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

Andrew J. Berry, Plaintiff, v. Advocate Sherman Hospital, Marta K. Haight, P.A., Barbara Kossut, M.D., Jerry Chan, CNP, Christopher Alexander Frantz, M.D., Shara Ann Marissa Brankin, NP, Nilesh P. Patel, D.O., Kari J. Johnson, P.A., CEP America LLC, CEP America-Illinois, P.C., Jeremy Joseph Darnell, D.C., Martha E. Quigley, APN, and Active Medical Center Ltd., Defendants.	No. 20 L 5266

MEMORANDUM OPINION AND ORDER

The doctrine of *forum non conveniens* permits a circuit court to transfer a case to another jurisdiction, but only after weighing a variety of public- and private-interest factors and determining they strongly favor the transfer. In this case, the plaintiff is presumed to be forum shopping and various factors strongly weigh in favor of transfer to Kane County. For these reasons, the defendants' motions to transfer are granted.

Facts

At approximately 8:46 p.m. on Friday, November 2, 2018, Andrew Berry, presented to Advocate Sherman Immediate Care Center in Algonquin, McHenry County. Marta K. Haight, P.A., and Barbara Kossut, M.D treated Berry, who complained of severe pain in his right, mid-back for two to three months. Berry reported no history of trauma or injury. Haight diagnosed Berry with a thoracic muscle spasm and discharged him, co-signed by Kossut.

At 11:30 p.m. the same evening, Berry presented to the Advocate Sherman Hospital emergency department in Elgin, Kane County. There, Jerry Chan, C.N.P., and Christopher Frantz, M.D. treated Berry. Chan diagnosed Berry with a right lumbar strain and discharged him, co-signed by Frantz.

On November 5, 2018, Berry presented to Active Medical Center in West Dundee, Kane County. Berry complained of mid-back pain that was exacerbated a week ago, worse on the right, and wrapped around to the front of his body. Jeremy Darnell, D.C., and Martha Quigley, A.P.N. performed and reviewed 13 X rays of Berry's spine and joints. Two or more of the X rays demonstrated a large, abnormal opacity along the right side of the thoracic spine. Darnell and Quigley reviewed the X rays and diagnosed Berry with abnormal posture, degeneration, and lumbago.

On December 20, 2018, Berry, again, presented to the Advocate Sherman Hospital emergency department in Elgin. This time, Shara Ann Brankin, N.P., and Nilesh Patel, D.O. treated Berry, who complained of right flank back pain and reported no history of trauma or injury. Brankin diagnosed Berry with lumbar strain and discharged him. Patel co-signed the diagnosis.

On April 20, 2019, Berry, again, presented to the Advocate Sherman Hospital emergency department in Elgin. Kari Johnson, P.A., and Frantz treated Berry, who complained of pain in his right, upper-back and reported that he had experienced the pain on and off for weeks. Brankin palpated a mass in Berry's right, mid-back and

diagnosed him with a thoracic muscle spasm, which Frantz co-signed. Berry was discharged.

On April 22, 2019, Berry presented to St. Alexius Medical Center in Hoffman Estates, Cook County, where Shariq Iqbal, D.O. treated Berry, who complained of back pain. Iqbal ordered X rays of Berry's ribs and spine, which showed a 13-centimeter mass along the right side of the thoracic spine and destructive changes of the right, ninth rib. Iqbal ordered a CT scan of Berry's chest with contrast, which showed a large mass in the area of Berry's right lung, extending into the chest wall and invading the right, ninth rib. On April 23, 2019, a biopsy of the mass was performed and was interpreted as showing Ewing's sarcoma. Workup in the subsequent days showed that Berry's Ewing's sarcoma had metastasized.

In their respective briefs, the parties supply information relevant to a *forum non conveniens* analysis. For example, Berry resides in Kane County, but did not provide his work location, if any. All of the alleged negligent medical treatment from which this case arises occurred in Kane, DuPage, and McHenry Counties. Only one party, Kossut, resides in Cook County, though she works in McHenry County. Prior to moving to Seattle, Frantz lived in Cook County. The parties also supplied affidavits concerning the parties' work and home locations.

