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

Tina Roberts, Plaintiff, v. Versiti Illinois, Inc., individually and as a successor to Heartland Blood Center, Phlebotomist EG0819, whose legal name is not known, Defendants.	)	No. 20 L 5427

MEMORANDUM OPINION AND ORDER

The doctrine of *forum non conveniens* permits a circuit court to transfer a case to another jurisdiction, but only after weighing a variety of public- and private-interest factors and determining they strongly favor the transfer. In this case, the factors strongly favor transferring this case, particularly as both the plaintiff and the defendants are not Cook County residents. The defendant's motion to transfer to DuPage County is, therefore, granted.

Facts

On June 20, 2018, Tina Roberts planned to donate blood during a blood drive sponsored by Versiti Illinois, Inc. in Lombard, DuPage County. A Versiti employee, Erica Gibson,[1] was the phlebotomist who inserted the needle into Gibson's arm. On May 19, 2020, Roberts filed a single-count complaint alleging medical negligence against Versiti and Gibson. Roberts alleges that Gibson negligently inserted the needle and hit a nerve, causing

[1] Gibson is the Versiti phlebotomist EG0819 partially identified in the case caption.

instantaneous pain and numbness. Roberts alleges she screamed for 14 minutes before another phlebotomist, Sarah Jepsen, removed the needle from Roberts' arm. For 18 months after the June 2018 incident, Roberts treated with various physicians and she underwent physical therapy. An EMG revealed that Roberts had sustained nerve damage.

July 13, 2020, the defendants filed their motion to transfer venue pursuant the *forum non conveniens* doctrine contained in Illinois Supreme Court Rule 187. The parties fully briefed the motion and provided exhibits. The record contains various facts relevant to this court's analysis that are summarized immediately below.

- The incident at issue in this case occurred in a building owned by the Village of Lombard, DuPage County.
- Roberts lives in Villa Park, DuPage County. Her home is more than twice as far away from the Daley Center as it is from the Wheaton courthouse. Roberts works in Oak Brook, DuPage County, which is four miles closer to the Wheaton courthouse than the Daley Center.
- Versiti is an Illinois not-for-profit corporation that operates twelve facilities, four of which are in DuPage County. Only one of its facilities is in Cook County, Tinley Park, and Versiti maintains its registered agent in Cook County. Versiti indicated that its vice president and area leader has her primary office in Aurora, Kane County.
- Gibson lives in Bolingbrook, Will County, while Jepsen lives in Oswego, Kendall County. Both Versiti employees spend most of their working time in DuPage County. Both live substantially closer to the Wheaton courthouse than to the Daley Center. Both Gibson and Jepsen indicate that trial would be significantly more convenient for them in DuPage County. Gibson also has an infant who attends daycare in Bolingbrook.
- All but one of Roberts' seven identified medical providers are based in DuPage County. Roberts' alleges that Dr. Arkadiy Konyukhov, physical therapist Sheryl Depakakibo, and Dr. Geoffrey Dixon live in Cook County, but there is no evidence

supporting the claim. Each provider cared for Roberts exclusively in DuPage County. There is no evidence as to where a trial would be more convenient for these witnesses.

- Dr. Dale Laning, identified by Roberts as Versiti's liaison, lives in Will County nearly equidistant from the Wheaton and Chicago courthouses. The parties dispute out of which Versiti office Laning primarily works. Laning investigated Roberts' pre-suit claims. It is unexplained on what basis Laning would be allowed to offer evidence at trial.

Analysis

There exists an extensive body of law governing a court's consideration of a motion to transfer litigation based on the doctrine of *forum non conveniens*. A main concern of *forum non conveniens* jurisprudence is curtailing forum shopping by plaintiffs. *See First Nat'l Bk. v. Guerine*, 198 Ill. 2d 511, 521 (2002). At its essence, the doctrine "is founded in considerations of fundamental fairness and sensible and effective judicial administration." *Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 169 (2005). The modern application of the doctrine came with the United States Supreme Court's decision in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), a decision Illinois courts have consistently followed. *See Fennell v. Illinois. Cent. R.R.*, 2012 IL 113812, ¶ 14 (2012) (citing cases).

A motion to transfer based on *forum non conveniens* differs from one based on venue, a distinction Roberts fails to grasp. 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)).

Circuit courts are given "considerable discretion in ruling on a *forum non conveniens* motion." *Id.* at 441-42 (citing *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 336 (1994)). A circuit court's decision will be reversed only if the court abused its discretion in balancing the relevant factors; in other words, if no reasonable person would adopt the view taken by the circuit court. *See Dawdy v. Union Pacific R.R.*, 207 Ill. 2d 167, 176-77 (2003). At the same time, courts are cautioned to exercise their discretion "*only in exceptional circumstances* when the interests of justice require a trial in a more convenient forum." *Langenhorst*, 116 Ill. 2d at 442 (citing cases, emphasis in original); *see also Dawdy*, 207 Ill. 2d at 176 ("the test . . . is whether the relevant factors, viewed in their totality, *strongly* favor transfer to the forum suggested by defendant") (emphasis added)), *quoting Griffith v. Mitsubishi Aircraft Int'l, Inc.*, 136 Ill. 2d 101, 108 (1990).

