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

Robert Lis, as special administrator of the estate of Kelly Romano, deceased,	)	
Plaintiff,	)	
v.	)	No. 21 L 787
Robert W. Tanney, D.O., and Northshore University Healthsystem,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The movant in a *forum non conveniens* motion bears the burden of showing that the balance of private and public factors strongly favors a forum transfer. In this case, the defendants have identified only two out of nine factors favoring a transfer of venue. Since the balance of factors does not favor another forum, the motion to transfer this case to Lake County is denied.

Facts

Beginning in January 2015, Kelly Romano treated with Dr. Robert Tanney at a Northshore University Healthsystem facility located at 650 West Lake Cook Road in Buffalo Grove. On January 23, 2019, Romano died of poly-substance toxicity. On April 21, 2021, Romano's father and special administrator, Robert Lis, filed an amended complaint against Tanney and Northshore. The complaint alleges, among other things, that Tanney overprescribed medications to Romano, including opioids such as Oxycodone and benzodiazepines.

On May 12, 2021, Tanney and Northshore filed a motion to transfer venue to Lake County pursuant to the *forum non*

conveniens doctrine authorized by Illinois Supreme Court Rule 187. The record establishes that Lis lives in Long Grove, Lake County, and that Romano lived in Vernon Hills, Lake County. Tanney lives in Wauconda, Lake County, 20 miles from the Waukegan courthouse and 47 miles from the Daley Center. Tanney's office at 650 West Lake Cook Road is 25 miles to the Waukegan courthouse, and 35 miles to the Daley Center. The other Northshore physicians who treated Romano did so at the same facility.

Lis identified four other institutional witnesses where Romano received treatment. Advocate Condell Medical Center is located in Libertyville, Lake County, Barrington Family Institute is located in Barrington, Lake County, NorthShore Medical Group is located in the same building as Northshore University Healthsystem in Buffalo Grove, Cook County, and Evanston Hospital is located in Evanston, Cook County.

The parties dispute whether the Northshore facility where Tanney treated Romano is located in Cook or Lake County. Between Lexington Drive on the east and North Arlington Heights Road on the west, West Lake Cook Road makes two curves, the first going north of the county line and a second going south of the county line.[1] 650 West Lake Cook Road lies within the curve south of the county line, meaning the Northshore facility actually lies in Cook County although it lies on the north side of West Lake Cook Road.

Analysis

The *forum non conveniens* doctrine 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*

[1] This court takes judicial notice of the official Cook and Lake County maps available online. *See* https://maps.cookcountyil.gov/cookviewer/mapViewer.html, and https://maps.lakecountyil.gov/mapsonline/.

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 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)). 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*, 219 Ill. 2d at 440-41.

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, ¶ 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.

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.

I. Venue

Despite the parties' disagreement as to the Northshore facility's location, the official Cook and Lake County maps establish conclusively that the 650 West Lake Cook Road facility in Buffalo Grove is located in Cook County. Venue is, therefore, proper in Cook County or, based on Tanney's residence, in Lake County. This venue determination is, however, as explained above, wholly independent of a *forum non conveniens* analysis and determination.

II. Private Factors

A. 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.

In this case, it is not surprising that Lis did not provide an affidavit stating that Cook County is a convenient forum. A Google Earth search shows that Long Grove is approximately 16 miles from Waukegan, but 30 miles from the Daley Center. Lis will travel twice as far for his deposition and every day for trial by choosing Cook County. In contrast, Tanney supplies an affidavit averring to the convenience of the Waukegan courthouse to both his home and office in contrast to the Daley Center. Tanney's averments are understandable and reasonable.

Northshore and Tanney argue that other care providers at the Northshore facility will likely be deponents and trial witnesses. Such a statement is reasonable to believe, yet the defendants failed to provide these potential witnesses' names and addresses. This court cannot presume what location is convenient to potential witnesses without more information in the record.

This factor favors transfer to Lake County.

B. The 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.

Lis does not identify any other witnesses who will testify on the estate's behalf. In contrast, Tanney identifies four care providing institutions that have employees who will likely be called as witnesses. Two of these facilities are in Lake County—Advocate Condell Medical Center in Libertyville and Barrington Family Institute in Barrington—while two are in Cook County—Northshore Medical Group in Buffalo Grove, and Evanston Hospital in Evanston. It is reasonable for this court to assume various persons from these facilities will, in fact, be deposed and present trial testimony. At the same time, this court may not presume, absent affidavits, the number of witnesses, their home addresses, and their statements as to the convenience of either Lake or Cook County.

Without a more insightful record, this factor must be considered neutral.

C. Compulsory Process of Unwilling Witnesses

Neither party addressed this factor; it is considered neutral.

D. Cost of Obtaining Attendance of Willing Witnesses

Neither party addressed this factor; it is considered neutral.

E. Viewing The Premises

Neither party addressed this factor; it is considered neutral.

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

The defendants argue that the cost to witnesses of attending trial will be greater in Chicago, where parking close to the Daley Center can cost from $14 to $30 a day. In contrast, free or far more inexpensive parking is available near the Waukegan courthouse. This court may, again, assume these statements to be true, but without knowing how many witnesses would be burdened by parking fees, it is impossible to draw a conclusion with certainty. Further, the parties do not address any other costs that might be associated with discovery and trial in Lake versus Cook County.

This singular argument as to parking costs is insufficient for this court to draw a conclusion in favor of either county. This factor is, therefore, considered neutral.

III. Public Factors

A. Deciding Localized Controversies Locally

Both Lake and Cook counties have a valid and substantial interest in this litigation. Lake County residents have an interest in the treatment provided to a now-deceased Lake County resident. Cook County residents have an equal interest because the medical care provided to the decedent occurred in Cook County. The location of the Northshore facility immediately adjacent to both counties suggests that both counties' residents would have a particularized interest in the way care is provided at Northshore. This equal balance means this factor is neutral.

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

This public-interest factor often follows from the first, and it does in this case. Both counties could reasonably be expected to assume the burdens of this case given both counties' interests. This factor is neutral.

C. Administrative Difficulties

The Administrative Office of Illinois Courts tracks cases in which juries reach a verdict in excess of $50,000. For those cases, the time from the date of filing until the date of verdict is 29.9 months in Cook County and 22.7 months in Lake County. 2019 Annual Report of the Illinois Courts, 72-74. A difference of seven months is not a significant period of time given that the true party in interest is deceased; nonetheless, based on the statistics alone, this factor favors transfer to Lake County.

IV. Balance of Factors

The factors available for consideration by this court indicate most are evenly balanced. The convenience of the parties and the speed with which this case may be considered weigh in favor of Lake County if only because the parties did not provide a more substantial record for this court to consider. Overall, the facts of this case do not show it to be an exceptional candidate for transfer to another county.

V. Sanctions

In his response brief, Lis argues that the defendants should be sanctioned for presenting a motion not well grounded in fact. According to Lis, a reasonable inquiry would have revealed that Northshore's facility is located in Cook, not Lake, County. This argument has a kernel of truth, but it is not unreasonable to assume that Lake and Cook Counties are divided by Lake Cook

Road. That assumption, while wrong and easily disproved, is patently not sanctionable.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motion to transfer pursuant to Illinois Supreme Court Rule 187 is denied;
2. Lis's motion for sanctions is denied; and
3. The defendants have until August 23, 2021 to answer the complaint.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUL 26 2021

Circuit Court 2075