Illinois Official Reports

Appellate Court

Jupiter v. Mead Johnson & Co., 2025 IL App (5th) 230248

Appellate Court Caption	DESTIN JUPITER; DANA JUPITER; KRISTAN JAMES, on Her Own Behalf and on Behalf of Her Minor Child Micah Frazier; KIMBRIANE PETTY, on Her Own Behalf and as Representative of the Estate of A'Marhi Wilson; KWAN SCOTT, on Her Own Behalf and as Representative of the Estate of Brendon Scott; SHEENA SHARPE, on Her Own Behalf and on Behalf of Her Minor Child Genuann Drake; CRISTINA VILLA, on Her Own Behalf and as Representative of the Estate of Jacklynn Vanezza Villa; EBONIE McKOY, on Her Own Behalf and on Behalf of her Minor Child Timothy Pender; and TROPHOSIA TANNER, on Her Own Behalf and as Representative of the Estate of Camyren Tanner, Plaintiffs-Appellees, v. MEAD JOHNSON & COMPANY, LLC; MEAD JOHNSON NUTRITION COMPANY; and ABBOTT LABORATORIES, Defendants-Appellants.
District & No.	Fifth District No. 5-23-0248
Filed	June 3, 2025
Modified upon denial of rehearing	July 2, 2025
Decision Under Review	Appeal from the Circuit Court of Madison County, No. 21-L-560; the Hon. Dennis R. Ruth, Judge, presiding.

Judgment	Affirmed in part and reversed in part; cause remanded.
Counsel on Appeal	Joel D. Bertocchi, of Akerman LLP, and Anthony J. Anscombe and Darlene K. Alt, of Steptoe & Johnson LLP, both of Chicago, and Donald M. Flack, of Armstrong Teasdale, of St. Louis, Missouri, for appellants Mead Johnson & Company, LLC, and Mead Johnson Nutrition Company. Linda T. Coberly and Stephen V. D'Amore, of Winston & Strawn LLP, of Chicago, Thomas L. Kilbride and Adam Vaught, of Kilbride & Vaught, LLC, of LaGrange, and W. Jason Rankin and Emilee M. Bramstedt, of HeplerBroom LLC, of Edwardsville, for other appellant. Ashley Keller and Benjamin Whiting, of Keller Postman LLC, of Chicago, Tor A. Hoerman, of TorHoerman Law LLC, of Edwardsville, and David Cates, of Cates Law Firm, LLC, of Swansea, for appellees. Gretchen Harris Sperry, of Gordon Rees Scully Mansukhani LLP, of Chicago, for *amicus curiae* Illinois Chamber of Commerce.
Panel	JUSTICE MOORE delivered the judgment of the court, with opinion. Presiding Justice McHaney and Justice Welch concurred in the judgment and opinion.

OPINION

¶ 1 This action originated on May 7, 2021, when the plaintiffs, Destin Jupiter and Dana Jupiter (collectively, Jupiter), filed a lawsuit (Jupiter v. Abbott Laboratories, No. 21-L-560 (Cir. Ct. Madison County) (Jupiter case No. 21-L-560) in the circuit court of Madison County, against the defendants, Mead Johnson & Company, LLC, Mead Johnson Nutrition Company (collectively, Mead Johnson), [1] and Abbott Laboratories (Abbott). The action alleged, *inter alia*, that prematurely born infants were given defendants' cow's milk-based infant feeding products, which caused the infants to develop necrotizing enterocolitis (NEC) which seriously injured the infants. The matter was removed to federal district court on May 12, 2021, and was remanded back to the Madison County circuit court later that same month.

[1]Mead Johnson & Company, LLC, and Mead Johnson Nutrition Company are represented by the same counsel and have filed pleadings collectively since the beginning of this litigation and on appeal, accordingly, we will also refer to these two defendants collectively as "Mead Johnson."

¶ 2 Lawsuits regarding similar allegations against the defendants have been filed in both state and federal courts across Illinois and the country. The defendants alleged that thousands of claims have been filed in Madison County by individual plaintiffs.

