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

Karenna Orist, as mother and next friend of Landis Orist, a minor,	)	
Plaintiff,	)	
v.	)	No. 20 L 10042
Naveed M. Khan, M.D., Onsite Neonatal Partners, Inc., and Centegra Health System,	)	
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 plaintiff's alleged medical malpractice injury occurred in McHenry County and the weighing of factors strongly favors the transfer of this case. The defendant's motion is, therefore, granted and this case is transferred to the 22nd judicial circuit in McHenry County.

Facts

On January 13, 2016, Karenna Orist gave birth to a son, Landis, at Northern Illinois Medical Center (NIMC). Landis allegedly suffered testicular torsion during or immediately after birth, resulting in permanent injury. On September 18, 2020, Karenna[1] filed a complaint against NIMC,[2] Dr. Naveed Khan, who

[1] The parties spell the plaintiff's name "Karenna" and "Kareena." This court follows the spelling in the complaint's caption, "Karenna."
[2] NIMC subsequently became Centegra Hospital-McHenry. In September 2018, Centegra became a division of Northwestern Medicine and is now known as Northwestern Medicine McHenry Hospital. Centegra is, therefore, an incorrectly named party.

treated Landis, and Onsite Neonatal Partners, Inc., Khan's employer.

On April 22, 2021, NIMC filed a motion to transfer venue to McHenry County pursuant to the *forum non conveniens* doctrine contained in the Illinois Supreme Court Rules. Ill. S. Ct. R. 187. Karenna filed a response brief, and NIMC filed a reply. Both parties attached various exhibits to their briefs.

The record indicates that Karenna and Landis both live in Crystal Lake, McHenry County. Karenna and Landis live approximately 11 miles from the McHenry County courthouse in Woodstock, but more than 50 miles from the Daley Center. Karenna's discovery answers state that Cook County is a more convenient forum for witnesses, but does not indicate it is more convenient for her.

NIMC is located in the city of McHenry, McHenry County. NIMC is located approximately 10 miles from the Woodstock courthouse, but 54 miles from the Daley Center. NIMC is owned by Northwestern Memorial Healthcare, which has its principal office in Chicago. Khan lives in Glenview, Cook County, and is on staff at hospitals in McHenry and Du Page counties, as well at Rush University Medical Center in Chicago. Onsite Neonatal Partners, Inc., is a New Jersey corporation, headquartered in New Jersey.

NIMC lists various other witnesses. Nurses Corrine Creighton and Jacquelyn Sengmany are expected witnesses since they completed Landis's examination shortly after his birth. Creighton lives in Lake Geneva, Wisconsin, and is employed at Huntley Hospital, in McHenry County. Creighton supplied an affidavit averring that McHenry County it is a more convenient forum. Saengmany lives in Huntley, McHenry County, and is employed in Rockford, Winnebago County. She has also averred that McHenry County is a more convenient forum. NIMC also lists Dr. John Guido, a radiologist, as an expected witness. Guido has an office in McHenry County.

Karenna listed four subsequent treating physicians, each of whom has an office in Chicago. In addition, Landis received subsequent treatment at Advocate Lutheran General Hospital in Park Ridge, Cook County, Lurie Children's Hospital in Chicago, and NIMC. Medical records indicate that Landis has not received treatment at these facilities in three to four years.

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 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 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.

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)). 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. 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. 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

The court first weighs the convenience of the parties to the chosen forum. "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." *Langenhorst*, 219 Ill. 2d at 444. Although a defendant is not supposed to be able 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.

Karenna's discovery responses state that Cook County is a more convenient forum for witnesses, but, tellingly, does not state it is more convenient for her. Doubtless, Karenna could not make such a statement because she and Landis live only 11 miles from the McHenry County courthouse in Woodstock, but more than 50 miles from the Daley Center. The realistic evaluation of these facts leads to the conclusion that McHenry County is, in fact, more convenient to Karenna and Landis.

Although Khan lives in Cook County, McHenry County must be convenient for him, otherwise he would not work there. As to Onsite Neonatal, neither side has identified a witness from the corporate entity or explained why such a person would be a necessary witness.

NIMC is located in McHenry County. Karenna argues that Cook County is the proper forum since NIMC is part of Northwestern Medicine. Yet NIMC explains that Centegra Health System joined Northwestern Medicine in September 2018, nearly one year after the alleged medical malpractice. The corporate ownership of NIMC is, therefore, entirely irrelevant to the analysis here. Further, Karenna has failed to identify anyone from the parent company that would be a necessary witness in this case.

This factor favors McHenry County.

