Tulsa Trust & Estate Attorney James Milton - Venue in Trust and Probate Proceedings

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Recently, the Oklahoma Supreme Court addressed venue in trust and probate proceedings. Venue determines which county is the correct location for a legal proceeding to be filed. Venue is slightly different from jurisdiction, but in some instances can be exclusive.

The Oklahoma Trust Act requires that trust proceedings must be brought in the county where one or more of the trustees reside. In 1982, in *State ex. rel. Cartwright v. Ogden*, the Oklahoma Supreme Court made clear that the trust venue statue in both mandatory and jurisdictional. But due to passage of time, uncertainty grew as to whether *Ogden* would continue to be applied.

This issue was raised specifically in two recent writ proceedings in which the Oklahoma Supreme Court was asked to weigh in on whether the petitioning party had complied with the venue requirement. In both writ proceedings, the Court upheld the mandatory nature of the venue statute. These orders were succinct, but did not specifically address whether the venue requirement is indeed jurisdictional as had been held in *Ogden*.

The Court's orders in these two writ proceedings are unpublished, an indication that a further published decision would not add significantly to the body of case law on the subject. Despite this, these two orders should provide some certainty to trust practitioners and jurists regarding the likely outcome when venue is raised in these types of proceedings.

In contrast, the Court determined that venue in probate proceedings needed a published opinion. In *Estate of Fulks*, the Supreme Court was faced with interpretation of the probate venue statute. Read one way, the statute would require probate proceedings to be brought in the county in which the decedent had been a resident at the time of death. Viewed the other way, the statute would provide a menu, of sorts, that would allow the petitioner to pick any county in Oklahoma, regardless of where the decedent resided at the time of death.

In *Estate of Fulks*, the Court held that the statute was intended to set forth certain options in a prioritized order, such that, if the decedent resided in Oklahoma at the time of death, venue is exclusive in the county of residence at the time of the decedent's death.

One lingering issue is whether prior probate proceedings brought in a county other that the county of resident could be flawed. Oklahoma title attorneys are studying this issue closely.

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