

No. 1-25-0423

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LUCINDA MARIA ALONSO RODRIGUEZ,	)	
individually and as personal representative of the	)	Appeal from the
Estate of TRISTAN M. RODRIGUEZ,	)	Circuit Court of
	)	Cook County, Illinois.
Plaintiff-Appellee,	)	
v.	)	No. 24 L 5821
	)	
ABBOTT LABORATORIES,	)	Honorable
	)	Brendan O'Brien,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE GAMRATH delivered the judgment of the court.
Justices Hyman and C.A. Walker concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court abused its discretion in denying motion to dismiss based on *forum non conveniens* where private and public interest factors strongly favored dismissal.
- ¶ 2 On January 27, 2022, Tristan Rodriguez (Tris) was born in Florida at 27 weeks and 4 days' gestation. In the Newborn Infant Care Unit (NICU) of Mount Sinai Medical Center in Florida, he was fed Similac, a cow's-milk-based infant fortifier designed and distributed by

defendant Abbott Laboratories. On February 25, he was diagnosed with necrotizing enterocolitis (NEC), a deadly intestinal condition. He was transported for emergency treatment to Nicklaus Children's Hospital in Florida and died in Florida on March 4.

¶ 3 His mother Lucinda Rodriguez (Lucinda), a resident of Florida, filed a product liability suit against Abbott in the circuit court of Cook County, Illinois. She alleged Similac consumption caused Tris' NEC and eventual death, raising claims of defective design, failure to warn, and misrepresentation. Hundreds of similar suits alleging that cow's-milk-based formula caused infants to develop NEC have been filed around the country, including a sizable number in Cook County.

¶ 4 Abbott filed a *forum non conveniens* motion to dismiss the case in favor of Florida. Although Abbott's headquarters are in Lake County, Illinois, the business unit that makes and sells specialized infant formula products is in Ohio. Abbott presented the affidavit of Robyn Spilker, senior brand manager for health care provider marketing, who avers that the "vast majority" of Abbott employees with knowledge about research, design, development, sourcing, manufacture, packaging, sale, distribution, marketing, and promotion of Similac formula are in Ohio. Spilker identified 16 Abbott employees with information most likely to be relevant to the litigation, of which 15 are in Ohio, with the remaining one in Illinois.

¶ 5 Abbott also pointed out that all decisions relating to Tris' nutrition were made in Florida and that testimony from Tris' NICU medical team would be "critical." In discovery, Lucinda identified 10 healthcare practitioners who provided treatment to Tris and one who provided treatment to herself relevant to the action. All 11 have business and/or residential addresses in Florida.

¶ 6 Abbott’s *forum non conveniens* motion was denied, and we granted Abbott’s petition for leave to appeal pursuant to Supreme Court Rule 306(a)(2) (eff. Oct. 1, 2020). After considering the totality of the circumstances and all relevant private and public interest factors, we find Abbott has proven the balance of factors strongly favors dismissal and, therefore, we reverse and remand with directions.

¶ 7 I. ANALYSIS

¶ 8 *Forum non conveniens* is an equitable doctrine allowing a court to decline jurisdiction if it appears another forum with proper venue “can better serve the convenience of the parties and the ends of justice.” *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 12. For interstate *forum non conveniens*, our focus is “whether the case is being litigated in the most appropriate state.” *Id.* ¶ 13 (citing *Eads v. Consolidated Rail Corp.*, 365 Ill. App. 3d 19, 25 (2006); 3 Richard A. Michael, Illinois Practice, Civil Procedure Before Trial § 14:1, 220 (2d ed. 2011)). The test is whether the relevant factors strongly favor dismissal in favor of the state proposed by the defendant. *Id.* ¶ 17. If so, the case will be dismissed, conditioned on the plaintiff timely filing the action in the other state and the defendant accepting service of process and waiving any statute of limitations defense. *Id.* ¶ 13.

¶ 9 Although plaintiff’s choice of forum is entitled to deference, that deference is less when neither her residence nor the site of the injury is in her chosen forum. *First American Bank v. Guerine*, 198 Ill. 2d 511, 517-18 (2002). Such is the case here.

¶ 10 When a defendant moves to dismiss on grounds of *forum non conveniens*, it bears the burden of showing plaintiff’s chosen forum is inconvenient to the defendant and another forum is more convenient to all parties. *Fennell*, 2012 IL 113812, ¶ 20. The court must evaluate the total circumstances of the case and balance the public and private interest factors in determining

whether they strongly favor dismissal. *Id.* ¶ 17. We review the circuit court’s ruling for an abuse of discretion, which occurs where no reasonable person would take the court’s view. *Id.* ¶ 21.

