

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Corey Anderson,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 22 L 3693
	)	
Walmart, Inc., a foreign corporation,	)	
and Keith Terrell,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

The *forum non conveniens* doctrine permits the transfer of a case to another venue if the weighing of various private and public factors strongly favors a transfer. Here, the balance of factors does not demonstrate that Howard County, Indiana, would be a substantially more convenient forum for the parties. The defendants' motion is, therefore, denied.

**Facts**

On April 25, 2020, Corey Anderson was shopping at a Walmart store located at 1920 Markland Avenue, Kokomo, Howard County, Indiana. At some point, Anderson confronted Keith Terrell, who was also in the store. Terrell shot Anderson in the abdomen, resulting in serious injuries. On April 21, 2022, Anderson filed a two-count complaint against the defendants. The single negligence count against Walmart alleges that it owed Anderson a duty of care for his safety and that Walmart breached its duty by failing in a variety of ways to provide adequate security.

These additional facts are gleaned from the record:

- Anderson is a resident of Richton Park, Cook County, Illinois. Anderson swore in an affidavit that it would be far more convenient for him to travel to the Daley Center than to the Howard County courthouse.
- Kokomo police arrested Terrell. He later pleaded guilty, and was incarcerated at the Plainfield Correctional Center, in Plainfield, Hendricks County, Indiana. Terrell's scheduled release date was October 23, 2022. The record does not indicate his current address.

- Danielle Jender was an eyewitness to the shooting and was Anderson's then-girlfriend. She lives in Bourbonnais, Kankakee County, Illinois. Jender swore in an affidavit that it would be far more convenient for her to travel to the Daley Center than to the Howard County courthouse.
- Lindell Clark was present for and observed events leading up to the shooting. Clark is a resident of Lansing, Cook County, Illinois. Clark swore in an affidavit that it would be far more convenient for him to travel to the Daley Center than to the Howard County courthouse.
- Anthony Matthews was an eyewitness to the shooting. Matthews is currently incarcerated at the Cook County Jail in Chicago.
- Walmart owns and operates several stores in Cook County.
- Jennifer Kearney is a Walmart employee who responded to the scene shortly after the shooting. Kearney swore in an affidavit that she lives in Howard County and that it would be significantly more convenient and cheaper for her to testify in Howard County.
- Amber Miller is a Walmart employee who responded to the scene shortly after the shooting. Miller swore in an affidavit that she lives in Howard County and that it would be significantly more convenient and cheaper for her to testify in Howard County.
- Shauna Halle is a Walmart employee who responded to the scene shortly after the shooting. Halle swore in an affidavit that she lives in Howard County and that it would be significantly more convenient and cheaper for her to testify in Howard County.
- Traci Hipsher is a Walmart employee who responded to the scene shortly after the shooting. Hipsher swore in an affidavit that she lives in Cass County, Indiana, and that it would be significantly more convenient and cheaper for her to testify in Howard County.
- Karen Hazelton is a Walmart employee who responded to the scene shortly after the shooting. Hazelton swore in an affidavit that she lives in Tipton County, Indiana, and that it would be significantly more convenient and cheaper for her to testify in Howard County.
- Rochelle Wendling is a Walmart employee who responded to the scene shortly after the shooting. Wendling swore in an affidavit that she lives in Cass County and that it would be significantly more convenient and cheaper for her to testify in Howard County.
- Anderson received medical care at Ascension St. Vincent Hospital in Kokomo. Anderson was later air lifted to Indiana University medical center in Indianapolis, Marion County, Indiana.
- Anderson received subsequent medical care at Loyola University Medical Center in Maywood, Cook County, Illinois.

On September 6, 2022, Walmart filed a motion to transfer this case to Howard County, Indiana, pursuant to Illinois Supreme Court Rule 187. The parties fully briefed the motion.

### Analysis

A motion filed pursuant to the *forum non conveniens* doctrine contained in Illinois Supreme Court Rule 218 seeks to transfer a lawsuit from one forum with proper venue to another, more convenient forum with proper venue. *Tabirta v. Cummings*, 2020 IL 124798, ¶ 1. Thus, “this doctrine assumes the existence of at least two forums in which the defendant is amenable to jurisdiction.” *Foster v. Chicago & N. W. Transp. Co.*, 102 Ill. 2d 378, 381 (1984). Here, Cook County and Howard County, Indiana, are both proper venues for this action based on the location of the defendants and the location of the alleged tort.

The equitable doctrine of *forum non conveniens* is well established in Illinois courts and is “founded in considerations of fundamental fairness and sensible and effective judicial administration.” *First Nat’l Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002) (quoting *Adkins v. Chicago, Rock Island & Pac. R.R. Co.*, 54 Ill. 2d 511, 514 (1973)). Illinois courts adopted the modern line of precedent from the United States Supreme Court case *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). See *Fennell*, 2012 IL 113812, ¶ 14 (listing cases). A *forum non conveniens* motion requires the movant to show the overall weight of several convenience factors strongly favors transfer (or dismissal) to a more convenient forum. *Guerine*, 198 Ill. 2d at 517 (citing *Griffith v. Mitsubishi Aircraft Int’l, Inc.*, 136 Ill. 2d 101, 106 (1990)).

