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

Jeffrey Findlay,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 6453
	)	
Maritime Delivery Services, Inc.,	)	
Molandro Freightlines, LLC, and	)	
Nicholas Molandro,	)	
	)	
Defendants.	)	

MEMORANDAM OPINION AND ORDER

The *forum non conveniens* doctrine permits a circuit court to transfer a case to another jurisdiction, but only after weighing public- and private-interest factors and determining they strongly favor the transfer. The parties in this case completed nearly all discovery in another jurisdiction before the plaintiff voluntarily dismissed the case and re-filed it in Cook County. Since the various factors strongly favor transferring this case, the defendants' motion is granted and this case is transferred to the 23rd judicial circuit, Kendall County.

Facts

On December 31, 2016, Maritime Delivery Services, Inc. accepted Nicholas Molandro's application to work as a driver. At the time, Molandro owned and was the sole employee of Molandro Freightlines, LLC. Freightlines owned a Columbia tractor that, as of December 31, 2016, Freightlines leased to Maritime.

On May 30, 2017, Jeffrey Findlay was driving a GMC Sierra west on Plattville Road in rural Kendall County. At the same time, Molandro was driving the Columbia tractor north on Ashley

Road. As Findlay's vehicle entered the intersection on the right of way, Molandro's tractor struck Findlay's vehicle and caused his injuries.

On September 25, 2017, Findlay filed a complaint in the Circuit Court of LaSalle County against Maritime, Freightlines, and Molandro. The case proceeded in discovery including the completion of all written and fact witness depositions. On June 8, 2020, a LaSalle County judge granted Findlay's motion for a voluntary dismissal.

On June 16, 2020, Findlay filed an 11-count complaint in the Circuit Court of Cook County against the same defendants. Counts one through five against Maritime and six through 10 against Freightlines are parallel causes of action. Counts one and six are negligence causes of action brought under the *respondeat superior* doctrine based on Molandro's duty to operate a vehicle safely. Findlay claims the defendants, through Molandro, breached their duty by failing to keep a proper lookout, violating Motor Vehicle Code provisions and Federal Motor Carrier Safety Regulations (FMCSR), and driving while under the influence of cocaine. Counts two and seven are negligent entrustment causes of action based on the defendants' duty to use reasonable care in entrusting its vehicles to drivers. Findlay claims the defendants breached their duty by failing to have in place a system to detect drivers who use illegal substances and disqualify them, provide appropriate oversight, review Molandro's employment history, or compile and maintain an appropriate driver qualification file. Counts three and eight are willful and wanton entrustment causes of action based on the same acts and omissions in counts two and seven. Counts four and nine are negligent training and supervision causes of action based on the defendants' duty to train and supervise Molandro so as not to injure others. Findlay claims the defendants breached their duty by failing to provide Molandro with a safety manual, an employee handbook, or the FMCSR, ensure Molandro was familiar with the FMCSR, provide classroom or on-the-job training, have a safety program in place and adhere to it, administer a road test before allowing him to

drive, have a drug testing system in place, and disqualify Molandro from driving until he had received appropriate training, instruction, and supervision. Counts five and 10 are willful and wanton training and supervision causes of action based on the same acts and omissions as presented in counts four and nine. Count 11 is a negligence cause of action against Molandro directly based on his duty to operate a vehicle so as not to injure others. Findlay claims Molandro breached that duty based on the same claims as in counts one and six.

On September 28, 2020, Freightlines and Molandro filed a motion to transfer the case to Kendall County pursuant to the *forum non conveniens* doctrine.[1] *See* Ill. S. Ct. R. 187. The parties subsequently conducted discovery. Findlay's interrogatory answers indicate he lives in the town of Newark, Kendall County. His address is approximately 10 miles from the Yorkville courthouse, but 55 miles from the Daley Center. Molandro lives in Yorkville. His address is approximately six miles from the Yorkville courthouse, but 50 miles from the Daley Center. As of May 30, 2017, Freightlines had its principal office at Molandro's home in Kendall County, but on January 11, 2019, the Illinois Secretary of State involuntarily dissolved Freightlines. Maritime is a Delaware corporation with its principal place of business in Joliet, Will County. Maritime's office is approximately 30 miles from the Yorkville courthouse and 50 miles from the Daley Center.