Andrew did not provide an affidavit, but his mother, Sheila, did, and stated that she will attend the trial each and every day to testify as a witness and provide mental, emotional, and physical support for Andrew. She states that she and Andrew strongly prefer to take public transportation to Andrew's attorney's offices and to the courthouse each day. Sheila states that, should the case go to trial at the Daley Center, she and Andrew would stay at a friend's home in Berwyn, Cook County, which is a five-minute walk to a Metra stop. Even if they did not stay at their friend's home in Berwyn, Sheila states, it would still be more convenient to take public transit from their home to the Daley Center than it would be to take public transit from their home to the Kane County courthouse in Geneva, which would take two hours in each direction. They would be able to drive to

the Barrington Metra station and take the train to the Ogilvie Transportation Center. She further stated that the family may need to move to a warmer climate because of Andrew's medical condition, and if they had to fly to Chicago, they would stay with their friend in Berwyn. They have no similar living arrangement available if the trial takes place in Kane County. Finally, Sheila states that it would be convenient, during the trial, for her family, including Andrew, to have access to his attorney's offices, which would allow him to rest. Andrew's attorneys do not have offices in Kane County. Sheila avers that she strongly prefers the trial to take place in Chicago and that it would be far more convenient for her.

Andrew provided affidavits from other family members—his brother and uncle—who averred they will testify at trial and that the Daley Center is more convenient based on public transportation and out-of-state travel. A family friend, Michelle Inman Sanders, supplied an affidavit stating she, too, will testify at trial and that a trial at the Daley Center would be more convenient. Andrew supplied two anonymous affidavits from physicians who averred that, should they be identified as expert witnesses, a trial at the Daley Center would be more convenient that one in Kane County.

Each individual defendant (save Frantz) provided an affidavit stating the additional time required to travel to and from the Daley Center as opposed to the Geneva courthouse would have a significant and negative impact on their ability to care and treat patients. Each avers that they live and work significantly closer to the Kane County courthouse than the Daley Center (though they do not give specific figures), and it would greatly inconvenience them and cause a hardship if the trial took place at the Daley Center. Each avers that if they were deposed or attend trial, Kane County would be a more convenient venue.

Analysis

There exists an extensive body of law governing a court's consideration of a motion to transfer litigation based on the doctrine of *forum non conveniens*. A main concern of *forum non conveniens*

jurisprudence is curtailing forum shopping by plaintiffs. *See First Nat'l Bank v. Guerine*, 198 Ill. 2d 511, 521 (2002). At its essence, the doctrine "is founded in considerations of fundamental fairness and sensible and effective judicial administration." *Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 169 (2005). The modern application of the doctrine came with the United States Supreme Court's decision in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), a decision Illinois courts have consistently followed. *See Fennell v. Illinois. Cent. R.R.*, 2012 IL 113812, ¶ 14 (2012) (citing cases).

A motion to transfer based on *forum non conveniens* differs from one based on venue. In Illinois, venue is a product of statute. *See* 735 ILCS 5/2-101. In contrast, *forum non conveniens* arises from the common law and is based on equitable principles. *See Langenhorst v. Norfolk S. Ry.*, 219 Ill. 2d 430, 441 (2006), *citing Vinson v. Allstate Ins. Co.*, 144 Ill. 2d 306, 310 (1991). In short, a circuit court is instructed to "look beyond the criteria of venue when it considers the relative convenience of a forum." *Id., quoting Bland v. Norfolk & W. Ry.*, 116 Ill. 2d 217, 226 (1987).

