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

Maria Pulido, independent administrator of the estate of Narcisco Pulido, Deceased, Plaintiff, v. Adventist Health Systems/Sunbelt, Inc., a corporation, Adventist Midwest Health d/b/a Amita Health Adventist Medical Center, Hinsdale, a Corporation, Alexian Brothers-AHS Midwest Region Health Co. d/b/a Amita Health Medical Group and Amita Health, a corporation, and Zeina Rabi, M.D., Defendants.	)	No. 20 L 13869

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

Facts

On July 27, 2018, Narcisco Pulido suffered a head injury while working. Pulido's employer directed him to Concentra Urgent Care where he was seen by Dr. Homer Diadula. Diadula ordered X rays and recommended further evaluation at an emergency room. Narcisco then presented at Adventist Bolingbrook Hospital's emergency department with a head injury. Technicians performed a CT scan of the brain and maxillofacial area that revealed a right frontal skull fracture extending into the right orbit and anterior cranial fossa. Additionally, there were fractures of the lateral right orbital wall and right nasal bone.

On July 28, 2018, Narcisco was transferred to Amita Health Adventist Medical Center, Hinsdale ("Hinsdale Hospital") where technicians performed another CT scan. There were no appreciable changes between the two scans.

On July 29, 2018, doctors discharged Narcisco with instructions to follow up with Dr. Claudia Vera, an internist.

On July 30, August 3, and August 9, 2018, Narcisco met with Vera. Vera noted that Narcisco had difficulty concentrating and sleeping. He also reported being dizzy and having memory abnormalities. Vera recommended Narcisco see a neurologist.

On August 22, 2018, Narcisco met with Dr. Zeina Rabi, a neurologist, for his head injury and symptoms. On September 19, 2018, Narcisco underwent a third CT scan. Narcisco continued to treat with Dr. Rabi. On January 9, 2019, Narcisco reported worsening neurological symptoms. On January 15, 2019, Narcisco was found unresponsive and was transported by ambulance to Presence Saint Joseph Medical Center. A CT scan revealed a significant diffuse subarachnoid hemorrhage. Narcisco died later that day. A January 24, 2019, autopsy reported the cause of death as acute congestive heart failure due to a cerebral hemorrhage.

On December 30, 2020, Maria Pulido, as independent administrator of the Narcisco's estate, filed an eight-count complaint. Maria alleges the defendants[1] owed Narcisco a duty of professional care and were negligent in Narcisco's care and treatment in a variety of ways. On March 3, 2021, defendants filed a motion to transfer venue pursuant to the *forum non conveniens* doctrine. The record shows the following pertinent facts:

- Maria and Narcisco lived in Joliet, Will County, while Narcisco was being treated by the defendants;
- Maria continues to live in Joliet;
- Maria did not supply an affidavit that a trial in Cook County would be more convenient than one in Will County;
- AMITA Health Adventist Medical Center, Bolingbrook, is located in Bolingbrook, Will County;
- Hinsdale Hospital is located in Hinsdale, DuPage County;
- The office of Alexian Brothers–AHS Midwest Region Health Co. ("Amita Health Medical Group") where Narcisco treated is located in Hinsdale, DuPage County;
- AMITA Health Saint Joseph Medical Center is located in Joliet, Will County;

[1]In her complaint, Maria named various defendants. The defendants responded that Maria had incorrectly named them and that the correct defendants are: Adventist Midwest Health d/b/a Amita Health Adventist Medical Center, Hinsdale; Alexian Brothers–AHS Midwest Region Health Co. d/b/a Amita Health Medical Group; and Zeina Rabi, M.D.

- Hinsdale Hospital and AMITA Health Medical Group each has its registered agent in Cook County;
- AMITA owns and operates other hospitals in Cook County;
- Crescent Turner, Hinsdale Hospital's trial representative, resides in Cook County;
- Crescent Turner supplied an uncontroverted affidavit that a trial in Will County would be significantly more convenient than one in Cook County;
- Dr. Zeina Rabi resides in Will County;
- Rabi's Medical Group is located in Hinsdale, DuPage County;
- Rabi supplied an uncontroverted affidavit that a trial in Will County would be more convenient than one in Cook County;
- Dr. Claudia Vera's office is located in Romeoville, Will County;
- Dr. James Bryant resides in Cook County;
- Dr. Claudia Veran resides in Cook County;
- Dr. Homer Diadula resides in Cook County.

Analysis

A motion filed pursuant to the *forum non conveniens* doctrine 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 and Will 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 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.

Although it may be assumed that Cook County is a convenient forum for Maria, it is also presumed she is forum shopping given that she does not reside in Cook County and the conduct giving rise to this litigation occurred elsewhere. Maria's selection of Cook County is, therefore, given less deference. And while Maria did not have to supply an affidavit as to convenience, it is notable that she did not supply one stating that Cook County is more convenient for her in light of the defendants' various affidavits indicating Will County is far more convenient for them.

The defendants emphasize that Maria and Narcisco are or were Will County residents. The defendants also point out that Crescent Turner, AMITA Health's representative, averred that a trial in Will County would be significantly more convenient for her. Additionally, the defendants emphasize that Rabi also averred a trial in Will County would be significantly more convenient for her because of the distance and traffic associated with commuting to Cook County.