¶ 3 On August 16, 2021, the circuit court granted a joint motion to reassign and consolidate 10 related cases for certain pretrial purposes and discovery-related matters only and included that future filed cases would also be consolidated. Included in this order was the Jupiter case No. 21-L-560 and the case of Ogle v. Mead Johnson & Co., No. 21-L-588 (Cir. Ct. Madison County) (Ogle case No. 21-L-588).

¶ 4 A first amended complaint, the operative complaint, was filed in the Jupiter case No. 21-L-560 on August 17, 2021, which added the following plaintiffs: Kristan James, on her own behalf and on behalf of her minor child, Micah Frazier (James); Andrew Kilgore,[2] on his own behalf and on behalf of his minor child, Kyler Kilgore (Kilgore); Kimbriane Petty, on her own behalf and as representative of the Estate of A'Marhi Wilson, deceased (Petty); Kwan Scott, on her own behalf and as representative of the Estate of Brendon Scott, deceased (Scott); Sheena Sharpe, on her own behalf and on behalf of her minor child, Genuann Drake (Sharpe); Cristina Villa, on her own behalf and as representative of the Estate of Jacklynn Vanezza Villa, deceased (Villa); Lauren Wakeling,[3] on her own behalf and as representative of the Estate of Maren Wakeling, deceased (Wakeling); Ebonie McKoy, on her own behalf and on behalf of her minor child, Timothy Pender (McKoy); and Trophosia Tanner, on her own behalf and as representative of the Estate of Camyren Tanner, deceased (Tanner). The plaintiffs, who consist of individuals who were born prematurely (injured infants) and their parents (plaintiff parents), alleged that the defendants' cow's milk-based infant feeding products were fed to the injured infants, which caused them to develop NEC. The plaintiffs alleged that venue was proper in Madison County because the defendants conduct business there.

¶ 5 On October 1, 2021, Mead Johnson filed its answer and affirmative defenses to plaintiffs' first amended complaint and its motion to dismiss based upon *forum non conveniens* or, in the alternative, to transfer venue. The same day, Abbott filed its answer and affirmative defenses to plaintiffs' first amended complaint and its motion to transfer to the circuit court of Lake County.

¶ 6 The matter continued with the parties exchanging written discovery and conducting depositions of witnesses related to venue and *forum non conveniens*. Also, while the motions regarding venue and *forum non conveniens* remained pending in the Madison County circuit court, several motions were made to the Illinois Supreme Court requesting that cases in multiple Illinois circuit courts, including the present matter, be consolidated and transferred pursuant to Illinois Supreme Court Rule 384 (eff. July 1, 2017). Each motion was denied by the Illinois Supreme Court.[4]

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[2]Kilgore was voluntarily dismissed from the complaint without prejudice on February 1, 2022.

[3]Wakeling was voluntarily dismissed from the complaint without prejudice on February 1, 2022.

[4]On February 8, 2022, the Illinois Supreme Court denied, without prejudice, the Jupiter plaintiffs' motion to consolidate and transfer three cases pending in Lake County and St. Clair County with the Jupiter case No. 21-L-560 pending in Madison County. *Jupiter v. Mead Johnson & Co.*, No. 127992 (Ill. Feb. 8, 2022). On April 26, 2022, the Illinois Supreme Court denied, without prejudice, Abbott's motion to consolidate and transfer 58 cases pending in Lake County, St. Clair County, Madison County with 10 cases pending in Cook County. *Jupiter v. Mead Johnson & Co.*, No. 128308 (Ill. Apr. 26,

¶ 7 On March 18, 2022, Abbott filed a second motion to transfer venue or, in the alternative, to dismiss under the doctrine of *forum non conveniens*. The motion sought the transfer of the claims filed by Jupiter, Scott, Tanner, Villa, Kilgore, and McKoy to the circuit court of Lake County. The same day, Abbott filed an "Omnibus Memorandum of Law in support of its Motions to Transfer Venue to the Circuit Courts of Lake and Cook[5] County." On April 7, 2022, Abbott filed an "Omnibus Memorandum of Law in support of its Motions to Dismiss or Transfer for *Forum Non Conveniens*." Combined, thousands of pages of exhibits were produced by the parties in support of their respective positions.

