2021 IL App (1st) 210359-U

No. 1-21-0359

Order filed September 30, 2021

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BRITTANIE M. HAYES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 2019 L 12016
	)	
BRADLEY M. ARTHUR,	)	Honorable
	)	Karen L. O'Malley,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant failed to meet his burden of establishing that the private and public interest factors used in *forum non conveniens* analysis strongly weighed in favor of transferring this matter to Kankakee County, Illinois. Therefore, we find the trial court did not abuse its discretion in denying defendant's *forum non conveniens* motion.

¶ 2 Defendant Bradley M. Arthur brings this interlocutory appeal pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Oct. 1, 2020), challenging the trial court's order denying his motion to transfer this matter from Cook County, Illinois to Kankakee County, Illinois based on

forum non conveniens. For the reasons which follow, we affirm.[1]

¶ 3 I. BACKGROUND

¶ 4 On October 10, 2019, shortly after 6:42 p.m., plaintiff Brittanie M. Hayes was crossing a four-lane roadway as a pedestrian in the City of Bourbonnais, Kankakee County, Illinois, when she was struck by a Nissan Altima driven by defendant. Defendant's wife, Miriam Arthur, was a passenger in his vehicle at the time of the accident. The vehicle defendant was driving had been leased by his employer, Seneca Petroleum Company ("Seneca"). Defendant was employed by Seneca as a sales representative for asphalt-based products.

¶ 5 Plaintiff was transported by ambulance to the emergency room at St. Mary's Hospital and then immediately transferred to the Loyola University Medical Center in Cook County, Illinois. Plaintiff suffered a traumatic brain injury. Plaintiff was subsequently transferred to the Shirley Ryan AbilityLab (formerly the Rehabilitation Institute of Chicago) where she remained and received treatment through February 2020.

¶ 6 At the time of the accident, plaintiff was a student at Olivet Nazarene University in Bourbonnais, Illinois. Following her release from the rehabilitation facility, plaintiff returned to her childhood home in Jackson, Michigan. However, plaintiff regularly returns to Cook County for follow-up medical treatment at the Loyola University Medical Center and the Shirley Ryan AbilityLab.

¶ 7 On October 30, 2019, plaintiff filed a two-count complaint against defendant and his employer Seneca in the circuit court of Cook County. In count I, plaintiff alleged that Seneca was vicariously liable for the negligent acts or omissions of defendant under the doctrine of *respondeat superior*. Plaintiff alleged that at the time of the accident, defendant was driving his employer's

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

vehicle in the course and scope of his employment. In count II, plaintiff alleged various negligent acts or omissions on the part of defendant in driving the vehicle such as: failing to decrease the speed of the vehicle; failing to exercise due care near pedestrians; failing to keep a proper and sufficient lookout; and failing to sound the vehicle's horn as a warning.

¶ 8 On December 2, 2019, Seneca filed a motion to dismiss count I of the complaint against it pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2018)). Seneca argued that it was not vicariously liable for any negligent acts or omissions on the part of the defendant Bradley M. Arthur, because he was not operating the vehicle for work related purposes at the time of the accident.

¶ 9 On February 7, 2020, defendant filed a motion to transfer the case from Cook County to Kankakee County pursuant to Illinois Supreme Court Rule 187 (eff. Jan. 4, 2013), based on the doctrine of *forum non conveniens*. Defendant argued that the private and public interest factors used to analyze *forum non conveniens* motions weighed in favor of transfer. Plaintiff filed a response memorandum in opposition to defendant's *forum non conveniens* motion. The parties then engaged in several months of motion practice.

¶ 10 On February 22, 2021, while the *forum non conveniens* motion was pending, the trial court granted Seneca's section 2-619(a)(9) motion to dismiss count I of the complaint, with prejudice. The court set a hearing date of March 4, 2021, for the parties to present their respective arguments concerning defendant's *forum non conveniens* motion. On March 4, 2021, after hearing arguments on the motion, the trial court denied defendant's motion and entered a written order to that effect on March 5, 2021.

¶ 11 On March 31, 2021, defendant filed a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(2), which this court granted on April 27, 2021. Defendant elected to

have his petition for leave to appeal stand as his brief (Rule 306(c)(8)), and this interlocutory appeal followed. Additional background will be presented and discussed as it becomes relevant to our analysis of the issues.

