2019

Davis County, Petitioner/Plaintiff, v. Purdue Pharma, L.P., Et Al., Respondents/Defendants : Brief of Appellant

Utah Supreme Court

Original Brief Submitted to the Utah Supreme Court; hosted by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.
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IN THE UTAH SUPREME COURT

DAVIS COUNTY, Petitioner/Plaintiff, vs. PURDUE PHARMA, L.P., et al., Respondents/Defendants.	**BRIEF OF PETITIONER** Supreme Court Case No. 20190487-SC District Court Case No. 180700870

Interlocutory appeal from an order of the Honorable David M. Connors
in the Second Judicial District Court

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PURDUE PHARMACEUTICALS L.P.;
PURDUE PHARMA MANUFACTURING L.P.;
TEVA PHARMACEUTICAL INDUSTRIES, LTD. (dismissed);
TEVA PHARMACEUTICALS USA, INC.;
CEPHALON, INC.;
ANESTA LLC
f/k/a ANESTA CORP.;
ALLERGAN PLC (dismissed)
f/k/a ACTAVIS PLC;
ALLERGAN FINANCE, LLC
f/k/a ACTAVIS, INC.
f/k/a WATSON PHARMACEUTICALS, INC.;
ALLERGAN SALES, LLC;
ALLERGAN USA INC.;
WATSON LABORATORIES, INC.;
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ACTAVIS LABORATORIES UT, INC.
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f/k/a THERATECH, INC.;
NORAMCO, INC.;
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ENDO PHARMACEUTICALS INC.;
ABBVIE INC.;
KNOLL PHARMACEUTICAL COMPANY;
MALLINCKRODT PLC (dismissed);
MALLINCKRODT LLC;
MYLAN INC.;
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MYLAN PHARMACEUTICALS INC.;
MYLAN SPECIALTY L.P.;
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LIPOCINE, INC.
f/k/a MARATHON BAR CORP.;
LIPOCINE OPERATING, INC.
f/k/a LIPOCINE, INC.;
SPRIASO LLC;
MCKESSON CORPORATION;
MCKESSON MEDICAL-SURGICAL INC.;
CARDINAL HEALTH, INC.;
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INTRODUCTION

Plaintiff Davis County has the right to choose where to pursue the damages it suffered as a result of the opioid crisis created by the Defendants, provided that its chosen venue is proper. Davis County chose to file its lawsuit in a proper venue, i.e., the Davis County Second Judicial District Court, where the harms occurred, where witnesses are located, and where Davis County itself is located. When presented with a motion to transfer venue of Davis County's case, the district court determined that none of the grounds contained in the transfer of venue statute were applicable (implicitly acknowledging that the Second District is a proper venue by retaining venue there for trial) but nonetheless erroneously exerted its allegedly unbridled inherent authority to transfer the case, for all discovery and pretrial issues, anyway.

STATEMENT OF THE ISSUE

Issue

Whether the district court made an error of law or abused its discretion in using its inherent authority to transfer venue of Davis County's opioid case from the Davis County court in the Second Judicial District to the Summit County court in the Third Judicial District for all discovery and pretrial purposes while retaining venue for trial.

Standard of Review

Generally, the standard of review for a ruling on a motion to change venue is abuse of discretion. *See, e.g.*, *Gunn Hill Dairy Properties, LLC v. Los Angeles Dep't of Water & Power*, 2015 UT App 261, ¶ 7, 361 P.3d 703; *Chamblee v. Stocks*, 344 P.2d 980, 981 (Utah 1959). Nevertheless, the application of the abuse of discretion standard is

conditional in nature, as certain preliminary requirements set forth in Utah's venue transfer statute, Utah Code Ann. § 78B-3-309, must first be satisfied before the trial court can grant a transfer of venue. *See, e.g.*, *Hale v. Barker*, 70 Utah 284, 259 P. 928, 931 (1927) ("District courts of this state have only such authority to transfer for trial causes of action from one county to another as is granted by the Code."); *Durham v. Duchesne County*, 893 P.2d 581, 583 (Utah 1995) (finding that Utah's transfer of venue statute requires "specific grounds for transferring venue"); *Rimensburger v. Rimensburger*, 841 P.2d 709, 711 (Utah Ct. App. 1992)[1] (determining that a district court's authority to transfer was limited by the venue transfer statute).

The Utah Supreme Court adopted and applied an analogous "conditional" discretionary standard of review in the case of *Langeland v. Monarch Motors, Inc.*, 952 P.2d 1058, 1060–61 (Utah 1998). There the Court, upon "close examination of rule 36(b) and applicable case law" found that "the decision to permit amendment of rule 36 admissions is not entirely within the discretion of the trial court; judicial discretion is permitted only after certain preliminary conditions have been met." *Id.* at 1060. Therefore, "because the rule does not give the trial court discretion to disregard the preliminary conditions of rule 36(b), its judgment as to whether those conditions have been satisfied is subject to a somewhat more exacting standard of review." *Id.* at 1061. The Court then articulated a two-step review process: first to ascertain whether the preliminary conditions of the rule had been satisfied and second to review the trial court's

[1] The case references Utah Code Ann. § 78-13-9 (1992), renumbered as Utah Code Ann. § 78B-3-309 by Laws 2008, c.3, § 704, eff. Feb. 7, 2008.

discretion to grant the motion.[2] *Id.* at 1060-61. Ultimately, because the trial court had not supplied findings of fact and conclusions of law on these preliminary conditions, the Court reviewed compliance with the rule 36(b) requirements de novo to determine whether the trial court had discretion to grant the motion. *Id.*

A similar "conditional" discretionary standard of review should be applied here. As in *Langeland*, a close examination of Utah Code Ann. § 78B-3-309 and applicable Utah case law shows that the decision to grant a transfer of venue is not entirely within the discretion of the trial court and that judicial discretion is permitted only after certain preliminary conditions have been satisfied. *See* Utah Code Ann. § 78B-3-309; *Hale*, 259 P. at 931; *Durham*, 893 P.2d at 583; *Rimensburger*, 841 P.2d at 711. Indeed, this Court has held that "the right of the court to make an order transferring the case . . . necessarily requires a consideration of the statute relating to the place of trial of actions" and that Utah's venue transfer statute "enumerates the grounds that *will authorize* a district court to transfer a cause for trial from one county to another." *Hale*, 259 P. at 930 (emphasis added).

In addition, given that this appeal concerns the application of Utah's venue statutes, including specifically Utah Code Ann. § 78B-3-309 and related statutes, the appeal necessarily involves questions of statutory interpretation and applicability. Under well-settled Utah law, questions of statutory interpretation and applicability are questions of law that are reviewed "for correctness, giving no deference to the district court's

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[2] The Court found that "[t]he trial court has discretion to deny a motion to amend, but its discretion to grant such a motion comes into play only after the preliminary requirements are satisfied." *Id.* at 1061.

interpretation." *Pearson v. Lamb*, 2005 UT App 383, ¶ 5, 121 P.3d 717 (quoting *Bd. of Educ. of Jordan Sch. Dist. v. Sandy City Corp.*, 2004 UT 37, ¶ 8, 94 P.3d 234); *see also Vorher v. Henriod*, 2013 UT 10, ¶ 6. 297 P.3d 614 (holding that statutory interpretation is a question of law, which is reviewed for correctness).

Preservation

The issue of authority to transfer venue was preserved in the district court through briefing and oral argument on the motion to transfer venue:

- March 29, 2019 – Johnson & Johnson and Janssen Pharmaceuticals, Inc.'s Motion to Transfer Venue (R. at 1495-2995, 3005-3624.)
- April 11, 2019 – Plaintiff's Opposition to Johnson & Johnson and Janssen Pharmaceuticals, Inc.'s Motion to Transfer Venue (R. at 5290-5299.)
- May 6, 2019 – Reply Memorandum Supporting Johnson & Johnson and Janssen Pharmaceuticals, Inc.'s Motion to Transfer Venue (R. at 6316-6333.)
- May 14, 2019 – Notice of Supplemental Authority (R. at 6608-6614.)
- May 15, 2019 – Oral argument minute entry and transcript (R. at 6617-6618; 7118-7251.)