Circuit courts are given "considerable discretion in ruling on a *forum non conveniens* motion." *Id.* at 441-42 (citing *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 336 (1994)). A circuit court's decision will be reversed only if the court abused its discretion in balancing the relevant factors; in other words, if no reasonable person would adopt the view taken by the circuit court. *See Dawdy v. Union Pacific R.R.*, 207 Ill. 2d 167, 176-77 (2003). At the same time, courts are cautioned to exercise their discretion "*only in exceptional circumstances* when the interests of justice require a trial in a more convenient forum." *Langenhorst*, 116 Ill. 2d at 442 (citing cases, emphasis in original); *see also Dawdy*, 207 Ill. 2d at 176 ("the test . . . is whether the relevant factors, viewed in their totality, *strongly* favor transfer to the forum suggested by defendant") (emphasis added)), *quoting Griffith v. Mitsubishi Aircraft Int'l, Inc.*, 136 Ill. 2d 101, 108 (1990).

The consideration given to a *forum non conveniens* motion rests on several relevant presumptions, four of which are relevant 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." *Guerine*, 198 Ill. 2d at 517-18 (citing cases). 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." *Id.* Third, "[w]hen the plaintiff is foreign to the chosen forum and the action that gives rise to the litigation did not occur in the chosen forum, 'it is reasonable to conclude that the plaintiff engaged in forum shopping to suit his individual interests, a strategy contrary to the purposes behind the venue rules.'" *Bruce v. Atadero*, 405 Ill. App. 3d 318, 328 (1st Dist. 2010) (citing *Dawdy*, 207 Ill. 2d at 174, quoting, in turn, *Certain Underwriters at Lloyd's London v. Illinois Cent. R.R.*, 329 Ill. App. 3d 189, 196 (1st Dist. 2002)). A fourth presumption is especially pertinent if the disputed fora are adjoining counties, as they often are in the Chicago metropolitan area and, indeed, as they are in this case. In such instances, "the battle over the forum results in a battle over the minutiae." *Langenhorst*, 219 Ill. 2d at 450 (quoting *Guerine*, 198 Ill. 2d at 519-20). As has been explained, "a trial court abuses its discretion in granting an intrastate *forum non conveniens* motion to transfer venue where . . . the potential trial witnesses are scattered among several counties, including the plaintiff's chosen forum, and no single county enjoys a predominant connection to the litigation." *Guerine*, 198 Ill. 2d at 526 (citing *Peile*, 163 Ill. 2d at 345).

A main concern of *forum non conveniens* jurisprudence is curtailing forum shopping by plaintiffs. *See Guerine*, 198 Ill. 2d at 521. The Supreme Court has plainly stated its position against forum shopping: "Decent judicial administration cannot tolerate forum shopping as a persuasive or even legitimate reason for burdening communities with litigation that arose elsewhere and should, in all justice, be tried there." *Fennell*, 2012 IL 113812, ¶ 19. "By itself, forum shopping 'furnishes no legal reason for sustaining' a plaintiff's choice of forum." *Evans v. Patel*, 2020 IL App (1st) 200528, ¶ 33 (citing *Dawdy*, 207 Ill. 2d at 175). Even with that admonition, a plaintiff is accorded only "somewhat less deference," not no deference. *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 767 (1st Dist. 2009) (plaintiffs California residents) (quoting *Guerine*, 198 Ill. 2d at 517). The reason is that, even if a plaintiff's claims arise in another

jurisdiction, such a fact merely establishes that the other jurisdiction is a proper venue, not necessarily a more convenient one. *See Kaiser v. Doll-Pollard*, 398 Ill. App. 3d 652, (5th Dist. 2010) (jurisdiction proper in St. Clair County despite plaintiff's medical malpractice injury occurring in Clinton County because St. Clair County physicians attempted to reverse resulting surgical complications).

The presumption here is that Berry is forum shopping. The case is properly filed in Cook County for venue purposes only because one defendant, Kossut, lives here. Yet Berry is not a Cook County resident and his injury did not occur here. While the presumption of forum shopping is, therefore, evident, it is, as the cases hold, not determinative. And with that conclusion, this court takes the next step in its analysis.