¶ 8 On September 2, 2022, plaintiffs filed a consolidated opposition to Mead Johnson's and Abbott's motions to transfer venue and an omnibus response to Abbott's motions to dismiss pursuant to *forum non conveniens*. Plaintiffs attached thousands of pages of exhibits to their responses. On September 23, 2022, Abbott filed a reply in support of its motion to transfer venue and a reply in support of its motion pursuant to *forum non conveniens*.

¶ 9 The circuit court conducted a hearing on the defendants' motions regarding venue and *forum non conveniens* on October 19, 2022. On March 31, 2023, the circuit court entered a written order denying the defendants' motions to transfer venue and entered a separate written order denying the defendants' motions to dismiss pursuant to *forum non conveniens*.

¶ 10 On April 17, 2023, Abbott filed with this court a petition for leave to appeal the circuit court's March 31, 2023, orders pursuant to Illinois Supreme Court Rule 306(a)(2), (4) (eff. Oct. 1, 2020). On April 25, 2023, Mead Johnson filed its petition for leave to appeal the circuit court's orders of March 31, 2023. On June 27, 2023, this court granted permission for an interlocutory appeal to proceed in Jupiter case No. 21-L-560. Additional facts will be presented where necessary in the analysis.

¶ 11 I. ANALYSIS

¶ 12 On appeal, Abbott argues that the circuit court erred as a matter of law in denying its motion to transfer venue and abused its discretion in denying the motion to dismiss pursuant to *forum non conveniens*. Mead Johnson argues that the circuit court erred in finding that it had both general and specific personal jurisdiction over Mead Johnson, that the circuit court erred in denying its motion to transfer venue, and that the circuit court erred in denying the motion to dismiss pursuant to *forum non conveniens*.

¶ 13 A. Jurisdiction

¶ 14 Appellate courts have a duty to consider, *sua sponte*, whether we have jurisdiction. *In re Marriage of Mackin*, 391 Ill. App. 3d 518, 519 (2009). This interlocutory appeal is before this court pursuant to the granting of petitions for leave to appeal pursuant to Illinois Supreme Court Rule 306 (eff. Oct. 1, 2020) that were filed and granted regarding Jupiter case No. 21-

2022). On January 20, 2023, the Illinois Supreme Court denied without prejudice, Abbott's motion to consolidate and transfer 227 cases pending in St. Clair County, Madison County, and Cook County with Simmons v. Abbott, No. 21-L-144 (Cir. Ct. Lake County), that was pending in Lake County. *Jupiter v. Mead Johnson & Co.*, No. 129176 (Ill. Jan. 20, 2023).

[5]There was no motion to transfer venue to Cook County filed in Madison County case No. 21-L-560. The omnibus memorandum of law was prepared regarding all infants in the discovery pool and was not limited to only those plaintiffs in Madison County case No. 21-L-560.

L-560. It is clear that we have jurisdiction to consider the circuit court's order of March 31, 2023, that denied the defendants' motions to transfer venue and the March 31, 2023, order that denied the defendants' motions to dismiss pursuant to *forum non conveniens* in the Jupiter case. However, we must determine if we have jurisdiction over the circuit court's order entered on March 31, 2023, on Mead Johnson's motion to dismiss for lack of personal jurisdiction filed in the Ogle case No. 21-L-588.

¶ 15 A review of the supporting record[6] reveals that on March 18, 2022, in Ogle case No. 21-L-588, Mead Johnson filed a combined motion to dismiss for lack of personal jurisdiction or, in the alternative, motion to transfer venue. A hearing on said motion was conducted by the circuit court on October 18, 2022. At the beginning of the hearing, the circuit court announced, "[w]e're here on 21-L-560, Destin and Dana Jupiter vs. Abbott Laboratories and Mead Johnson." After the numerous attorneys identified themselves and their clients for the record, attorney Anthony Anscombe proceeded on behalf of the Mead Johnson defendants. Anscombe stated, "Good morning, your Honor. Anthony Anscombe again. I would actually note that the motion today has actually been filed in the Ogle vs. Mead Johnson case. That is Case No. 2021-L-588. This matter is because we have not asserted a personal jurisdiction motion in the Jupiter case." The circuit court's order of March 31, 2023, which denied the motion to dismiss for lack of personal jurisdiction was filed only in the Ogle case No. 21-L-588. However, a footnote in the March 31, 2023, order stated that it applied to the following cases:

