IN THE SUPREME COURT OF THE STATE OF NEVADA

DRESSER INDUSTRIES, INC., ROOTS DIVISION,
Appellant,
vs.
NEWMONT GOLD COMPANY,
Respondent.

No. 45313

FILED

JAN 30 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for a change of venue. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

Appellant Dresser Industries, Inc., Roots Division (Roots) appeals from an order denying its motion to change venue from Elko County. Roots moved to change venue under NRS 13.050(2)(b) on the basis that it could not obtain a fair trial in Elko County against respondent Newmont Gold Company. The parties are familiar with the facts, and we do not recount them in this order except as is necessary for our disposition.

Roots argues that the district court abused its discretion by denying the change of venue. Specifically, Roots contends that absent a change of venue there is a reasonable likelihood that it cannot obtain an impartial trial. Roots grounds its argument in Newmont's size and prevalence in the Elko County community.

DISCUSSION

On appeal from an order denying a change of venue, this court conducts an independent review of the record to determine whether the

district court manifestly abused its discretion.[1] A district court should grant a motion to change venue when "there is a reasonable likelihood that in the absence of such relief, an impartial trial cannot be had."[2]

This court has adopted five factors to determine whether there is a reasonable likelihood that an impartial trial cannot be had without a change of venue: "(1) the nature and extent of pretrial publicity; (2) the size of the community; (3) the nature and gravity of the lawsuit; (4) the status of the plaintiff and the defendant in the community; and (5) the existence of political overtones in the case."[3] Roots contends that each of the factors weighs in favor of changing venue, while Newmont argues that they do not.[4]

Nature and extent of pretrial publicity

Roots suggests that the publicity Newmont engaged in during the weeks leading up to trial could have influenced potential jurors. The record does not indicate that the publicity Newmont conducted was

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[1]Nat'l Collegiate Athletic Ass'n v. Tarkanian, 113 Nev. 610, 613, 939 P.2d 1049, 1051 (1997) (citing State v. Ware, 338 N.W.2d 707 (Iowa 1983)).

[2]Id. at 612, 939 P.2d at 1051 (citing Martinez v. Superior Court, 629 P.2d 502, 503 (Cal. 1981)).

[3]Id. (citing People v. Hamilton, 774 P.2d 730, 737 (Cal. 1989)).

[4]Newmont also raises the issue that the five factors may be inapplicable where, as here, the district court reserved ruling on Roots' motion to change venue until after conducting voir dire. We hold that the five factors are equally applicable to a change of venue determination whether made before or after voir dire. The relevant inquiry remains whether there is a reasonable likelihood that a fair trial can be had. The district court having conducted voir dire only assists our analysis of the factors by making available additional facts to consider.

anything other than its typical publicity to promote its company. Additionally, Roots fails to identify publicity by Newmont or by anyone else regarding the trial itself. This factor only contemplates pretrial publicity about the trial.[5] Accordingly, we conclude that this factor does not weigh in favor of changing venue.

Size of the community

Roots argues that Elko County's small size weighs in favor of changing venue due to the close connection of the jury pool to Newmont. Although the size of the community is typically closely related to pretrial publicity,[6] the community's size can independently warrant changing venue.[7] Having the benefit of the voir dire record, we are able to see that the district court had little difficulty seating a jury that was not affiliated with Newmont. Although some of the jurors do have connections to Newmont, those connections are tenuous at best.[8] Based on the district

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[5]See Tarkanian, 113 Nev. at 613-14, 939 P.2d at 1051-52.

[6]See People v. Jennings, 807 P.2d 1009, 1026 (Cal. 1991) (holding that the size of the community is important to determine whether the population is sufficiently large to dilute the impact of adverse pretrial publicity).

[7]Althiser v. Richmondville Creamery Co., 215 N.Y.S.2d 122, 123-24 (N.Y. App. Div. 1961) (focusing exclusively on the small size of the community in determining that there was a likelihood of juror partiality toward the milk-producer plaintiffs).

