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

Elonda Lipscomb, administrator of the estate of Antwann Lipscomb, deceased,	)	
Plaintiff,	)	
v.	)	No. 19 L 11427
Unified CMC Operations, LLC and Manuel Cortez,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Illinois Supreme Court Rule 187 authorizes the dismissal and transfer of venue based on the *forum non conveniens* doctrine. The defendants here have failed to meet their burden of presenting facts strongly favoring the dismissal and interstate transfer of this case. For that reason, the defendants' motion must be denied.

Facts

On October 20, 2017, a car driven by Antwaun Lipscomb[1] collided with a truck driven by Manuel Cortez at the intersection of U.S. Route 30 and Utah Street in Hobart, Indiana. The impact killed Antwaun instantly. Cortez was not injured. Records indicate that 17 members of the Hobart police department, the Lake County, Indiana sheriff's department, the East Chicago, Indiana police department, the Lake County, Indiana coroner's office, and the Indiana State Police either responded to the scene or took part in the post-accident investigation.

---

[1] Although the complaint spells the decedent's first name, Antwann, the death certificate spells the name, Antwaun.

At the time of the collision, Antwaun was a resident of Sauk Village, Cook County. Cortez was also an Illinois resident. Unified CMC Operations, LLC, a company based in Bedford Park, Cook County, employed Cortez.

On October 16, 2019, Elonda Lipscomb, as administrator of Antwaun's estate, filed a two-count complaint against the defendants pursuant to the Wrongful Death Act. *See* 740 ILCS 180/0.01 – 2.2. Count one is brought against Unified in *respondeat superior*, while count two is brought against Cortez. The claims are identical and charge that the defendants: (1) failed to keep a lookout for other vehicles; (2) failed to pay attention; (3) failed to see Antwaun's vehicle; (4) turned left in front of Antwaun's vehicle; and (5) failed to yield.

The defendants filed a motion to dismiss the case and transfer it to a court in Lake County, Indiana based on the *forum non conveniens* doctrine. *See* Ill. S. Ct. R. 187. The plaintiffs filed a response, and the defendants replied. This court has reviewed each of the parties' submissions.

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*. 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, ¶ 12 (2012) (citing cases).

A motion to transfer based on *forum non conveniens* differs from one based on venue. 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*, 219 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 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." *First Am. Bk. v. Guerine*, 198 Ill. 2d 511, 517-18 (2002), *citing* cases. Third, in a wrongful death case, if the decedent's residence and the state of the accident are not the same as the plaintiff's chosen forum, the plaintiff's choice is given less deference, but not no deference. *See Ellis v. AAR Parts Trading, Inc.*, 357 Ill. App. 3d 723, 742-43 (1st Dist. 2005) (citing *Dawdy*, 207 Ill. 2d at 173-74; *Guerine* 198 Ill. 2d at 517). Fourth, "[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)). A fifth presumption is especially pertinent if the disputed fora are two adjoining counties, as they often are in the Chicago metropolitan area. In those instances, "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, quoting, in turn, *Peile*, 163 Ill. 2d at 335, quoting, in turn, *Peile v. Skelgas, Inc.*, 242 Ill. App. 3d 500, 522 (5th Dist. 1993) (Lewis, J., specially concurring)).

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). It is the defendant's burden to show that the relevant factors strongly favor the defendant's choice of forum to warrant disturbing the plaintiff's choice. *See Langenhorst*, 219 Ill. 2d at 444 (citing *Griffith*, 136 Ill. 2d at 107). 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.*

In *Guerine*, the Illinois Supreme Court listed the private- and public-interest factors a circuit court is to consider when addressing a motion to transfer based on *forum non conveniens*. As stated, 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).

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.

I. Private Factors

A. Convenience Of The Parties

The defendants do not argue that Cook County is an inconvenient forum for the parties in this litigation. It is, indeed, inconceivable they could make such an argument given that each party is a Cook County resident. The undisputed facts as to residency means this factor favors Cook County.

B. The Relative Ease Of Access To Evidence

This factor reveals, to a certain extent, the antique nature of the *forum non conveniens* private-interest factors. The use of real evidence is far less common given the modern use of photography and video photography both in depositions and at trial. The ease of access to evidence still remains relevant, however, as to testimonial evidence, and this forms the basis of the defendants' argument.

In their reply brief, the defendants identify 17 witnesses from various Indiana state and local agencies involved in the post-accident investigation, and one additional witness from a local law firm. The defendants present in the most cursory way each potential witness's involvement. These skeletal facts are, however, ultimately unavailing for at least three reasons. First, no judge in Illinois or Indiana will permit 18 depositions or trial witnesses on the issues of a post-accident investigation. Such testimony is unquestionably cumulative, and the defendants have failed to identify which of these 18 witnesses is essential to the admission of any evidence. Second, while police reports are generally inadmissible under both Illinois law, *see Steward v. Crissell*, 289 Ill. App. 3d 66, 70 (1st Dist. 1997); Ill. R. Evid. 803(8)(B), and Indiana law, *see Lee v. Dickerson*, 133 Ind. App. 542 (1962), statements of fact contained in those records are generally admissible, *see Steward*, 289 Ill. App. 3d at 71; *Dale v. Trent*, 146 Ind. App. 412, 419 (1970). Yet the defendants have failed to delineate which statements in any of the records would need foundation for admission versus those that could be admitted as a public record. Third, and obvious from the first two reasons, the defendants have failed to meet their burden on the motion. While the defendants are correct that Rule 187 does not require affidavits to support a *forum non conveniens* motion, their argument must fail because they have did not provide a discernable rationale for classifying any witness as essential.