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

[1] On November 24, 2020, this court granted Maritime's motion to join Freightlines' and Molandro's motion to transfer.

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. *See Langenhorst v. Norfolk S. Ry.*, 219 Ill. 2d 430, 440-41 (2006). When considering *forum non conveniens*, the court assumes 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 must 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)). Fourth, if a plaintiff has re-filed a lawsuit in a second forum, the second forum deserves less deference, particularly if discovery has been completed. *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 344 (1994) (ordering transfer from St. Clair County to Pike County, noting, "[n]othing in the record suggests that the parties' ability to conduct discovery and engage in other pretrial matters was unduly hampered by proceeding in the circuit court of Pike County [for two years]").

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. 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 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 as described above.

I. Private Factors

Findlay's argument begins with a misstatement of the law: "Defendants have not shown that Cook County is inconvenient for any party, let alone for all parties, as is required in a *forum non conveniens* motion." Rather, the law is plain that "[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*, 219 Ill. 2d at 444. At the same time, courts have recognized it is 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.

A. Convenience of the Parties

Findlay lives in Newark, Kendall County, approximately 10 miles from the Kendall County courthouse in Yorkville, but 55 miles from the Daley Center. It is not surprising that Findlay did not supply an affidavit stating that Cook County is convenient or more convenient for him as opposed to Kendall County. The absence of such an averment is meant to suggest that Cook County is convenient, but such a conclusion is unrealistic for a Kendall County resident who lives only 10 miles from his home county's courthouse.

Molandro also lives in Yorkville, Kendall County, only six miles from the courthouse, but approximately 50 miles from the Daley Center. Findlay's witness list provides two additional addresses for Molandro. One is a South Harlem Avenue address in Palos Heights, Cook County, but a Google Earth view shows that address is commercial, not residential, property. Since Freightlines is now defunct, that address is of no value. Findlay also lists for Molandro a Midlothian Turnpike address in Crestwood, Cook County, but another Google Earth view indicates there is no such address. In short, the only relevant address for Molandro and the now-defunct Freightlines is Molandro's home address in Yorkville.

Maritime has its principal office in Joliet, Will County. Maritime's office is approximately 20 miles to Yorkville, but 50 miles to the Daley Center.

The inexorable conclusion is that Kendall County is substantially more convenient for all the parties than is Cook County. This factor favors transfer to Kendall County.

B. Relative Ease of Access to Evidence

This factor reveals the 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)). Medical records, in particular, are now provided in electronic format, making them easily distributable. *Evans v. Patel*, 2020 IL App (1st) 200528, ¶ 43 (citing *Koss Corp. v. Sachdeva*, 2012 IL App (1st) 120379, ¶ 128). The use of real evidence is far less common than it used to be, 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 that this factor is now focused primarily on the availability of testimonial evidence.

Findlay provided a list of 45 witnesses, in addition to the parties. Such overreach is nothing short of astounding, particularly since he has done little or nothing to explain how each witness is either necessary and non-cumulative. The simple fact is, this case arises from a two-vehicle collision. That Molandro may have been high on cocaine at the time does not alter the simplistic nature of this case. Further, the parties had no difficulty completing fact discovery during the two years this case was on the LaSalle County Circuit Court docket. Findlay does not explain how his case has changed and why Cook County is the most convenient forum for his re-filed causes of action. This court takes a very dim view that Findlay has now chosen to pad his witness list case in a transparent attempt to keep his case in Cook County.

