

FILED
02-05-2025
Clerk of Circuit Court
Outagamie County
2025CV000075

STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

TESLA, INC.,

Petitioner,

v.

Case No.: 2025-CV-075

Case Code: 30607

Administrative Agency Review

WISCONSIN DEPARTMENT OF
TRANSPORTATION,

STATE OF WISCONSIN DEPARTMENT OF
ADMINISTRATION, DIVISION OF HEARINGS
AND APPEALS

Respondents,

and

WISCONSIN AUTOMOBILE AND TRUCK
DEALERS ASSOCIATION

Interested Party.

**WISCONSIN AUTOMOBILE AND TRUCK DEALERS ASSOCIATION’S
BRIEF IN SUPPORT OF MOTION FOR CHANGE OF VENUE**

INRODUCTION

Wisconsin law prohibits a vehicle manufacturer from owning or operating a motor vehicle dealership in Wisconsin. Wis. Stat. § 218.0121(2m). Petitioner Tesla, Inc. (“Tesla”) requested an exemption from this rule under Wis. Stat. § 218.0121(3m)(c), which allows a manufacturer to own or operate a dealership if “the division of hearing and appeals [(“Division”)] determines, after a hearing on the matter at the request of any party, that there is no prospective independent dealer available to own and operate the dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the factory.” The Division

determined that Tesla does not qualify for this exemption. Tesla now seeks judicial review of the Division's determination under Wis. Stat. §§ 227.52 and 227.53.

However, Tesla improperly filed its Petition for Judicial Review of Agency Action (Dkt. 4) in the Circuit Court for Outagamie County. The venue requirements of Wis. Stat. § 227.53(1)(a)(3) are mandatory and require that the petition be heard in the "county where the petitioner resides," or, if the petitioner is not a resident, in the county "where the property affected by the decision is located." If no property is affected, then and only then does the statute provide that the petition may be heard "in the county where the dispute arose." *Id.* Here, under any review of the facts, venue is proper only in Dane or Milwaukee County; venue does not and cannot lie in Outagamie County. For that reason, the Wisconsin Automobile and Truck Dealer Association ("WATDA") moves the Court to transfer this case to Dane County, or in the alternative, to Milwaukee County.

FACTS

Tesla currently operates two Tesla gallery/service centers: one at 6624 Seybold Road, Madison, Dane County, Wisconsin and the other at 12011 W. Silver Spring Dr, Milwaukee, Milwaukee County, Wisconsin. (*See* Hearing Transcript 5/21/24 121:20-23). On or around March 8, 2024, Tesla wrote a letter to the Department of Transportation, indicating that it was interested in opening Tesla-owned motor vehicle dealerships in Wisconsin. (Hearing Ex. 6). Tesla requested a hearing be scheduled to determine if Tesla qualified for an exemption to Wis. Stat. § 218.0121(2m) (the "Factory Store Rule"), which prohibits vehicle manufacturers from also owning vehicle dealerships in Wisconsin. With that letter, Tesla submitted applications to open two Tesla-owned dealerships at sites in Madison and Milwaukee. (Hearing Ex. 6). Tesla intends to convert its current gallery locations in Madison and Milwaukee into full dealership locations

upon its applications being approved. (*See* Hearing Transcript 05/21/24 at 65:23-66:19). Tesla noted in its letter to DOT that it intended to later submit applications to open a dealership in Glendale (which is located in Milwaukee County) and one at another yet undetermined location, which it alternatively referred to as “Appleton” or “Grand Chute” or “thereabouts.” (Hearing Exhibit 6). To date, Tesla has not submitted an application to open a dealership anywhere in Outagamie County.

After a hearing on Tesla’s exemption petition, the Division determined that Tesla did not qualify for an exemption to the Factory Store Rule. Tesla now brings the present petition for review of that decision in Outagamie County Circuit Court. Tesla claims that “[v]enue for this proceeding is proper in Outagamie County, Wisconsin, under Wis. Stat. § 227.53(1)(a)(3), because that is the location of the ‘property affected by the decision’—Tesla’s proposed dealership.” (Dkt. 4, Petition ¶ 7). Tesla also argues that “Outagamie County is the location ‘where the dispute arose.’” (*Id.*). Because venue is not proper in Outagamie County, WATDA files this motion to change venue to Dane County, or in the alternative, Milwaukee County.

ARGUMENT

I. Chapter 227’s Venue Provision Prohibits Hearing Tesla’s Petition in Outagamie County.

To begin, Wis. Stat. § 801.51 provides that “[a]ny party may challenge venue, on the grounds of noncompliance with s. 801.50 or any other statute designating proper venue” by filing a motion alongside its first responsive pleading. Here, the statute designating proper venue of Tesla’s Petition for Judicial Review is Wis. Stat. § 227.53(1)(a)(3), which provides in relevant part:

If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides . . . If the petitioner is a nonresident, the proceedings shall be held in the county where the property affected by the decision is located or, if no property is affected, in the county where the dispute arose.