As noted above, circuit courts are instructed to balance a variety of private- and public-interest factors to determine the appropriate forum in which a case should be tried. *See Dawdy,* 207 Ill. 2d at 172. The test is "whether the relevant factors, viewed in their totality, strongly favor transfer to the forum suggested by defendant." *Id.* at 176 (quoting *Griffith*, 136 Ill. 2d at 108). It is the defendant's burden to show that the relevant factors strongly favor the defendant's choice of forum to warrant disturbing the plaintiff's choice. *See Langenhorst*, 219 Ill. 2d at 444 (citing *Griffith*, 136 Ill. 2d at 107). A court is not to weigh the private- and public-interest factors against each other, but to evaluate the totality of the circumstances before deciding whether the defendant has proven that the balance of factors strongly favors transfer. *Id.* (citing *Guerine*, 198 Ill. 2d at 518). "The defendant must show that the plaintiff's chosen forum is inconvenient to the defendant and that another forum is more convenient to all parties." *Id.* The defendant may not, however, assert that the plaintiff's chosen forum is inconvenient to the plaintiff. *Id.*

Before addressing the private and public factors, this court believes some commentary on the *forum non conveniens* analysis is highly warranted. First, the analysis by Illinois courts of motions to transfer litigation based on the *forum non conveniens* doctrine has always been weighted to 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. The current *forum non conveniens* analysis stressing the trial is, quite frankly, out of sync with modern litigation practice. A more current analysis would give at least equal weight to the applicability of enumerated factors to pre-trial proceedings, particularly the discovery process, and not merely the trial.

Second, the *forum non conveniens* analysis as stated in *Langenhorst* has not been updated to reflect the changing face of litigation over the past 15 years. 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. Several of the elements have been rendered trivial because of improved technology and its entrenchment in court proceedings. In application, this reality renders the public factors weightier than the private factors.

Third, the Covid-19 pandemic of 2020–2021 has altered the 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 has been enormous. It is difficult to think that clients, counsel, and witnesses will return to far more expensive and time-consuming discovery practices after the pandemic is over.

In *Guerine*, the Illinois Supreme Court listed the private- and public-interest factors a circuit court is to consider when addressing a motion to transfer based on *forum non conveniens*. The private factors are:

> (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).

198 Ill. 2d at 516 (citing *Griffith*, 136 Ill. 2d at 105-06; *Bland*, 116 Ill. 2d at 224; and *Adkins v. Chicago, Rock Island & Pac. R.R.*, 54 Ill. 2d 511, 514 (1973)). Courts have generally broken down the third element to address each aspect separately and have often reorganized the order of the factors, as this court does below.

I. Private Factors

A. Convenience of the Parties

Courts have recognized that it is relatively 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.

This court begins by stressing that this factor focuses on the parties, not other witnesses, and not the attorneys. A motion to transfer based on *forum non conveniens* is, of course, a defendant's motion and, therefore, imposes pleading burdens on the movant. Although the defendants cite Berry's residence in Kane County as a reason to relocate the case, "defendants cannot assert that the plaintiff's chosen forum is inconvenient to the plaintiff." *Langenhorst*, 219 Ill. 2d at 448; *see Guerine*, 198 Ill. 2d at 518.

Berry is a resident of Kane County. Berry did not, however, submit an affidavit as to the relative convenience of the Daley Center versus the Geneva courthouse. Rather, the only affidavits he provided are from family members, friends, and potential expert witnesses who are not parties. Even if Sheila's averments may be inferred to Andrew, it is highly questionable that the Daley Center is

the more convenient forum. Sheila states that she and Andrew wish to rely on reliable public transportation, yet it is evident either she or Andrew owns a car because Sheila indicates they would drive it to a train station. She fails to explain why the car is reliable enough to get to a train station but not reliable enough to get to Geneva. And although Sheila avers it would take two hours to travel from their home to Geneva by public transportation, she noticeably fails to explain how long it would take to stay in her car, pass the train station, and drive directly to the Geneva courthouse. It is fair to assume it would take far less than two hours. Such an omission transparently implicates *Hale*'s burden to look beyond mere declarations of convenience, 2018 IL App (1st) 180280, ¶ 34-35, and Berry has failed to fill in the gaps.

