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Appeals

## Trial Court Can't Transfer Case on Its Own, Superior Court Rules

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A trial court cannot transfer a matter to another jurisdiction on its own initiative, the Superior Court has ruled.

In a July 30 memorandum opinion in *Scott v. Lower Bucks Hospital*, the court reversed the Philadelphia Court of Common Pleas' transfer order and remanded the case back to Philadelphia, citing Pennsylvania Rule of Civil Procedure 213.1, which governs case transfers.

"While Rule 213.1 does provide the procedural basis to transfer cases for purposes of coordination, it does not provide the ability of the trial court to do so of its own volition," Judge Paula Francisco Ott wrote for the three-judge panel, which included President Judge Susan Peikes Gantman and Judge John T. Bender. "By acting unilaterally, the trial court ignored the requirements that a party request the transfer and that all parties be given both notice and the opportunity to respond."

The case, brought by a guardian ad litem representing Jenna Marie Scott, began with a medical malpractice suit in Bucks County against Lower Bucks Hospital and related defendants alleging Scott's severe birth defects were caused by the defendants' medical negligence. The hospital was in bankruptcy, according to the opinion, which would have stayed the action unless Scott agreed to proceed solely against available insurance coverage.

Despite claiming potential damages beyond \$100 million, Scott agreed to proceed against the insurance limits, Ott said. Scott then filed a fraud action in the Philadelphia Court of Common Pleas alleging the hospital induced her to proceed against nonexistent insurance limits.

The hospital filed a joinder complaint in both the Bucks County and Philadelphia cases, alleging legal malpractice, but did not contest the venue of the Philadelphia action. Through a series of motions and responses from both sides, the issue of venue was never addressed, Ott said.

But on Aug. 27, 2014, the trial court ordered the fraud case transferred to Bucks County for coordination with the negligence case.

The trial court offered no procedural basis to support its transfer, Ott said. It did, however, cite

*Pennsylvania Manufacturers' Association Insurance v. Pennsylvania State University*, which relied on Rule 213.1.

Rule 213.1 provides that when actions pending in different counties share a common question of law, "any party, with notice to all other parties, may file a motion requesting the court in which a complaint was first filed to order coordination of the actions," Ott said.

The court, however, found no case law addressing the sua sponte transfer of a case pursuant to Rule 213.1, and it determined that the rule's plain language does not allow for such an action, because transfer must be initiated by a party.

Ott said the Superior Court's 1988 opinion in *Horn v. Erie Insurance Exchange* held that a trial court could not sua sponte transfer a matter pursuant to Rule 1006(d), regarding forum non conveniens.

Ott also denied Lower Bucks Hospital's motion to dismiss Scott's appeal of the Aug. 27, 2014, ruling. The hospital had argued that because it prevailed in the underlying negligence action, the appeal was moot. Ott said that because post-trial motions and an appeal are still pending in that case, and Scott could still prevail, the fraud action is not moot.

The jury in the Bucks County negligence case returned a defense verdict on Sept. 24, 2014. Eric H. Weitz of Messa & Associates, who represents Scott, said the court ordered a new trial following post-trial motions. The defendants have appealed that order to the Superior Court.

"We appreciate the Superior Court's careful consideration of this matter and we look forward to conducting discovery into the hospital's misrepresentations of applicable insurance coverage," Weitz said.

Andrew Kessler and Lawrence Silverman of Litchfield Cavo represent Lower Bucks Hospital. Kessler did not return a call for comment.

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(Copies of the seven-page opinion in *Scott v. Lower Bucks Hospital*, PICS No. 15-1221, are available from Pennsylvania Law Weekly. Please call the [Pennsylvania Instant Case Service](#) at 800-276-PICS to order or for information.)