The consideration given to a *forum non conveniens* motion rests on several presumptions, four of which are relevant here. 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. Fourth, if the disputed fora are two adjoining counties, as they often are in the Chicago

metropolitan area and, indeed, as they are in this case, "the battle over the forum results in a battle over the minutiae." *Langenhorst*, 219 Ill. 2d at 450 (quoting *Guerine*, 198 Ill. 2d at 519-20). As has been explained, "a trial court abuses its discretion in granting an intrastate *forum non conveniens* motion to transfer venue where . . . the potential trial witnesses are scattered among several counties, including the plaintiff's chosen forum, and no single county enjoys a predominant connection to the litigation." *Guerine*, 198 Ill. 2d at 526 (citing *Peile*, 163 Ill. 2d at 345).

As noted above, circuit courts are instructed to balance a variety of private- and public-interest factors to determine the appropriate forum in which a case should be tried. *See Dawdy*, 207 Ill. 2d at 172. The test is "whether the relevant factors, viewed in their totality, strongly favor transfer to the forum suggested by defendant." *Id.* at 176 (quoting *Griffith*, 136 Ill. 2d at 108). A court is not to weigh the private- and public-interest factors against each other, but evaluate the totality of the circumstances before deciding whether the defendant has proven that the balance of factors strongly favors transfer. *Id.* (citing *Guerine*, 198 Ill. 2d at 518). "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." *Id.* The defendant may not, however, assert that the plaintiff's chosen forum is inconvenient to the plaintiff. *Id.*

Before addressing the private and public factors, 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. The current *forum non conveniens* analysis stressing the trial is, quite frankly, out of sync with modern litigation practice. A more current analysis would give at least equal if not greater weight to

the applicability of enumerated factors to pre-trial proceedings, particularly the discovery process, and not merely the trial.

Second, the *forum non conveniens* analysis as stated in *Langenhorst* and its progeny has not been updated over the past 15 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 soon to be 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 has 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.

Regardless of apparent shortcomings of the now dated *forum non conveniens* analysis, the Illinois Supreme Court has listed the private- and public-interest factors a circuit court must still consider when addressing a motion to transfer based on *forum non conveniens*. The private factors are:

> (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 *Griffith*, 136 Ill. 2d at 105-06; *Bland*, 116 Ill. 2d at 224; and *Adkins v. Chicago, Rock Island & Pac. R.R.*, 54 Ill. 2d 511, 514 (1973)). Courts have generally broken down the third element to address each aspect separately and have often reorganized the order of the factors, as this court does below.

A. Presumptions

As noted above, the *forum non conveniens* doctrine is founded on various presumptions. In this case, this court presumes Roberts is forum shopping because she filed her case in Cook County despite the facts that she does not live here and her claimed injury occurred in DuPage County. That Versiti maintains a registered agent in Cook County is a fact that goes solely to establishing statutory venue, not a convenient one. As a consequence, Roberts' choice of forum is highly suspect and is given very little deference.

B. Private Factors

1. Convenience of the Parties

Courts have recognized that 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.

This court begins by stressing that this first private factor focuses on the parties, not other witnesses, and not the attorneys. Roberts lives in DuPage County while Gibson lives in Will County; both work in DuPage County. Gibson has also indicated that she has a young child who is in daycare in Will County and that, as a

result, this case continuing in Cook County would be inconvenient. For its part, Versiti has twelve locations, only one of which is in Cook County, Tinley Park, a location where the incident did not occur. The parties have not specifically identified a Versiti corporate representative other then Laning, who conducted the post-incident investigation. Laning, however, lives in Will County, it is unclear where he conducts the majority of his practice. Further, it is unexplained how Laning would be able to offer any first-hand evidence since he merely conducted a post-incident investigation.

This factor favors DuPage County.

2. 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.

Other identified witnesses in this case include Jepsen as well as Roberts' post-incident treaters. Jepsen lives in Kendall County and works in DuPage County. She averred that a trial of

this case in Cook County would be inconvenient while a trial in DuPage County would be significantly more convenient. Roberts alleges that her post-incident treaters have Cook County mailing addresses, but she offers no proof. Regardless of where these witnesses live, the defendants point out that all of Roberts' post-incident care and treatment occurred in DuPage County.

This analysis assumes, of course, this factor is still relevant. It is highly likely that Roberts' treaters they will be deposed remotely, in which case accessibility is convenient to all. And as with nearly all treaters, their trial testimony will be provided via pre-recorded evidence depositions taken at their place of employment, as is the current common practice. Once again, these will likely occur remotely, making this factor far less important than it used to be.

