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

Curtis W. Carrithers, independent administrator of the estate of Jordyn A. Carrithers, deceased,	)	
Plaintiffs,	)	
v.	)	No. 20 L 4980
Michelle Meziere, M.D., Elmhurst Memorial Hospital, Edward-Elmhurst Heathcare and Elmhurst Emergency Medical Services, Ltd.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The *forum non conveniens* doctrine contained in Illinois Supreme Court Rule 187 authorizes a court to transfer a case to another jurisdiction if various private and public factors strongly suggest the other venue is more convenient. Here, the factors do not lead to that conclusion. For that reason, the defendants' motion to transfer must be denied.

Facts

On July 22, 2019, 15-year-old Jordyn Carrithers was with her uncle, John Carrithers, and his friend, Michelle Buonavolanto, at Oak Brook Center Mall in DuPage County. While at the mall, Jordyn suffered a diabetic seizure. Oak Brook fire department paramedics Andrew Maka and Diana Cruz-Arenas responded to the scene and transported Jordyn to Elmhurst Memorial Hospital in DuPage County. Dr. Michelle Meziere and two nurses, Krista Boyle and Kristen Veenstra, treated Jordyn in the EMH emergency room. After an initial assessment and treatment,

Meziere ordered Jordyn transferred to Loyola University Medical Center, located in Cook County, for services unavailable at EMH.

Prior to Jordyn's transport to Loyola, Meziere performed an intubation. At that point, Jordyn became pulseless. Two emergency medical technicians and a nurse, David Zarnowski, John Thompson, and Kevin Kostner, witnessed the intubation. The three worked for Advanced Critical Transport, a Cook County-based private ambulance service, and subsequently transported Jordyn to Loyola. Jordyn arrived at Loyola unresponsive and died there three days later.

On May 6, 2020, Jordyn's father, Curtis, as the independent administrator of Jordyn's estate, filed a two-count complaint against the defendants. The complaint raises one cause of action under the Wrongful Death Act, 740 ILCS 180/0.01 – 2.2, and the second under the Survival Act, 755 ILCS 5/27-6. The complaint alleges that Meziere and the other defendants negligently cared for and treated Jordyn by failing to intubate her properly, failing to diagnose an esophageal intubation, and failing to resuscitate her.

On December 2, 2020, the defendants filed a motion to transfer venue to DuPage County pursuant to the *forum non conveniens* doctrine. *See* Ill. S. Ct. R. 187. On March 25, 2021, Curtis filed a response brief, and on April 7, 2021, the defendants filed a response. Each brief contains facts, both relevant and irrelevant, to a *forum non conveniens* analysis.

The motion's exhibits include Meziere's affidavit stating that a trial in Cook County would be extremely difficult and significantly inconvenient for her personally and professionally. Meziere resides in DuPage County and works exclusively in DuPage County at EMH. She lives only a 20-minute drive from the Wheaton courthouse, but well over an hour from the Daley Center. She indicates that parking is less expensive in Wheaton than in Chicago. Meziere indicates that Elmhurst Medical Services, Ltd., a DuPage County medical group, employed her at

the time she treated Jordyn. Meziere avers that, as a named defendant, her attendance at trial is essential.

The defendants also attached Boyle's affidavit. Boyle is employed at EMH. She lives in Oswego, Kendall County, which is 17.3 miles from the DuPage County courthouse, but 42.6 miles to the Daley Center. She also points out the additional parking costs associated with downtown Chicago. Boyle avers that a Cook County trial would be significantly inconvenient given that it is further from her home and place of employment.

The defendants also attached Veenstra's affidavit. Veenstra is also employed by EMH. She lives in Westchester, Cook County, which is 13.2 miles from the Wheaton courthouse and 15.7 miles from the Daley Center. Veenstra notes the additional costs associated with having to park in downtown Chicago. She also avers that attending trial in DuPage County would be more convenient for her as it is les than 30 minutes away from her home and EMH.

Carrithers' response attaches various discovery responses and affidavits. Jordyn's father, Curtis, mother, Sarah Heldt, and two siblings live in Stickney, Cook County. Sarah averred that the Daley Center is closer to her home and requires less driving time than to Wheaton. She believes the DuPage County courthouse is not accessible by public transportation. Carrithers' discovery responses identify 18 Loyola doctors and nurses who cared for and treated Jordyn. Carrithers did not identify these treaters as witnesses until after EMH filed its motion to transfer. Carrithers further points out that the coroners conducted Jordyn's autopsy in Cook County.

