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

Glenn Brown,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 21 L 2515
	)	
Adventist Health Partners, Inc., Edward Health Ventures d/b/a Edward Medical Group, Christopher Boniquit, M.D., and George A. Aghia, M.D.,	)	
	)	
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 plaintiff's alleged medical malpractice injury occurred in Will County and the weighing of factors strongly favors the transfer of this case. The defendants' motion is, therefore, granted and this case is transferred to the 12th judicial circuit in Will County.

Facts

On June 8, 2021, Glenn Brown filed a medical malpractice complaint against the defendants. The complaint alleges that on April 10, 2019, Dr. Christopher Boniquit, an alleged agent of Adventist Health Partners, treated Glenn Brown at Boniquit's office. Brown alleges that Boniquit breached his professional duty of care by, among other things, failing to perform a digital rectal exam, order a biopsy, appreciate and treat Brown's PSA levels increased risk for prostate cancer. Brown's complaint presents similar allegations and claims against Dr. George Aghia, an agent

of Edward Medical Group, based on an examination Aghia performed on April 12, 2019 at his office.

On June 8, 2021, Adventist and Boniquit filed a motion to transfer this case to Will County pursuant to the *forum non conveniens* doctrine contained in Illinois Supreme Court Rule 187. On June 17, 2021, this court granted the motion of Edward Medical Group and Aghia to join the motion to transfer. The parties then fully briefed the motion.

The record indicates that Brown lives in Romeoville, Will County. No information was provided as to where Brown works. Boniquit lives in Northbrook, Cook County, and works out of his Bolingbrook, Will County, office, where the alleged malpractice occurred. Aghia lives in Naperville, Will County, and works out of his Crest Hill, Will County, office, where the alleged malpractice occurred.

Boniquit supplied an affidavit in support and avers it would be substantially more convenient for him if this case were to proceed in Will County. Boniquit's office is 13.4 miles from the Joliet courthouse, but 29.7 miles from the Daley Center. Boniquit does not provide similar information based on his home address. Boniquit avers that he would avoid rush-hour traffic and be able to go to his office if this case were to proceed in Will County.

Crescent Turner, a registered nurse and Adventist's regional director of risk management, also provided an affidavit. Turner plans to serve as the Adventist's personal representative at the trial. Turner lives in DuPage County and avers that a trial in Will County would be substantially more convenient because it would save her rush-hour commuting time and would be able to work at her office in the mornings and evenings.

Aghia avers that it would be substantially more convenient for him if this case were to proceed in Will County. Aghia's office is 5.8 miles from the Joliet courthouse, but 38.3 miles from the Daley Center. Aghia's home is 17 miles from the Joliet

courthouse, but 35 miles from the Daley Center. Aghia has childcare responsibilities for his two young daughters, ages seven and three, twice a week. Were this case to proceed in Will County, he would have to find childcare alternatives if a trial were to proceed in Cook County. Aghia avers that he would avoid rush-hour traffic and be able to go to his office if this case were to proceed in Will County.

Analysis

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 v. Illinois Cent. R.R. Co.*, 2012 IL 113812, ¶ 14 (2012) (listing cases).

A *forum non conveniens* motion asks the court to evaluate whether the plaintiff's chosen forum is appropriate for the current case. This is an equitable consideration different than a motion related to venue, which is statutorily based. *See Langenhorst v. Norfolk S. Ry.*, 219 Ill. 2d 430, 440-41 (2006); 735 ILCS 5/2-101 & 2-102. When considering a *forum non conveniens* motion, a court is to assume the plaintiff's chosen forum is a proper venue and "look[s] beyond the criteria of venue when it considers the relative convenience of a forum." *Id.* at 441 (quoting *Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217 (1987)); *Fennell*, 2012 IL 113812 at ¶ 47.