> "The cases before the Court for a ruling on personal jurisdiction are discovery pool Plaintiffs filed after Mead answered in the Jupiter case: *Ogle v. Mead Johnson & Co., LLC* (No. 2021L000588), *Dillard v. Mead Johnson & Co., LLC* (No. 2021L000621), *Miller v. Mead Johnson & Co., LLC* (No. 2021L000662), *Cherry v. Mead Johnson & Co., LLC* (No. 2021L000986), *Mahoney v. Mead Johnson & Co., LLC* (No. 2021L001158), *Hirschenhofer v. Mead Johnson & Co., LLC* (No. 2021L001318), and *Walker v. Mead Johnson & Co., LLC* (No. 2021L001067)."

¶ 16 We note that a "Joint Motion to Reassign and Consolidate Related Cases for Certain Pretrial Purposes and Discovery-Related Matters Only" was filed in the Jupiter case No. 21-L-560 on August 16, 2021. The motion for consolidation was made as to the following cases: (1) Jupiter v. Mead Johnson & Co., No. 2021-L-0560 (Cir. Ct. Madison County), (2) Smith v. Mead Johnson & Co., No. 2021-L-0571 (Cir. Ct. Madison County), (3) Ogle v. Mead Johnson & Co., No. 2021-L-0588 (Cir. Ct. Madison County), (4) Dillard v. Mead Johnson & Co., No. 2021-L-0621 (Cir. Ct. Madison County), (5) Miller v. Mead Johnson & Co., No. 2021-L-0662 (Cir. Ct. Madison County), (6) Baker v. Mead Johnson & Co., No. 2021-L-0738 (Cir. Ct. Madison County), (7) Weaver v. Mead Johnson & Co., No. 2021-L-0767 (Cir. Ct. Madison County), (8) Flores v. Mead Johnson & Co., No. 2021-L-0804 (Cir. Ct. Madison County), (9) Whatley v. Mead Johnson & Co., No. 2021-L-0823 (Cir. Ct. Madison County), and (10) Bundy v. Mead Johnson & Co., No. 2021-L-0893 (Cir. Ct. Madison County). The motion

[6]The supporting record submitted with Mead Johnson's petition for leave to appeal was prepared and authenticated by counsel for Mead Johnson. Pursuant to Illinois Supreme Court Rule 306(b)(1) (eff. Oct. 1, 2020), the supporting record "shall include the order appealed from or the proposed order, and any supporting documents or matters of record necessary to the petition." This is different from the record on appeal submitted in appeals of final orders pursuant to Illinois Supreme Court Rule 324 (eff. July 1, 2017) as that record on appeal is prepared by the clerk of the trial court and contains, among other things, the entire common law record.

also requested that "any future cases alleging NEC injury arising from exposure to Defendants' infant formula products that are filed by Holland Law Firm or Keller Lenkner in the Circuit Court of Madison County be consolidated." The joint motion was filed by attorneys for plaintiffs represented by Holland Law Firm, LLC, and Keller Lenkner, LLC, as well as counsel for the defendants. The same day, the circuit court entered the consolidation order,[7] which, *inter alia*, stated "[t]he specific form of consolidation to which the parties have agreed, and which they seek in this motion, is coordination for common discovery and pretrial purposes only."

¶ 17 Consolidation orders may affect cases in different ways. Cases may be consolidated "for the purpose of discovery only, in which case the cases retain a separate identity and case numbers for all non-discovery purposes." *540 North Lake Shore Drive Condominium Ass'n v. MCZ Development Corp.*, 2025 IL App (1st) 230733, ¶ 33. Or a court "might consolidate cases solely for the purpose of a 'hearing on certain common issues,' in which case, again, these cases retain separate case numbers and receive separate judgments." *Id.* (quoting *Kassnel v. Village of Rosemont*, 135 Ill. App. 3d 361, 364 (1985)). The other type of consolidation is to merge actions into one suit and each case loses its individual identity. *Id.* ¶ 34.

¶ 18 While the Jupiter case and the Ogle case were consolidated, along with many other cases, each case retained its separate case number and remained separate cases for matters other than discovery matters and common pretrial issues. The consolidation was done for convenience and judicial economy and it did not merge the causes into a single suit nor make those who were parties in one suit parties to another. *Ellis v. AAR Parts Trading, Inc.*, 357 Ill. App. 3d 723, 731 (2005).