STATEMENT OF THE CASE

This case presents the question of whether a district court has authority to transfer a case out of a proper venue where the conditions of the venue statute are not met and the only cited authority for the transfer is the court's allegedly unbridled inherent authority. Davis County filed a lawsuit for damages it suffered and continues to suffer as a result of the opioid epidemic that Defendants created. Davis County filed that lawsuit in the Second Judicial District Court, which has jurisdiction over cases filed in Davis County.

1. Plaintiff Davis County filed its complaint in this matter in the Second Judicial District Court on August 28, 2018 against dozens of entities and individuals associated with the opioid epidemic. (R. at 1-143.)

2. On November 9, 2018, opioid defendants in Summit County joined in a motion to consolidate the opioid cases pending in Utah. (Summit County Case 180500119, Docket No. 195.)

3. On November 23, 2019, Plaintiff Davis County filed an opposition vigorously opposing the motion to consolidate on the grounds that the applicable rules, including Rule 42 of the Utah Rules of Civil Procedure, did not allow it and that the opioid cases generally and Davis County's opioid case specifically are local cases that should be heard locally. (Summit County Case 180500119, Docket No. 245.)

4. On December 13, 2018, the Summit County court unilaterally entered a pre-consolidation case management order in the Third District Court, staying Davis County's case, along with all the other opioid cases pending in the state. (Summit County Case 180500119, Docket No. 273.)

5. Plaintiff Davis County, along with selected other plaintiffs, filed an objection to that order on December 21, 2018. (Summit County Case 180500119, Docket No. 274.)

6. After briefing and oral argument, the Summit County court issued its *Ruling and Order Granting in Part and Denying in Part the Manufacturer Defendants' Motion to Consolidate*, originally issued on March 25, 2019 and amended on April 9, 2019. In that ruling, the court determined that it did not have jurisdiction pursuant to Rule 42 of the Utah Rules of Civil Procedure to consolidate cases outside the district with cases in the Third District Court but suggested that the defendants may want to file motions to transfer venue under Utah Code § 78B-3-309 in the other opioid cases, which cases could then be consolidated. (Summit County Case 180500119, Docket No. 332, attached as Addendum B.)

7. Thereafter, on March 29, 2019, Defendants Johnson & Johnson and Janssen Pharmaceuticals, Inc. did file a motion to transfer venue, for pretrial proceedings only, under Utah Code Ann. § 78B-3-309 in the Davis County case. (R. at 1495-2995, 3005-3624.)[3]

[3] No other defendants joined in the motion to transfer venue. Defendants Mallinckrodt LLC; Purdue Pharma L.P.; Purdue Pharma Inc.; Purdue Pharmaceuticals L.P.; Purdue Pharma Manufacturing L.P.; The Purdue Frederick Company; and The Purdue Frederick Company Inc. filed notices of non-opposition. (R. at 4496-4501; 4502-4504.) Defendants Allergan Finance, LLC; Allergan Sales, LLC; Allergan USA Inc.; and Allergan PLC filed a response to the motion to transfer venue, urging the court to grant their motion to consolidate instead. (R. 5290-5299.)

8. On April 26, 2019, the Allergan defendants alternatively filed a motion to consolidate six of the Utah opioid cases into the Davis County case under Rule 42 of the Utah Rules of Civil Procedure. (R. at 4505-5289.)

9. Davis County opposed both motions. (R. at 4239-4284; 6340-6361.)

10. On May 15, 2019, the district court held oral argument on the motion to transfer venue and the motion to consolidate and then took the matters under advisement. (R. at 6617-6618.)

11. On May 31, 2019, the district court issued its *Ruling and Order on Defendants Johnson & Johnson and Janssen Pharmaceuticals, Inc.'s Motion to Transfer Venue and Defendants Allergan's Motion to Consolidate Related Cases* ("Venue Order"). In the ruling, the district court specifically determined that the change of venue statute, Utah Code Ann. § 78B-3-309, was inapplicable, but determined that it could nonetheless transfer venue, because there was nothing prohibiting it from doing transferring under its inherent authority to manage its cases. (R. at 6873-6878, attached as Addendum A.)

12. In the same ruling, the district court denied the motion to consolidate, because "it is not appropriate for this Court to consider taking a position that would be inconsistent with the position already taken in the Summit County case on the issue of consolidation of cases from outside the Third District." (Add. A, p. 5.)

13. Davis County was inadvertently left off of the service list for the Venue Order but did eventually discover it on the docket.

14. On June 13, 2019, Davis County filed its *Petition for Permission to Appeal from an Interlocutory Order.*

15. On June 28, 2019, Davis County also filed a motion to stay the trial court's Venue Order with the Utah Court of Appeals. On July 1, 2019, the stay was granted.

16. Respondents Johnson & Johnson and Janssen Pharmaceuticals, Inc. filed an opposition to Davis County's petition on July 2, 2019.

17. On July 11, 2019, the Utah Court of Appeals granted Davis County's petition for permission to file an interlocutory appeal. (*Order Granting Petition for Permission to Appeal from an Interlocutory Order*, attached as Addendum C.) The case was thereafter recalled by this Court.

SUMMARY OF THE ARGUMENT

The district court erred when it transferred venue of Davis County's case out of the proper venue in Davis County, finding that Utah's venue statute did not apply and invoking its inherent authority to transfer the case anyway. First, the venue statute prohibits the transfer. The venue statute clearly defines the limits of a court's ability to transfer venue to a transfer for trial under one of four enumerated grounds. *See* Utah Code Ann. § 78B-3-309. The venue statute thus did not permit the transfer of Davis County's case to Summit County where there was not a request to transfer for trial and none of the four grounds applied. Second, the district court's inherent authority does not extend to a transfer of venue outside the venue statute. Indeed, "[a] change of venue is prohibited except when authorized by law." *State v. Cauble*, 563 P.2d 775, 777 (Utah 1977). The court's transfer then, under only its inherent authority, was erroneous.

ARGUMENT

The district court erred in granting the motion to change venue, for discovery and pretrial purposes, from Davis County to Summit County. The transfer is not permitted under Utah's change of venue statute, as the transfer was not for trial and did not satisfy any of the four grounds necessary to properly transfer venue. Further, the district court exceeded the scope of its inherent authority by transferring venue outside of the venue statute. This Court should therefore reverse the district court's Venue Order, and the case should be remanded to the Second Judicial District Court for discovery, trial, and all other purposes.

I. THE DISTRICT COURT EXCEEDED ITS AUTHORITY BY GRANTING DEFENDANTS' MOTION TO TRANSFER VENUE ON GROUNDS NOT AUTHORIZED BY SECTION 78B-3-309.

The district court erred in changing venue of this case from Davis County to Summit County where the requirements of the change of venue statute were not met. The analysis under Utah law is clear: "[d]istrict courts of this state have only such authority to transfer for trial causes of action from one county to another as is granted by the Code."[4] *Hale v. Barker*, 70 Utah 284, 259 P. 928, 931 (1927). Thus, in order to properly transfer Davis County's case out of Davis County, the district court must have relied on some provision of the Utah Code. In Utah, a transfer of venue is permitted only in four specific instances after certain preliminary conditions are met:

> The court may, on motion, change the place of trial[5] in the following cases:
>
> (1) when the county designated in the complaint is not the proper county;
>
> (2) when there is reason to believe that an impartial trial cannot be had in the county, city, or precinct designated in the complaint;
>
> (3) when the convenience of witnesses and the ends of justice would be promoted by the change;

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[4] Utah's current venue transfer statute Utah Code Ann. § 78B-3-309 is in effect the same as it existed in the *Hale* case in 1917 under Section 6533, which provided that "the court may, on motion, change the place of trial in the following cases: (1) when the county designated in the complaint is not the proper county; (2) when there is a reason to believe that an impartial trial cannot be had therein; (3) when the convenience of witnesses and the ends of justice would be promoted by a change; (4) when from any cause the judge is disqualified from acting; (5) when all of the parties to an action, by stipulation, or by consent in open court, entered in the minutes, may agree that the place of trial may be changed to any county in the state." *Hale*, 259 P. at 929-930 (quoting Comp. Laws Utah 1917 § 6533).

