

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

CHRISTINE KILMER, *et al.*,

Plaintiffs,

vs.

DAVID GILL, MAXINE BUCKMEIER,  
STATE OF IOWA, WOODBURY  
COUNTY, DEPARTMENT OF  
HUMAN SERVICES, STEVE  
HAYWARD, INDIVIDUALLY,  
AND IN HIS OFFICIAL CAPACITY,  
DEWEY SLOAN, INDIVIDUALLY  
AND IN HIS OFFICIAL CAPACITY,  
ST. LUKE'S REGIONAL MEDICAL  
CENTER, MARCHELLE DENKER,  
LAURIE ARAGON, ADOPTION WISE,  
ADOPTION INSIGHT, WALMART,  
INC., JUDGE MARY L. TIMKO,

Defendants.

No. 4:07-cv-0240-JAJ

**ORDER**

This matter comes before the court pursuant to defendants Woodbury County and Dewey Sloan's July 16, 2007 motion to change venue to the United States District Court for the Northern District of Iowa, Western Division (docket number 18) and defendant Maxine Buckmeier's August 13, 2007 joinder in motion for change of venue (docket number 27). These motions are unresisted and granted.

The plaintiffs, Christine Kilmer, on behalf of herself and as the next-friend of Kylee Kilmer, Angel Kilmer, and Tude Kilmer-Kaiser, filed suit on June 5, 2007, alleging that the defendants conspired to deprive her of her parental rights and to remove her children from her custody in violation of 42 U.S.C. §§ 1981, 1983, 1985 & 1986. Plaintiffs also

raise claims for intentional infliction of emotional distress, defamation per se, defamation per quod, and interference with a contractual relationship.

Plaintiffs bring this action against Woodbury County; Maxine Buckmeier, attorney who arranged for the adoption of Ms. Kilmer's daughter; Assistant Woodbury County Attorney Dewey Sloan; Attorney David Gill, attorney for the Christine Kilmer at the time of her daughter's birth; Steve Hayward, employee of the Iowa Department of Human Services; Marchelle Denker, guardian ad litem for Kylee and Angel Kilmer; Iowa District Court Judge Mary Timko; Adoption Wise; Adoption Insight; Laurie Aragon, employee of Adoption Insight; St. Luke's Regional Medical Center; the State of Iowa Department of Human Services ("DHS"); the State of Iowa; and Walmart, Inc.

Defendants contend that venue is improper in the Southern District of Iowa because (1) none of the defendants reside there; and (2) none of the events giving rise to the plaintiffs' claims occurred there. Defendants argue that the case should be transferred to the Northern District of Iowa, where the cause of action arose. For the reasons set forth below, the defendants' motion for change of venue is granted.

### **Conclusions of Law**

Title 28 U.S.C. § 1391(b) states in relevant part:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may . . . 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). Where the defendants do not all reside in the same state, the court will determine venue by asking whether the district the plaintiff chose had a "substantial

connection to the claim.” Setco Enterprises Corp. v. Robbins, 19 F.3d 1278, 1281 (8th Cir. 1994) (citing Bates v. C & S Adjusters, Inc., 980 F.2d 865, 867 (2d Cir. 1992)). The court’s function in determining proper venue is not to decide which district is the “best venue” among two or more possible venues, but only if there is a “substantial connection.” Setco Enterprises, *supra*, at 1281.

The court can find no basis for venue in the Southern District of Iowa. None of the defendants reside in the Southern District, and therefore, venue cannot be based on 28 U.S.C. § 1391(b)(1). Venue is also improper under § 1391(b)(2) as none of the events or omissions occurred in the Southern District of Iowa. Not only is there no “substantial connection” between the claim and the Southern District of Iowa, there is no connection at all.

The court finds that venue should be transferred to the Northern District of Iowa, Western Division, which is where the alleged claim arose. The basis of the plaintiff’s claim is that the defendants conspired to conduct an illegal adoption ring in Sioux City, located in Woodbury County, Iowa. Plaintiff asserts that various Woodbury County officials and attorneys conspired to take her daughter away from her. Plaintiff contends that these Woodbury County officials and attorneys made defamatory statements about her and false representations to her. Plaintiff asserts that Judge Mary Timko, a resident of Sioux City, should have stopped the illegal adoption from taking place. Taken together, a “substantial part of the events or omissions giving rise to the claim occurred” in Sioux City, Iowa. 28 U.S.C. § 1391(b)(2). Therefore, venue should be transferred to the Northern District of Iowa, Western Division.

The court finds that the assertion of venue in the Southern District of Iowa is frivolous. Further, the motions herein are unresisted. The court cannot find any connection whatsoever between the claim and the Southern District of Iowa. Prior to filing

the motion to change venue, defense counsel twice contacted plaintiffs' counsel regarding the issue of venue, first by telephone and then by certified mail, dated July 6, 2007. In both communications, defense counsel questioned the basis for venue in the Southern District of Iowa. Plaintiffs' counsel did not respond to either inquiry. Due to the unsupported claim of venue, as well as counsel's unresponsiveness, the plaintiffs' counsel shall pay costs related to the motion for change of venue. Defendants shall file with the court an affidavit relating to fees and costs within 14 days.

Upon the foregoing,

**IT IS ORDERED**

Defendants' motions to transfer the case to the Northern District of Iowa, Western Division, are granted. The Defendants' motions for fees are also granted.

**DATED** this 16th day of August, 2007.

  
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JOHN A. JARVEY  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF IOWA