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

Cynthia Grubba, as Independent Executor of the Estate of Constance Marion Grubba, Deceased	)	
Plaintiff,	)	
v.	)	No. 20 L 3798
Alden Estates of Naperville, Inc., an Illinois Corporation d/b/a Alden Estates of Naperville; Alden Management Services, Inc., an Illinois Corporation; and Danielle Lewandowski, DON	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The *forum non conveniens* doctrine permits the transfer of a case to another venue if the weighing of various private and public factors strongly favors a transfer. Here, the balance of factors demonstrates that DuPage County would be a substantially more convenient forum for the parties. The defendants' motion is, therefore, granted and this case is transferred to the Eighteenth Judicial Circuit in DuPage County.

Facts

Constance Grubba lived at Alden Estates of Naperville (Alden Estates) in Naperville, DuPage County, from February 5, 2019, to February 8, 2019. While there, Constance fell, resulting in a hip fracture that required surgical intervention. Subsequently, Constance's condition deteriorated, and she died on June 15, 2019. Cynthia Grubba, as independent executor of Constance's estate, filed suit, alleging that Alden Estates was negligent in its care of Constance by failing to

implement fall prevention measures that caused or contributed to her death. Indeed, all of Cynthia's allegations concern the care and treatment Constance received and the injuries she sustained while a resident at Alden Estates.

Constance had been a DuPage County resident even before her admission to Alden Estates. Cynthia is currently a resident of DuPage County. Danielle Lewandowski, Alden Esates' director of nursing, lives in Kendall County. Alden Management Services, another defendant, is a resident of Cook County.

Analysis

A motion filed pursuant to *forum non conveniens* seeks to transfer the action from one forum with proper venue to another, more convenient forum with proper venue. *Tabirta v. Cummings*, 2020 IL 124798, ¶ 1. Thus, "this doctrine assumes the existence of at least two forums in which the defendant is amenable to jurisdiction." *Foster v. Chi. & N. W. Transp. Co.*, 102 Ill. 2d 378, 381 (1984). Here, both Cook County and DuPage County are proper venues for this action.

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 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)).

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

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

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

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

Guerine, 198 Ill. 2d at 516-17. The public and private factors are not weighed against each other but are weighed together to test whether they strongly favor transfer away from the plaintiff's chosen forum. *Fennell*, 2012 IL 113812, ¶ 18. "The plaintiff's right to select the forum is substantial" and "should rarely be disturbed." *Id.*

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

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

It can be assumed that Cook County is a convenient forum for Cynthia, despite the inference that she is forum shopping given that she lives in DuPage County and the defendants' alleged negligent conduct occurred there. It is uncontested that Constance was a resident of DuPage County, Cynthia is a resident of DuPage County, and the incident alleged in the complaint occurred in DuPage County. The defendants also point out that Constance's treatment after her fall and her medical providers are located in DuPage County. Further, defendant Danielle Lewandowski avers that the DuPage County courthouse in Wheaton would be more convenient as it is only 18 miles from her home, compared to the Daley Center, which is 44 miles away from her home.

In response, Cynthia argues that the defendants have strong ties to Cook County because of their business activity here. As articulated in *Dawdy*, if the fact that the defendant conducts business in the

plaintiff's chosen forum were dispositive, the *forum non conveniens* doctrine "would be entirely vitiated, and no transfer would ever be obtained. Rather, plaintiff's choice would be elevated to the stature of a dispositive consideration, which is patently not to be allowed." *Dawdy*, 207 Ill. 2d 167, 182 (2003) (quoting *Franklin v. FMC Corp.*, 150 Ill. App. 3d 343, 347 (1986)). Cynthia's argument is, therefore, not persuasive. Given the substantial connection to DuPage County, this factor weighs in favor of DuPage County.

