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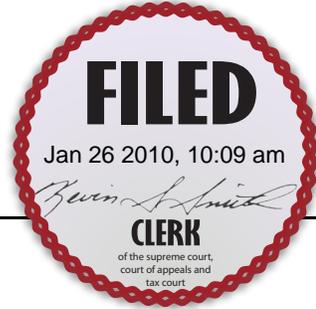
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**IN THE  
COURT OF APPEALS OF INDIANA**

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TRAVELERS PROPERTY CASUALTY )  
INSURANCE COMPANY, )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
STEVEN D. SEDDELMAYER, )  
 )  
Appellee-Petitioner. )  
 )

No. 45A04-0909-CV-526

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Thomas Webber, Senior Judge  
Cause No. 45D10-0907-MI-21

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**January 26, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## Case Summary

In a case involving the failure of an insurer and insured to agree on the amount of loss after the insured's house was damaged by fire, Travelers Property Casualty Insurance Company appeals the trial court's denial of its motion to transfer venue to Marion County pursuant to Indiana Trial Rules 12(B)(3) and 75. Specifically, Travelers contends that the trial court abused its discretion because the county in which insured Steven D. Seddelmeyer filed the present action is not a preferred venue while Marion County, the county of Travelers' principal place of business, is a preferred venue under Trial Rule 75(A)(4). Although we acknowledge that Marion County is a preferred venue, we find controlling the portion of the homeowner's policy providing for filing in a "court of record in the state where the 'residence premises' is located." We therefore affirm.

## Facts and Procedural History

Seddelmeyer's house, located in Fort Wayne, Allen County, Indiana, was insured by Travelers when it was damaged by fire in July 2008. The homeowner's policy includes an appraisal provision that governs how the amount of loss will be set absent agreement by the parties:

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, *you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located.* The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Appellant's App. p. 20 (emphasis added). This provision is an agreement to submit any dispute regarding the amount of loss to an umpire. Seddelmeyer and Travelers were unable to agree on the amount of loss, and Seddelmeyer consequently demanded an appraisal on June 13, 2009. When Travelers had yet to select an appraiser by July 13, 2009, thirty days after Seddelmeyer's demand, Seddelmeyer filed an action in Lake County seeking the appointment of an umpire.

Travelers moved to transfer venue to Marion County arguing that, as the county of Travelers' principal place of business, it is a preferred venue while Lake County is not. Seddelmeyer filed a response arguing that the homeowner's policy provision permits him to file in Lake County because it is in the state where his damaged house is located. After Travelers replied and a hearing was held, the trial court denied the motion. Travelers now appeals.

### **Discussion and Decision**

Travelers contends that the trial court abused its discretion in denying its motion to transfer venue. We review a trial court's denial of a motion to transfer venue for an abuse of discretion. *Bostic v. House of James, Inc.*, 784 N.E.2d 509, 510-11 (Ind. Ct. App. 2003), *trans. denied*. A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it, or when the trial court has misinterpreted the law. *Id.* at 511.

Trial Rule 75(A) provides in pertinent part:

Any case may be venued, commenced and decided in any court in any county, except, that upon the filing of a pleading or a motion to dismiss allowed by Rule 12(B)(3), the court, from allegations of the complaint or after hearing evidence thereon or considering affidavits or documentary

evidence filed with the motion or in opposition to it, shall order the case transferred to a county or court selected by the party first properly filing such motion or pleading if the court determines that the county or court where the action was filed does not meet preferred venue requirements or is not authorized to decide the case and that the court or county selected has preferred venue and is authorized to decide the case.

Trial Rule 75(A) then includes ten subsections listing certain criteria under which preferred venue lies. Travelers asserts that Marion County, the county of its principal place of business, is a preferred venue under Trial Rule 75(A)(4), which states that preferred venue lies in:

the county where either the principal office of a defendant organization is located or the office or agency of a defendant organization or individual to which the claim relates or out of which the claim arose is located, if one or more such organizations or individuals are included as defendants in the complaint.

When parties consent to venue in a contract, that agreement overrides the preferred venue analysis set forth in Trial Rule 75. *Indianapolis-Marion County Pub. Library v. Shook, LLC*, 835 N.E.2d 533, 540 (Ind. Ct. App. 2005) (citing *Linky v. Midwest Midrange Sys., Inc.*, 799 N.E.2d 55, 57 (Ind. Ct. App. 2003) (finding Marion County to be the proper venue based on a contract venue provision even though it was not a preferred venue under Trial Rule 75(A)(1)-(9))). *Shook* involved an underlying breach of contract action brought by a general contractor hired by a library to build a garage for its facility. *Id.* at 535. The contract between the parties provided:

*Owner's Right to Select Forum.* Owner shall have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to his (sic) Agreement, or breach therefore, shall be submitted to a court of law or arbitrated.... The venue of such court action or arbitration proceeding shall be in the county in which the Project is located, or in any adjacent County, as Owner, in its sole discretion, may elect to the exclusion of all other jurisdictions and venues. Contractor must make a written

request to Owner to determine whether the dispute shall be submitted to a court or to arbitration. Owner shall respond to the Contractor's request within ten (10) business days after receipt thereof. Owner's response shall identify whether the matter will be submitted to a court or to arbitration, and Contractor shall submit itself to the personal jurisdiction and venue of the court or arbitration proceeding selected by Owner, to the exclusion of all other forums, jurisdictions and venue. Contractor waives any rights to contest Owner's selection of forum, including, but not limited to, any rights based upon forum non conveniens.