The convenience factors adopted from *Gulf* are divided into “private interest factors affecting the litigants and public interest factors affecting court administration.” *Fennell*, 2012 IL 113812, ¶ 14. Illinois courts have defined the private factors to include:

(1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make a trial of a case easy, expeditious, and inexpensive—for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises (if appropriate).

*Guerine*, 198 Ill. 2d at 516 (citing cases). Courts have generally broken down the third element to address each aspect separately. The public interest factors are:

(1) interest in deciding localized controversies locally; (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in already congested fora.

*Id.* at 516-17. The public and private factors are not weighed against each other but are weighed together to test whether they strongly favor transfer away from the plaintiff's chosen forum. *Fennell*, 2012 IL 113812, ¶ 18. Courts are admonished that "[t]he plaintiff's right to select the forum is substantial" and "should rarely be disturbed." *Id.*

The consideration given to a *forum non conveniens* motion rests on several relevant presumptions, two of which are important here. First, as to a plaintiff's choice of forum, "[w]hen the home forum is chosen, it is reasonable to assume that the choice is convenient. [Second,] [w]hen the plaintiff is foreign to the forum chosen . . . this assumption is much less reasonable and the plaintiff's choice deserves less deference." *Guerine*, 198 Ill. 2d 511, 517-18 (2002) (citing cases).

Before applying the private and public factors to the case at hand, this court believes some commentary on the *forum non conveniens* analysis is warranted. First, Illinois courts analyzing motions to transfer litigation based on the *forum non conveniens* doctrine have tended to focus on trials and not discovery. The reality is, however, that very, very few cases go to trial. Further, the amount of time parties and their attorneys spend in discovery far exceeds the amount of time they spend at trial. Analysis focused on trials is, quite frankly, out of sync with modern litigation practice. A more current analysis would give equal or greater weight to the applicability of enumerated factors to pre-trial proceedings, particularly the discovery process.

Second, the *forum non conveniens* analysis has not been updated for at least a decade and a half. Several of the factors enumerated in the analysis do not reflect the reality of modern litigation, such as viewing the premises, which rarely, if ever, occurs during a modern jury trial. Other factors have been rendered trivial because of improved technology and its entrenchment in court proceedings. In application, this reality renders the public factors far weightier than the private factors.

Third, the Covid-19 pandemic has altered the private convenience factors related to obtaining parties' and witnesses' deposition or trial

testimony. It is now common for depositions and trial testimony to occur remotely, with attorneys, witnesses, and a court reporter in multiple, separate locations. The cost savings to all parties have been enormous. It is difficult to think that clients, counsel, and witnesses will return to far more expensive discovery and trial practices after the pandemic is over.

Fourth, these cost and time savings further muddle the *forum non conveniens* analysis. If, for example, technology has made in-person depositions largely a thing of the past, then venue for the discovery portion of a case is next to irrelevant given that all documents are now electronically transferable. That conclusion would also make the trial portion of the case the only relevant temporal factor, in contrast to this court's earlier point that *forum non conveniens* should focus more on the discovery phase.

Notwithstanding the limitations of the current *forum non conveniens* analysis, this court will proceed with the required factor analysis described above.

## I. Private Factors

### A. Convenience of the Parties

As to the first private factor, “[t]he defendant must show that the plaintiff’s chosen forum is inconvenient to the defendant and that another forum is more convenient to all parties.” *Langenhorst v. Norfolk S. Ry.*, 219 Ill. 2d 430, 444 (2006). Although a defendant is not required to claim a plaintiff’s chosen venue is inconvenient for the plaintiff, *Guerine*, 198 Ill. 2d at 518, courts have also recognized it is quite easy for a party to declare its forum preference as convenient and the opposing party’s as inconvenient. “If we follow this reasoning, the convenience of the parties means little. . . .” *Hale v. Odman*, 2018 IL App (1st) 180280, ¶ 34 (quoting *Fennell*, 2012 IL 113812, ¶ 20). “To avoid this inevitable conflict, we must look beyond the declarations of convenience and realistically evaluate convenience and the actual burden each party bears when traveling to the plaintiff’s chosen forum.” *Id.* at ¶ 35.

Walmart’s singular argument as to the parties’ convenience is based on the fact that its witness-employees are all located in and around Howard County. Given the distance between Kokomo and Chicago, it is plain that this proceeding would be far more convenient for them in Howard County. Importantly, however, Walmart does not explain the nature of the testimony its employees will provide. The Kearney, Miller, Halle, Hipsher, Hazleton, and Wendling affidavits indicate that each arrived on the scene after the shooting had occurred. In other words, it appears that these employees’

testimony does not go to the central issue in Anderson's complaint—that Walmart failed to supply sufficient security and failed to respond properly after its employees had been informed that Terrell had a gun. It is possible, therefore, that these witnesses may simply offer cumulative evidence, in which case, the number of witnesses identified could be misleading.