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*. 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 Pac. 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 a foundational presumption that, 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." *First Nat'l Bk. v. Guerine*, 198 Ill. 2d 511, 517-18 (2002). At the outset, Carrithers conflates

that presumption into something it is not. Carrithers argues the county in which a person dies has an interest in deciding litigation relating to the death because the death is the last act necessary to establish a cause of action. Resp. Br. at 4 (citing *Smith v. Silver Cross Hosp.*, 312 Ill. App. 3d 210, 215 (1st Dist. 2000), and *Bradbury v. St. Mary's Hosp. of Kankakee*, 273 Ill. App. 3d 555, 558 (1st Dist. 1995)). That statement, while true, is relevant only as to venue. *Bradbury*, 273 Ill. App. 3d at 558 (since death is an element in wrongful death cause of action, venue is proper where death occurred). Thus, while Jordyn's death in Cook County makes this county a proper venue—an undisputed fact—Robyn's death in Cook County is irrelevant in determining the relative convenience of the proper forum. *Kahn v. Enterprise Rent-A-Car Co.*, 355 Ill. App. 3d 13, 24-25 (1st Dist. 2004).

A second presumption applicable here is pertinent if the disputed fora are two adjoining counties, as they often are in the Chicago metropolitan area. In those 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, quoting, in turn, *Peile*, 163 Ill. 2d at 335, quoting, in turn, *Peile v. Skelgas, Inc.*, 242 Ill. App. 3d 500, 522 (5th Dist. 1993) (Lewis, J., specially concurring)). 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).

As noted above, circuit courts are instructed to balance a variety of factors, both private and public, 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 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 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 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.

A. Private Factors

1. Convenience of the Parties

Courts have recognized 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. The number of parties in this case is small. Carrithers lives in Cook County; the record does not indicate where he works. Meziere lives and works in DuPage County, and her practice group and EMH are both located there. Based simply on those numbers, this factor favors DuPage County; however, the corporate entities must be discounted since they failed to identify who will testify on their behalf. Further, Jordyn's mother and siblings are more than mere witnesses given that they are potential beneficiaries to any settlement or judgment. Considering the gaps in the record and the testimony of Jordyn's survivors, this factor is best adjudicated as neutral.

2. 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 video photography 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 result is this factor is now focused primarily on the availability of testimonial evidence.

It is highly likely that Meziere, Boyle, and Veenstra will be deposed where they work either in person or via an audio-visual link, as is the current, common practice. Even if they are deposed

in person, it is common practice for treaters to be deposed where they work, in this case DuPage County. For trial purposes, it is likely that these three witnesses will appear live and, therefore, DuPage County would be more convenient.

As to the 18 Loyola treaters Carrithers identified post-motion, it is expected they, too, would be deposed live or via an audio-visual link where they work. It is highly doubtful, however, this court would permit 18 post-injury treaters to be deposed, let alone a judge permitting them to testify at trial given the cumulative nature of their testimony. Further, Carrithers has not explained why any Loyola provider is a necessary deponent or trial witness given that the alleged malpractice occurred exclusively at EMH. The lack of affidavits from any of these treaters infers Curtis named them to pad his response rather than to serve as a substantive reason to defeat the motion. In short, as to medical providers, the location of discovery in Cook or DuPage County is unimportant, but trial testimony from the treaters would be more convenient in DuPage County.

As to non-medical witnesses, Heldt and Jordyn's two siblings live in Stickney. As to their depositions, there is no indication they would be taken in person; thus, for discovery purposes their location is irrelevant. As to trial testimony, Heldt and Jodyn's siblings will be presented live at trial. Heldt averred that the Daley Center is closer to her home and requires less driving time than to Wheaton. She believes the DuPage County courthouse is not accessible by public transportation, which is untrue. Metra's Union Pacific West Line stops just two blocks from the Wheaton courthouse.[1] Further, it is unexplained why Heldt would travel by car to the Daley Center but by public transport to the Wheaton courthouse. Regardless of that error, the trial testimony for the family members would be more convenient in Cook County.

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[1] Ill. R. Evid. 201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . generally known within the territorial jurisdiction of the trial court. . . .").

Ultimately, this factor balances between three identified necessary defendant witnesses—Meziere, Boyle, and Veenstra—and three plaintiff witnesses—Heldt and Jordyn's siblings. The equal balance of these witnesses means this factor is best considered neutral.

