

**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



APPELLANT PRO SE:

ATTORNEY FOR APPELLEES:

**JAMES WRIGHT**  
Indianapolis, Indiana

**DIRCK H. STAHL**  
Ziemer, Stayman, Weitzel & Shoulders, LLP  
Evansville, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMES WRIGHT, individually, )  
JAMES WRIGHT d/b/a )  
WRIGHT MANAGEMENT, INC., and )  
JAMES WRIGHT d/b/a FIRST AVENUE )  
COLLISION AND MUFFLER CENTER/ )  
THE TRUCK SHOP, )

Appellants-Plaintiffs, )

vs. )

No. 49A05-1002-CT-160

CAMARO COSTELLO d/b/a CAMARO )  
COSTELLO'S COLLISION CENTER, )  
FRANZ J. COSTELLO, ZACHARY COSTELLO, )  
INC., and TERRY COSTELLO, )

Appellees-Defendants. )

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APPEAL FROM THE MARION CIRCUIT COURT  
The Honorable Timothy W. Oakes, Judge  
Cause No. 49D13-0911-CT-53578

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**August 31, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

James Wright, d/b/a Wright Management, Inc.,<sup>1</sup> appeals the Marion Circuit Court’s order transferring venue to Vanderburgh County. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Wright sued Camaro Costello and others in the Marion Circuit Court for damages arising out of Wright’s attempt to purchase Costello’s business located in Evansville. Wright’s complaint named five defendants, at least three of which were residents of, or businesses located in, Vanderburgh County. Wright represented in his complaint that he “is an individual and a resident of Indianapolis,” (Appellees’ App. at 6), but the record reflects he is incarcerated in North Carolina with a release date in 2018.

The defendants moved to transfer venue to Vanderburgh County. Wright then purported to dismiss all the defendants except two located in Vigo County, “suggesting instead, Vigo County, Indiana, [is] the new [p]referred venue county.” (Br. of Appellants at 3.) The trial court granted the motion to transfer venue to Vanderburgh County.

### **DISCUSSION AND DECISION**

Indiana Trial Rule 75 addresses venue:

(A) Venue. 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

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<sup>1</sup> In his complaint, Wright alleges Wright Management, Inc., “is not a valid Indiana corporation” because Wright’s attorney did not “complete the necessary steps for incorporation.” (Appellees’ App. at 6.) Accordingly, he says, Wright Management, Inc., is “a sole proprietorship for the purposes of the claims made herein.” (*Id.*) The three named plaintiffs were Wright, Wright doing business as Wright Management, Inc., and Wright doing business as a collision and muffler shop in Evansville.

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. Preferred venue lies in:

(1) the county where the greater percentage of individual defendants included in the complaint resides, or, if there is no such greater percentage, the place where any individual defendant so named resides; or

(2) the county where the land or some part thereof is located or the chattels or some part thereof are regularly located or kept, if the complaint includes a claim for injuries thereto or relating to such land or such chattels, including without limitation claims for recovery of possession or for injuries, to establish use or control, to quiet title or determine any interest, to avoid or set aside conveyances, to foreclose liens, to partition and to assert any matters for which *in rem* relief is or would be proper; or

(3) the county where the accident or collision occurred, if the complaint includes a claim for injuries relating to the operation of a motor vehicle or a vehicle on railroad, street or interurban tracks; or

(4) 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; or

(5) the county where either one or more individual plaintiffs reside, the principal office of a governmental organization is located, or the office of a governmental organization to which the claim relates or out of which the claim arose is located, if one or more governmental organizations are included as defendants in the complaint; or

(6) the county or court fixed by written stipulations signed by all the parties named in the complaint or their attorneys and filed with the court before ruling on the motion to dismiss; or

(7) the county where the individual is held in custody or is restrained, if the complaint seeks relief with respect to such individual's custody or restraint upon his freedom; or

(8) the county where a claim in the plaintiff's complaint may be commenced under any statute recognizing or creating a special or general remedy or proceeding; or

(9) the county where all or some of the property is located or can be found if the case seeks only judgment *in rem* against the property of a defendant being served by publication; or

(10) the county where either one or more individual plaintiffs reside, the principal office of any plaintiff organization or governmental organization is located, or the office of any such plaintiff organization or governmental organization to which the claim relates or out of which the claim arose is located, if the case is not subject to the requirements of subsections (1) through (9) of this subdivision or if all the defendants are nonresident individuals or nonresident organizations without a principal office in the state.

The pleading or motion permitted by this rule must be filed within the time prescribed for the party making it by Rules 6 and 12 and any other applicable provision of these rules.

Pursuant to that rule, a complaint may be filed in any county in Indiana. If the complaint is not filed in a preferred venue and a party files a proper request, the court is required to transfer the case to a preferred venue. *Am. Family Ins. Co. v. Ford Motor Co.*, 857 N.E.2d 971, 974 (Ind. 2006). T.R. 75(A) does not create a priority among the ten subsections that establish preferred venue. *Id.*

Wright does not reside in Marion County, where he filed his complaint, and he argues on appeal that the only preferred venue is Vigo County. As Wright appears to concede Marion County was not a preferred venue, the trial court was obliged to transfer the case to a preferred venue if a party requested such transfer. The defendants requested transfer to Vanderburgh County.

Vanderburgh County is a preferred venue for a number of reasons. One of Wright's named plaintiffs, "JAMES WRIGHT, d/b/a First Avenue Collision and Muffler Center/The Truck Shop," (Appellees' App. at 5), is a business located in Vanderburgh County, which

makes that county a preferred venue pursuant to T.R. 75(A)(5). The subject matter of Wright’s complaint is business property he tried to purchase in Vanderburgh County, so Vanderburgh County is a preferred venue under T.R. 75(A)(2). At least two individual defendants reside in Vanderburgh County, so it is a preferred venue under T.R. 75(A)(1), and a corporate defendant operated its business in Vanderburgh County, indicating Vanderburgh County is a preferred venue under T.R. 75(A)(4).

Wright argues Vanderburgh County is an improper venue because he subsequently dismissed the Vanderburgh County defendants. But the preferred venue status of a county is determined when a complaint is filed in court.<sup>2</sup> *Painters Dist. Council 91 v. Calvert Enters. Elec. Servs., Inc.*, 906 N.E.2d 254, 257 (Ind. Ct. App. 2009); *see also* T.R. 75(A)(1) (discussing preferred venue for “individual defendants *included in the complaint*”) and 75(A)(4) (discussing preferred venue when “such organizations or individuals are included as defendants *in the complaint*”) (emphases added). That Wright dismissed those defendants is irrelevant.

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<sup>2</sup> Wright argues the trial court should not have ruled on the change of venue motion after just six days, as Wright had twenty days in which to respond to the motion. This argument is premised on Wright’s purported dismissal, within the twenty-day period, of the non-Vanderburgh County defendants. As explained above, the dismissal of those defendants had no effect on the propriety of the change of venue. We therefore decline to address that allegation of error.

The trial court did not err in transferring venue to Vanderburgh County, and we accordingly affirm.

Affirmed.

BAILEY, J., and BARNES, J. concur.