As noted above, it is possible that, if this case were to proceed in Cook County, the Walmart employees could be deposed remotely through Zoom or a similar platform. The same is true for their evidence depositions. If the remote testimony option is used, convenience in Howard County becomes far less of an issue.

In contrast to Walmart, it is equally plain that Cook County is a more convenient forum for Anderson, who lives in Richton Park. Although Richton Park is in far southern Cook County, it is still much closer to the Daley Center than to Kokomo. To that end, Anderson supplied a sworn affidavit averring that it would be far more convenient for him to travel to the Daley Center than to the Howard County courthouse.

Given that the nature of the evidence to be supplied by the Walmart employees is unclear and that their depositions could be accomplished remotely, this factor is considered neutral.

#### B. The Relative Ease of Access to Evidence

This factor focuses on testimony from witnesses other than the parties as well as documentary evidence. As to Anderson's witnesses, Jender, Clark, and Matthews each currently reside in Cook County. Jender and Clark also provided affidavits indicating the convenience of the Cook County forum.

There is likely to be many depositions of Anderson's medical providers. Despite the sparse record, it is plain that the physicians are located in Kokomo, Indianapolis, and Maywood. Out of professional courtesy, physicians are generally deposed where they work, regardless of the litigation's venue. Once again, the ability of remote proceedings makes the physicians' depositions convenient regardless of the venue location.

The location of real and documentary evidence is of no issue since the materials may be physically or electronically transferred between the two counties. See *Ruch v. Padget*, 2015 IL App (1st) 142972, ¶¶ 61, 65.

The overriding consideration with this factor is the location of Anderson's witnesses in Cook County. At this stage of the litigation, their testimony would appear to be far more significant than the Walmart

employees because they witnessed the events leading up to the shooting. For that reason, this factor favors Cook County.

C. Compulsory Process of Unwilling Witnesses

Walmart's motion did not address this factor; consequently, it is considered neutral.

D. Cost of Obtaining Attendance of Willing Witnesses

This factor cuts both ways. Proceeding in Cook County will likely incur costs for Walmart's witnesses, while a proceeding in Howard County will incur costs for Anderson's witnesses. Given that the number of Walmart's key witnesses is not yet clear, this factor must be considered neutral.

E. Viewing the Premises

Walmart does not address this factor, and this court can think of no need for a jury to visit the Walmart given that its physical layout is not an issue in this case. This factor is neutral.

F. Other Practical Considerations That Make a Trial Easy, Expeditious, and Inexpensive

The parties do not meaningfully address this factor; consequently, it is considered neutral.

II. Public Factors

A. Deciding Localized Controversies Locally

It is quite evident that Howard County has a significant interest in this case. Anderson's injury occurred in Howard County, and its residents would questionably be interested and concerned about the security or lack of security at a store located in their vicinity. This factor favors Howard County.

B. Unfairness of Imposing Expense and Burden on a County with Little Connection to the Litigation

The Supreme Court has stated plainly that a court should avoid imposing administrative costs and the burden of jury duty on a forum with little interest in the dispute. *Dawdy*, 207 Ill. 2d at 183. As a result, this

public factor often follows from the first. In this instance, however, the two factors diverge.

Just as Howard County has a substantial interest in this case, so does Cook County. This case arises from an injury to a Cook County resident and whose prime witnesses also live here. That the particular Walmart is located in Indiana is of secondary concern as it is uncontested that Walmart owns and operates many stores in Cook County. To that extent, Cook County residents would also be concerned about the security or lack thereof at other Walmart stores in their vicinity. Given that concern, it is not unreasonable that Cook County should bear the burden of hearing this case. This factor favors Cook County.

C. Administrative Concerns

This factor considers court congestion by comparing the caseload and resolution times of the fora in question. *Fennell*, 2012 IL 113812 at ¶ 43. “Court congestion is a relatively insignificant factor, especially where the record does not show the other forum would resolve the case more quickly.” *Guerine*, 198 Ill. 2d at 517. In this instance, Walmart did not supply any statistics as to the number of length of cases before the Howard County circuit court. Without such information, this factor must be judged neutral.

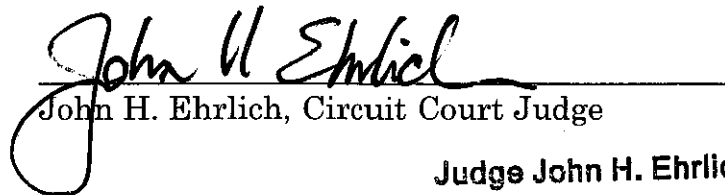
III. Balance of Factors

The analysis presented above shows that two factors favor Cook County, one factor favors Howard County, and six factors are neutral. This result plainly does not overcome the high threshold necessary to support the transfer of a case from one county to another.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendant’s motion to transfer is denied; and
2. This matter is scheduled for a case management conference on March 16, 2023 at 9:30 a.m. via Zoom.

  
John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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