A *forum non conveniens* motion requires the movant to show the overall weight of several convenience factors strongly favors transfer 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)). As adopted from *Gulf*, the convenience factors 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 interest 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 trial of a case easy, expeditious, and inexpensive." *Guerine*, 198 Ill. 2d at 516 (citing *Griffith*, 136 Ill. 2d at 105-06 and *Bland*, 116 Ill. 2d at 224). The "other practical problems" considered by the court include the compulsory process of unwilling witnesses, the cost of obtaining the attendance of willing witnesses, the possibility of viewing the premises, and the location of the parties' attorneys. *See Fennell*, 2012 IL 113812 ¶¶ 15, 67. The public interest factors are: (1) the local interest in deciding local controversies; (2) the imposition of trial expenses and jury duty on a county with little connection to the dispute; and (3) the administrative difficulties related to congested fora. *Guerine*, 198 Ill. 2d at 516. A circuit court is instructed to "include *all* of the relevant private and public interest factors in their analysis." *Fennell*, 2012 IL 113812 at ¶ 24 (emphasis in original).

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. *Id.* at ¶ 18. "The plaintiff's right to select the forum is substantial" and "should rarely be disturbed." *Id.* "However, when the plaintiff is foreign to the chosen forum and when the action giving rise to the litigation did not occur in the chosen forum, the plaintiff's choice of forum is accorded less deference," *id.*, but not no deference. *See Ellis v. AAR Parts Trading Inc.*, 357 Ill. App. 3d 723, 742-43 (1st Dist. 2005) (citing *Dawdy v. Union Pac. R.R.*, 207 Ill. 2d 167, 173-74 (2003); *Guerine* 198 Ill. 2d at 517).

Each *forum non conveniens* motion presents unique facts that should be reviewed on their own merits. *See Langenhorst*, 219 Ill. 2d at 443. Circuit courts have "considerable discretion" in making a decision. *Id.* at 441. The court's discretionary power "should be exercised *only in exceptional circumstances* when the interests of justice require a trial in a more convenient forum." *Id.*

at 442 (emphasis in original). The decision by the court will be reversed only if "no reasonable person would adopt the view taken." *See Dawdy*, 207 Ill. 2d at 176-77.

The consideration given to a *forum non conveniens* motion rests on several relevant presumptions. 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)). 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.

Before applying the private and public factors to the case at hand, 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. An analysis focused on the trial 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, as stated in *Langenhorst* and its progeny, has not been updated over the past fifteen years to reflect the changing face of litigation. 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 of 2020 and 2021 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.

Notwithstanding the current test's shortcomings, this analysis will proceed with the required factor analysis described above.

I. Private Factors

A. Convenience of the Parties

The court first weighs the convenience of the parties to the chosen forum. "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." *Langenhorst*, 219 Ill. 2d at 444. Although a defendant is not supposed to be able 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.

It can be assumed that Cook County is a convenient forum for Brown, despite the inference that he is forum shopping. Balanced against the minimal deference forum shopping provides and Brown's role as a single plaintiff are two individual defendants and an institutional defendant, each of whom has averred that it would be more convenient for this case to proceed in Will County. In a case of simple numbers, Brown loses three to one. This factor favors Will County.

B. The Relative Ease of Access to Evidence

The next convenience factor considers the ease of access to evidence. Most real and documentary evidence offers little issue of being transported physically or electronically between two counties and, therefore, has little impact on this analysis. *See Ruch v. Padget*, 2015 IL APP (1st) 142972, ¶¶ 61, 65. Neither party identified the access to documentary evidence to be an issue.

As for witnesses, Brown argues that he will present various witnesses on his behalf, but he does not identify them or indicate where they live or work. Even assuming that Brown had follow-up care with other providers, he has failed to identify either those institutions or the individuals who provided the care. Brown's attorney averred in an affidavit that he planned to call a New York physician as a Rule 213(f)(3) expert witness. That disclosure does not weigh in Brown's favor because once the New York physician lands at O'Hare Airport, she or he will take a cab either to Joliet or Chicago. Besides, any inconvenience to an expert witness is of relatively little importance considering the witness is paid to travel to any venue.

