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

Laiq Munir, as independent administrator of the estate of Aisha Munir, deceased, Plaintiff, v. Advocate Sherman Hospital, Zubair Ahmad, M.D., Deepak Khurana, M.D., Manzoor A. Qazi, M.D., Jongwook Ham, M.D., Pulmonary Critical Care Medicine Specialists, S.C., Defendants.	)	No. 21 L 11963

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 Kane County would be a substantially more convenient forum for the parties. The defendants' motion is, therefore, granted, and this case is transferred to the Sixteenth Judicial Circuit in Kane County.

Facts

On January 6, 2017, Aisha Munir presented to Advocate Sherman Hospital. An examination showed that Aisha had an airway obstruction and had suffered an apneic or hypoxic episode. Further, Aisha's blood oxygen saturation level was below 90 percent without intubation. Advocate's policies required that a patient in Aisha's condition be transferred to the intensive care or critical care unit. Advocate did not transfer Aisha, and she subsequently suffered respiratory arrest and hypoxic encephalopathy. Aisha's injuries left her incapable of independent living and resulted in her admission to a long-term-care facility and death on November 21, 2017.

On June 24, 2017, Laiq Munir filed a medical malpractice alleging that the defendants' care and treatment Aisha Munir caused or contributed to her death.[1] On December 8, 2020, Munir voluntarily dismissed the defendants,

[1] Munir's original complaint also raised claims against Alden Estates of Barrington under the Nursing Home Care Act. On July 12, 2021, this court approved a settlement between Munir and Alden, dismissed Alden with prejudice.

without prejudice and with leave to re-file within one year. On November 29, 2021, Munir refiled this case.

On April 25, 2022, the defendants filed a motion to transfer this case to Kane County Circuit Court. By August 15, 2022, the parties had fully briefed the motion. The record shows the following pertinent facts:

- Munir lives in Algonquin, Kane County. His home is 19.9 miles from the Kane County courthouse and 51.4 miles from the Daley Center. Munir's employer is also located in Kane County.
- Aisha lived in Algonquin, Kane County, before her death.
- All of Aisha's care and treatment occurred at Advocate.
- Advocate is located at 1425 North Randall Road in Elgin, Kane County.
- Advocate is located 41.9 miles from the Daley Center and 14.2 miles from the Kane County courthouse.
- Dr. Zubair Ahmad lives in Barrington, Cook County. His home is 24.5 miles to the Kane County courthouse and 33.3 miles to the Daley Center. Ahmad practices exclusively in Kane County. All of the care Ahmad provided to Aisha occurred in Kane County. Ahmad averred that it would be inconvenient and burdensome for him to travel to the Daley Center for the trial and far more convenient and less burdensome for him to travel to the Kane County courthouse.
- Dr. Manzoor Qazi provided an affidavit that did not indicate his residence. He did, however, aver that he practices exclusively in Kane County. His offices are located in the Kane County side of Elgin. Further, all of the care he provided Aisha occurred in Kane County. Qazi's office is 14.5 miles from the Kane County courthouse and 43.1 miles from the Daley Center. Qazi averred that it would be inconvenient and burdensome to travel to Cook County for trial and far more convenient and less burdensome to travel to the Kane County courthouse.
- Dr. Jongwook Ham lives in Kane County, and all of the care and treatment he provided to Aisha occurred there. Ham's office is located in Kane County. Ham's affidavit avers that it would be inconvenient and burdensome for him to travel to Cook County for the trial of this case and far more convenient and less burdensome for him to travel to the Kane County courthouse.

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. Chicago & N. W. Transp. Co.*, 102 Ill. 2d 378, 381 (1984). Here, both Cook County and Kane Counties 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. *Id.* 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 511, 517-18 (2002), 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' depositions or trial testimonies. 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 in the pandemic's wake. Notwithstanding the current test's shortcomings, this analysis will proceed with the required factor analysis described above.

This court's comments are meant as food for thought, not to serve as a justification for overturning the current *forum non conveniens* analysis. It is plain that Illinois courts continue to apply the same factors in the same fashion as existed before the COVID-19 pandemic. *See, e.g., Petrungaro v. Jayachandran*, 2022 IL App (1st) 220304; *Pierce v. Cherukuri*, 2022 IL App (1st) 210339. This court will do the same.

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.

Although it may be assumed that Cook County is a convenient forum for Munir, it is also presumed that he is forum shopping. It is uncontested that Munir lives and works in Kane County and that the medical negligence at issue in this case occurred in Kane County. Munir's selection of Cook County must, therefore, be given less deference.