Maria acknowledges that Rabi is a Will County resident but argues the proximity between Will and Cook County is negligible and, therefore, unpersuasive. A declaration that the distance between Will and Cook counties is irrelevant avoids the fundamental purpose of the *forum non conveniens* doctrine and is unsupported by the case law. Additionally, Maria asserts that Rabi works in Cook County, an unsupported statement conflicting with Rabi's affidavit. In fact, Rabi averred that she maintains an office and sees patients in DuPage County and does not maintain an office or see patients in Cook County. Maria's argument also overlooks the fact that, out of professional courtesy, physicians, as parties or non-parties, are typically deposed where they work.

Maria also argues the majority of the defendants reside in Cook County. Maria's basis for this assertion is the location of the registered agents for the hospitals, the hospital's advertisements, and their business conducted in Cook County. Courts have previously rejected similar arguments. For example, "[a]lthough these defendants have business ties to St. Clair County that are sufficient to establish venue there, any business transactions that are unrelated to the instant case are insignificant for purposes of *forum non conveniens*." *Kuhn v. Nicol*, 2020 IL App (5th) 190225, ¶17 (citing *Shaw v. Haas*, 2019 IL App (5th) 180588, ¶ 32); *Czarnecki v. Uno Vein Co.*, 339 Ill. App. 3d 504, 509 (1st Dist. 2003) (Cook County). 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)). Finally, Maria argues that the location of parties' attorneys should skew our analysis in favor of Cook County. Not only is that an inappropriate consideration in this section of the analysis, but the location of the parties' attorneys is given little weight in a *forum non conveniens* analysis. *See Langenhorst*, 219 Ill. 2d at 433, 450.

Though Maria is afforded some modicum of deference in her forum selection, the overwhelming fact is the majority of the parties, including Maria, are Will County residents or provided care in Will County. This factor favors Will County.

B. The Relative Ease of Access to Evidence

As a legal matter, the location of real and documentary evidence has little weight since the materials may be physically or electronically transferred between various venues. *See Ruch v. Padget*, 2015 IL App (1st) 142972, ¶¶ 61, 65. To that end, the defendants assert that Narcisco's alleged negligent care and treatment did not occur in Cook County but in DuPage County and, therefore, no medical records or other testimonial or documentary evidence would be located here. The defendants also argue that part of the alleged negligent care and treatment occurred in Will County and thus access to that information would be easier.

In response, Maria points to several witnesses she alleges either reside or work in Cook County. This argument has limited persuasive effect. First, three of the non-party witnesses Maria identifies—Bryant, Vera, and Homer—are physicians. As noted above, their residency is relatively unimportant for convenience purposes in contrast to where they work. Second, Maria erroneously included Crescent Turner as someone for whom a trial in Cook Count would be more convenient, despite her specific averment that Will County would be more convenient. Third, Maria points to three lay witnesses who are friends or family members located in Cook County. Maria did not, however, indicate these witnesses have non-cumulative testimony, and Maria did not provide affidavits from them as to which location would be more convenient. Finally, Maria argues this factor favors Cook County because Narcisco's injury occurred here. That argument is off point since the complaint does not arise out of construction negligence but alleged medical malpractice.

This factor weighs in favor of Will County.

C. Compulsory Process of Unwilling Witnesses

A judge in either Cook or Will 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. Defendants argue that since most of the witnesses either reside or practice medicine in Will County, it would be an easier and less expensive forum. The defendants, however, provide no authority for their assertion; moreover, Maria does not meaningfully address this factor. Without any evidence in the record to support the argument, this factor is considered neutral.

E. Viewing the Premises

In a medical malpractice case, viewing the premises is rarely if ever necessary. *Hackl v. Advocate Health and Hosp. Corp.*, 382 Ill. App. 3d 442, 452 (1st Dist. 2008). The parties have not provided any argument or facts to the contrary; consequently, this factor is neutral.

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

The parties did not meaningfully address this factor; therefore, it is considered neutral.

II. Public Factors

A. Settling Local Controversies Locally

This case arises out of alleged medical malpractice of a doctor practicing in Will County and a Will County resident. In fact, Narcisco received treatment from two hospitals located in Will County. Cook County's interest in this case is, therefore, far more tenuous. That the defendants conduct business and non-party treaters live in Cook County does not make their activities or residence outweigh the locus of the controversy. It is inevitable that Will County residents have a far greater interest in considering a case involving the practice of medicine in Will County involving a Will County resident. This factor weighs in favor of Will 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, Will County residents have a substantial interest in this dispute because it involves its resident being treated by a physician in Will County. This court also does not subscribe to the notion that Cook County has a substantial interest in this litigation simply because some of the defendants and non-party treaters live in Cook County. In sum, it is no imposition on Will County to assume the costs associated with discovery in and trial of this case. This factor favors Will 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 and resolved by jury verdict, Will County disposed of three cases in an average of 45.1 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 Will 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

Maria's choice of forum is given little deference, but not no deference, because she is forum shopping. Further, a review of the relevant factors shows that four factors favor Will County, four are neutral, and only one favors Cook County. Importantly, the most significant factors—party and non-party convenience, locus of controversy, and burden shifting—each favors transfer to Will 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 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 12th Judicial Circuit in Will 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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