¶ 12 II. ANALYSIS

¶ 13 Defendant contends on appeal that the trial court abused its discretion in denying his *forum non conveniens* motion. Defendant argues that the private and public interest factors used in *forum non conveniens* analysis strongly weigh in favor of transferring the case from Cook County to Kankakee County.

¶ 14 "The Latin words '*forum non conveniens*' mean 'forum not agreeing.' Over time the expression became associated with 'convenience,' meaning the defendant's inconvenience of litigating the dispute in the plaintiff's chosen forum*."* *Aranda v. Philip Morris USA Inc.*, 183 A.3d 1245, 1249 (Del. 2018) (internal footnotes omitted). The common law doctrine of *forum non conveniens* was developed "to prevent a plaintiff from using a liberal venue statute to vex, oppress or harass a defendant by bringing a suit in a forum unrelated to the parties or cause of action." *Anglim v. Missouri Pacific R. Co.*, 832 S.W.2d 298, 302 (Mo. en banc. 1992).

¶ 15 The doctrine of *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 "comes into play when more than one forum exists with proper jurisdiction and venue over the parties and the subject matter of the cause of action*."* *Boner v. Peabody Coal Co.*, 142 Ill. 2d 523, 527 (1991). The doctrine "allows a court to decline jurisdiction of a case even though it may have proper jurisdiction over the subject matter and the parties involved if it appears that another forum can better serve the convenience of the parties and the ends of justice." *Gridley v. State Farm Mutual Auto Insurance Co.*, 217 Ill. 2d

158, 169 (2005).

¶ 16 A defendant may invoke the doctrine of *forum non conveniens* to transfer a cause of action from an Illinois county to a county in a different state (interstate transfer), or, as in this case, transfer an action from one county in Illinois to another Illinois county (intrastate transfer). See, *e.g.*, *Fennel v. Illinois Central Railroad Co*., 2012 IL 113812, ¶ 13. In either situation, the burden is on the defendant to establish that the selected forum is inconvenient such that the ends of justice support transferring the case. See *Langenhorst*, 219 Ill. 2d at 444.

¶ 17 A trial court has broad discretion in determining whether to transfer a cause of action based on *forum non conveniens*. *Boner*, 142 Ill. 2d at 527-28. Therefore, we will reverse the trial court's decision only if defendant can show that the trial court abused its discretion in balancing the private and public interest factors used to analyze *forum non conveniens* motions. *Langenhorst*, 219 Ill. 2d at 442. A trial court abuses its discretion in balancing the relevant factors only where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 18 In ruling on a motion to transfer based on *forum non conveniens*, a trial court must balance the private and public interest factors enumerated by our supreme court.

¶ 19 The private interest factors 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 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)." *Gridley*, 217 Ill. 2d at 170.

¶ 20 The public interest factors include: "(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." *Gridley*, 217 Ill. 2d at 170.

¶ 21 In balancing these factors, trial courts must recognize that no single factor is controlling. See *Langenhorst*, 219 Ill. 2d at 443 ("In deciding a *forum non conveniens* motion, a court must consider all of the relevant factors, without emphasizing any one factor"). Moreover, a trial court is not to weigh the private interest factors against the public interest factors, but rather "must evaluate the total circumstances of the case in determining whether the balance of factors strongly favors transfer." *Gridley*, 217 Ill. 2d at 170.

¶ 22 Another consideration is the deference to be accorded to a plaintiff's choice of forum. *Id.* A plaintiff's choice of forum is generally entitled to substantial deference. *Langenhorst*, 219 Ill. 2d at 448. However, where, as here, neither the plaintiff's residence nor the site of the injury are located in the chosen forum, the plaintiff's choice of forum is "entitled to *somewhat* less deference." (Emphasis in original.) *Id.* Nevertheless, the supreme court has cautioned that even under such circumstances " 'the deference to be accorded is only *less*, as opposed to *none.* ' " (Emphasis in original.) *Id.* (quoting *First American Bank v. Guerine*, 198 Ill. 2d 511, 518 (2002)). The "plaintiff's forum choice should rarely be disturbed unless the other factors strongly favor transfer." *Id.* at 442.