[5] The motion to transfer requested transfer for all purposes except trial. This issue is discussed in more detail below.

(4) when all the parties to an action, by stipulation or by consent in open court entered in the minutes, agree that the place of trial may be changed to another county.

Utah Code Ann. § 78B-3-309 (emphasis added).

In the instance case, the preliminary condition of a motion to change the place of trial was not met and none of the four grounds for proper change was met. The change of venue of Davis County's case was therefore improper.

A. The Transfer of Davis County's Case for Purposes Other Than Trial is Not Authorized by the Venue Statute.

The district court erred in transferring venue of Davis County's case for any reason other than trial. As noted above, the venue statute allows a court to change venue when it is presented with a motion to "change the place of trial" (and when one of four grounds is met.) In this case, a motion to change the place of trial, as required by the venue statute, was not before the court. Defendants moved the district court under Section 78B-3-309(3) to transfer this case to the Summit County court for discovery and other pretrial purposes—but not for trial.[6] While a court can certainly transfer a case at any stage for trial, which would then transfer all other issues including discovery, it cannot, under the plain language of the statute, transfer a case solely for all purposes except trial. The district court was therefore not authorized to transfer venue, as the preliminary condition to a proper transfer, a motion to change the place of trial, was not before it.

[6] The district court acknowledged as much in its Venue Order, stating that the statute "only addresses a situation where the court is asked to transfer a matter to another district for purposes of trial. Such a motion is not before the Court at this time in this case." (Add. A, p. 4.)

The district court in this case sidestepped the change of venue statutory requirements, acknowledging that the statute "is silent" on a request to transfer "solely for purposes of resolving the pretrial issues" but stating that "the statute does not prohibit the type of transfer sought in the present motion." (Venue Order, p. 4.) Utah's statutory interpretation rules and case law do not permit this kind of reasoning. Again, Utah courts only have authority to change venue as provided by statute. "A change of venue is prohibited except when authorized by law." *State v. Cauble*, 563 P.2d 775, 777 (Utah 1977); *see also Hale v. Barker*, 70 Utah 284, 259 P. 928, 931 (1927) ("District courts of this state have only such authority to transfer for trial causes of action from one county to another as is granted by the Code.").

District courts cannot simply ignore the venue statute because it is limited to transfers for the place of trial. Utah courts are required to follow established statutory interpretation rules and look first to "the plain language of the statute itself" "to evince the true intent and purpose of the Legislature." *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14, 267 P.3d 863. In interpreting that plain language, Utah courts must presume "all omissions to be purposeful," and "the expression of one term should be interpreted as the exclusion of another." *Id.*

In this case, the plain language of the venue transfer statute includes a prerequisite that the transfer must be of "the place of trial." Utah Code Ann. § 78B-3-309. The omission in the statute of transfers for other purposes, such as discovery or other pretrial issues, must be interpreted as a purposeful omission. In other words, transfers of venue for purposes other than for trial are not permitted by statute. Again, district courts have

no right to order a change of venue on grounds not supported by statute. *See Hale*, 259 P. at 930-31 (finding that where action was instituted by plaintiff in the proper county, it "was the official duty of the district court of Weber county to retain jurisdiction unless transfer of the cause for trial to another county was granted upon a showing of the other, or some of the other, grounds enumerated in section 6533.").

In other words, a trial court's discretion or inherent authority to change venue is not absolute nor unbridled—the transfer at issue must be authorized by statute. And, under the current statutes, a district court's discretion in transferring venue is limited to transfers that are both for trial and grounded in one of the four prerequisites set forth in Section 78B-3-309. Thus, the district court's transfer of Davis County's case for all purposes except trial is not authorized by Section 78B-3-309.

Nothing in the plain language of the venue transfer statute justifies what amounts to a temporary transfer of venue to Summit County for discovery and pretrial purposes only, while simultaneously reserving future venue for trial in Davis County. Davis County filed its lawsuit in a proper forum. The district court may not then change the venue of trial—much less change venue solely for discovery and pretrial matters—absent satisfaction of at least one of the four enumerated grounds for change of venue or reliance on other authority. And, as demonstrated below and recognized by the district court, none of the four grounds of the venue statute is satisfied in this case.

B. The Transfer of Davis County's Case is Not Authorized Under Any of the Four Grounds Enumerated in the Venue Statute.

Even if that provision of the venue statute requiring a change in "the place of trial"

had been satisfied—which it indisputably was not—the transfer of Davis County's case is not permitted under any of the four statutory grounds found in Utah Code Ann. § 78B-3-309. Consequently, the transfer of Davis County's case is prohibited for this additional reason.

1. The County Designated in Davis County's Complaint is a Proper County.

Defendant's motion to change venue does not meet the requirements of the first ground for transfer permitted by the venue statute. This matter should not be transferred to Summit County because venue is proper in Davis County. Defendants failed to allege—and the district court made no finding—that a change of venue is either required or warranted on the basis that Davis County is not a proper county for trial. *See* Utah Code Ann. § 78B-3-309(1). That is because Davis County *is* a proper forum. Indeed, Davis County itself is the plaintiff, and the harms it alleges all occurred in Davis County. In its Venue Order, the district court even *agrees* that venue is proper in Davis County. (*See* Add. A, p. 5 (ordering trial in this case to "remain before this [Davis County] Court").)

Utah's venue statute states: "[A]n action shall be tried in the county in which: (a) the cause of action arises; or (b) any defendant resides at the commencement of the action." Utah Code Ann. § 78B-3-307(1). As set forth in its Complaint, Davis County alleges that its causes of action arose in Davis County.[7] (R. at 38.) Therefore, venue is

[7] Additionally, venue is proper in Davis County because Davis County brings an action for abatement of a public nuisance under Utah Code Ann. § 76-10-806, which provides that "[t]he action shall be brought in the district court of the district where the public

proper in Davis County.

Having properly chosen Davis County as its forum, "it [does] not lie within the prerogative of the trial court to compel the action to be tried" in Summit County. *See Walker Bank & Tr. Co. v. Walker*, 631 P.2d 860, 861 (Utah 1981). A plaintiff's choice of forum cannot be disturbed unless a transfer or change is permitted under applicable statutes or rules. *See, e.g.*, *Summa Corp. v. Lancer Industries, Inc.*, 559 P.2d 544, 546 (Utah 1977) ("[T]he general policy of the law is that when a plaintiff has commenced a lawsuit and acquired jurisdiction over the defendant, he should be allowed to pursue his remedy . . . ."); *see also Hale v. Barker*, 259 P. at 931 ("The district court, by ruling that it would grant the motion [to transfer venue], in effect declined to proceed to hear and determine the cause and therefore refused to perform an act enjoined upon it as part of its official duty. . . . [I]t was the duty of the court, as a public officer, to hear and determine the controversy between the parties and render judgment.").

Davis County filed its lawsuit in a proper county; therefore, the district court has no basis to transfer Davis County's case to an improper county under Utah Code Ann. § 78B-3-309(1).

2. There is No Evidence that an Impartial Trial Cannot be had in Davis County.

Defendant's motion to change venue did not meet the requirements of the second ground for transfer permitted by the venue statute. Defendants did not attempt to argue that an impartial trial could not be had in Davis County, and the district court made no

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nuisance exists." *See* Complaint, ¶¶ 338-358.

such finding in support of its Venue Order granting Defendants' motion to transfer venue. Again, the parties and the court all agreed that Davis County is to be the place of trial. (*See* Add. A., generally and p. 5.) Accordingly, Defendants were not entitled to a change of venue on the basis of Section 78B-3-309(2).

3. There is No Argument or Evidence that Both the Convenience of Witnesses and the Ends of Justice Would Be Promoted by the Change.