B. The Relative Ease of Access to Evidence

The defendants assert that the alleged negligent nursing care, Constance's medical treatment, employees of the facility, and other types of real evidence are located at the DuPage County facility. In contrast, Cynthia argues that the totality of witnesses reside in different counties such that no one county has a substantial connection. The defendants point out further, however, that all of the witnesses expected to testify regarding Constance's condition while at Alden Estates, as well as the care and treatment she received there, reside outside of Cook County and are much closer to the DuPage County courthouse than the Daley Center.

Cynthia's assertion that witnesses will likely only have to testify one day at trial does not diminish the fact that a more convenient forum is available. Additionally, Cynthia argues that the location of the documentary evidence in DuPage should not skew the analysis. Cynthia is correct that most real and documentary evidence is of no issue since records may be easily transported physically or electronically. *See Ruch v. Padget*, 2015 IL App (1st) 142972, ¶¶ 61, 65. That information, however, combined with the significant connections to DuPage County weighs in favor of DuPage County.

C. Compulsory Process Unwilling Witnesses

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

D. Cost of Obtaining Attendance of Willing Witnesses

Parties bear the costs of paying for witness travel. Here, the defendants generally assert that the witnesses on the whole are closer to DuPage County, which will be cheaper for both parties. Cynthia does not meaningfully address this factor; consequently, it favors DuPage County.

E. Viewing the Premises

Cynthia argues that viewing the premises is unnecessary. The convenience factor of viewing the site is not, however, concerned with the necessity of viewing the site but rather the possibility of viewing it if appropriate. *Dawdy*, 207 Ill. 2d. at 178. Here, the alleged negligent conduct giving rise to this action occurred in DuPage County. Thus, this factor favors DuPage County.

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

Cynthia asserts that Cook County is a more convenient forum because her attorneys are located there. The location of the parties' attorneys is, however, accorded little weight in determining a *forum non conveniens* motion. *Langenhorst*, 219 Ill. 2d at 433. Cynthia correctly points out that the Covid-19 pandemic has forced cases to proceed primarily in virtual settings, such as Zoom, but that fact weighs equally in favor of DuPage or Cook County. This factor is considered neutral.

II. Public Factors

A. Settling Local Controversies Locally

This case arises out of allegedly negligent conduct that occurred in DuPage County. Cynthia, Constance, and the defendant employees and witnesses reside in and around DuPage County. DuPage residents have a far more substantial interest in deciding disputes regarding businesses and the provision of care within their county. In contrast,

Cook County's interest in this case is limited. As addressed above, Cynthia incorrectly asserts that the defendants' business presence implicates the defendants to Cook County. Further, Cynthia argues that Cook County residents have an interest in this case because the defendants' websites are available to all Cook County residents. Pltfs. Resp. at 16. While internet access is universal, if Cynthia's argument were correct, the entire world would be a convenient forum for litigation. That is an unacceptable result; thus, this factor weighs in favor of DuPage County.

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

This public factor typically follows from the first, and it does in this instance. 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. The defendants argue that Cynthia, Constance, and the defendants' employees and witnesses reside in or around DuPage County. The defendants further argue that Cook County has no connection to the occurrence and that this burden should fall to DuPage residents. Since Cynthia does not meaningfully address this factor, it weighs in favor of DuPage 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.

According to the 2020 report for law division cases valued at more than $50,000 and resolved by jury verdict, DuPage County disposed of two cases in an average of 45.5 months while Cook County disposed of 69 cases in 28.6 months. Administrative Office of the Illinois Courts, *Annual Report of the Illinois Courts, Statistical Summary*, at 81. It

must be noted that these statistics cover a year in which DuPage and Cook 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 the ability to dispose of cases faster. 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

Cynthia's choice of forum must be given little deference, but not no deference, because it is presumed she is forum shopping. Further, a review of the relevant factors shows that six factors favor DuPage County, two 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 defendants' motion to transfer venue based on the *forum non conveniens* doctrine contained in Illinois Supreme Court Rule 197 is granted;
2. This matter is transferred to the Eighteenth Judicial Circuit in DuPage County; and
3. The defendants shall pay all costs for the transfer.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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