[8]One juror sells car parts to several mining companies in Elko County, including Newmont. Another juror's husband has two cousins employed by Newmont. Another juror has a nephew with whom he is not close who works for Newmont. Finally, Newmont laid off another juror in 1993—a point that would seemingly favor Roots.

court's ability to seat an impartial jury, we conclude that the size of Elko County does not weigh in favor of changing venue.

Nature and gravity of the lawsuit

Roots contends that this factor weighs in favor of changing venue because the sizable amount of damages requested by Newmont, $32 million, will influence jurors as they will see the award as an economic benefit to their community. First, the voir dire transcript does not indicate such partiality among the chosen jurors. Second, a county's general interest in an award is not grounds for a change of venue.[9] Therefore, we conclude that this factor does not weigh in favor of changing venue.

Status of plaintiff and defendant in the community

Roots argues that Newmont's significant status in Elko County weighs in favor of changing venue. Specifically, Roots points to Newmont's investment in the community through monetary donations, its sponsorship of local events, and its employment of many county residents. Roots also notes the lack of awareness of its company in Elko County. Roots suggests that these facts create an appearance of impropriety in the jury pool because the Elko County jurors' human tendency will be to favor Newmont as a provider of economic well being in the community.

Although Newmont contributes substantially to the Elko County community, its status alone is insufficient to presume partiality in

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[9]See Conley v. Chedic, 7 Nev. 336, 340 (1872) (complete facts available at 1872 WL 3549); N. Tex. Steel Co., Inc. v. R.R. Donnelly & Sons Co., 679 N.E.2d 513, 520-21 (Ind. Ct. App. 1997) (rejecting the defendant's argument that venue should be changed because the community might benefit economically from an award in favor of the local plaintiff).

Newmont's favor.[10] Newmont "should not be penalized for its good reputation."[11] Further, the voir dire transcript does not evince partiality toward Newmont by the selected jurors. We are satisfied that the jurors sufficiently indicated their ability to lay aside any opinion they may have of Newmont in order to render a fair and impartial verdict.[12] We therefore conclude that Newmont's status is insufficient to warrant changing venue.

Political overtones

Roots concedes that "[i]t is difficult to evaluate potential political overtones in this case." Nevertheless, Roots argues that Elko County jurors might worry that an adverse ruling to Newmont could lead to Newmont not making future political or social contributions to the county. Roots does not indicate any specific evidence that would suggest such a result. We conclude that is because the record is devoid of such evidence. There is nothing to suggest that the outcome of this case will

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[10]See Braswell v. Money, 344 So. 2d 767, 769 (Ala. 1977) (holding that it was improper to conclude that a local university's influence in the community created a presumption of prejudice sufficient to change venue and that there was insufficient evidence to support a finding of prejudice); N. Tex. Steel, 679 N.E.2d at 520-21 (holding that evidence that a local company was a prominent employer in the county, a major contributor to the local economy, and enjoyed positive press coverage by the primary county newspaper was insufficient to infer partiality among county jurors).

[11]N. Tex. Steel, 679 N.E.2d at 521.

[12]See Murphy v. Florida, 421 U.S. 794, 798-800 (1975) (holding improper a presumption of partiality based on a juror's knowledge of the defendant's past crimes without an indication of an actual existence of bias).

have any political repercussions. Therefore, this factor also does not weigh in favor of changing venue.

CONCLUSION

We conclude that an analysis of the Tarkanian factors supports the district court's decision not to change venue from Elko County. We therefore hold that the district court did not abuse its discretion by denying Roots' motion to change venue, and we ORDER the judgment of the district court AFFIRMED.

Douglas, J.

Becker, J.

Parraguirre, J.

cc: Hon. Andrew J. Puccinelli, District Judge
Goicoechea, Di Grazia, Coyle & Stanton, Ltd.
Lemons Grundy & Eisenberg
Quarles & Brady LLP
Beckley Singleton, Chtd./Las Vegas
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Elko County Clerk