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

Lilia Valencia, deceased by the independent administrator of her estate, Kimberly Penaloza, Plaintiff, v. Advocate Condell Medical Center, a not-for-profit corporation; Advocate Health & Hospital Corporation d/b/a Advocate Condell Medical Center, a not-for-profit corporation; Advocate Health Care a/k/a Advocate Health Care Network d/b/a Advocate, a not-for-profit corporation; Maria Palillo, R.N., Edward Schultz, R.N., Subhash Patel, M.D., Jyothi Jolepalem, M.D., Annette Olin, M.D., Galina Goode, M.D., Best Practices Inpatient Care, Ltd., Lake County Surgeons, P.C., Aaron Siegel, M.D., Defendants, Amit Parikh, M.D. and Grad Delaney, R.N., Respondents in Discovery.	)	No. 21 L 4098

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

Facts

On December 9, 2020, Lilia Valencia presented to Advocate Condell Medical Center ("Condell") with abdominal pain. A computed tomography scan revealed gallstones within the gallbladder. Condell admitted Valencia the same day and Dr. Amit Parikh performed a laparoscopic cholecystectomy to remove the gallbladder.

Later in the evening, Nurse Maria Palillo noted Valencia's decreased level of consciousness, labored breathing, hypotension, and tachycardia. Dr. Galina Goode ordered a bolus of normal saline, but did not suspect that bleeding caused Valencia's symptoms. Dr. Subhash Patel later ordered another fluid bolus, but failed to consider that Valencia was bleeding. Valencia's condition continued to decline through the evening. By 10:00 p.m. Valencia was delirious and her abdomen was rounded, tender, and hypoactive.

Palillo did not notify a physician about Valencia's symptoms. Later that evening, Goode ordered another bolus of normal saline, but did not personally examine Valencia. Goode also failed to notify Parikh of Valencia's condition. Just after 11:00 p.m. on December 9, 2020, Dr. Jyothi Jolepalem learned of Valencia's condition, but did not suspect bleeding. Lab results revealed a high white blood cell count and low red blood cell count, but no one notified a physician of the abnormal results.

At 1:20 a.m. on December 10, 2020, Dr. Aaron Siegel was notified of Valencia's condition, but failed to suspect bleeding as the cause of her symptoms and did not notify Parikh. Siegel did not come to Condell to examine Valencia. Dr. Annette Olin learned of Valencia's condition around 1:45 a.m., but failed to suspect bleeding as the cause of Valencia's symptoms and did not advise Parikh about Valencia's condition. Around 2:00 a.m. on December 10, Siegel learned that Valencia's hemoglobin level was 7.9, but he still failed to notify Parikh. Siegel failed to issue any orders as to Valencia's care.

By 5:19 a.m. on December 10, Valencia went into hemorrhagic shock. She was then transferred to the intensive care unit where she coded. At 7:30 a.m., Parikh conducted exploratory surgery that revealed bleeding from the mesentery of the transverse colon and from a sidewall of a branch of the cystic artery. Valencia received multiple blood transfusions, but was pronounced dead at 11:55 a.m. on December 10.

On June 24, 2020, Kimberly Penaloza, as the independent administrator of Valencia's estate, filed a 35-count first amended complaint. Penaloza alleges the defendants were negligent in their care and treatment of Valencia. On November 15, 2021, Aaron Siegel and Lake County Surgeons, P.C. ("defendants") filed a motion to transfer venue pursuant to the *forum non conveniens* doctrine. The record shows the following pertinent facts:

- Lilia Valencia lived and worked in Zion, Lake County.
- Kimberly Penaloza lives in Waukegan, Lake County.