B. The Relative Ease of Access to Evidence

The next convenience factor considers the ease of access to evidence. Most real and documentary evidence offers little issue of being transported physically or electronically between two

counties and, therefore, has little impact on this analysis. *See Ruch v. Padget*, 2015 IL APP (1st) 142972, ¶¶ 61, 65. Neither party identified the access to documentary evidence to be an issue.

As for witnesses, Karenna's discovery responses identify various family members who live in McHenry County and states that Cook County is more convenient for them. Noticeably absent are affidavits from any of these family members as to the convenience of either county. Karenna's discovery responses also identify subsequent treaters located in various locations. The location of these physicians is, however, not concerning because, as is the common practice in Illinois courts, non-party treating physicians are deposed where they work and their trial testimony is presented through recorded evidence depositions.

NIMC identifies nurses Creighton and Saengmany, who are likely to testify because they assisted in Landis's examination. Given their role, these witnesses are likely to appear live at trial. Creighton lives in Lake Geneva, Wisconsin and works at Huntley Hospital in McHenry County. Creighton avers that McHenry County is more convenient forum for her. Saengmany lives in Huntley, McHenry County, and works in Rockford, Winnebago County. Saengmany also avers that McHenry County is a more convenient forum. Guido, another likely witness, has an office in McHenry County.

This factor favors transfer to McHenry County.

C. Compulsory Process of Unwilling Witnesses

The parties did not raise this issue. It is plain that a judge in either Cook or McHenry County would have the authority to subpoena unwilling witnesses; consequently, this factor is considered neutral.

D. Cost of Obtaining Attendance of Willing Witnesses

The parties did not raise this issue; consequently, it is considered neutral.

E. Viewing the Premises

Neither party raised this issue; consequently, it is considered neutral.

F. Other Practical Considerations That Make A Trial Easy, Expeditious, And Inexpensive

The parties did not address this issue; consequently, it is considered neutral.

II. Public Factors

A. Settling Local Controversies Locally

The first public factor concerns a forum's interest in resolving the case. The fundamental facts of this case are that the defendants allegedly committed medical malpractice on a McHenry County resident at a McHenry County hospital. While other physicians were involved in Landis's subsequent care, and there may be more in the future, none of those witnesses is alleged to have committed the tort that lies at the heart of this case.

Those facts lead inexorably to the conclusion that McHenry County residents have a substantially greater interest in addressing the provision of care to a McHenry County resident at a McHenry County hospital. In contrast, Cook County residents have a minimal interest based solely on the fact that Khan practices at times at Rush University Medical Center in Chicago, a facility that has no connection to the underlying tort.

This factor favors transfer to McHenry County

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

This public factor often follows the first, and it does in this case. A court should avoid imposing administrative costs and the burden of jury duty on a forum with little interest to the dispute. *Dawdy*, 207 Ill. 2d at 183. In this case, McHenry County residents have a substantial interest in this dispute because NIMC is located there and the alleged malpractice to a McHenry County resident occurred there. Given those facts, it is no imposition on McHenry County to assume the costs associated with the discovery in and trial of this case. This factor favors a transfer to McHenry 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.

The 2020 report for law division cases valued at more than $50,000 shows that Cook County circuit court received 9,833 new cases, disposed of 6,458, and ended the year with 20,147 cases. Administrative Office of the Illinois Courts, *Annual Report of the Illinois Courts, Statistical Summary,* at 44. For the same period, McHenry County circuit court received 12 new cases, disposed of 10, and ended with 12 pending cases. *Id.* For the same period, and for cases valued at more than $50,000 and resolved by a jury verdict, Cook County disposed of 69 cases in an average of 28.6 months, while McHenry County had no such trials. *Id.* at 78.

It must be noted that these statistics pre-date the Covid-19 pandemic, and it is highly doubtful that insightful statistics will be available for many years. It is, however, plain that Cook County has a substantially larger number of cases valued at more

than $50,000 and that it takes more than two years to dispose of those cases; the post-Covid backlog of cases is certain to be greater in Cook than McHenry County. It is, therefore, reasonable to conclude that this case would be resolved far more quickly in McHenry than in Cook County. This factor favors a transfer to McHenry County.

III. Balance of Factors

Orist's choice of forum is given little deference, but not no deference, because it is presumed she is forum shopping. The reason is that Cook County is neither her nor Landis's home county and is not the county where the alleged medical malpractice occurred. Further, A review of the relevant factors shows that four factors are neutral, five favor McHenry County, and none 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 defendant's 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 22nd judicial circuit in McHenry County; and
3. The defendant shall pay all costs for the transfer.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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Circuit Court 2075