The individual defendants (save Frantz and Johnson[1]) have submitted affidavits stating they will be attending in person every day of the trial. They also state a trial at the Daley Center would significantly and adversely affect their ability to care and treat patients. Given the realities of trials, it is, however, extraordinarily unlikely that any of the individual defendants would be able to practice medicine during the trial regardless of where it is held. *See Foster v. Hillsboro Area Hosp., Inc.*, 2016 IL App (5th) 150055, ¶ 46 ("In medical negligence cases, the defendant medical providers are generally in attendance each day, all day, every day, and the days are long.") The individual defendants' uninformed statements are, therefore, unrealistic and do not factor into this *forum non conveniens* analysis.

The Haight, Kossut, Chan, Brankin, and Patel affidavits each state it will take more time for each to get to the Daley Center for the trial and the Daley Center is significantly further from their homes and workplaces. Noticeably absent, however, is any discussion of the time or distance differences. In contrast, Darnell and Quigley indicate the Daley Center is approximately 20 miles farther from their homes than is the Geneva courthouse and that it would take 20

[1] Frantz did not provide and affidavit and Johnson states that, "If I were to give a deposition or attend the trial of this case, Kane County would be a more convenient venue for me than the Daley Center..." (Aff. of Johnson).

minutes or 15 minutes more, respectively, to reach the Daley Center.[2] Haight, Chan, Brankin, Patel, Darnell, and Quigley all live outside Cook County while only Kossut lives in Cook County. Some weight must be given to their statements that trial at the Daley Center would be less convenient, but since the counties of residence are adjacent, the difference is not significant. *See Shirley v. Kumar*, 404 Ill. App. 3d 106, 112-13 (1st Dist. 2010).

Frantz lives in Seattle, so it is presumed he would fly to Chicago. Frantz has, however, not indicated whether he intends to attend the entirety of the trial; therefore, his relative convenience to the two courthouses does not factor into this analysis.

Johnson avers the Kane County courthouse is "significantly closer" to Madison than the Daley Center. This court takes judicial notice, *see* Ill. S. Ct. R. 201, that, depending on the route chosen, the distance from Madison to the Daley Center is between 147 and 167 miles while, the distance from Madison to Geneva is between 120 and 121 miles. To characterize the 27-46-mile difference as "significantly closer," given the overall distance of the journey, is misleading. Further, since Johnson has not indicated she intends to attend the entirety of the trial, her averment does not factor into this analysis.

As for CEP America, CEP America-Illinois, Active Medical Center, and Advocate Sherman Hospital, it is unclear at this time who will be designated their corporate representatives. Had these defendants provided their representatives' counties of residence and work, their convenience might factor into this assessment.

This factor reduces to simple numbers and overall convenience. Berry is the only plaintiff and did not aver to the relative convenience of the Daley Center over the Kane County courthouse. In contrast, there are 10 defendants, only one of whom lives in Cook County, and eight of whom live and work far closer to Geneva than Chicago. Given the significantly greater number of defendant parties and their

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[2] This court relies on the figures given from the defendants' residences, as they are unlikely to be able to treat patients at their places of employment while on trial. (See discussion above.)

proximity to the Geneva courthouse, this factor favors transfer to Kane County.

B. The Relative Ease of Access to Evidence

This factor reveals a certain antique nature of the *forum non conveniens* analysis. As to documents, this factor is much less important than it used to be. The court in *Ruch v. Padgett*, wrote that: "the location of documents, records and photographs has become a less significant factor in *forum non conveniens* analysis in the modern age of email, internet, telefax, copying machines and world-wide delivery services, since they can now be easily copied and sent." 2015 IL App (1st) 142972, ¶ 61 (citing *Vivas v. Boeing Co.*, 392 Ill. App. 3d 644, 659 (1st Dist. 2009)). The use of real evidence is far less common, given the modern use of photography and videography both in depositions and at trial. Technology has made document transfer possible at the press of a few buttons, while the portability of real and demonstrative evidence is rarely a substantial hurdle. The defendants' argument that Kane County provides more convenient access to evidence because the majority of the medical records are located there is unavailing. See *Foster*, 2016 IL App (5th) 150055, ¶ 47 ("There is no reason to believe that the transportation of any original records or documents to the chosen forum would pose a significant burden on the defendants in this case.")

