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

Wiley T. Moore, as special administrator of the estates of Autaya Readus and Toneisa Algeria Ball, deceased,	)	
Plaintiff,	)	
v.	)	No. 17 L 710
Camelot Radiology Associates, Ltd., by and through its agent and employee, Nestor S. Cuasay, and Nestor S. Cuasay, M.D., individually,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Illinois Supreme Court Rule 187 authorizes the transfer of a case to another venue based on the doctrine of *forum non conveniens*. This court has twice previously denied various defendants' motions to transfer this case and, once again, the applicable private and public factors do not strongly favor the denial of the plaintiff's choice of forum. The defendant's motion to transfer this case to Stephenson County is, therefore, denied.

Facts

The relevant facts are generally the same as they have been in the previous two motions. On January 15, 2015, Autaya Readus, presented at Mercyhealth Hospital in Rockford, Winnebago County, for an ultrasound. On February 3, 2016, and then a Stephenson County resident, Autaya complained of flank pain and went to Freeport Memorial Hospital in Freeport, Stephenson County, for an MRI. The same day, Dr. Nestor Cuasay, a radiologist and Cook County resident, interpreted the

images, allegedly finding nothing unusual. The next day, February 4, 2016, Autaya died from a retroperitoneal hemorrhage, allegedly the result of the misinterpreted images. Autaya's death also resulted in the death of her fetus, Toneisa Algeria Ball.

At the time of her death, Autaya lived in Stephenson County with her minor daughter, Shaniece Moore. Shaniece's father, Wiley Moore, is the special administrator but not a beneficiary in this case, and lives in Cook County. Shaniece now lives in Cook County and is still a minor. Autaya's parents, Rolando Ball and Toneisa Readus live in the State of Georgia and Freeport, respectively.

On September 18, 2019, Moore filed an amended complaint adding Camelot Radiology Associates, Ltd. as a defendant. Camelot's facilities are located in Rockford. On October 17, 2019, Camelot filed its appearance in this case. On November 20, 2019, this court entered a good-faith finding supporting the settlement between Moore and Freeport Memorial Hospital and the dismissal of the latter from this lawsuit.

Cuasay is a Cook County resident. He previously supplied an affidavit stating that "it would not be an inconvenience for me to attend the trial . . . in Stephenson County." The affidavit does not aver as to whether it would be inconvenient for him to attend a trial in Cook County. Camelot attached as an exhibit to its motion the affidavit of Rebecca Stemm, Camelot's practice manager. She avers that Camelot is based in Winnebago County and does not have any offices in Cook County. She further avers that it would be extremely inconvenient for her to have to travel to Cook County for 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*. 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 Lagenhorst 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." *Lagenhorst*, 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 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.

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 Lagenhorst*, 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

It must be stressed at the outset that this factor focuses on the parties only, not other persons the parties might call at trial. It is also important to "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." *Hale v. Odman*, 2018 IL App (1st) 180280, ¶ 35. Without looking behind the affidavits, deposition testimony, Google Maps, and other evidence frequently filed in these sort of motions, the argument of convenience is at a standstill based on meaningless declarations.

In this case, both the special administrator and Shaniece, the only beneficiary to Autaya's estate and one of the two beneficiaries to Toneisa Ball's estate, live in Cook County. It is reasonable to conclude that a trial in Cook County is convenient for them, particularly since the suit is filed here. Indeed, that is the presumption this court is required to take.

As to the defendants, it is extremely difficult to accept an argument from Cuasay that Cook County is an inconvenient forum considering that he is a Cook County resident. It would be safe to assume that throughout the course of a trial, Cuasay would not travel to work in Stephenson or Winnebago Counties and

would, instead, be present at the Daley Center. Camelot's position misses the mark for a different reason. Stemm's affidavit avers that it would be extremely inconvenient for her to attend a trial in Cook County. That may very well be true, but her affidavit begs the question as to why she would be necessary to testify at all. This case concerns Cuasay's alleged malpractice, conduct about which Stemm, as a practice manager, would be unqualified to testify. Without more substance in the record as to Camelot's role in this case, Camelot appear to be only a potential source of financial recovery given Cuasay's association with the practice group. That conclusion makes Camelot's argument *about* convenience simply an argument *of* convenience. This factor favors Cook County.

B. The Relative Ease Of Access To Evidence

This factor focuses primarily on the availability of testimonial witnesses as opposed to the availability of documents. In this case, Freeport Memorial Hospital records have already been produced, so their availability to Camelot is not an issue. Further, the availability of the plaintiff's non-party witnesses has not changed with the addition of a new defendant.