The defendants have also failed to identify other witnesses. There are certain to be more, particularly care providers, this court cannot consider their convenience of inconvenience. It is, however, important to note that the common practice in Illinois courts, is for non-party treating physicians and medical staff to be deposed where they work. To that extent, it is likely any depositions of these providers would occur in Will County. Further, non-party treaters are typically presented at trial through recorded evidence depositions.

Given the paucity of the record available at this point, this factor favors transfer to Will County.

C. Compulsory Process of Unwilling Witnesses

A judge in either Cook or Will County would have equal authority to subpoena unwilling witnesses; consequently, this factor is considered neutral.

D. Cost of Obtaining Attendance of Willing Witnesses

The parties did not raise this issue; consequently, it is considered neutral.

E. Viewing the Premises

Viewing the premises is not an issue in this case; consequently, this factor is neutral.

F. Other Practical Considerations That Make A Trial Easy, Expeditious, And Inexpensive

The parties did not substantively address this issue; consequently, it is considered neutral.

II. Public Factors

A. Settling Local Controversies Locally

The first public factor concerns a forum's interest in resolving the case. The fundamental facts of this case are that the defendants allegedly committed medical malpractice on a Will County resident at Will County medical offices. While other physicians may have been involved in Brown's subsequent care, and there may be more in the future, none of those witnesses is alleged to have committed the tort that lies at the heart of this case.

Those facts lead inexorably to the conclusion that Will County residents have a substantially greater interest in addressing the provision of care to a Will County resident at Will County doctors' offices. In contrast, Cook County residents have a minimal interest based solely on the fact that Boniquit lives in Cook County, a factor that is only relevant for venue purposes, not *forum non conveniens*. This factor favors transfer to Will County.

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

This public factor often follows the first, and it does in this case. A court should avoid imposing administrative costs and the burden of jury duty on a forum with little interest to the dispute. *Dawdy*, 207 Ill. 2d at 183. In this case, Will County residents have a substantial interest in this dispute because both Boniquit and Aghia practice medicine in Will County and their alleged malpractice occurred there. Given those facts, it is no imposition on Will County to assume the costs associated with the discovery in and trial of this case. This factor favors a transfer to Will 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. And, under *Dawdy*, a review of the most recent Annual Report of the Illinois Courts is the appropriate reference. 207 Ill. 2d at 181.

The 2020 report for law division cases valued at more than $50,000 and resolved by a jury verdict, Cook County disposed of 69 cases in an average of 28.6 months, while Will County disposed of three trials in an average of 45.1 months. Administrative Office of the Illinois Courts, *Annual Report of the Illinois Courts, Statistical Summary,* at 78. It must be noted that these statistics cover a year in which Cook and Will counties closed their courts for substantial periods. Given the backlog of cases in both counties, it is doubtful that insightful statistics will be available for several years. It is, however, plain that Cook County has a substantially larger number of cases valued at more than $50,000 but disposes of them approximately one-and-a-half years faster than in Will County. It is, therefore, reasonable to conclude that this case would be resolved quickly in Cook County. This factor favors Cook County.

III. Balance of Factors

Brown's choice of forum is given little deference, but not no deference, because it is presumed he is forum shopping. The reason is that Cook County is neither Brown's resident county nor the county where the alleged medical malpractice occurred. Further, a review of the relevant factors shows that four factors favor Will County, four are neutral, and only one favors Cook County. This one-sided tilt plainly meets the exceptional circumstance necessary to justify the transfer of a case pursuant to the *forum non conveniens* doctrine.

Conclusion

Based on the foregoing, it is ordered that:

1. The defendant's motion for transfer of venue based on the *forum non conveniens* doctrine contained in Illinois Supreme Court Rule 197 is granted;
2. This matter is transferred to the 12th judicial circuit in Will County; and
3. The defendant shall pay all costs for the transfer.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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