- Siegel lives in Lake County. He works exclusively in Lake County and is employed by Lake County Surgeons, P.C.
- Lake County Surgeons, P/C is located in Lake County.
- Patel lives in DuPage County and works in DuPage and Cook Counties. He remotely consulted on Valencia's case from DuPage County while Valencia was in her hospital bed in Lake County.
- Olin lives in DuPage County and works in Lake, Cook, and DuPage Counties.
- Goode lives in Cook County and works in Lake and Cook Counties.
- Jolepalem lives and works in DuPage and Cook Counties.
- Palillo works in Lake County; her residence is unknown.
- Schultz works in Lake County; his residence is unknown.
- Condell is located in Libertyville, Lake County.
- Advocate Health & Hospitals Corp. is located in Lake and Cook Counties.
- Best Practices Inpatient Care, Ltd., is located in Lake and Cook Counties.
- Rodolfo Penaloza, Valencia's husband, lives in Zion, Lake County and averred that Cook County is a convenient location.
- Jorge Penaloza, Valencia's son, lives in Zion, Lake County, and averred that Cook County is a convenient location.
- Anthony Penaloza, Valencia's son, lives in Winthrop Harbor, Lake County, and averred that Cook County is a convenient location.
- Alicia Robles, a close friend of Valencia, lives in Beach Park, Lake County, and averred that Cook County is a convenient location.
- Herminia Limon, a close friend of Valencia, lives in Waukegan, Lake County, and averred that Cook County is a convenient location.
- Nadia Martinez, a close friend of Valencia, lives in Round Lake, Lake County, and averred that Cook County is a convenient location.
- Julie Stangel, Valencia's co-worker and supervisor, works in Zion, Lake County, and averred that "it would not be inconvenient for me to travel to Cook County for the trial of this matter."

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 Lake 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 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 Penazola, it is also presumed that she is forum shopping given that she is foreign to the chosen forum and the action giving rise to the litigation did not occur in Cook County. Her selection of Cook County is, therefore, given less deference.

The defendants emphasize that Siegel works and resides exclusively in Lake County and Lake County Surgeons is based in Lake County. In his interrogatory answers, Siegel explained that he lives more than 30 miles from the Daley Center but only 16 miles from the Lake County Courthouse in Waukegan, and seven miles from Advocate. Siegel estimated that in rush hour traffic, a trip from his house to the Daley Center could take upwards of 90 minutes whereas it would take 20 minutes to commute to the Lake County Courthouse. Penazola appears to argue that because Siegel occasionally travels to Cook County for social events, he cannot argue Cook County is inconvenient. That argument is clearly erroneous.

The defendants highlight that Valencia lived and worked in Lake County and her injury occurred at Condell, a Lake County medical center. The defendants point out that Penazola also resides in Lake County and both Palillo and Schultz work in Lake County at Condell. The defendants also assert that Advocate Health & Hospitals Corp., Best Practices Inpatient Care, Ltd., Olin, Goode, Patel, and Jolepalem all have ties to Lake County through their work or practice.

Penazola stresses that Cook County would not be inconvenient for Patel or Goode because they live and work in Cook County, yet Patel's interrogatory answers establish that Patel was working in DuPage County when she provided care to Valencia. Additionally, Goode works in both Lake and Cook Counties and was at Condell in Lake County for Valencia's treatment. Further, Kimberly does not provide affidavits from Patel or Goode supporting this assertion. Interestingly, Kimberly suggests that Goode cannot argue Cook County would be inconvenient because she lives there, which is precisely the defendants' argument for Penazola. Regarding

Jolepalem, Penazola argues that Cook County would not be inconvenient for her because she works in Cook County. However, Jolepalem's interrogatory answers establish that she lives and worked in DuPage County at the time she provided care to Valencia.

Penazola also asserts that because the Advocate hospital system does business throughout Cook County, Advocate cannot claim it would be inconvenient to litigate in Cook County. Similar arguments have been previously rejected in other cases. "Although 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, Penazola argues that because the other defendants have not joined this motion, this court should presume Cook County is a more convenient forum for them. As this is not a factor to be considered, it is irrelevant to our analysis. To find otherwise would invite unwarranted and unsubstantiated speculation.