Given the defendants' failure to meet their burden as the moving party, this factor favors Cook County.

C. Compulsory Process Of Unwilling witnesses

There is no question that this court lacks jurisdiction to issue compulsory process to any Indiana resident for either deposition or trial testimony. At the same time, it is unknown whether any of the 18 purported witnesses listed by the defendants would be unwilling to testify. This factor may ultimately be a difficult one in discovery but, for purposes of the motion, this factor favors transfer to Lake County, Indiana.

D. Cost Of Obtaining Attendance Of Willing Witnesses

This factor makes little analytic sense. If a witness is willing to be deposed or attend trial, then the witness should be willing to bear the cost of attending rather than shift it to a party. Regardless, the defendants do not make an argument as to this private factor, let alone introduce costs that might be associated with attending a deposition or trial in Cook County, such as mileage, parking, or hotel expenses. Absent any argument on this point, this factor favors Cook County.

E. Viewing The Premises

The defendants argue strenuously that a jury will need to view the accident intersection and surrounding area. They reason it is, "necessary for [the jury] to understand the outrageousness of Plaintiff's Decedent['s] conduct" given the numerous stoplights and businesses in the area and location of a mall less than a half mile away. Reply Br. at 4. That description could be repeated in hundreds if not thousands of other vehicle collisions on suburban roadways in the Chicago metropolitan area. The defendants present no facts indicating why this particular vehicle collision is so unusual or the intersection and surrounding area so unique that they could not be reconstructed either through ground and aerial photography or video or mock ups (as often presented by accident reconstruction experts). The weakness of the defendants' argument makes it highly doubtful that even a Lake County, Indiana court sitting far closer to the accident scene would grant a motion to excuse the jury for an on-view inspection. This factor favors Cook County.

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

The case law discussing this factor acknowledges that the Chicago metropolitan area is well connected by a series of multi-lane highways and commuter train systems. While trains usually

run on a schedule, travel by car across metropolitan Chicago, particularly in peak hours, is often long and frustrating. To that extent, it is reasonable to presume that travel time by car or train is reduced the shorter the distance.

The defendants have, once again, failed to present an argument on this private factor. Regardless, this court can take judicial notice that the distance between downtown Chicago and the Lake County, Indiana courthouse in Crown Point is approximately 44 miles. That is the same distance from Chicago to Joliet (Will County), 44 miles, and only slightly further than from Chicago to Waukegan (Lake County, Illinois), 41 miles. The defendants' failure to raise an argument means that this factor favors Cook County.

II. Public Factors

The court in *Guerine* also identified the public-interest factors a circuit court should weigh in considering a motion to transfer venue based on the *forum non conveniens* doctrine. 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.

A. Deciding Localized Controversies Locally

There is no question that Lake County, Indiana residents have a strong interest in this case. The accident occurred there and local officials consumed a considerable amount of resources in

investigating the accident and conducting an autopsy, among other things. And Indiana residents certainly have a strong interest in how drivers drive on Indiana roads and highways.

At the same time, Illinois residents also have a strong interest in this case. Antwaun, Elonda, Cortez, and Unified are each Cook County residents. Illinois residents certainly have an interest in how its drivers drive on Illinois roads or elsewhere. To that extent, it is merely fortuitous that this accident occurred in Indiana.

The only reasonable conclusion is that both Lake County and Cook County residents have legitimate interests in deciding this controversy either because the accident occurred in Lake County or because all the involved parties lived or live in Cook County. Since the balance of interests is even, this court concludes that this factor is neutral.

B. Unfairness Of Imposing Expense And Burden On A County With Little Connection To The Litigation

This public-interest factor generally follows from the first, and it does in this instance. For the reason presented immediately above, this court concludes that neither Lake County nor Cook County would be unfairly burdened by this case proceeding in either court because residents of both counties have justifiable interests in the subject. This factor is also neutral.

C. Administrative Difficulties

The defendants have indicated that, should their motion be denied and this case proceed in Cook County, they are likely to bring a motion for the application of Indiana law. Although controlling law is not currently before this court, it is understandable why the defendants want to raise the issue at this time. The need to apply foreign law is unquestionably a significant factor favoring the dismissal of a suit on grounds of *forum non conveniens*. *See Wilder Chiropractic, Inc. v. State Farm*

Fire & Cas. Co., 2014 IL App (2d) 130781, ¶ 68 (quoting *Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 175 (2005), quoting, in turn, *Moore v. Chicago & N.W. Transp. Co.*, 99 Ill. 2d 73, 80 (1983)). "Illinois courts have an interest in not being burdened with applying foreign law *in the absence of strong policy reasons and a strong connection to the case.*" *Gridley*, 217 Ill. 2d at 175 (emphasis added).

This court does not doubt that an Indiana judge would have far greater familiarity with Indiana law and its application to the facts of this case. Yet, it is not beyond the ability of Cook County Circuit Court judges to apply foreign law as they do occasionally. Even if Indiana law were to apply in this case, there are strong policy reasons as noted above for a Cook County judge to hear this case because each of the parties is a Cook County resident.

On balance, this factor is, at best, neutral.

Conclusion

For the reasons presented above,

It is ordered that:

1. The defendants' motion to dismiss and transfer venue based on the *forum non conveniens* doctrine is denied; and
2. The defendants have until August 24, 2020 to answer the complaint.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUL 27 2020

Circuit Court 2075