Findlay lists five damages witnesses, one of whom is his wife who, apart from Findlay, can certainly provide valuable damages testimony. She lives in Newark with her husband. Given her testimony, it is inconceivable that a trial judge would also allow Findlay to call as witnesses his sister living in Vermillion County, his mother, living in Grundy County, and his sister living in Des Moines, Iowa. The cumulative nature of their testimony is evident in their affidavits, which are nearly identical. Findlay names a fourth damages witness who did not supply an affidavit.

The witness list includes two eyewitnesses to the collision. One witness lives in Kendall County, while the second lives in Oneida County in northern Wisconsin. The record does not indicate Findlay deposed either eyewitness, which leads to the conclusion that their testimony is unnecessary.

Findlay lists three witnesses to substantiate that Molandro was high on cocaine at the time of the collision. Two of these witnesses are from the Illinois State Police, meaning that one is cumulative. While both persons work at the state police office in Chicago, it is unexplained why their testimony could not be presented to a jury through a recorded evidence deposition. The third witness appears to be a relative of Molandro, but Findlay does not explain how this person possesses any relevant testimony.

Findlay identifies four Maritime witnesses, two of whom live in Will County, one of whom lives in DuPage County, and the fourth is unknown. Maritime and the parties will unquestionably need a Maritime corporate representative to testify at trial, but Findlay does not explain why each witnesses is necessary and non-cumulative. He also fails to explain in particular why the company's dispatcher would have any relevant information as to Molandro and this accident.

Findlay also lists three expert witnesses, one who works in DuPage County and is substantially closer to Yorkville, one who works in Chicago and is substantially closer to the Daley Center, and one who works in McHenry County and is equidistant to both courthouses. Yet, once again, Findlay has not explained why expert testimony is necessary in this case, let alone how three experts will provide unique, non-cumulative opinions.

Findlay lists one corporation that will provide testimony as to the maintenance of the Columbia tractor. It is unexplained why such testimony is necessary.

Findlay next lists 18 persons and entities to provide testimony as to his medical treatment. Four witnesses are identified as physicians, two who have offices in both DuPage County and Cook County, one who has an office solely in DuPage County, and the fourth who is located in McHenry County. As to these witnesses, Findlay apparently labors under the misapprehension that medical providers appear live at trial. It is

common practice in all courts of this state that treating physicians are deposed where they work and present trial testimony through video recorded evidence depositions; consequently, their relative convenience or inconvenience is not an issue. Eleven of the identified witnesses are simply provider institutions that probably produced medical records in the case. Record keepers from these institutions are unnecessary given that the parties can stipulate to the foundation of Findlay's records. Further, Findlay does not explain the need for the witnesses from the Kendall County sheriff's office, the local fire department, or a third person whose role in this case is unexplained.

Findlay lists three of Molandro's medical treaters. These witnesses are wholly unnecessary as Molandro's medical condition or treatment is not at issue.

Finally, Findlay lists six corporate witnesses supporting his negligent training, retention, and supervision causes of action. Findlay admits these are corporations where Molandro regularly made pickups or deliveries for Maritime, and then guesses they are likely to possess useful information. In fact, these entities are entirely irrelevant to this case, and no trial judge would permit their testimony because these corporations did nothing to train, retain, or supervise Molandro.

To be fair, the defendants' witness list is also padded, but is at least explainable. The defendants list 25 witnesses, 19 of whom are treating physicians and the remainder provider institutions. Again, the depositions of the physicians will be taken where they work, and their recorded testimony will be presented at trial; the parties can stipulate to the records provided by the institutions. Of the six other non-medical witnesses, five are located in Kendall County, while Maritime is located in Will County.

In sum, the defendants have provided a narrower list of witnesses and institutions whose records are easily addressed by a trial court. In contrast, Findlay has taken a scattershot approach to identifying witnesses in the hope that numerosity prevails. It

does not. This factor favors transferring this case to Kendall County.

C. Compulsory Process of Unwilling Witnesses

The burden of compelling witness testimony does not affect this analysis because this motion is for intrastate transfer of forum and neither party has identified any unwilling witnesses. This factor is neutral.