¶ 19 In order to vest this court with jurisdiction over the circuit court's order denying the motion to dismiss based on personal jurisdiction as raised by Mead Johnson, Illinois Supreme Court Rule 306(c) (eff. Oct. 1, 2020) requires that an interlocutory petition for leave to appeal be filed in this court. *Ellis*, 357 Ill. App. 3d at 730. The petition for leave to appeal filed by Mead Johnson identified only the Jupiter case No. 21-L-560. Further, this court's order granting permission for the interlocutory appeal to proceed identified only the Jupiter case No. 21-L-560. A petition for leave to appeal the March 31, 2023, order on Mead Johnson's motion to dismiss for lack of personal jurisdiction was not filed naming the Ogle case No. 2021-L-588. Therefore, this court has no jurisdiction over the personal jurisdiction ruling that was entered only in the Ogle case No. 21-L-588 and not in the Jupiter case No. 21-L-560. See *id.* at 731.

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[7]Abbott filed a petition for rehearing on June 24, 2025, which alleged, *inter alia*, that we erred by failing to consider whether Madison County was a proper venue for Abbott independent of Mead Johnson because the case of Jolly v. Abbott Laboratories, No. 2021-L-1169 (Cir. Ct. Madison County), named only Abbott as a defendant and not Mead Johnson. Exhibit 2 to Abbott's petition for rehearing is a copy of the Jolly complaint that was filed on September 28, 2021. This complaint was not part of our record on appeal in this matter. Abbott contends that the Jolly case was consolidated with the Jupiter case; however, a review of the 15 consolidation orders that were provided to this court as a joint supplement to the supporting record in response to our order to provide all consolidation orders does not demonstrate that Jolly was consolidated with Jupiter. The Jolly case was included in an exhibit to a case management order entered on November 15, 2021, which established a discovery pool; however, it was not a consolidation order.

¶ 20 B. Venue

¶ 21 On appeal, the parties challenge the circuit court's denial of their motions to transfer venue. Specifically, they challenge the circuit court's finding that Abbott maintained "other offices" in Madison County. The circuit court's order on venue stated, *inter alia*, that:

> "The Court finds that Abbott maintains 'other offices' in Madison County within the meaning of the venue statute via at least two employees' home offices. *** Herein, the Madison County home offices of two of Abbott's sales representatives satisfy the criteria of the term 'other offices' within the meaning of the venue statute. Critical to the Court's factual determination is the fact that the two Madison County home based employees in question used their home addresses in their Abbott email signature blocks. Abbott admitted this fact in its Reply. ('. . .Abbott's representatives put their home addresses in their individual email signature blocks[.]') This is clear evidence that Abbott intended to hold these locations out as offices to their customers/email recipients. The only logical reason to list any address on a business email signature block is to signal to the business community receiving the emails that Abbott maintains an office at that physical address. This Court is hard pressed to believe any employee would, on their own, want their home address published to their work/business world. In addition, Abbott also furnished its Madison County employees with laptop computers, cell phones that Abbott either paid or reimbursed, and reimbursed for office supplies. These facts all support the conclusion that Abbott maintains 'other offices' in Madison County for venue purposes."

¶ 22 A two-step analysis is required when reviewing an order on a motion to transfer based on improper venue. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005). The reviewing court will not disturb the circuit court's findings of fact unless those findings are against the manifest weight of the evidence. *Id.* The circuit court's legal conclusions are subject to *de novo* review. *Id.* When utilizing *de novo review*, we perform the same analysis that a circuit court would perform. *Khan v. Fur Keeps Animal Rescue, Inc.*, 2021 IL App (1st) 182694, ¶ 25. Further, "we may affirm on any basis appearing in the record, whether or not the [circuit] court relied on that basis and whether or not the [circuit] court's reasoning was correct." *Id.*

¶ 23 In Illinois, venue is purely statutory. *Tabirta v. Cummings*, 2020 IL 124798, ¶ 19. The venue statute provides that every action must be commenced either:

> "(1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose." 735 ILCS 5/2-101 (West 2020).