Since real evidence is unlikely to create a hurdle, the real focus of this factor turns on the availability of testimonial evidence. Berry has disclosed witnesses who live in various counties: Sheila (Kane County), Anthony (McHenry County), Billy Lamb (Christian County, MO), and Michelle Inman Sanders (Cook County). Berry has produced an affidavit from each asserting that the Daley Center is a more convenient venue for them than the Kane County courthouse. Apart from the omissions in Sheila's affidavit, it is questionable whether any trial judge would permit each of Berry's witnesses to testify because there is no indication they have anything to provide other than cumulative testimony.

Berry has identified as witnesses Iqbal and Mihalcik, both of whom reside and practice in Cook County. Berry has also identified as witnesses Drs. Brinda Mehta, Andrew Tsung, and Trevor Washburn, physicians who subsequently treated Berry at OSF St. Francis Hospital in Peoria, Peoria County. Unlike the defendant medical providers who will likely be present during the trial, Berry's treating physicians are most likely to be deposed where they work and present trial testimony through video recorded evidence depositions; consequently, their relative convenience or inconvenience is not an issue.

Berry has also identified two purported Rule 213(f)(3) experts who will testify on his behalf at trial. Berry provided their affidavits, but redacted their names and signatures beneath their certifications. While courts evaluate the sufficiency of affidavits in a *forum non conveniens* analysis by less stringent standards than required under Rule 191(a), the evidence presented by affidavit must still be "competent." Rule 187(b); *Botello v. Illinois Cent. R.R.*, 348 Ill. App. 3d 445, 451 (1st Dist. 2004). It is impossible to find that the evidence supplied by these two purported witnesses is competent because it is not evident they signed the certifications.

This factor also reduces to the number of witnesses and the relative convenience to each of them. It is doubtful all of Berry's relatives and friends will be allowed to testify, while his non-party treating physicians are not inconvenienced by a trial in either venue. In contrast, the defendant medical providers will be attending trial each day and live and work closer to the Geneva courthouse than to the Daley Center. This factor favors Kane County.

C. Other Practical Problems That Make Trial Easy, Expeditious, and Inexpensive

The First District has held that when the issue is moving a suit from Cook County to an adjacent county, the factor of practical problems is not usually a strong factor favoring transfer. *See Johnson v. Nash*, 2019 IL App (1st) 180840, ¶ 56 (quoting *Susman v. North Star Tr. Co.*, 2015 IL App (1st) 142789, ¶ 31. Nevertheless,

this court discusses the topics enumerated in *Guerine* as the third private interest factor in the *forum non conveniens* analysis. *Guerine,* 198 Ill. 2d at 516.

1. Compulsory Process of Unwilling Witnesses

The parties have not suggested that any witness would need to be compelled to be deposed or testify, and it does not appear to be a relevant factor in this case, as a judge in either county would have access to compulsory process over witnesses. As a result, this factor is neutral.

2. Cost of Obtaining Attendance of Willing Witnesses

Forum non conveniens analyses cannot ignore the effect web-based video conferencing has had on litigation. The need for parties, witnesses, and lawyers to spend time and money traveling long distances to prepare for and give testimony in a court proceeding has significantly decreased. When weighing the cost of obtaining witness testimony, travel expenses are far less likely to be a substantial component.

Moreover, the Covid-19 pandemic has had a dramatic impact on how litigation is conducted. Most court hearings, depositions, and pre-trial conferences are now being done remotely. The judiciary is even finding ways to conduct jury trials remotely. Covid-19 has accelerated the adoption of Zoom, Skype, Microsoft Teams, and other web-based video conferencing platforms by lawyers and the general public. The technology employed during this crisis is not likely to disappear once it ends. The idea of a trial consisting of lawyers, witnesses, jurors, and judges all being in the same room may one day become an artifact of a bygone era. Under the new norm, the only travel required for these witnesses will be to testify at trial, and many of them need not even be present at trial, as their testimony can be given via recorded evidence deposition and, as noted, depositions will likely be taken remotely, obviating the need for travel.