Defendant's motion to change venue does not meet the requirements of the third ground for transfer permitted by the venue statute. The Utah venue statute requires a showing that "the convenience of witnesses and the ends of justice would be promoted by the change." Utah Code Ann. § 78B-3-309(3) (emphasis added). The provision must be read as whole—it is not disjunctive. While the district court specifically found that the statutory requirements had not been met, it invoked the "ends of justice" prong from the statute without the rest of the statutory context as a basis to invoke its apparently unbridled inherent authority to transfer cases. (*See* Add. A, p. 5.) The district court's Venue Order omits any finding that the convenience of witnesses will be served or promoted by the change in venue. Moreover, the motion to transfer venue contains only bald recitations of Section 78B-3-309(3) without any explanation about how change of venue would actually *promote* the convenience of witnesses. (*See* R. at 4241, 4245, and 4247; *see also* R. at 6322 (arguing that Davis County would not be "inconvenienced").) There is nothing in the record that indicates or suggests that venue in Summit County would promote the convenience of witnesses. Conversely, not only is the Defendants' tortious conduct alleged to have occurred in Davis County, but also most of the witnesses

who will testify at trial for Plaintiff in the Davis County case reside in Davis County. Furthermore, Davis County's public nuisance claim must be heard in Davis County, pursuant to statute. Utah Code Ann. § 76-10-806. Accordingly, Defendants were not entitled to a change of venue on the basis of Section 78B-3-309(3).

4. The Parties Did Not Agree that the Place of Trial May be Changed to Another County.

Defendant's motion to change venue does not meet the requirements of the fourth ground for transfer permitted by the venue statute. As evidenced by the motions and briefing on the face of the record, the parties did not "agree that the place of trial may be changed to another county." In fact, the parties and the district court agreed that Davis County was to be the place of trial. (*See, e.g.*, Add. A, p. 5.) Therefore, transfer of venue is not justified under Utah Code Ann. § 78B-3-309(4).

As the district court determined in its Venue Order, the provisions of Section 78B-3-309 are designed to come into play only after a motion requests transfer of venue for trial. The facts of this case not only fail to move past the preliminary condition of such a motion but also fail to meet any of the four grounds that are statutorily required prior to a change of venue. When the district court could not make a transfer under the statute, it erroneously decided to rely on its apparently unbridled inherent authority to justify the change of venue.

II. THE DISTRICT COURT EXCEEDED THE SCOPE OF ITS INHERENT AUTHORITY TO TRANSFER VENUE IN THIS CASE.

The district court erred when it used its inherent authority to transfer the case to Summit County in circumvention of its clear and admitted inability to transfer pursuant to

the venue statute. The district court correctly found the requested transfer under the venue statute—Utah Code Ann. § 78B-3-309—to be impermissible, but erroneously decided to exercise its inherent authority to sidestep the statute.

This Court oversees the district courts and generally will reverse a district court's exercise of discretion "only if there is no reasonable basis for the district court's decision." *Solis v. Burningham Enters. Inc.*, 2015 UT App 11, ¶ 12, 342 P.3d 812. However, as in the conditional discretionary standard discussed above, this Court must first ascertain whether any preliminary conditions have been satisfied and only then determine whether the district court appropriately exercised its discretion. In other words, this Court must define the scope of the district court's authority before it can determine whether the district court's actions were within the realm of that authority. In this case, the district court erroneously exercised its inherent authority where its authority was limited by the venue statute.

A. The Scope of a Court's Inherent Authority is Limited by Law.

Statutes enacted by the legislature and the rules and case law promulgated by this Court constitute the outer bounds of a court's inherent authority. There is no question that "courts maintain a certain degree of inherent power to properly discharge their duties." *W. Water, LLC v. Olds*, 2008 UT 18, ¶ 42, 184 P.3d 578. However, that inherent power is necessarily limited where a statute or rule applies. In 1913, this Court acknowledged that a court's inherent powers "may, within certain limits, be abridged, and the procedure with respect to the exercise of them be regulated, by legislation." *In re Evans*, 42 Utah 282, 130 P. 217, 224 (1913). In *Western Water*, this Court held that the "certain degree of

inherent power [Utah courts have] to properly discharge their duties" stems from and is therefore "limited by statute or constitution." 2008 UT 18 at ¶ 42. In *Chen v. Stewart*, this Court similarly held that "[c]ourts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their judicial duties." 2004 UT 82, ¶ 50, 100 P.3d 1177, *abrogated on other grounds by State v. Nielsen*, 2014 UT 10, ¶ 50, 326 P.3d 645 (quoting *Ex Parte Peterson*, 253 U.S. 300, 312 (1920)).

Indeed, a review of inherent authority cases in Utah confirms the general rule that courts have inherent authority to manage the cases before them, subject to governing rules and statutes. As shown in the table below, in the vast majority of Utah cases that address an area of a trial court's authority, no statute or rule specifically governs the conduct at issue.

Case	**Inherent Authority**	**Discussion of Application of Statute or Rule**
In re Evans, 42 Utah 282, 130 P. 217, 224 (1913).	"to punish for contempt, to make, modify, and enforce rules for the regulation of the business before the court, to amend its record and proceedings, to recall and control its process, to direct and control its officers, including attorneys as such, and to suspend, disbar, and reinstate attorneys"	"It is undoubtedly true that courts of general and superior jurisdiction possess certain inherent powers not derived from any statute." "Such powers and summary jurisdiction may, within certain limits, be abridged, and the procedure with respect to the exercise of them be regulated, by legislation."
Peterson v. Evans, 55 Utah 505, 188 P. 152, 153 (1920).	"to make and enforce all necessary rules and orders calculated to enforce the orderly conduct of their	None

	business and secure justice between parties litigant"	
Lewis v. Moultree, 627 P.2d 94, 96 (Utah 1981).	"to grant a stay of proceedings"	None
Barnard v. Wassermann, 855 P.2d 243, 249 (Utah 1993).	"to impose monetary sanctions on attorneys who by their conduct thwart the court's scheduling and movement of cases through the court"	"This inherent power of trial courts is separate and distinct from the contempt powers they may exercise in appropriate cases."
Kearns-Tribune Corp. v. Wilkinson, 946 P.2d 372, 376 n.3 (Utah 1997).	"to conduct in camera proceedings to intelligently rule on matters before them"	None
Spratley v. State Farm Mut. Auto. Ins. Co., 2003 UT 39, ¶ 22, 78 P.3d 603.	"to govern the conduct of proceedings"	None
Chen v. Stewart, 2004 UT 82, ¶¶ 50-51, 100 P.3d 1177, *abrogated on other grounds by State v. Nielsen*, 2014 UT 10, 326 P.3d 645.	"to provide themselves with appropriate instruments required for the performance of their judicial duties" "to appoint a receiver" or an interim CEO with the same powers	"Courts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their judicial duties." Rule 66(a)(5): "The court may appoint a receiver in all other cases in which receivers have been appointed by courts of equity."
Burke v. Lewis, 2005 UT 44, ¶¶ 23-27, 122 P.3d 533.	"to ensure the pursuit of a just process and result" "to make and enforce all necessary rules and orders calculated to enforce the orderly conduct of their business and secure justice between parties litigant" "to appoint counsel"	None