Section 2-102(a) sets forth the residency considerations for corporate defendants. It states that a private corporation "is a resident of any county in which it has its registered office or other office or is doing business." *Id.* § 2-102(a).

¶ 24 "A defendant who objects to a plaintiff's chosen venue bears the burden of proving that the venue is incorrect." *Tabirta*, 2020 IL 124798, ¶ 17 (citing *Corral*, 217 Ill. 2d at 155). Further, to prove the venue selection was improper, the defendant must set forth, by affidavit or other evidence, specific facts, not conclusions, and show a clear right to the relief asked for. *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 285 (1987). "Any doubts arising from the inadequacy of the record will be resolved against the defendant." *Id.*

¶ 25 The plaintiffs first amended complaint alleged that venue was proper in Madison County because the defendants "conduct business there." In the context of "doing business" sufficient to establish venue for a corporation pursuant to section 2-102(a), the Illinois Supreme Court has explained that quantitatively more extensive contacts with a county are required compared to the " 'minimal contacts' " required to subject a defendant to the jurisdiction of the courts of Illinois. *Stambaugh v. International Harvester Co.*, 102 Ill. 2d 250, 257-58 (1984). A relevant consideration in determining, for purposes of venue, whether a corporation may be deemed to be doing business in the county is the quantity or volume of business done by the corporation in the county as compared to the amount of business generated by the corporation as a whole or throughout the State of Illinois. *Bucklew v. G.D. Searle & Co.*, 138 Ill. 2d 282, 291-92 (1990) (citing *Weaver*, 116 Ill. 2d at 286). The plaintiffs' brief argues that both Mead Johnson and Abbott failed to prove the quantity or volume of their sales in Madison County.

¶ 26 In this case, while an extensive record consisting of thousands of pages was produced, ultimately, the record regarding the quantity or volume of Mead Johnson's business in Madison County is insufficient for Mead Johnson to prove it was not doing business in Madison County. Mead Johnson submitted the verified declaration of Mark Andrew Lannert, an employee of Mead Johnson's parent company, in support of its motion regarding venue and *forum non conveniens*. Lannert's declaration set forth, *inter alia*, the following:

> "3. As part of my job, I have knowledge about sales of Mead Johnson products in different geographical locations. Mead Johnson ships its products almost exclusively to customer distribution centers, and therefore *does not have a record of the dollar amount of sales of its products in Madison County, IL*. However, we do subscribe to a third party which provides us with POS sales data at a state and national level.
>
> 4. In this declaration, *I have estimated*, for 2020, what percentage of Mead Johnson's annual sales, nationally and in Illinois, occur in Madison County." (Emphases added.)

¶ 27 The verified declaration submitted by Mead Johnson contains a factual admission that Mead Johnson "does not have a record of the dollar amount of sales of its products in Madison County, IL." "A factual admission in a verified pleading constitutes a judicial admission, which has the effect of withdrawing a fact from issue and makes it unnecessary for the opposing party to introduce evidence in support thereof." *L.D.S., LLC v. Southern Cross Food, Ltd.*, 2011 IL App (1st) 102379, ¶ 35.

¶ 28 The Illinois Supreme Court has examined cases that contained sales data and used that data to determine that a corporation was not doing business in a county for purposes of venue. In *Stambaugh*, 102 Ill. 2d at 259, the defendant sold $2.6 million worth of its products in the county in question, constituting approximately five-hundreths of 1% of its annual sales volume. In *Gardner v. International Harvester Co.*, 113 Ill. 2d 535, 540 (1986), the same defendant sold even less, $2.25 million, in the county in question. In *Bucklew*, 138 Ill. 2d at 292, the defendant sold $289,760 worth of products in the relevant county, representing 2.5% of the defendant's sales in Illinois and 0.12% of its national sales.

¶ 29 The type of sales data examined by the Illinois Supreme Court in the aforementioned cases is absent from the present case. The declaration submitted by Mead Johnson admits that the corporation does not have this information. The declaration goes on to provide an estimate of sales; however, an estimate does not equate to specific facts that show that venue is not proper in Madison County. Any doubts that arise from an insufficient record or inconsistencies in the

record will be resolved against the defendants and their request to transfer venue. *Weaver*, 116 Ill. 2d at 285; *Reynolds v. GMAC Financial Services*, 344 Ill. App. 3d 843, 850 (2003). Accordingly, Mead Johnson did not carry its burden to establish that venue was improper in Madison County and the motion was properly denied by the circuit court.