As to factual issues, this court notes that the Chicago metropolitan area is well-connected by a series of multi-lane highways and commuter train lines. It is also noted that these highways and train lines are generally convenient to both the Geneva and Chicago courthouses, so perhaps a greater consideration for the purpose of convenience is time. This factor does not, however, implicate the length of time it takes or difficulties incurred to travel to any particular location, only cost. This court concludes this factor is neutral.

3. Viewing the Premises

The First District has previously stated that a viewing of the site is rarely or never called for in a medical negligence case. *See Hackl v. Advocate Health & Hosp. Corp.*, 382 Ill. App. 3d 442, 452 (1st Dist. 2008). This factor, standing alone, is simply insufficient to justify transfer to another county; consequently, this factor is neutral.

II. Public Factors

The court in *Guerine* also identified public-interest factors a circuit court should consider in a *forum non conveniens* analysis. These factors are:

> (1) the 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.

Guerine, 198 Ill. 2d at 516-17. This court's analysis of these factors follows seriatim.

A. Deciding Localized Controversies Locally

The fundamental facts in this case are that all of the alleged malpractice occurred in Kane and McHenry counties and none

occurred in Cook County. Berry does not contest these facts. It is only reasonable that Kane County residents would have a far greater degree of interest in the type of medical care provided by a local hospital, such as Advocate, and far greater concern about malpractice allegations against a hospital in their community.

Berry's cause of action for institutional negligence does not alter that conclusion. Count 13 is brought against Advocate Sherman Hospital, not the Advocate parent corporation or an affiliate. In other words, Berry's institutional claims extend only to the credentialing of the individual defendants who work or worked at Advocate Sherman Hospital, not other Advocate facilities in Cook County or northern Illinois. Further, Berry does not allege that Advocate Sherman Hospital's credentialing affected, in any way, the credentialing of physicians practicing at other Advocate facilities in Cook County or northern Illinois.

This factor strongly favors transfer to Kane County.

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

This public-interest factor generally follows from the first, as it does in this case. In *Lint,* the Fifth Circuit stated that, "we cannot say that it would be unfair to burden [a] county['s] jurors with the trial of one of their fellow residents." *Id.* In this case, only one defendant, Kossut, is a Cook County resident. That fact, however, only goes to venue, and does not implicate imposing expense on a county with no other connection to the litigation. All of the alleged malpractice in this case, including Kossut's, occurred outside Cook County, thus Kossut's residence has nothing to do with her conduct.

This factor also strongly favors transfer to Kane County.

C. Administrative Difficulties

This factor typically calls for a court to consider the length of time a case is on the docket from filing to resolution. The Illinois

Supreme Court has relied upon the annual report of the Administrative Office of the Illinois Courts as a proper reference for assessing relative court congestion in conducting *forum non conveniens* analysis. *See Dawdy*, 207 Ill. 2d at 181; *see also Griffith,* 136 Ill. 2d at 114. The average length of time a case is on the docket in Cook County is 29.9 months, while in Kane County it is 45.9 months. *See* Annual Report of the Illinois Courts, Statistical Summary–2019, at 72-73. Yet Cook County reported 10,451 new law division jury cases seeking more than $50,000 and 16,392 cases pending. *Id.* at 44. In contrast, Kane County reported only 35 new law division jury cases seeking more than $50,000 and only two pending. *Id.* at 42. These statistics do not explain the reason for the considerably longer time lag in Kane County, yet the difference of approximately 16 months to dispose of a case in Kane versus Cook County is significant. This factor weighs in favor of Cook County.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motion to transfer venue based on Illinois Supreme Court Rule 187—the *forum non conveniens* doctrine—is granted; and
2. This case is transferred to Kane County, the Illinois Sixteenth Judicial Circuit.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

MAR 08 2021

Circuit Court 2075