D. Cost of Obtaining Attendance of Willing Witnesses

Although Findlay has identified one out-of-state witness and others from various Illinois counties, he has not provided a record with which this court may assess the costs of obtaining these witnesses' attendance either for deposition or trial. This factor is neutral.

E. Viewing the Premises

It is possible a court may decide to have a jury view a vehicular accident site. This convenience factor is, therefore, "not concerned with the *necessity* of viewing the premises, but rather is concerned with the *possibility* of a view, if appropriate." *Fennell*, 2012 IL 113812 at ¶ 37 (emphasis in original). Here, it is inconceivable that a Cook County trial judge would find it appropriate to convene a jury at a rural intersection nearly 50 miles away from the Daley Center. Photographs or video of the scene would unquestionably be sufficient. On the other hand, a Kendall County judge might find it appropriate to convene a jury at an intersection a little more than nine miles away from the Yorkville courthouse. In short, if viewing the premises is a relevant factor, it is so only if this case proceeds in Kendall County. This factor favors Kendall County.

G. Other Practical Considerations that Make a Trial Easy, Expeditious, and Inexpensive

Neither party addresses this factor; therefore, it is considered neutral.

II. Public Factors

A. Deciding Localized Controversies Locally

The fundamental fact in this case is that the collision occurred in Kendall County. Kendall County has, therefore, a significant interest in the dispute. *Smith v. Jewel Food Stores, Inc.*, 374 Ill. App. 3d 31, 34 (1st Dist. 2007) (quoting *Dawdy,* 207 Ill. 2d at 183 ("when an automobile accident occurs within a county's borders, that county has 'a significant interest in the dispute'")). Kendall County residents certainly have a higher degree of investment and interest in the safety of vehicles using their roads than do Cook County residents. This is particularly true here considering that Findlay and Molandro are both Kendall County residents. This factor favors Kendall 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 instance. Generally, 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. One court has concluded the obvious by writing, "we cannot say that it would be unfair to burden [a] county['s] jurors with the trial of one of their fellow residents." *Lint v. Missouri Pac. R.R. Co.*, 200 Ill. App. 3d 1047, 1051 (5th Dist. 1990). There is no good reason to burden the Cook County civil courts and its residents with a case involving a vehicle collision that occurred in Kendall County involving Kendall County residents. This factor favors Kendall County.

C. Administrative Difficulties

This factor considers court congestion by comparing the case load and resolution times of the fora in question. *Fennell v. Illinois Cent. R.R. Co.*, 2012 IL 113812, ¶ 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. Finlay argues that the Cook County docket is overloaded, but a review of the most recent Annual Report of the Illinois Court is the appropriate reference, *Dawdy*, 207 Ill. 2d at 181, and provides more nuanced information.

The 2019 report for law division cases over $50,000 shows that Cook County had 10,451 new cases, disposed of 10,153 and ended the year with 16,392 cases. Annual Report of the Illinois Court, Statistical Summary, at 44. Kendall County had 53 new cases, disposed of 67 and ended with 130 pending cases. *Id.* For cases resolved by jury verdict, Cook County disposed of 336 cases in an average of 29.9 months while Kendall County disposed of one case in 26.2 months. *Id.* at 72-73. Despite the vastly larger docket of cases in Cook County, the resolution time here is only three-and-one-half months longer than in Kendall County. Such a short time difference is insignificant in the life of a case; consequently, this factor is neutral.

III. Balance of Factors

Findlay's choice of forum is given less deference here because he is presumed to be forum shopping and because he completed discovery in LaSalle County, took a voluntary dismissal, and then re-filed his case in Cook County. Five factors, including the four most important—location of parties and witnesses, the locus of the controversy, and relative burden—favor transfer to Kendall County. The other four factors are neutral. These facts presented in the record show this to be an exceptional case warranting transfer.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motion to transfer pursuant to Illinois Supreme Court Rule 187 is granted;
2. This case is to be transferred to the 23rd judicial district, Kendall County;
3. The defendants are to pay all costs related to the transfer.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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