¶ 11 A. Private Interest Factors

¶ 12 Relevant private interest factors include: (a) the convenience of the parties; (b) the relative ease of access to sources of testimonial, documentary, and real evidence; (c) the cost of obtaining attendance of willing witnesses and the availability of compulsory process to secure attendance of unwilling witnesses; and (d) the possibility of viewing the premises, if appropriate. *Id.* ¶ 15.

¶ 13 Abbott’s primary contention is that access to testimony of third-party medical witnesses will be more convenient in Florida, where all decisions about Tris’ medical care were made and where all his treaters work. Lucinda urges us to give short shrift to this fact because this is a product liability case and “the *forum non conveniens* analysis should remain centered on product liability and not malpractice.” Had she alleged only a defective design, that point might carry weight. But by pleading multiple counts premised on failures to warn and deception of the medical professionals who treated Tris, she injects claims for which the location of those witnesses is plainly material.

¶ 14 We rejected a nearly identical argument by the plaintiffs in *Deppa v. Abbott Laboratories*, 2025 IL App (1st) 241795, a consolidated products liability suit in which plaintiffs alleged that infant formula caused their premature babies to develop NEC. As relevant here, Abbott filed a *forum non conveniens* motion seeking dismissal of 23 cases with infants who were born, injured, and treated in states other than Illinois. We found the location of the infants’ hospitals and doctors highly relevant:

“[P]laintiffs’ complaints focus not just on design defects and manufacturing of Abbott’s infant formula in Ohio. They zero in on Abbott’s sales and marketing of its formula to out-of-state hospitals and healthcare providers despite known dangers. The complaints allege that Abbott gave out-of-state hospitals, healthcare providers, and parents inadequate warnings and training about its formula. They allege that if the hospitals and healthcare providers had known of the risks associated with the formula, they would not have fed it to the injured infants. Plaintiffs also allege Abbott made misrepresentations to out-of-state hospitals and healthcare providers and used longstanding relationships to persuade them to provide the formula to these infants, causing serious injury or death.” *Id.*, ¶ 37.

¶ 15 Similarly, the present complaint alleges that Abbott failed to warn Tris’ health care providers that Similac could cause NEC, which proximately caused Tris’ death. The complaint also alleges that Abbott misrepresented to physicians that cow’s-milk-based products were safe and beneficial for premature infants, which induced Tris’ health care providers to feed him Similac. Testimony of the health care providers will be critical as to what they knew and/or believed about Similac, what representations Abbott made to them, and how it impacted their decisions about Tris’ nutrition.

¶ 16 *Watson v. Mead Johnson & Co.*, 2026 IL App (5th) 240936, another product liability case involving a premature infant who developed NEC, provides a useful example of the kind of healthcare provider testimony one might expect in this sort of action. At trial, neonatologists involved in the child’s care presented extensive testimony as to (1) what they told the child’s mother about the risks of prematurity and the risks and benefits of various feeding options; (2) their understanding about formula use and risk of NEC; and (3) the source of that understanding

and the basis of their treatment decisions (*e.g.*, information from medical school and published medical literature vis-à-vis defendant's marketing materials, product labeling, website, and statements by sales representatives). *Id.* ¶¶ 7, 23-24, 26-32, 36, 79-84, 86-89. Similar testimony will be relevant to Lucinda's claims of misrepresentation and failure to warn, making access to Tris' treaters more important than in a typical product liability case.

¶ 17 Under these facts, the relative ease of access to evidence, specifically, the testimony of Tris' medical providers, strongly favors dismissal in favor of Florida. *Toles v. Mead Johnson & Co., LLC*, 2025 IL App (5th) 231205, is illustrative by contrast. *Toles* involved 20 coordinated actions with 90 plaintiff infants who developed NEC. The relevant healthcare providers were located in many states, including California, Washington, Nevada, Florida, Missouri, New York, North Carolina, Connecticut, and Alabama. *Id.* ¶ 83. The Fifth District held their locations did not favor transfer or dismissal, since "[w]hen the witnesses are so scattered, there is no single forum that enjoys a predominant connection to the litigation." *Id.* This is readily distinguishable from our case, in which *every* healthcare practitioner who provided relevant care is in Florida. Furthermore, Lucinda and Tris never left Florida and have no connection to Illinois.