¶ 30 The defendants also argue that the circuit court erred because it did not analyze each plaintiff's case separately for purposes of venue and rely on *Peterson v. Monsanto Co.*, 157 Ill. App. 3d 508, 511 (1987), in support of their argument. Additionally, Mead Johnson argues that the circuit court's finding that one defendant was properly venued in Madison County was not enough to bind the other defendant to venue in Madison County. We disagree with both contentions.

¶ 31 A review of the *Peterson* case reveals that it is distinguishable from the present matter. In *Peterson*, the court noted,

> "Thirty-two plaintiffs have joined their actions in separate counts in a single complaint. While the rules of permissive joinder allow such a procedure [citation], for purposes of venue, these counts must be considered separate actions and *each plaintiff must establish 'the transaction or some part thereof' occurred in Madison County as to him individually when venue is premised on section 2-101(2) of the Act*.' " (Emphasis added.) *Id.*

Further, the *Peterson* court examined the evidence presented regarding which plaintiffs were exposed to dioxin in Madison County and ultimately reversed the order of the circuit court of Madison County finding venue was proper as to all plaintiffs except five that had shown through evidence that they were exposed to dioxin in Madison County. The present case is not premised upon section 2-101(2) of the Act; rather, plaintiffs argue that venue is established pursuant to section 2-101(1) of the Act. See 735 ILCS 5/2-101(1), (2) (West 2020). The defendants' reliance on this case appears to be disingenuous.

¶ 32 Additionally, the language of the venue statute is clear. If venue is established in a county based upon the residence of a defendant, who was not joined in bad faith, venue is then proper for any other defendant in the same county. *Id.* § 2-101. As venue was established for Mead Johnson in this case based on residence and not premised upon transactional venue, venue in Madison County is also proper for Abbott.

¶ 33 As we have found that the motion to transfer venue should have been denied based upon Mead Johnson's failure to meet its burden in proving venue is improper and we may affirm based on any basis in the record, there is no need for this court to examine the arguments regarding venue premised upon other offices located in Madison County. Further, as set forth above, if venue is established for any defendant based upon residence, all other properly named defendants are also subject to venue in that county. *Id.* The circuit court's order of March 31, 2023, denying the motion to transfer venue is affirmed.

¶ 34 C. *Forum Non Conveniens*

¶ 35 As an alternative to their motions to transfer venue, the defendants also filed motions to transfer the case based upon *forum non conveniens*, which were denied by the circuit court. "*Forum non conveniens* is an equitable doctrine founded in considerations of fundamental fairness and the sensible and effective administration of justice." *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 441 (2006). The doctrine of *forum non conveniens* assumes

the plaintiff's chosen forum is a proper venue for the action and that there are additional proper venues for the action. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 182 (2003).

¶ 36 A circuit court's "decision on a *forum non conveniens* motion will be reversed only if it can be shown that the [circuit] court abused its discretion in balancing the various factors at issue." *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 169 (2005). A circuit court "abuses its discretion only if it acts arbitrarily without the employment of conscientious judgment, exceeds the bounds of reason and disregards recognized principles of law, or if no reasonable person would take the position adopted by the [circuit] court." *Campbell v. Autenrieb*, 2018 IL App (5th) 170148, ¶ 26. Every motion to transfer based on *forum non conveniens* must be considered as unique on its facts and must be decided pursuant to an "individualized, case-by-case consideration of convenience and fairness." (Internal quotation marks omitted.) *Wylie v. Schaefer*, 2021 IL App (5th) 200425, ¶ 14 (citing *Langenhorst*, 219 Ill. 2d at 443, and *Gridley*, 217 Ill. 2d at 168).