Though Kimberly is afforded deference in her forum selection, the alleged injury did not occur in Cook County. Moreover, she is located in Lake County, the decedent was a Lake County resident, and Lake County would be more convenient for the parties. This factor weighs in favor of Lake County.

B. The Relative Ease of Access to Evidence

The defendants assert that the alleged negligent care and treatment did not occur in Cook County and, therefore, no medical records or other testimonial or documentary evidence are located here. Ultimately, the location of real and documentary evidence is of no issue since the materials may be physically or electronically transferred between the two counties. *See Ruch v. Padget*, 2015 IL App (1st) 142972, ¶¶ 61, 65. The defendants also argue that Lake County is much more convenient because it is where Condell is located and where the alleged injury occurred. Further, the Lake County courthouse is closer to where Condell's employees spend their time during business hours, which is when a trial would occur.

In response, Kimberly points to several lay witnesses who have averred that Cook County would be a convenient forum. This aggregation of family members and friends has a limited persuasive effect for six of the non-party witnesses Kimberly identified—Rodolfo, Jorge, and Anthony Penaloza, Robles, Limon, and Martinez—each live in Lake County. Moreover, the seventh non-party witness, Stangel, Valencia's co-worker and supervisor, works in Lake County. Additionally, Stangel averred that "[i]t would not be inconvenient for me to travel to Cook County for the trial of this matter."

It is important to distinguish that "not inconvenient" is not the same as "convenient" and, thus, invokes the wrong standard. Furthermore, courts have determined that a party listing "several, perhaps cumulative, damage witnesses" will not weigh in favor of the plaintiff's choice of forum. *See Bruce*, 405 Ill. App. 3d at 326. Thus, this factor weighs in favor of Lake County.

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. The defendants argue that since most of the witnesses either reside or practice medicine in Lake County, it would be a more convenient and less expensive forum. The defendants, however, provide no authority for such a finding. Penazola protests that the costs of experts should not be included in this analysis because experts are compensated regardless of the forum. Without any evidence in the record on this issue, this factor is considered neutral.

E. Viewing the Premises

It is undisputed that the alleged negligence occurred in Lake County. Penazola argues that viewing the premises is not an important consideration. Though she is correct that 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), the convenience factor of viewing the site is not concerned with the necessity of viewing the site, but rather the possibility of viewing the site if appropriate. *Dawdy*, 207 Ill. 2d. at 178. Thus, this factor is favors Lake County.

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

Penazola argues that the location of the parties' attorneys should skew our analysis in favor of Cook County. However, it is well-established 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 is considered neutral.

II. Public Factors

A. Settling Local Controversies Locally

This case arises out of alleged medical malpractice concerning a Lake County resident, at a Lake County hospital, with several doctors who either live or practice in Lake County. Cook County's interest in this case is, therefore, quite tenuous. As discussed above, that the defendants conduct business and three of the twelve defendants live in Cook County does not make their activities or residence outweigh the locus of the controversy. Further, Lake County residents certainly have a far greater interest in a case involving the practice of medicine on a Lake County resident in a Lake County hospital by physicians that live or practice in Lake County. This factor weighs in favor of Lake 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, Lake County residents have a substantial interest in this dispute because it involves its resident being treated at a Lake County hospital by physicians that live or practice in Lake County. This court also does not subscribe to the notion that Cook County has a substantial interest in this litigation because a minority of the defendants live in Cook County. In sum, it is no imposition on Lake County to assume the costs associated with discovery in and trial of this case. This factor favors Lake 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, Lake County disposed of two cases in an average of 20.5 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 Lake 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 Lake County has the ability to dispose of cases faster. It is, therefore, reasonable to conclude that this case would be resolved more quickly in Lake County. This factor favors Lake County.

III. Balance of Factors

Penazola'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 six factors favor Lake County, three are neutral, and none favors Cook County. It is important to recognize that the most significant factors—party and non-party convenience, locus of controversy, and burden shifting—each favors transfer to Lake 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 19th judicial circuit in Lake 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