Camelot's lack-of-convenience argument is not its own; rather, Camelot adopts the argument of the now-dismissed defendant, Freeport Memorial Hospital – that a trial in Cook County is inconvenient for the hospital's personnel. That argument has twice been considered and rejected by this court because the hospital's affidavits were insufficient. Camelot has done nothing to remedy those shortcomings. Further, the only argument with potential currency at this point concerns Stemm's lack of convenience. Yet, as noted above, Camelot has not indicted that Stemm has any relevant and admissible testimony as it relates to Cuasay's alleged malpractice.

There is nothing in the record to indicate that a trial in Cook County is any less convenient for Camelot than it was for Freeport

Memorial Hospital. Given the lack of support for Camelot's argument, this factor favors Cook County.

C. Compulsory Process Of Unwilling Witnesses

Camelot states in passing that the cost of compulsory process of witnesses favors Stephenson County. That conclusion may or may not be true, but without any evidence in the record, this court has nothing on which to base its opinion. Without such evidence this factor must be considered neutral.

D. Cost Of Obtaining Attendance Of Willing Witnesses

Camelot states, once again in passing, that the cost of obtaining witnesses favors Stephenson County. Camelot fails, however, to provide any evidence to support its position. Absent a supporting record, this court cannot accept Camelot's argument and must find that this factor is considered neutral.

E. Viewing The Premises

The parties have not argued that this factor is relevant to a *forum non conveniens* analysis in this case. This factor is, therefore, considered neutral.

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

Most of Camelot's arguments as to this factor are repetitions of those presented elsewhere. The only unique argument is that a trial would be more expensive in Cook rather than in Stephenson County. Camelot does not, however, provide any facts to support that argument. Simply because Chicago is a larger city does not necessarily mean that the cost of court reporters, parking, hotels and other expenses involved in a trial are higher in Cook County. Absent any supporting evidence in the record, this factor must be considered neutral.

II. Public Factors

The court in *Guerine* also identified the public-interest factors a circuit court should weight 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

This case is localized in both Stephenson and Cook Counties. On one hand, the alleged malpractice took place in Stephenson County. Residents there would unquestionably have a strong interest in hearing a case dealing with how medicine is practiced in their county by a doctor who practices there. At the same time, the alleged malpractice has had an impact on the plaintiffs who live in Cook County. Residents here would be equally interested in hearing a case dealing with how a Cook County resident practices medicine anywhere in the state, but particularly considering the alleged malpractice injured Cook County residents. Given that both counties have a strong interest in this litigation, this court finds 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. It is somewhat unusual for a Cook County jury to hear a case involving alleged medical malpractice that occurred in another county; however, this also involves Cook County residents. The special administrator lives in Cook County. Further, Shaniece, the only beneficiary of Autaya's estate and one of the two beneficiaries of Toneisa Ball's estate lives in Cook County.

On the defendants' side, Cuasay also lives in Cook County. The foreign locus of the malpractice is balanced by his residence here; consequently, a Cook County jury would understand the importance that Cook County plaintiffs and the key Cook County defendant get a trial in Cook County. At the same time, Camelot's corporate representation in the proceedings is, as noted above, secondary to the witnesses who will actually testify at trial. Further, since Camelot employs Cuasay, a Cook County resident, Camelot cannot be surprised that a malpractice claim against him would be brought in Cook County. Overall, this factor favors Cook County.

C. Administrative Difficulties

The most recent statistics available for verdicts over $50,000, indicate that a case from filing to disposition takes 14.1 months in Stephenson County Circuit Court and 30.1 months in Cook County Circuit Court. "2018 Annual Report of the Illinois Courts," p. 60. While this fact would ordinarily balance in favor of Stephenson County, this case has already been on this court's docket since January 20, 2017 – nearly 40 months. Further, this case is on the focused case management call, meaning that it returns at least once a month. Most important, this case has a September 2020 trial date. While that date might be moved given the closure of the courts for the Co-Vid pandemic, the trial date in Cook County is not far off. At this point in the litigation, it would not be prudent to transfer the case to Stephenson County and require a judge there to get up to speed in a new case with what would be a short trial date. Overall, this factor favors Cook County.

Conclusion

Based on the foregoing, it is ordered that:

1. Camelot's motion to transfer this case to Stephenson County based on *forum non conveniens* is denied; and
2. This case will next be heard for focused case management on a date to be scheduled by notification to the parties.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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