This factor favors transferring the case to DuPage County.

3. Compulsory Process of Unwilling Witnesses

Courts in either Cook or DuPage Counties would be able to compel unwilling witnesses. This factor is, therefore, neutral.

4. Cost of Obtaining Attendance of Willing Witnesses

The defendants suggest that a trial in DuPage County would be less costly than one at the Daley Center. The defendants did not, however, provide any substantive evidence to support what is otherwise a reasonable assumption. As a result, this factor is neutral.

5. Viewing The Premises

This is not a relevant factor to this case; consequently, this factor is neutral.

6. Other Practical Considerations that Make a Trial Easy, Expeditious, and Inexpensive

The First District has held that when the issue is moving a suit from Cook County to an adjacent county, the factor of practical problems is not usually a strong factor favoring transfer. *See Johnson v. Nash*, 2019 IL App (1st) 180840, ¶ 56 (quoting *Susman v. North Star Trust Co.*, 2015 IL App (1st) 142789, ¶ 31). A more timely consideration is that the CoVid-19 pandemic has dramatically altered oral discovery. Most court hearings, depositions, and pre-trial conferences are now being done remotely. The judiciary is even finding ways to conduct jury trials remotely. CoVid-19 has accelerated the adoption of Zoom, Skype, Microsoft Teams, and other web-based video conferencing platforms by lawyers and the general public. The technology employed during this crisis is not likely to disappear once it ends. The idea of depositions or even a trial consisting of lawyers, witnesses, jurors, and judges all being in the same room may one day become an artifact of a bygone era.

The defendants have argue persuasively that because Roberts' injury occurred in DuPage County, Gibson and Jepsen both work there, and Roberts' received her post-incident treatment there, DuPage is the more convenient county. Roberts does not offer much in rebuttal except the unsupported statement that Roberts' treaters have Cook County mailing addresses. That, alone, is wholly insufficient to tip the balance in favor of DuPage County. Even if travel distances were relevant, the facts favor DuPage County and Roberts does not contest the defendants' evidence that all witnesses in this case live closer to the Wheaton courthouse than the Daley Center.

This factor favors DuPage County

C. Public Factors

The court in *Guerine* also identified public-interest factors a circuit court should consider in a *forum non conveniens* analysis. These factors are:

> (1) the 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. This court's analysis of these factors follows seriatim.

1. Deciding Localized Controversies Locally

Roberts does not contest the alleged malpractice on which she bases her complaint occurred anywhere other than at Versiti in DuPage County. Roberts also does not deny that she lives in DuPage County or that Gibson works in DuPage County. Fundamentally, Roberts has failed to offer any case law supporting the assertion that a county other than the one of the plaintiff's residence and locus of the injury has an overriding interest in deciding the plaintiff's case.

The fundamental fact in this case is that the alleged malpractice occurred in DuPage County. It is only reasonable that DuPage County residents, as opposed to Cook County residents, would have a much higher degree of interest in the type of blood donation services provided by a local service agency, such as Versiti, that operates four centers in DuPage County. Cook County residents are simply removed from the alleged negligence of a social service provider presented in DuPage County.

This factor favors DuPage County.

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

This public-interest factor generally follows from the first, as it does in this case. Indeed, one court has concluded the obvious by writing that, "we cannot say that it would be unfair to burden [a] county['s] jurors with the trial of one of their fellow residents." *Lint v. Missouri P. R. Co.*, 200 Ill. App. 3d 1047, 1051 (5th Dist. 1990). Here, Roberts fails to provide an argument as to why Cook County should be burdened with the expense of a trial concerning a DuPage County plaintiff and collar county defendants arising out of an incident in DuPage County.

This factor favors transfer to DuPage County.

3. Administrative Difficulties

This factor typically calls for a court to consider the length of time a case is on the docket from filing to resolution. The Illinois Supreme Court has relied upon the annual report of the Administrative Office of the Illinois Courts as a proper reference for assessing relative court congestion in conducting *forum non conveniens* analysis. *See Dawdy*, 207 Ill. 2d at 181; *see also Griffith*, 136 Ill. 2d at 114. For cases valued more than $50,000, the average length of time a case is on the docket in Cook County is 29.9 months, while in DuPage County it is 49.8 months. *See* Annual Report of the Illinois Courts – 2019, at 72. Yet Cook County had 336 trials ending in a verdict, while DuPage County had only 22. *Id.* The significant difference of approximately 16 months between the duration of trials in Cook and DuPage counties is significant yet, ultimately, not persuasive.

This is the only private or public factor weighing in favor of Cook County.

Conclusion

For the reasons presented above, it is ordered that:

The defendants' motion to transfer venue based on Illinois Supreme Court Rule 187—the *forum non conveniens* doctrine—is granted. The defendants are to pay the costs of the transfer.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

DEC 29 2020

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