The use of the term “shall” indicates that these venue directives are mandatory, not permissive. *Heritage Farms, Inc. v. Markel Ins. Co.*, 2012 WI 26, ¶ 32, 339 Wis. 2d 125, 144, 810 N.W.2d 465, 475 (when interpreting a statute, courts presume the use of the word “shall” is mandatory).

A. Tesla is not a Resident of Outagamie County.

Wisconsin Stat. § 227.53(1)(a)(3) provides different venue rules for residents and non-residents. The statute does not define “resident” for this purpose and so under Wisconsin law, the term is given its plain and ordinary meaning found in dictionary definitions. *See Landwehr v. Ladwehr*, 2006 WI 64, ¶ 16, 291 Wis. 2d 49, 715 N.W.2d 180 (“When a statute does not define a term, we examine the ordinary meaning of that term, and rely on dictionary definitions for undefined, non-technical terms.”). “Resident” is “[s]omeone who lives permanently in a particular place.” “Resident (*n.*)” Black’s Law Dictionary (12th ed. 2024).

Tesla does not permanently occupy any place in Outagamie County. It has no gallery or service center in Outagamie County. In contrast, Tesla operates a gallery/service center in Madison and in Milwaukee. (Dkt. 4, ¶ 15). At these gallery/service locations, Tesla offers a display of its cars, demo drives, and educational information, as well as service for Tesla vehicles. (Hearing Transcript 05/21/24 at 9:25-10:1; 49:20-50:9; 121:24-124:4). The Milwaukee location employs over twenty people, and the Madison location employs a similar number. (Hearing Transcript 05/21/24 at 129:14-24).

The facts show that Tesla is not a resident of Outagamie County and therefore, there is no basis to assert venue in Outagamie County under Wis. Stat. § 227.53(1)(a)(3)’s mandate that the “proceeding shall be held in the circuit court where the petitioner resides.”¹

¹ While the facts support Tesla’s residency in Dane and Milwaukee Counties, this Court need not decide whether Tesla is a resident or a non-resident under Wis. Stat. § 227.53(1)(a)(3) because under either analysis, there is no basis to assert that venue lies in Outagamie County and venue is proper only in Dane or Milwaukee County. *See infra* I.B.

B. There are No Properties Affected by the Division's Decision in Outagamie County.

Tesla asserts in its petition that it is a non-resident, and that venue in Outagamie County is proper because it is the location of “Tesla’s proposed dealership.” *See* Dkt. 4, Petition ¶ 7. Presumably, Tesla is relying on its assertion that it wants to open a Tesla-owned dealership at a yet undetermined location, which it has alternatively referred to as located in “Appleton” or “Grand Chute” or “thereabouts.” Tesla presumes that such hypothetical desire satisfies Wis. Stat. § 227.53(1)(a)(3)’s mandate that venue for a nonresident must be held in the county where the property affected by the decision is located. (*See* Hearing Exhibit 6). Tesla’s overreach is notable.

First, as explained above, Tesla currently operates two gallery/service centers in Wisconsin: one in Madison and one in Milwaukee. Tesla submitted only two dealership license applications to the DOT with its letter and those specifically sought to convert these two existing locations to dealerships. (*See* Hearing Transcript 05/21/24 at 65:15-66:19). These are the only two locations where Tesla has currently established property that will be affected by the Division’s decision. Tesla has not alleged—and there is nothing in the record to suggest—that it owns or leases any property in Outagamie County that it intends to convert into a dealership if the Division had granted the exemption.

Indeed, Tesla’s letter to the DOT indicated only that it *may* submit an application to open a dealership in Appleton, Grand Chute “or thereabouts” sometime in the future. (Hearing Ex. 6). Importantly, Tesla has not yet applied for a license to operate a dealership in Grand Chute. While Tesla sought a determination from the Division that, if it qualified for an exemption from the Factory Store Rule, would arguably allow it to eventually open a dealership in Outagamie County, that does not establish that Tesla has property in Outagamie County that has been affected by the Division’s denial. This is especially the case where so far, it appears that Tesla has only applied

for dealerships in Dane County and Milwaukee County. (*See* Hearing Ex. 6) (“Applications for the Madison and Milwaukee sites are enclosed herewith; applications for the Appleton and Glendale sites are forthcoming.”). Indeed, Tesla cannot simply open a dealership in Outagamie County even if it were to prevail on its petition for judicial review because Tesla would still be required to submit a new application to amend its license. *See* Wis. Stat. § 218.0119(1) (“Before . . . opening a new place of business in a municipality in which authorized to do business, a licensed dealer, distributor, or manufacturer shall apply to the department of transportation for an amended license.”). That is not the case for the Madison and Milwaukee locations because Tesla submitted applications for those locations with its request to DOT for an exemption from the Factory Store Rule under Wis. Stat. § 218.0121(3m)(c).