¶ 37 In deciding a motion on the basis of *forum non conveniens*, "the circuit court must balance private interest factors affecting the litigants and public interest factors affecting the administration of the courts." (Internal quotation marks omitted.) *Id.* The burden of showing that the balance of the factors strongly favors a dismissal and transfer of the case rests with the defendant. *Id.*

> "The private interest factors include the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure the attendance of unwilling witnesses; the cost of obtaining the attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical considerations that make a trial easy, expeditious, and inexpensive. [Citation.] The public interest factors include the interest in having local controversies decided locally, the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin, and the unfairness of imposing jury duty upon residents of a county with no connection to the litigation." (Internal quotation marks omitted.) *Id.*

When deciding a *forum non conveniens* motion, the circuit court is "to include *all* of the relevant private and public interest factors in their analyses." (Emphasis in original.) *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 24.

¶ 38 The circuit court's order of March 31, 2023, denying the motions to transfer based on *forum non conveniens*, set forth, *inter alia*, the following:

> "Abbott identifies that present employees, related to the products in question, are generally located, at or near, its facilities in Columbus, Ohio and Lake County, IL. Mead Johnson identifies that its present employees, related to the products in question, are generally located at or near its facilities in Evansville, Indiana with other employees located in a handful of other locations spread throughout the country. (Cincinnati, Austin, Seattle, Dallas, California, and New Jersey) But in their briefing, Defendants don't address that those witnesses are, in many cases, closer to or perhaps equal distant to this venue than the ones proposed by Defendants. And neither accounts for the whereabouts of past employees who've worked on the products in question over the last twenty years. Defendants discount, if not completely ignore, how those witnesses factor into any convenience analysis. Rather, Defendants claim that testimony from treating physicians and healthcare providers are more critical pieces of evidence and

not subject to live testimony at trial in Illinois. BUT, and this is critical to the Court's decision herein, Defendants don't provide an analysis of who those witnesses really are going to be, and where are they now. Who are they, where are they? What the Defendants are positing is: there are lots of healthcare providers who likely have critical testimony; they are all still located where they were when they treated plaintiffs; and that forum is more convenient than this forum. This Court cannot speculate as to all those facts nor jump to those conclusions. For those reasons Defendants fail in their burden to prove dismissal/transfer is justified under Forum Non Conveniens.

Additionally, the Court points out that in this post-covid legal world, Defendants (and Plaintiffs) are no longer limited to just presenting deposition testimony of the out of state witnesses. All Madison County Law Division jury trial rooms are now equipped with internet based technology and equipment allowing for *live* remote participation. In short, Defendants are not as hamstrung as they claim to be.

The Court also points out that, upon refiling in Plaintiffs' home states, Defendants have indicated their intent to remove Plaintiffs' claims to federal court so they will be consolidated with a Federal MDL in *Chicago, IL*, for at least discovery and pre-trial proceedings. Forum Non Conveniens is a principle rooted in equity and this Court believes such equitable principles should not be invoked for such a purpose." (Emphasis in original.)

¶ 39 In the present case, the circuit court either misapprehended or disregarded the directive to consider all relevant private and public factors as only one of the private factors concerning the availability of witnesses was analyzed in the order. None of the public factors were considered in the order. Further, the circuit court considered the availability of Internet-based testimony and refiling in federal court, neither of which are proper factors for a *forum non conveniens* analysis. "[I]t is always an abuse of discretion to base a decision on an incorrect view of the law." *Thompson v. Gordon*, 356 Ill. App. 3d 447, 461 (2005). It is clear that the circuit court's order of March 31, 2023, denying the motions pursuant to *forum non conveniens* was an abuse of discretion due to the misapprehension or disregard for the law requiring an analysis of the public and private factors. However, the role of this court is to determine what is within the bounds of reason and not to conduct a *de novo* review of the evidence as it relates to the private and public interest factors. *Wylie*, 2021 IL App (5th) 200425, ¶ 22. Accordingly, we reverse the circuit court's order of March 31, 2023, on the motions to dismiss under *forum non conveniens* and remand the matter to the circuit court for a proper analysis of the private and public interest factors.

¶ 40 II. CONCLUSION

¶ 41 For the foregoing reasons, we affirm the March 31, 2023, order of the circuit court of Madison County, which denied the defendants' motions to transfer venue, and we reverse the March 31, 2023, order of the circuit court of Madison County, which denied the defendants' motions to dismiss under *forum non conveniens*, and remand for further proceedings consistent with this opinion.

¶ 42 Affirmed in part and reversed in part; cause remanded.