¶ 18 The cost of attendance and availability of compulsory process to secure attendance of unwilling witnesses also strongly favors dismissal, particularly since there is no compulsory process to secure the attendance of unwilling third-party witnesses outside Illinois. *Deppa*, 2025 IL App (1st) 241795, ¶ 46 (citing *Skidmore v. Gateway Western Ry. Co.*, 366 Ill. App. 3d 238, 241-42 (2006)). As we observed in *Deppa*, although evidence depositions could obviate the need for Tris' doctors to testify at trial, they are inadequate substitutes for in-person testimony. *Id.* ¶ 47. Likewise, "reasonable debate exists" over whether testimony by Zoom is equivalent to in-person testimony. *Id.* As for Abbott's own witnesses, they are a non-factor, since Abbott has

committed to bring its current and retired employees, as well as any documentary evidence, to any forum where the litigation is tried. Nonetheless, 15 out of 16 of these people are in Ohio, not Illinois.

¶ 19 As to the remaining factors, the convenience of the parties does not favor dismissal. Although Lucinda is a resident of Florida, not Illinois, “[t]he defendant cannot assert that the plaintiff’s chosen forum is inconvenient to the plaintiff.” *Guerine*, 198 Ill. 2d at 518. As for Abbott, although the majority of its relevant employees are in Ohio, it is headquartered in Illinois. See *Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261, 276 (2011) (a party’s main place of business is not dispositive but is an acceptable factor to be weighed in determining convenience). The possibility of viewing the premises is neutral, since there is no indication that the jury will be asked to view either Abbott’s manufacturing facilities or the hospitals where the injury occurred. Overall, the parties’ access to testimonial evidence, the cost of attendance, and the lack of compulsory process over third-party witnesses from Florida strongly favor dismissal.

¶ 20 B. Public Interest Factors

¶ 21 Relevant public interest factors include (a) the interest in deciding controversies locally; (b) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (c) the administrative difficulties presented by adding litigation to congested court dockets. *Fennell*, 2012 IL 113812, ¶ 16.

¶ 22 Tris’ birth, injury, and death in Florida can scarcely be considered a controversy “local” to Illinois. Although Illinois residents have a general interest in ensuring the safety of Abbott’s products because it is headquartered and sells formula in Illinois, “merely conducting business in a county or having a corporate headquarters in a state does not give a forum a natural nexus to all litigation.” *Deppa*, 2025 IL App (1st) 241795, ¶ 60 (citing *Fennell*, 2012 IL 113812, ¶ 47).

Rather, we must consider the connection between the litigation and the forum. *Deppa*, 2025 IL App (1st) 241795, ¶ 61. Here, the connection to Illinois is tenuous at best because the following events occurred exclusively in Florida: the decedent’s injury, all relevant medical events, and critical facts regarding the failure to warn and misrepresentation. Consequently, the circuit court acted unreasonably in finding that this factor does not favor dismissal.

¶ 23 By the same token, “[i]t would be patently unfair to burden Cook County residents with jury duty and the expense associated with [this] complex trial” when Abbott is headquartered in Lake County and Lucinda’s home state bears the predominant connection to the litigation. *Id.* ¶ 66 (collecting cases). Holding otherwise would invite every NEC case to be litigated here, regardless of where the families live, where the infants were born and treated, where the formula was prescribed and marketed, and where the injuries occurred. The circuit court’s conclusion that this factor only “slightly” favors dismissal was unreasonable.

¶ 24 Lastly, as to the administrative difficulties presented by adding litigation to congested dockets, this factor is neutral because there is no evidence as to the congestion of Cook County’s docket versus any Florida county, and the record does not reflect whether the case would be resolved more quickly here or in Florida. Under the circumstances, this “relatively insignificant factor” (*Guerine*, 198 Ill. 2d at 517) does not outweigh the unfairness of burdening residents of Cook County with the expense of adjudicating this complex action that lacks a significant factual connection to this state.

¶ 25 II. CONCLUSION

¶ 26 As stated by Lucinda, every *forum non conveniens* case is unique and must be decided on its own facts. *Deppa*, 2025 IL App (1st) 241795, ¶ 13. After considering the facts of this case in light of the principles we articulated in *Deppa* and taking all relevant private and public interest

factors into account, we find the balance of factors strongly favors dismissal (*Fennell*, 2012 IL 113812, ¶ 17) and the trial court abused its discretion in denying Abbott's motion to dismiss.

¶ 27 We reverse the denial of Abbott's *forum non conveniens* motion and remand for dismissal, conditioned on Lucinda timely filing her action in Florida and Abbott accepting service of process and waiving any available statute of limitations defense. See Ill. S. Ct. R. 187(c)(2) (eff. Jan. 1, 2018). If Abbott refuses to accept service or waive the statute of limitations defense, Lucinda shall be given leave to reinstate the case in the circuit court of Cook County.

¶ 28 Reversed and remanded with directions.