Second, and more importantly, even if Tesla’s self-stated future desire were credited, the fact that Tesla envisions a hypothetical future dealership somewhere near the border of Outagamie County does not mean that Outagamie County is “the county where the property affected by the decision is located” pursuant to Wis. Stat. § 227.53(1)(a)(3). Tesla has not committed to building a dealership at a specific location in Grand Chute but rather, Tesla told the DOT that it wished to establish a location in Appleton, or Grand Chute “or thereabouts.” (Hearing Ex. 6). Even Tesla’s Petition for Judicial Review submitted to this Court uses the “thereabouts” language. (Dkt. 4, Petition, ¶ 16). Grand Chute is less than three miles from the border of Winnebago County. “Thereabouts” could easily be outside of Outagamie County. Tesla has also referred to this proposed location as “Appleton,” a city that spans three counties—Outagamie, Winnebago, and Calumet. (*See* Hearing Ex. 6 “applications for the Appleton and Glendale sites are forthcoming”).

Tesla has failed to show that Outagamie County is “the county where the property affected by the decision is located” pursuant to Wis. Stat. § 227.53(1)(a)(3). Because Tesla already operates

business locations in Madison and Milwaukee and submitted applications to obtain licenses to convert those locations into Tesla-owned dealerships, Dane County and Milwaukee County are the only two counties containing property affected by the Division's decision. Accordingly, venue is proper only in Dane or Milwaukee County.

C. No Dispute Has Arisen in Outagamie County.

Wisconsin Stat. § 227.53(1)(a)(3) also permits a nonresident to file a petition for review in the county where the dispute arose *but only if* the Court first determines that there is no property affected by the Division's decision. As explained *supra*, I.B., Tesla operates business locations in Madison and Milwaukee and submitted applications to convert those locations into Tesla-owned dealerships. Thus, Dane County and Milwaukee County contain property affected by the Division's decision. As such, the Court does not consider any arguments about where the dispute arose.

However, even if this Court did look to where the dispute arose, there is no basis for Tesla to assert that this dispute arose in Outagamie County. The same reasons identified in I.B.—that there is no property in Outagamie County affected by the Division's decision—support that the dispute did not arise there as well. The dispute arose over Tesla's license applications for dealerships in Dane and Milwaukee Counties. Tesla's assertions that the dispute arose in Outagamie County because it may eventually apply to open a dealership in Appleton, Grand Chute or thereabouts does not show the dispute arose in Outagamie County where the location of any proposed future dealership could easily be in Winnebago or Calumet County based on Tesla's own statements. The facts demonstrate that venue is proper only in Dane County or Milwaukee County.

II. Venue Should be Transferred to Dane County, or Alternatively, Milwaukee County.

In light of Tesla's improper selection of Outagamie County, WATDA moves the court to change venue to Dane County. Although venue is proper under Wis. Stat. § 227.53(1)(a)(3) in either Dane or Milwaukee County, WATDA requests a change to Dane County because all parties are located in Dane County. Tesla's Wisconsin counsel, Eric M. McLeod and Richard J. Lewandowski, have their offices in Madison. The Wisconsin Department of Justice has its principal place of business in Madison (as do the Department of Transportation and the Division of Hearings and Appeals). The Wisconsin Automobile and Truck Dealers Association also has its principal place of business in Madison, and its counsel have their offices in Madison. If the court elects not to transfer the case to Dane County, then WATDA requests the case be transferred to Milwaukee County.

CONCLUSION

Tesla's filing of its Petition for Judicial Review in Outagamie County is improper because it violated the mandatory venue statute found in Wis. Stat. § 227.53(1)(a)(3). As established above, venue exists only in Dane or Milwaukee County, and there is no basis to assert that venue lies in Outagamie County. Because Tesla operates galleries in Madison and Milwaukee and submitted applications to convert those locations into Tesla-owned dealerships, Dane and Milwaukee Counties are the only two counties containing property affected by the Division's decision. Tesla's desire to eventually apply to open a dealership in Appleton, Grand Chute or thereabouts does not establish that there is property located in Outagamie County affected by the Division's decision, especially where there is no specified location, Grand Chute is three miles from Winnebago County, and Appleton spans three counties. For these reasons, WATDA respectfully requests that this case be transferred to Dane County, or if the Court declines that request, to Milwaukee County.

Dated this 5th day of February 2025.

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Electronically Signed by Sarah A. Zylstra

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