest the Mexican forum's adequacy on the additional grounds that its legal system does not provide for a jury, no "American-style" discovery is available, and a Mexican court could not compel the authentication of documents in the United States. The Arans further contend Mexican law does not provide for survival damages and severely restricts damages for death.

Presuming that the Arans' portrayal of the Mexican law is correct, we do not agree that a Mexican forum is thereby rendered inadequate. That the substantive law of an alternative forum may be less favorable to the plaintiff is entitled to little, if any, weight. *Piper Aircraft*, 454 U.S. at 246-51. We agree with the Fifth Circuit that "[a]n alternative forum is adequate if 'the parties will not

be deprived of all remedies or treated unfairly, even though they may not enjoy the same benefits as they might receive in an American court.'" *Vasquez*, 325 F.3d at 671 (quoting *Gonzalez v. Chrysler Corp.*, 301 F.3d 377, 379-80 (5th Cir. 2002)). As the Fifth Circuit explained in *Gonzalez*:

> [W]e start from basic principles of comity. Mexico, as a sovereign nation, has made a deliberate choice in providing a specific remedy for this tort cause of action. In making this policy choice, the Mexican government has resolved a trade-off among the competing objectives and costs of tort law, involving interests of victims, of consumers, of manufacturers, and of various other economic and cultural values. In resolving this trade-off, the Mexican people, through their duly-elected lawmakers, have decided to limit tort damages . . . . It would be inappropriate — even patronizing — for us to denounce this legitimate policy choice by holding that Mexico provides an inadequate forum for Mexican tort victims.

301 F.3d at 381-82. Pirelli has demonstrated the availability of an adequate alternative forum, and the factors that the Arans raise are immaterial to that assessment.

2. Private Interests

Pirelli argues that the private-interest factors identified in *Gulf Oil* favor a Mexican forum for several reasons, and we agree. First, key evidence and witnesses concerning damages are in Mexico. Benitez, the only witness to the accident, together with the accident investigators and all medical personnel are in Mexico. The witnesses most likely to be familiar with the condition and maintenance of the truck and the tire, the truck's owner and its importer, are in Mexico. None of the Mexican witnesses can be compelled to testify in Texas, and several critical witnesses — Benitez, the truck's owner, the importer of the truck, and even one of the plaintiffs — have refused to be deposed here. While compulsory process may be available under the Hague Convention, Pirelli presented evidence that the process was time-consuming, uncertain as to result, and unlikely to bear

fruit in time for trial. The accident scene itself is in Mexico. Moreover, evidence concerning the tire's design and manufacture is located not in Texas, but in Georgia or Iowa.

The Arans contend Pirelli has not demonstrated that litigating in Cameron County would be vexatious or oppressive, and has not shown that any burden on the corporation would substantially outweigh their own convenience. But the Arans cannot logically claim that it is more convenient for them to litigate in Texas than in Mexico. In fact, Felipa Aran Limas, Valentin's mother, has refused to appear for a deposition in Texas, claiming she is unable to make the trip. It is undoubtedly true, as the Arans claim, that documentary evidence and expert reports will have to be translated into Spanish if the case proceeds in Mexico. But it is equally true that all documents and testimony bearing on the accident and its cause, the condition and maintenance of the truck and the tire, and damages, will have to be translated into English if the case is tried in Texas. On balance, the private interests that are implicated clearly favor the Mexican forum.

3. Public Interests

Factors regarding the public interest must also be considered in applying the doctrine of forum non conveniens. *Gulf Oil*, 330 U.S. at 508. The public interests involved here strongly favor Mexico. Mexico's interest in protecting its citizens and seeing that they are compensated for their injuries is paramount. The safety of Mexican highways and products within the country's borders are also Mexican interests. On the other hand, it is unfair to impose upon the citizens of Cameron County the cost and administrative burden of a complex products-liability suit with no significant connection to Texas. As the Supreme Court has stated, "[j]ury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation." *Gulf Oil*, 330 U.S.

at 508-09. The happenstance that the truck was in Texas for eleven days before it was sold and imported to Mexico is simply insufficient to provide Texas with any interest in this case.

In sum, the factors the Supreme Court articulated in *Gulf Oil* clearly and overwhelmingly favor a Mexican forum for resolution of this dispute. In light of the evidence presented, the trial court's denial of Pirelli's motion was arbitrary, unreasonable, contrary to guiding rules and principles, and constituted a clear abuse of discretion.

IV. Inadequate Remedy by Appeal

We have held that there is no adequate remedy by appeal when a trial court refuses to enforce a forum-selection clause. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004). Erroneous denial of a forum-non-conveniens motion is closely analogous, and for the same reasons cannot be adequately rectified on appeal. We conclude that Pirelli has no adequate remedy by appeal, and conditionally grant mandamus relief.

* * *

For the foregoing reasons, we conditionally grant Pirelli's petition for writ of mandamus, and direct the trial court to dismiss the case in accordance with our opinion. The writ will issue only if the trial court fails to comply.

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Harriet O'Neill
Justice

OPINION DELIVERED: November 2, 2007