Chen v. Stewart, 2005 UT 68, ¶ 43, 123 P.3d 416.	"to strike a party's pleadings and enter a default judgment if the party engages in conduct designed to improperly influence the court's decision on the merits of the case, such as perjury or obstruction of justice, or if the conduct itself tends to demonstrate bad faith or a lack of merit"	"A court's authority to sanction contemptuous conduct is both statutory and inherent." "A court's authority to hold any person in contempt, whether a party to a case before that court or a non-party, is subject to constitutional and statutory restraints regarding the process due to any person so accused."
W. Water, LLC v. Olds, 2008 UT 18, ¶¶ 42, 47, 184 P.3d 578.	"to properly discharge their duties" "to consider and make rulings on matters respecting their own jurisdiction, such as whether the substance of a claim may be reached, whether an issue is ripe for adjudication, or whether a party has standing" "to oversee their own processes, even when the merits of a claim are dismissed for lack of subject matter jurisdiction"	Rule 54(d) allows a court to award costs "to the prevailing party" or to "otherwise" direct an award of costs.
Goggin v. Goggin, 2013 UT 16, ¶¶ 34-35, 299 P.3d 1079.	"to award reasonable attorney fees when it deems it appropriate in the interest of justice and equity" "to award attorney fees as a sanction under its inherent sanction powers"	None
Maxwell v. Woodall, 2014 UT App 125, ¶ 6, 328 P.3d 869.	"to impose monetary sanctions on attorneys who by their conduct thwart the	"An award of attorney fees pursuant to a court's inherent sanction power is

	court's scheduling and movement of cases through the court"	appropriate even in the absence of a statutory or contractual authorization."
Chaparro v. Torero, 2018 UT App 181, ¶ 44, 436 P.3d 339.	"to impose contempt sanctions"	Inherent authority to impose contempt sanctions is separate from authority to impose sanctions under Rule 37.
Macris v. Sevea Int'l, Inc., 2013 UT App 176, ¶ 22, 307 P.3d 625.	"to strike a party's pleadings as a sanction for contempt"	None
Garver v. Rosenberg, 2014 UT 42, ¶ 15 n.24, 347 P.3d 380, as amended (Feb. 24, 2015).	"to manage their proceedings to promote efficiency in the judicial process and to prevent attempts (conscious or otherwise) to abuse that process" to "stay proceedings pending an appellate decision on the jurisdictional issue"	None
Warner v. Warner, 2014 UT App 16, ¶¶ 15, 27, 319 P.3d 711.	"to control the parties' conduct and protect the integrity of the judicial system" "to ensure that his or her rulings are accurately memorialized and can correct misstatements of those rulings at any time, no matter how the error might come to his or her attention"	None
Bagley v. KSM Guitars, Inc., 2012 UT App 257, ¶ 7 n.3, 290 P.3d 26.	"to control the proceedings on its docket in order to move cases forward in an orderly and predictable way"	Although rules 16 and 26 place the burden on the parties to move for a scheduling order, neither rule constrains the inherent authority of the court to control the proceedings on its docket. . . ."

State v. Parsons, 781 P.2d 1275, 1282 (Utah 1989).	"to control and manage the proceedings and preserve the integrity of the trial process"	None
Jensen v. Ruflin, 2017 UT App 174, ¶ 23, 405 P.3d 836.	"to manage its docket"	None
Matter of J. Melvin, 2018 UT App 121, ¶ 25, 428 P.3d 43.	"to manage its docket"	None

As shown in the table, while Utah courts undoubtedly have and use their inherent authority, the scope of that authority does not include the ability to override governing statutes and rules.

Establishing, maintaining, and enforcing consistent boundaries on the inherent power of Utah's courts is necessary for the proper functioning of the courts and to provide a level of certainty to all participants in the legal system. As noted by this Court, the scope of "authority is not a matter for the courts to define at our preference and whim." *Utah Transit Auth. v. Local 382 of Amalgamated Transit Union*, 2012 UT 75, ¶ 20, 289 P.3d 582. The scope of a court's inherent authority is properly limited by statutes and rules, rather than determined by each court on an ad hoc basis. To find otherwise would create judicial chaos.

The scope of a court's inherent authority to transfer venue of a case has been clearly limited by statute in Utah for almost one hundred years: "[d]istrict courts of this state have only such authority to transfer for trial causes of action from one county to

another as is granted by the Code."[8] *Hale v. Barker*, 70 Utah 284, 259 P. 928, 931 (1927). When interpreting the venue statute, Utah courts must presume "all omissions to be purposeful," and "the expression of one term should be interpreted as the exclusion of another." *Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14, 267 P.3d 863. Thus, where the venue statute permits transfers only for trial, it must be read to exclude transfers for other purposes, such as discovery and pretrial matters. It must further be read to limit a trial court's ability to transfer venue to only those instances where a motion requests a change to "the place of trial" and one of the four grounds for transfer is met. *See* Utah Code Ann. § 78B-3-309. In *Anderson v. Johnson*, the court acknowledged that, at common law, a trial court had inherent authority "to order a change of place of trial" "as part of its inherent power to assure a fair and impartial trial in dispensing justice." 268 P.2d 427, 430 (1954). However, that power was eventually codified by the legislature, and the power was therefore limited by the venue statute.[9] *Id.* The *Anderson* court was then tasked, not with determining whether the district court properly exercised its inherent authority to transfer venue, but with determining whether the district court properly exercised its discretion in transferring venue under the impartial trial ground of the venue statute. *Id.* Thus, despite the fact that inherent authority to transfer cases existed at common law, Utah courts have since recognized that such authority is limited by the venue statute. The district court in this case therefore lacked authority to transfer

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[8] Utah's current venue transfer statute Utah Code Ann. § 78B-3-309 is in effect the same as it existed in the *Hale* case 1917 under Comp Laws Utah 1917 § 6533. *Hale*, 259 P. at 929-930 (quoting Comp. Laws Utah 1917 § 6533).

[9] *See also State v. Riley*, 126 P. 294, 297 (1911) (applying and analyzing criminal venue statute rather than relying on inherent authority to change venue).

Davis County's case to Summit County on any basis outside of the venue statute.

B. The District Court Overstepped the Bounds of Its Inherent Authority When It Transferred Venue of Davis County's Case.

The district court erred when it permitted a transfer of venue outside of the venue statute. After finding that the motion to change venue did not meet the requirements of the venue statute, the district court erroneously relied only on its allegedly unbridled inherent authority to transfer Davis County's case for all pretrial proceedings. As discussed above, a Utah court's inherent authority is limited by applicable statutes and rules. Where, as here, there is a specific statute directly on point, this district court lacked authority to make a transfer not specifically authorized by the venue statute.

In its ruling, the district court cited a few cases in support of its ruling to imply that it has an absolute and unbridled inherent power to "manage its docket" and has "broad discretion in managing the cases before [it]." (Add. A, p. 2.) While Davis County acknowledges a court's inherent power to manage the cases before it, that power is neither absolute nor unbridled. Indeed, in the cases cited by the district court, the court's inherent authority is never used to transfer the case before the court to another venue outside of the terms of the venue statute. Rather, a court's inherent powers are typically used to manage the case and docket before it in handling the day to day matters of the case and in "manag[ing] the proceedings and preserv[ing] the integrity of the trial process." *State v. Parsons*, 781 P.2d 1275, 1282 (Utah 1989). For example, in *State v. Parsons*, the principal case relied on in the district court's Venue Order as a basis for its inherent authority, the court's inherent powers were used in giving advice to the

prosecutor about the order of proof to lay foundation for impeachment. *Id.* In that case, there was no applicable rule or statute governing the issue, and the trial court acted "within the bounds of its inherent powers as the authority in control of the trial." *Id.* In *Matter of J. Melvin*, another case cited in the Venue Order, the court's inherent powers were used to overrule an objection filed by one of the parties. 2018 UT App 121, ¶ 25, 428 P.3d 43. In *Jensen v. Ruflin*, the Court's inherent powers were used to deny a continuance. 2017 UT App 174, ¶¶ 22-23, 405 P.3d 836. In *Chen v. Stewart*, the Court's inherent powers were used to appoint an interim CEO to act as a receiver. 2004 UT 82, ¶ 50, 100 P.3d 1177. In *Warner v. Warner*, the Court's inherent powers were used to ensure that rulings were accurately memorialized and to maintain and protect the integrity and dignity of the court. 2014 UT App 16, ¶ 27, 319 P.3d 711. In each of the above cases there was no applicable rule or statute governing the issue and therefore limiting the court's inherent authority to manage its cases. These cases are distinguishable from the circumstances of this case, where the venue statute governs the transfer of cases from one court to another.