3. Compulsory Process of Unwilling Witnesses

Neither Carrithers nor the defendants addressed this factor. Considering that compulsory process is available to any Illinois judge pursuant to Illinois Supreme Court Rule 237, this factor is neutral.

4. Cost of Obtaining Attendance of Willing Witnesses

A *forum non conveniens* analysis cannot ignore the impact web-based video conferencing on litigation. The need for parties, witnesses, and lawyers spending time and money traveling long distances to prepare for and give testimony in a court proceeding has significantly decreased. In weighing the cost of obtaining witness testimony, travel expenses are now far less likely to be a substantial component.

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 the pandemic ends. The idea of a trial consisting of lawyers, witnesses, jurors, and judges all in the same room may one day become an artifact of a bygone era.

In the meantime, none of the parties presented a coherent argument that the costs of willing witnesses weighs in this *forum non conveniens* analysis. Boyle and Veentra correctly point out

that parking is more expensive in Chicago than Wheaton, but that cost is, ultimately, relatively minor. Absent a compelling argument by either side, this factor is best judged neutral.

5. Viewing the Premises

It is beyond doubt that no DuPage or Cook County judge would ever interrupt the functioning of EMH's emergency room so that a jury could walk through and see it in real time. Further, such a viewing would be entirely irrelevant to the factual and legal issues present in this case. Thus, a jury's window into the EMH emergency room, if any, would be done through the use of a video. This factor is neutral.

6. Other Considerations

Practical problems attendant to litigation is generally not a strong factor favoring transfer if the choice of fora is Cook or an adjacent county. *See Johnson v. Nash*, 2019 IL App (1st) 180840, ¶ 56 (quoting *Susman v. North Star Trust Co.*, 2015 IL App (1st) 142789, ¶ 31). The Chicago metropolitan area is well connected by multi-lane highways and commuter train systems, both of which are generally convenient to both the Wheaton and Chicago courthouses. This factor is considered neutral.

B. 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.

1. Deciding Localized Controversies Locally

The Supreme Court has recognized that "a case should not be tried in a forum that has no significant factual connections to the cause of action." *Fennell*, 2012 IL 113812, ¶ 46 (citing *Foster v. Chicago & N. W. Transp. Co.*, 102 Ill. 2d 378, 383 (1984) (collecting cases)). The fundamental facts in this case are two: (1) the entirety of the malpractice allegedly leading to Jordyn's death occurred in DuPage County; and (2) Jordyn was a Cook County resident. Both of these interests are substantial. DuPage County residents have a strong interest because the alleged malpractice focuses on care and treatment provided at a DuPage County hospital. Cook County residents also have a strong interest in care and treatment provided to another Cook County resident regardless of where the treatment occurred. Given the legitimate interests both counties have in this litigation, it would be unwise to consider either more or less important. Since this factor could favor either county, this factor is best considered neutral.

2. 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. Residents of one county are generally not to be burdened with jury duty if the incident at issue occurred in a different county. As explained, "[t]he county in which the trial is held is financially burdened by the payment of jurors' fees and by providing court personnel and court facilities. The court system of this State is also burdened by the necessity to provide judicial personnel and the machinery for appellate review." *Id.* (quoting *Fennell*, 2012 IL 113812, ¶ 45, quoting, in turn, *Wieser v. Missouri Pac. R.R.*, 98 Ill. 2d 359, 371 (1983)). As noted immediately above, both DuPage and Cook County residents have substantial interests in this case. Given those interests, it would be fair for

either court to assume the costs associated with the litigation. This factor is also considered neutral.

3. 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 relies on 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 2019 statistics indicate that a case valued at more than $50,000 in Cook County stays on the docket for 29.9 months from filing until disposition; the figure is 49.8 months in DuPage County. Yet only 22 $50,000-plus cases went to verdict in DuPage County in 2019, while in Cook County there were 336.

The trouble with these statistics is that they have been rendered fairly worthless because of the Covid-19 pandemic. It is simply unknown at this point how and when either county will address its backlog of pending cases ready to go to trial. It is fair is assume, however, that the number of months cases will pend on either docket will increase substantially. Because this court can only speculate how quickly a 2020 filing will be able to go to trial, it is prudent to judge this factor as neutral.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motion to transfer venue pursuant to Illinois Supreme Court Rule 187 is denied; and
2. The defendants have until May 10, 2021 to answer the complaint.

Judge John H. Ehrlich

APR 19 2021

Circuit Court 2075

John H. Ehrlich, Circuit Court Judge