The defendants emphasize their ties to Kane County based on their location, residence, and distance to the two courthouses. It is also important to recognize that professional courtesy is extended to medical care providers so that their depositions occur where they work. It is equally true that depositions and trials occur during work hours and not before or after hours or at deponent's or trial witness's residence. In other words, is far more insightful to determine places of work rather than residence.

Munir's only argument to keep the case in Cook County is that more than one of the physician-defendants lives in Cook County. That argument, of course, only goes to venue and not convenience. As indicated above, location of work is a far more useful factor in determining convenience.

Munir is afforded only some deference in his forum selection, given that he is presumed to be forum shopping. Moreover, Munir is a Kane County resident as was Aisha, and each of the defendants' work location is in Kane County. The convenience to the parties strongly favors Kane County.

B. The Relative Ease of Access to Evidence

The location of real and documentary evidence is, ultimately, of no issue because those materials may be physically or electronically transferred between the two counties. *See Ruch v. Padget*, 2015 IL App (1st) 142972, ¶¶ 61, 65. Of more importance is the location of other testimonial witnesses other than the parties. On this point, both parties fail to meet the task.

The defendants argue that they will likely call other Advocate employees, who work at the hospital in Elgin. That may be true, but without identifying those persons and the nature of their testimony, this court cannot weigh their convenience or inconvenience for purposes of this analysis. Likewise, Munir states that he will likely call employees of the Alden Estates nursing facility. Again, that may be true, but without identifying those persons, let alone providing their affidavits, this court is unable to consider what weight to attribute to their convenience or inconvenience.

This factor is considered neutral.

C. Compulsory Process of Unwilling Witnesses

A judge in either Cook or Lake 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, neither party has identified any willing witnesses whose costs must be paid. Without any such information on this issue, this factor is neutral.

E. Viewing the Premises

Viewing the premises is rarely, if ever, necessary in a medical malpractice case, *Hackl v. Advocate Health and Hosp. Corp.*, 382 Ill. App. 3d 442, 452 (1st Dist. 2008). Nonetheless, courts have indicated that the convenience factor of viewing the site is not concerned with the necessity of viewing the site, but rather the possibility of doing so. *Dawdy*, 207 Ill. 2d. at 178. Thus, this factor favors Kane County.

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

Munir argues that the location of the parties' attorneys should skew our analysis in favor of Cook County. It is well-established, however, that the location of the parties' attorneys is given little weight in a *forum non conveniens* analysis. *See Langenhorst*, 219 Ill. 2d at 433, 450. This factor, to the extent it has any weight at all, slightly favors Cook County.

II. Public Factors

A. Settling Local Controversies Locally

This case arises out of alleged medical malpractice concerning a Kane County resident, at a Kane County hospital, by defendants that practice exclusively in Kane County. Cook County's interest in this case is, therefore, tenuous at best and non-existent at worst. That some of the physician-defendants live in Cook County does not weigh in favor of keeping the litigation here because the locus of the physicians' work is, and alleged malpractice occurred, exclusively in Kane County. Conversely, Kane County residents unquestionably have an enormous interest in a case involving the practice of medicine on a Kane County resident at a Kane County hospital by physicians who practice exclusively in Kane County. This substantial factor weighs heavily in favor of Kane 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. Here, Kane County residents have a substantial interest in this dispute because it involves its resident being treated at a Kane County hospital by physicians that practice exclusively in Kane County. This court repeats that it does not subscribe to the notion that Cook County has a substantial interest in this litigation simply because a minority of the defendants live in Cook County. In sum, it is no imposition on Kane County to assume the costs associated with discovery in and trial of this case. This significant factor also strongly favors Kane 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.

In the 2020 report for law division cases valued at more than $50,000 and resolved by jury verdict, Kane County disposed of two cases in an average of 62.9 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 Kane 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 Kane County has far fewer large cases, but disposes of them at a far slower rate. It is, therefore, reasonable to conclude that this case would be resolved more quickly in Cook County. This factor favors Cook County.

III. Balance of Factors

Munir's choice of forum is given little deference, but not no deference, because he is forum shopping. A review of the relevant factors shows that four factors favor Kane County, three are neutral, and two favor Cook County, but only slightly. It is important to recognize that the most significant factors—party and non-party convenience, locus of controversy, and burden shifting—each strongly favors transfer to Kane 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 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 16th judicial circuit in Kane County; and
3. The defendants shall pay all costs for the transfer.

Judge John H. Ehrlich

JAN 04 2023

Circuit Court 2075

John H. Ehrlich, Circuit Court Judge