In its Venue Order, the district court did not, and could not, cite to any Utah cases that entitled the court to absolute or unbridled inherent power or authority to transfer this case to Summit County for all pretrial proceedings. Similarly, the district court did not, and could not, cite to any Utah cases where its inherent authority is used to transfer a case to another venue for any reason besides those specifically enumerated in Utah Code Ann. § 78B-3-309. Instead, the district court selectively quoted from parts of the venue statute and stated that "the ends of justice would be promoted by transferring the matters . . .

because doing so would facilitate consolidation of the matters and, by extension, achieve the substantial benefits offered by pre-trial coordination." (Add. A, p. 5.) Under Utah's venue statute, these are not lawful reasons for a transfer of venue, and they do not form a reasonable basis for the district court to exercise its discretion.

Both the Summit County district court and the Davis County district court (as well as various defendants) have indicated that they would prefer a multi-district litigation procedure to handle the Utah opioid cases, including Davis County's case. But Utah has no such "MDL" procedure, and twisting the venue statute (or Rule 42) around to meet the perceived need of such a procedure is not appropriate.[10] If Utah would like to adopt a multi-district litigation procedure, there are appropriate ways to implement one. Allowing district courts to do so on an ad hoc basis is not one of those ways.

If any court in Utah could simply transfer a case based on its inherent authority any time it wanted to, it would effectively circumvent Utah's statutes and rules, rendering them meaningless. Allowing courts to have unbridled inherent authority to transfer cases as part of its "power to manage its trials, cases, and docket," could lead to instances where courts attempt to relieve themselves of cases that, for whatever reason, they do not want to handle.

Davis County should be allowed to litigate its case in its chosen and proper venue. Permitting the district court to unilaterally add to the ad hoc multi-district litigation case in Summit County is well past the limits of Utah law and the court's inherent authority.

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[10] Further, as a practical matter, Davis County has been willing to discuss and stipulate to discovery and pretrial limitations that will eliminate some duplication of effort.

The Summit County consolidated opioid case is already bogged down by a morass of parties (including more plaintiffs and additional defendants not in the Davis County case). The defendants in the Davis County case have already been unable to agree on almost anything, and to now force Davis County to go to Summit County, with even more defendants and multiple plaintiffs, will keep the Davis County case from moving forward expeditiously. Forcing Davis County to stew in the ad hoc MDL quagmire in Summit County, when it could otherwise move its case forward quickly and efficiently in Davis County, significantly prejudices Davis County, is not in the interest of justice in its case, and is an abuse of the district court's discretion.[11]

The district court abused its discretion by transferring this case to Summit County. As stated, there is no reasonable basis for the district court's decision to transfer venue in this case. The district court does not have absolute or unbridled inherent authority to transfer this case to Summit County. Davis County is the proper venue for this case to be heard. Plaintiff has a right to choose its venue and the district court should have denied Defendants' motion to transfer the case. In *Hale v. Barker*, the Utah Supreme Court stated:

> The district court, by ruling that it would grant the motion, in effect declined to proceed to hear and determine the cause and therefore refused to perform an act enjoined upon it as part of its official duty. That is to say, the plaintiffs, as we have held, having the right to institute the action in Weber county, it must, in our judgment, necessarily follow that it was the duty of the court, as a public officer, to hear and determine the controversy between the parties and render judgment.

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[11] In fact, Davis County chose to pursue its state law claims as it has to avoid the federal opioid MDL in Ohio. It certainly does not want to be in a state ad hoc MDL.

70 Utah 284, 259 P. 928, 931 (1927) (internal citations omitted). Having been assigned Davis County's case in a proper venue, the district court is duty-bound "to hear and determine the controversy between the parties and render judgment." Its duty cannot be shifted under the venue statute, nor can the duty be reassigned by virtue of unbridled inherent authority. Because the venue statute does not apply and the district court's inherent authority to transfer venue is limited to the terms of the venue statute, the transfer of Davis County's case was erroneous, was an abuse of discretion, and should be overturned.

CONCLUSION

Therefore, Petitioner Davis County respectfully requests that this Court reverse the Venue Order of the district court and remand this case to the Second Judicial District Court for all proceedings.

RESPECTFULLY SUBMITTED this 28th day of August 2019.

DURHAM JONES & PINEGAR

/s/ Douglas B. Thayer
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(g)(1) because this brief contains 29 pages, excluding the parts of the brief exempted by Utah R. App. P. 24(g)(2).

2. This brief complies with the addendum requirements of Utah R. App. P. 24(a)(12) because the addendum contains a copy of:

> any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;
>
> the order, judgment, opinion, or decision under review and any related minute entries, findings of fact, and conclusions of law; and
>
> materials in the record that are the subject of the dispute and that are of central importance to the determination of the issues presented for review, such as challenged jury instructions, transcript pages, insurance policies, leases, search warrants, or real estate purchase contracts.

3. This brief complies with the non-public information requirements of Utah R. App. P. 21(g).

DATED this 28th day of August 2019.

DURHAM JONES & PINEGAR

/s/ Douglas B. Thayer
Douglas B. Thayer
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that, on the 28th day of August 2019, an electronic copy of the foregoing Brief of Petitioner was sent and that, within 7 days after filing by email, two paper copies of the foregoing Brief of Petitioner will be sent to the following:

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ADDENDA

Addendum A – Ruling and Order on Defendants Johnson & Johnson and Janssen Pharmaceuticals, Inc.'s Motion to Transfer Venue and Defendants Allergen's Motion to Consolidate Related Cases (May 31, 2019)

Addendum B – Ruling and Order Granting in Part and Denying in Part the Manufacturer Defendants' Motion to Consolidate (as amended on April 9, 2019)

Addendum C – Order Granting Petition for Permission to Appeal from an Interlocutory Order (July 11, 2019)

Addendum A

Ruling and Order on Defendants Johnson & Johnson and

Janssen Pharmaceuticals, Inc.’s Motion to Transfer Venue and

Defendants Allergen’s Motion to Consolidate Related Cases

(May 31, 2019)

IN THE SECOND DISTRICT COURT, STATE OF UTAH
DAVIS COUNTY

DAVIS COUNTY, Plaintiff, vs. PURDUE PHARMA L.P., et al., Defendants.	**RULING AND ORDER ON DEFENDANTS JOHNSON & JOHNSON AND JANSSEN PHARMACEUTICALS, INC.'S MOTION TO TRANSFER VENUE AND DEFENDANTS ALLERGEN'S MOTION TO CONSOLIDATE RELATED CASES** Case No. 180700870 Judge David M. Connors

This matter comes before the Court on two separate motions filed by different groups of defendants. First, a Motion to Transfer Venue was filed March 29, 2019 by Defendants Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. n/m/a Janssen Pharmaceuticals, Inc.'s (collectively, the "Janssen Defendants"). Plaintiff Davis County filed an opposition memorandum on April 12, 2019. The Janssen Defendants filed a reply on May 6, 2019. Second, a Motion to Consolidate Related Cases was filed on April 26, 2019 by Defendants Allergan Finance, LLC f/k/a, Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc., Allergan Sales LLC, and Allergan USA, Inc.'s (collectively, the "Allergan Defendants"). Plaintiff filed an opposition memorandum on May 10, 2019. The Allergan Defendants filed a reply on May 13, 2019. The Court held oral argument on the motions on May 15, 2019. Prior to the hearing, Plaintiff objected to the Court hearing the Motion to Consolidate Related Cases; however, at oral

argument the Court heard both motions by stipulation of the parties. Having reviewed the filings and considered the parties' arguments, the Court rules and orders as follows:

ANALYSIS AND RULING

Pursuant to Utah Code Section 78B-3-309, a Court may transfer venue "when the convenience of witnesses and the ends of justice would be promoted by the change." It is within the discretion of the Court to determine whether the ends of justice would in fact "be promoted by the change." *Id.*; *see also Gunn Hill Dairy Properties, LLC v. Los Angeles Dep't of Water & Power*, 2015 UT App 261, ¶ 7, 361 P.3d 703 (noting that a lower court's decision to transfer is "review[ed] . . . for an abuse of discretion."). "The trial court, with its inherent powers as the authority in charge of the trial, has broad latitude to control and manage the proceedings and preserve the integrity of the trial process." *State v. Parsons*, 781 P.2d 1275, 1282 (Utah 1989). The Utah Court of Appeals has held that "[a] district court is endowed with discretion in exercising its 'inherent power to manage its docket.'" *Matter of J. Melvin*, 2018 UT App 121, ¶ 25, 428 P.3d 43 (quoting *Jensen v. Ruflin*, 2017 UT App 174, ¶ 23, 405 P.3d 836). Additionally, "[t]rial courts have broad discretion in managing the cases before them and we will not interfere with their decisions absent an abuse of discretion." *Townhomes at Pointe Meadows Owners Ass'n v. Pointe Meadows Townhomes, LLC*, 2014 UT App 52, ¶ 9, 329 P.3d 815 (citation and internal quotation marks omitted). In its review of the trial court's exercise of discretion, the appellate court will "reverse only if there is no reasonable basis for the district court's decision." *Solis v. Burningham Enterprises Inc.*, 2015 UT App 11, ¶ 12, 342 P.3d 812.

