

RENDERED: March 16, 2001; 10:00 a.m.

ORDERED NOT PUBLISHED BY THE KENTUCKY SUPREME COURT:  
MAY 8, 2002 (2000-SC-0293-D)

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000704-MR

KENNETH EWING

APPELLANT

v.

APPEAL FROM TAYLOR CIRCUIT COURT  
HONORABLE ALLAN R. BERTRAM, JUDGE  
ACTION NO. 99-CI-00161

THE RICHARD E. JACOBS  
GROUP, INC.

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: COMBS, EMBERTON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Kenneth Ewing appeals from an order of the Taylor Circuit Court dismissing his action against the Richard E. Jacobs Group, Inc. (Jacobs), an Ohio corporation, for lack of venue in Taylor County. Ewing's action arose from an alleged slip-and-fall injury which occurred in Fayette Mall located in Lexington, Kentucky. Ewing, citing Kentucky Revised Statute (KRS) 454.210, Kentucky's Long-arm statute, argued that since Jacobs is a foreign corporation, venue is proper where the plaintiff resides. Jacobs moved to dismiss under KRS 452.450, which requires that an action in tort against a corporation doing

business in Kentucky be filed in the county in which the alleged tort occurred. The trial court agreed with Jacobs, and dismissed the complaint. We affirm.

Ewing argues on appeal that the circuit court erred in holding that Taylor County was not the proper venue for his action. KRS 454.210(4), on which Ewing relies, reads as follows:

When the exercise of personal jurisdiction is authorized by this section, any action or suit may be brought **in the county wherein the plaintiff resides or where the cause of action or any part thereof arose.** (Emphasis added.)

By contrast, KRS 452.450, on which the trial court based its ruling, reads:

**452.450. Where tort or contract action against corporation must be brought.**

Excepting the actions mentioned in KRS 452.400 to 452.420 both inclusive, and in KRS 452.430, 452.440, 452.445, 452.455, 452.465 and 452.475, an action against a corporation which has an office or place of business in this state, or a chief officer or agent residing in the state, must be brought in the county in which such office or place of business is situated or in which such officer or agent resides; or, if it be upon a contract, in the above named county, or in the county in which the contract is made or to be performed; or, if it be for a tort, in the first-named county or the county in which the tort is committed. (Emphasis added.)

Ewing further cites the cases of Haven Point Enterprises, Inc., v. United Kentucky Bank, Inc., Ky., 690 S.W.2d 393, 395 (1985), and Ford Motor Credit Company. v. Nantz Ky., 516 S.W.2d 840, 842 (1974), in support of his argument. Both of these cases dealt with out-of-state corporations who did not maintain a place of business in Kentucky. In Ford, a judgment

was obtained in Leslie County for a wrongful repossession and sale of a truck in Jefferson County. The case did not hold that a plaintiff may elect to use either KRS 452.450 or 454.210; it held that personal jurisdiction (as distinct from venue) is authorized even though another statute may provide another means of obtaining jurisdiction. Ford did not address the issue of proper venue, as Ewing maintains.

The controlling precedent in this case is Hoop v. Hahn, Ky. App., 568 S.W.2d 57 (1978). In Hoop, a personal injury action was filed against a corporation that maintained an office and place of business in Owen County, Kentucky, for an injury that occurred in Owen County, Kentucky. The plaintiffs, however, filed suit in Kenton County, Kentucky, the county where they resided. In holding that Owen County was the proper venue for the action, we said:

Except in cases having no application here, KRS 452.450 provides that an action for tort against a corporation which has an office or place of business in this state must be brought in the county in which such office or place of business is situated or in which the tort was committed. (Emphasis added.)

Hoop at 58.

When two statutes appear to conflict, as a rule of statutory construction, the more specific statute applies. KRS 454.210 authorizes venue for an action against a foreign corporation in the county in which the plaintiff resides for some actions. However, KRS 452.450, specifically addresses the question of proper venue for an action in tort against a foreign corporation which maintains a place of business in Kentucky.

Accordingly, KRS 452.450 applies, as it is the more specific statute. See, Commonwealth v. Phon, Ky., 17 S.W.3d 106 (2000), Troxell v. Trammell, Ky., 730 S.W.2d 525 (1987).

The judgment of the Taylor Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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