*Id.* at 541 (quoting the appellee's appendix). Shook sent the library a letter summarizing its claims and requesting that the library identify whether the dispute would be submitted to a court or arbitration. *Id.* at 537. When the library made no forum or venue selections within the ten business days provided by contract, Shook filed a complaint in Boone County, which is adjacent to Marion County. *Id.* The library brought an interlocutory appeal after the trial court denied, among other things, its request to transfer venue pursuant to Trial Rules 12(B)(3) and 75. *Id.* at 538. Another panel of this Court found that the contract provision was worded such that both parties agreed without limitation that venue would be proper and acceptable in Marion County or any adjacent county. *Id.* at 541. Further, because the library "did not avail itself of its time-limited right to pick the forum and venue, nothing prevented application of the portion of the Agreement indicating that venue would be proper in any of the other counties." *Id.* As Boone County is adjacent to Marion County, our Court concluded that the trial court did not abuse its discretion in denying the library's motion to transfer venue. *Id.*

We find a similar situation in the present case. Here, the appraisal provision in Seddelmeyer's homeowner's policy provides that if the parties are unable to agree on the amount of loss, either party can demand an appraisal. Pursuant to such a demand, each

party is to choose a competent appraiser within twenty days, and those appraisers are to subsequently choose an umpire. If the appraisers cannot agree upon an umpire within fifteen days, Seddelmeyer or Travelers “may request that the choice be made by a judge of a court of record in the state where the ‘residence premises’ is located.” Appellant’s App. p. 20. Seddelmeyer and Travelers were unable to agree on the amount of loss, and Seddelmeyer consequently demanded an appraisal on June 13, 2009. When Travelers had yet to select an appraiser by July 13, 2009, thirty days after Seddelmeyer’s demand, Seddelmeyer filed an action in Lake County seeking the appointment of an umpire.

As in *Shook*, we find that the homeowner’s policy provision is worded such that both parties agreed that venue, for the purpose of the appointment of an umpire, would be proper and acceptable in a court of record in the state where Seddelmeyer’s damaged house was located. Further, because Travelers failed to choose an appraiser within twenty days of Seddelmeyer’s demand, nothing prevented application of the portion of the homeowner’s policy indicating that venue would be proper in any court of record in the state where Seddelmeyer’s damaged house was located.

Although we acknowledge that there appears to be no policy provision expressly permitting Seddelmeyer to file an action seeking the appointment of an umpire in the event that Travelers failed to choose an appraiser within the twenty-day period, *compare Shook*, 835 N.E.2d at 536 (where the contract expressly permitted Shook to initiate any court or arbitration proceeding if the library failed to respond within the ten-day period), such lack of express permission is of no moment. Otherwise, Travelers would be

permitted to limit Seddelmeyer's options and delay resolution of his claim by failing to select an appraiser as provided in the policy.

The homeowner's policy does not state that Marion County becomes the sole acceptable venue if Travelers fails to select an appraiser within the prescribed time limits. *See Shook*, 835 N.E.2d at 542. Nor does the homeowner's policy state that Seddelmeyer is precluded from filing an action until Travelers selects an appraiser. *See id.* Inasmuch as Travelers failed to select an appraiser within the twenty-day period, it follows that Seddelmeyer had the choice of doing nothing or filing an action seeking appointment of an umpire in a court of record in the state where Seddelmeyer's damaged house was located. *See id.* We decline to allow Travelers to contest venue when Travelers' own action of not selecting an appraiser within the prescribed time limits led Seddelmeyer to file his action. We thus do not find that the trial court abused its discretion in concluding that Seddelmeyer could file and maintain an action in Lake County upon Travelers' failure to select an appraiser within the prescribed time limits.

Affirmed.

RILEY, J., concurs.

CRONE, J., dissents with separate opinion.

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**CRONE, Judge, dissenting**

I respectfully disagree with the majority’s conclusion that the policy provision at issue constitutes an agreement that venue would be “proper and acceptable” in any county in the state for the purpose of the appointment of an umpire. Slip op. at 6.<sup>1</sup> I believe that it is nothing more than an agreement as to the forum state in which a request for such an appointment must be made. Unlike the contract in *Shook*, the policy does not mention venue, nor does it waive the applicability of Trial Rule 75(A). As such, Travelers was well within its rights under the policy to file a motion to transfer venue to Marion County pursuant to Trial Rule 75(A). Because it is undisputed that Marion

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<sup>1</sup> I note that Travelers has not questioned whether the policy permits Seddelmeyer “to file an action seeking the appointment of an umpire in the event that Travelers failed to choose an appraiser within the twenty-day period[.]” Slip op. at 6. The question before us is whether the policy prohibits Travelers from transferring the action to a preferred venue.

County is a preferred venue and that Lake County is not, I would reverse and remand with instructions to transfer the case to Marion County. *See Am. Family Ins. Co. v. Ford Motor Co.*, 857 N.E.2d 971, 974 (Ind. 2006) (“A case or complaint may be filed in any county in Indiana, but if the complaint is not filed in a preferred venue, the court is required to transfer the case to a preferred venue upon the proper request from a party.”) (citing Ind. Trial Rule 75(A)). Therefore, I respectfully dissent.