The case before this Court clearly has common questions of law or fact shared with the similar opioid-related cases (hereinafter, the "opioid cases") brought in other counties throughout Utah (and throughout the country). This conclusion has not been genuinely disputed by Plaintiff.

Recently a motion was brought before Utah's Third District Court seeking consolidation of all of the Utah opioid cases, including the Davis County case, into the first filed case, which happened to be in Summit County. *Summit County v. Purdue Pharma L.P. et al.*, Case No. 180500119 in the Third District Court in and for Summit County (hereinafter, the "Summit County Case"). In a decision entered in the Summit County Case on March 15, 2019, the court, through Judge Mrazik, concluded that consolidation of the three cases pending in the Third District Court was appropriate for pre-trial purposes, but declined consolidation of the cases from outside of the Third District, asserting that it was "an untested interpretation of Rule 42 to consolidate matters pending in other judicial districts into the Summit County matter." *See* Pl's Ex. 12, Summit County Case, 5. However, the court then noted that cases outside the Third District could be transferred to the Third District by appropriate order of the district court in the district where they were originally filed for pretrial proceedings. *Id.* at 7.

Presumably following the Summit County court's suggestion, the Janssen Defendants moved this Court to transfer venue to Summit County for pre-trial proceedings, and specifically for discovery and other pretrial matters. In response, Plaintiff asserts that the transfer statute relied on by the Janssen Defendants[1] does not specifically authorize the type of transfer being sought in the present motion (*i.e.*, a transfer of the case for purposes of handling pretrial matters, but not for trial). To some extent the Court agrees with the assertion that the statute does not specifically authorize the type of transfer sought by the Janssen Defendants. In fact, the statute deals narrowly with only one particular subset of the potential universe of types of transfers the court might need to consider when exercising its discretionary authority to manage its trials, cases, and dockets. Specifically, the statute referenced by both the Janssen Defendants and the

[1] "The court may, on motion, change the place of trial . . . when the convenience of witnesses and the ends of justice would be promoted by the change." Utah Code Ann. § 78B-11-309(3).

Plaintiff only addresses a situation where the court is asked to transfer a matter to another district for purposes of trial. Such a motion is not before the Court at this time in this case. Rather, the Court is being asked to transfer this case to Summit County to be consolidated with other opioid cases solely for purposes of resolving the pretrial issues that will be common to all of the opioid cases in Utah. The statute is silent on this type of a transfer request.

But the fact that the transfer sought by the Janssen Defendants is not the type of transfer covered by the statute does not answer the question of whether the motion can be granted or not. Importantly, the statute does not prohibit the type of transfer sought in the present motion. The Court retains its inherent power to manage its trials, cases, and docket. *See State v. Parsons*, 781 P.2d at 1282; *see also Matter of J. Melvin*, 2018 UT App 121, ¶ 25. And even though the statute is silent on this type of transfer, the Court believes that the general principle stated therein, that transfers should only be granted when they promote the ends of justice, is an appropriate standard for this Court to consider in evaluating the Janssen Defendants' motion.

Clearly, there are significant benefits that will result from the partial transfer of venue requested by the Janssen Defendants' motion. Some of those benefits are outlined in Judge Mrazik's ruling:

> (1) Conservation of judicial resources by avoiding the need for eleven judges to manage twelve substantively similar lawsuits, in parallel, at the same time; (2) Avoidance of inconsistent legal rulings regarding the pleadings, discovery disputes—of which there are likely to be many—and potentially dispositive motions; and (3) Avoidance of unnecessarily duplicative discovery, and judicial coordination and management of the extraordinary discovery, well beyond the standard limits set by Rule 26, that is almost certainly required in a litigation of this size.

Pl's Ex. 12, 4–5. This Court concurs with this assessment of the benefits of a limited transfer for the purpose of consolidating pretrial proceedings. Furthermore, the Court specifically agrees

with Judge Mrazik's conclusion that "the ends of justice would be promoted by transferring the matters pending outside the Third District to Summit County—for pretrial proceedings only—because doing so would facilitate consolidation of the matters and, by extension, achieve the substantial benefits offered by pre-trial coordination." *Id.* at 6. Accordingly, this Court, exercising its inherent authority to manage its cases and dockets, concludes that a limited transfer of venue for pretrial proceedings will promote the ends of justice and the efficient administration of pending cases and dockets. Therefore, the Court transfers the venue of pre-trial proceedings only, to Summit County in Utah's Third District Court.

Regarding the Allergan Defendants' Motion to Consolidate Related Cases, in light of the Court's decision to transfer this case to Summit County for pretrial proceedings, it is not appropriate for this Court to consider taking a position that would be inconsistent with the position already taken in the Summit County case on the issue of consolidation of cases from outside the Third District. Accordingly, the Allegan Defendants' Motion to Consolidate Related Cases is denied at this time.

ORDER

The Court grants the Janssen Defendants' Motion to Transfer Venue to Summit County for pre-trial proceedings. Trial in this case will remain before this Court. The Court denies Defendants Allergan's Motion to Consolidate Related Cases. In light of these rulings, the hearing on pending motions to dismiss, previously set for Friday, June 7, 2019, is hereby stricken.

DATED this 31ST day of May, 2019.

BY THE COURT

David M. Connors
District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 180700870 by the method and on the date specified.

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Date: 05/31/2019 /s/ URSULA HARRIS

Deputy Court Clerk

Addendum B

Ruling and Order Granting in Part and Denying in Part the

Manufacturer Defendants' Motion to Consolidate

(as amended on April 9, 2019)

The Order of the Court is stated below:
Dated: April 09, 2019 04:41:26 PM
/s/ RICHARD MRAZIK
District Court Judge

IN THE THIRD JUDICIAL DISTRICT COURT FOR
SUMMIT COUNTY, SILVER SUMMIT DIVISION, STATE OF UTAH

SUMMIT COUNTY, UTAH, Plaintiff, vs. PURDUE PHARMA L.P. *et al.*, Defendants.	**RULING AND ORDER GRANTING IN PART AND DENYING IN PART THE MANUFACTURER DEFENDANTS' MOTION TO CONSOLIDATE** Case No. 180500119 Judge Richard E. Mrazik

INTRODUCTION

At least fourteen Utah counties have filed twelve separate lawsuits against manufacturers, distributors, and promoters of opioids, each alleging claims related to the marketing, sale, or distribution of opioid medications.

Seventeen defendant manufacturers have filed a Joint Motion to Consolidate Related Cases for Pretrial Proceedings, requesting that the counties' lawsuits be consolidated into this matter, which is the first filed case, for coordinated pretrial proceedings.

Five other defendants—three distributors and two physicians—have joined in the Manufacturers' Motion to Consolidate.

Seven of the plaintiff counties—Summit, Tooele, Wasatch, Uintah, Daggett, Duchesne, and Weber Counties—along with the TriCounty Health District, have filed a Notice of Non-Opposition to the Manufacturers' Motion to Consolidate.

