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(Cite as: Not Reported in F.Supp.)

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McDonald v. General Acc. Ins. Co.
N.D.N.Y., 1996.

United States District Court, N.D. New York.
William McDONALD, Stacey McDonald, and
Donna Rondyke, Plaintiffs,

v.

GENERAL ACCIDENT INSURANCE CO., Linda
D. Olivera, Commonwealth of Massachusetts, Mas-
sachusetts Worcester Superior Court, Massachu-
setts Fall River Superior Court, Patrick Rogers,
Massachusetts Department of Transitional Assist-
ance f/k/a Department of Public Welfare, Mas-
sachusetts Milford District Trial Court, Debra Per-
kins, VNA/Milford-Northbridge, Jacob Oppewal,
Shannon (Chalmers) Delba, Commerce Insurance
Co., James E. Vaida, Pawtucket Mutual Insurance
Co., State of Connecticut, Speiser Dabran Manage-
ment Company of New York, Massachusetts South
Middlesex Opportunity Council, County of Albany
New York Department of Social Services, Mas-
sachusetts Division of Medical Assistance, Mas-
sachusetts Department of Revenue, Webster Credit
Union, Massachusetts Department of Industrial Ac-
cidents, Maine Department of Health and Human
Services SSI Division, Massachusetts Department
of Health and Human Services SSI Division, De-
fendants.

No. 96-CV-326.

Oct. 7, 1996.

MEMORANDUM DECISION AND ORDER
McAVOY, Chief Judge.

I. BACKGROUND

*1 This is an action alleging violations under the
Civil Rights Act of 1964, 42 U.S.C. § 1982 et seq.,
the federal Fair Housing Act of 1968, 42 U.S.C. §
3601 et seq., the Rehabilitation Act of 1973, 29
U.S.C. § 794, the Civil Rights Restoration Act of
1988, P.L. 100-259 § 1, 102 Stat. 28, and the Amer-
icans With Disabilities Act, 42 U.S.C. § 12134.

Plaintiff William McDonald^{FN1} was a Massachu-
setts resident from 1985 through some point in
1995. Mr. McDonald apparently suffered injuries in
an accident on the job in Massachusetts, in October
1985.^{FN2} As a result, McDonald was permanently
disabled and requires in-home nursing care.

FN1. The plaintiffs in this action claim that
they constitute a protected class and that
therefore this action is a class action.
However, no formal class certification has
been made nor have Plaintiffs met their
burden of showing they meet the require-
ments of a class action under Federal Rule
of Civil Procedure 23.

FN2. Because Plaintiffs' complaint is al-
most unintelligible, this statement of facts
is drawn from the complaint as well as
from the decisions and orders previously
entered against Mr. McDonald by United
States District Court for the District of
Massachusetts in *McDonald v. Common-
wealth of Massachusetts*, Civil Action No.
92-11772-NMB (April 5, 1995).

Pro se plaintiffs William McDonald, Stacey Mc-
Donald, and Donna Rondyke brought suit against
twenty-five defendants, including: the Common-
wealth of Massachusetts, the State of Connecticut,
four Massachusetts executive agencies, one Mas-
sachusetts secretariat, three Massachusetts trial
courts, one Massachusetts employee, a Massachu-
setts credit union, the Maine Department of Health
and Human Services, Visiting Nurses Association-a
Massachusetts health services organization, Mc-
Donald's previous attorney who represented him in
a worker's compensation claim, and a number of in-
surance companies. Only two defendants appear to
have direct ties to New York State-Speiser Dabran
Management Company, a realty management com-
pany and New York Department of Social Services.

Plaintiffs' rambling and inarticulate complaint al-
leges, *inter alia*, that these defendants individually,

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and conspiratorially, denied Plaintiffs' due process and equal protection, and denied Plaintiffs' reasonable accommodation in the provision of medical services, medical benefits, legal redress, and insurance payments related to McDonald's injury in 1985. Jurisdiction is predicated on both federal question jurisdiction, 28 U.S.C. § 1331, and/or diversity of citizenship, 28 U.S.C. § 1332.

Defendants VNA Milford-Northbridge, Debra Perkins, Massachusetts South Middlesex Opportunity Council, Jacob Oppewal, Webster First Credit Union, Pawtucket Mutual Insurance, James Vaida, Patrick Rogers, Commonwealth of Massachusetts, Massachusetts Department of Revenue, Massachusetts Division of Medical Assistance, Massachusetts Department of Transitional Assistance, Massachusetts Department of Industrial Accidents, Massachusetts Department of Health and Human Services, Massachusetts Worcester Superior Court, Massachusetts Fall River Superior Court, MASSACHUSETTS Milford District Trial Court, and the State of Connecticut have moved this court for dismissal primarily on the grounds of improper venue, lack of personal jurisdiction, and improper service of process.

II. DISCUSSION

Even a cursory reading of the caption in this case raises the question of whether this action is in the proper court. 28 U.S.C. § 1406(a) provides that “the district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.”

*2 The proper venue for an action is determined by the statute at issue, if it contains a specific venue provision, or by the general venue statute at 28 U.S.C. § 1391. For claims under § 1983, 28 U.S.C. § 1391(b) governs venue. *See, e.g., Baker v. Coughlin*, 1993 WL 356852 (S.D.N.Y.1993).

Section 1391(b) sets forth three distinct conditions under which venue is conferred on one or more judicial districts:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b).

Applying § 1391(b) to the facts presented here, it is clear that the Northern District of New York is not the proper venue for this action. First, all twenty-five defendants do not “reside in the same State,” let alone all reside in New York State. 28 U.S.C. § 1391(b)(1). Second, “a substantial part of the events or omissions giving rise to the claim” occurred in Massachusetts, not New York. 28 U.S.C. § 1391(b)(2). To wit, Plaintiff McDonald is claiming discrimination, on the basis of his disability, in the furnishing of medical assistance, medical benefits, legal redress, and insurance payments related to McDonald's injury and treatment in Massachusetts.

Finally, although two of the twenty-five defendants can “be found” in New York, New York is not the proper venue because there has not been a showing that there “is no district in which the action may otherwise be brought.” 28 U.S.C. § 1391(b)(3). Indeed, this action can be brought in the District of Massachusetts—the situs of the alleged constitutional deprivations.

In the end, the decision whether transfer or dismissal is in the interest of justice rests within the discretion of this Court. *See Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 789 (D.C.Cir.1983), *cert. denied*, 467 U.S. 1210 (1984); *Sheet Metal Workers' Nat'l Pension Fund v. Gallagher*, 669 F.Supp. 88, 91 (S.D.N.Y.1987). Because Plaintiffs have not shown bad faith in initiating this action in the Northern District of New York and considering

Plaintiffs' *pro se* status, it is in the interest of justice to transfer this case rather than dismiss it.

Therefore, it is hereby

ORDERED that this matter is hereby transferred to the United States District Court for the District of Massachusetts; and it is further

ORDERED that the Clerk of this Court shall transmit all records and papers in this civil action to the Clerk of the Court of the United States District Court for the District of Massachusetts, together with a copy of this order.

***3 IT IS SO ORDERED.**

N.D.N.Y.,1996.

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