But the remaining seven plaintiff counties—Salt Lake, Davis, Iron, San Juan, Grand,

Millard, and Sanpete Counties—oppose the Manufacturers' Motion to Consolidate.

So the question before the Court is whether the counties' twelve lawsuits can and should be consolidated before a single judge for coordination and management of pretrial proceedings. Having fully considered all briefs and other filings related to the Motion to Consolidate as well as the parties' oral arguments at the lengthy hearing on February 22, 2019, the Court rules as follows.

RULING

Under Rule 42 of Utah Rules of Civil Procedure, when actions pending before the Court involve a common question of law or fact, the Court may order, among other things, that the actions be consolidated and may enter such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. While the Court has substantial discretion to decide whether to consolidate cases that satisfy this standard, that discretion can be abused if the prejudice to any party from consolidation far outweigh the likely benefits. See Lignell v. Berg, 593 P.2d 800, 806 (Utah 1979).

As a threshold matter, the Court finds the pending opioid matters involve numerous common questions of law and fact. In each of the twelve complaints the Court has reviewed in connection with the Motion to Consolidate, against at least eight of the same defendants, among others.

Each of the twelve complaints also asserts at least five common causes of action, based on the following theories: (1) violation of the Utah Consumer Sales Practice Act; (2) public nuisance; (3) fraud; (4) civil conspiracy; and (5) unjust enrichment.

In addition to the common parties and claims, the allegations in the Utah opioid litigation

involve numerous common questions of fact, including: (1) what Defendants knew about the benefits and risks of opioids medications; (2) when they knew about those benefits and risks; (3) (3) whether and how they communicated that knowledge to the medical community and to the public at large (meaning, whether they misrepresented the risks and benefits of opioids, and if so, how); and (4) why defendants acted or failed to act in the way they did with respect to that knowledge. And those are only a small sample of the numerous common questions of law and fact raised by the causes of action shared by the complaints filed in the twelve pending matters. These are only a small sample of the numerous common questions of law and fact raised by the claims and allegations in the pending complaints, and they are sufficient to meet the standard set forth in Rule 42(a).

In light of these common questions of law and fact, the benefits of consolidation far outweigh the potential prejudice to any party. First, the form of consolidation requested by the Manufacturer Defendants--and the form being considered by the Court--is to consolidate and coordinate the cases for pre-trial proceedings only, with each matter returning to its original venue for trial. This paradigm honors each Plaintiff's choice of venue for trial, and ensures that each County's case, if tried, will be heard in that County by jurors who reside in that County. This paradigm also allays any concern that consolidation will sow juror confusion by injecting superfluous issues, irrelevant evidence, or immaterial legal issues into each county's trial.

Second, the Court finds that potential prejudice can be effectively mitigated through careful judicial management of the coordinated pre-trial proceedings. This Court is sensitive to and respects each county's right to prosecute its own case according to its own strategy on its own schedule—albeit within the bounds imposed by opposing counsel, and by reasonable

coordination by the judge managing the litigation. Consolidation before a single judge who can reasonably coordinate and manage pre-trial proceedings will bring more efficiency to these complicated and numerous proceedings, and each County's desire to prosecute its own case according to its own strategy can be appropriately balanced against these goals of consolidation.

Third, the benefits of coordinated pre-trial proceedings are many and significant, and include: (1) Conservation of judicial resources by avoiding the need for eleven judges to manage twelve substantively similar lawsuits, in parallel, at the same time; (2) Avoidance of inconsistent legal rulings regarding the pleadings, discovery disputes—of which there are likely to be many—and potentially dispositive motions; and (3) Avoidance of unnecessarily duplicative discovery, and judicial coordination and management of the extraordinary discovery, well beyond the standard limits set by Rule 26, that is almost certainly required in a litigation of this size. On balance, the Court finds the benefits of consolidation far outweigh the potential prejudice to any litigant.

For the foregoing reasons, the Court grants in part the Motion to Consolidate and consolidates the Salt Lake County and Tooele County matters into the Summit County matter, for purposes of pre-trial coordination only. If trial becomes necessary, the Salt Lake County and Tooele County matters will return to Salt Lake County and Tooele County, respectively, to be tried in their original venues. . By approval of the presiding and associate presiding judges of the Third District Court, the consolidated Summit County matter shall now be assigned to Judge Richard E. Mrazik.

Regarding the matters pending outside the Third District, and notwithstanding the substantial benefits of consolidation, the Court declines to use an untested interpretation of

Rule 42 to consolidate matters pending in other judicial districts into the Summit County matter.

Rather, the Court elects to follow the more conservative approach raised in the opposing parties' briefing—namely, allowing the parties desiring consolidation, if they choose, to file motions in those matters pending outside of the Third Judicial District requesting a change of venue to Summit County. If the parties who desire consolidation file such motions and they are granted, they may then request that this Court consolidate any transferred matters into the Summit County matter for coordinated pretrial proceedings, as the Court has done with the three cases pending in the Third Judicial District via this Order.

Under this paradigm, the benefits of consolidation can be accomplished without the need for this Court to adopt an interpretation of Rule 42 that has yet to be approved by Utah's appellate courts. Indeed, under Utah Code 78B-11-309(3), "[t]he court may, on motion, change the place of trial … when the convenience of witnesses and the ends of justice would be promoted by the change." For the reasons discussed above, the Court finds the ends of justice would be promoted by transferring the matters pending outside the Third District to Summit County—for pretrial proceedings only—because doing so would facilitate consolidation of the matters and, by extension, achieve the substantial benefits offered by pre-trial coordination.

Under Utah Code 78B-11-310, in the absence of an agreement between the parties, "the action shall be transferred to the nearest court where the objection or reason for transfer does not exist." For the reasons discussed above, the Court finds Salt Lake County is the nearest court where the reason for transfer—i.e., the risk of inefficient use of judicial resources, duplication of effort, and inconsistent pretrial rulings—does not exist.

Given this Court's careful consideration and discussion of the parties' robust briefing and arguments on the consolidation issue, and the findings and conclusions made by this Court, perhaps the assigned judges outside the Third Judicial District will find this Court's ruling to be persuasive authority—though certainly not binding authority—weighing strongly in favor of transferring venue of the opioid matters pending outside the Third District to Summit County as a means of facilitating pretrial coordination and achieving the benefits it offers.

ORDER

For the reasons stated above, the Motion to Consolidate is GRANTED IN PART with respect to the Summit, Salt Lake, and Tooele County matters only, and DENIED IN PART without prejudice with respect to the remaining matters.

Any party who wishes to renew a motion to consolidate following the transfer of an opioid case from another judicial district to this one may do so at the appropriate time.

The stay entered pursuant to this Court's Pre-Consolidation Case Management Order was lifted in all non-consolidated cases as of February 22, 2019.

* * * END OF ORDER * * *

Pursuant to Rule 10(e) of the Utah Rules of Civil Procedure, this Order will be entered by the Court's electronic signature at the top of the first page of this document.

Addendum C

Order Granting Petition for Permission to Appeal from an Interlocutory Order

(July 11, 2019)

IN THE UTAH COURT OF APPEALS

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DAVIS COUNTY, Petitioner, v. PURDUE PHARMA, L.P., ET AL., Respondents.	)	ORDER Case No. 20190487-CA

Before Judges Orme, Mortensen, and Hagen.

This matter is before the court on a petition for permission to appeal from an interlocutory order filed pursuant to Rule 5 of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the petition for permission to appeal is granted.

DATED this 11th day of July, 2019.

FOR THE COURT:

David N. Mortensen, Judge

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2019, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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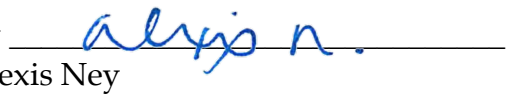
By 
Alexis Ney
Judicial Assistant

Case No. 20190487
SECOND DISTRICT, FARMINGTON, 180700870