¶ 23 With these principles in mind, we review the trial court's analysis of the relevant factors to determine whether it abused its discretion.

¶ 24 A. Private Interest Factors

¶ 25 1. Convenience of the Parties

¶ 26 In regard to the convenience of the parties, the trial court determined that this factor slightly favored transfer to Kankakee County. The court noted that although defendant lived in Kankakee

County and the accident occurred in that county, evidence was presented showing that defendant regularly travels to Cook County for work and to attend sporting events, restaurants, and concerts. Defendant is required to travel to Cook County at least once a week for sales team meetings at his office in Cook County. Evidence was also presented that over the course of the last two years, defendant traveled to Cook County to attend nearly fifty Bulls, Blackhawks, Cubs, and Bears games.

¶ 27 Defendant contends that this evidence does not necessarily establish that it is convenient for him to travel to Cook County to attend a multi-day trial. However, that is not the test. The test is inconvenience. Defendant "must show that the plaintiff's chosen forum is inconvenient to the defendant." *Guerine*, 198 Ill. 2d 518. Defendant does not allege that Cook County is an inconvenient forum, just that Kankakee County is more convenient. Although Kankakee County may be more convenient to defendant, he was required to show that it would be inconvenient for him to travel to Cook County to attend trial. Defendant fails to make such a showing.

¶28 2. Ease of Access to Evidence

¶ 29 In regard to the ease of access to testimonial, documentary, and real evidence, the trial court found that this factor did not warrant transferring the case to Kankakee County. As to the testimonial evidence, the trial court observed that the potential trial witnesses were located in both Kankakee and Cook Counties. Responding police officers and emergency medical responders are located in Kankakee County and the majority of plaintiff's medical providers and rehabilitation specialists are located in Cook County. The trial court found that this factor favored plaintiff's choice of forum in Cook County.

¶ 30 We do not believe the trial court abused its discretion in making this finding. Our supreme court has explained that when "potential trial witnesses are scattered among several counties,

including the plaintiff's chosen forum, and no single county enjoys a predominant connection to the litigation, the plaintiff may not be deprived of his or her chosen forum." *Dawdy v. Union Pacific Railroad Co.*, 207 Ill. 2d 167, 183-84 (2003).

¶ 31 Defendant asserts the trial court should have afforded little weight to the location of plaintiff's treating physicians. Defendant relies on three cases to support his position. Two of the cases, *Bland v. Norfolk & Western Railway Co.*, 116 Ill. 2d 217 (1987), and *Walsh v. Ramada Inns, Inc.*, 194 Ill. App. 3d 945 (1989), are factually distinguishable and are therefore inapplicable to the present case. The third case, *Buettner v. Parke-Davis & Co.*, 217 Ill. App. 3d 316 (1991), actually supports the trial court's finding.

¶ 32 In *Bland*, all of the plaintiff's medical records regarding his hospital treatment were located 100 miles away in the transferee forum. 116 Ill. 2d at 226. Unlike *Bland*, in this case, the majority of records pertaining to plaintiff's medical treatment and rehabilitation are located in her chosen forum of Cook County.

¶ 33 In *Walsh*, the plaintiff obtained medical treatment in his chosen forum of Cook County just weeks prior to filing his personal injury action in the circuit court of Cook County. 194 Ill. App. 3d at 946. Plaintiff had earlier obtained medical treatment for his injuries in five other counties in Illinois: Whiteside, Winnebago, La Salle, Putnam, and Lake. The appellate court, citing to *Bland*, suggested that plaintiff may have sought medical treatment in Cook County in an attempt to frustrate defendant's ability to effectively use the doctrine of *forum non conveniens* to transfer the case to a different county. *Id*. at 949. Unlike *Walsh*, there is no evidence suggesting that the plaintiff in this case sought medical treatment in Cook County in an attempt to frustrate *forum non conveniens* principles. Rather, the evidence in the record shows that plaintiff, while unconscious, was transported to a medical facility in Cook County because the facility was staffed

by medical personnel who were best qualified to treat plaintiff's serious brain injury.

¶ 34 In *Buettner*, the appellate court determined that a minor plaintiff who suffered brain damage at birth and who utilized treatment from medical specialists years prior to his mother filing a medical malpractice suit on his behalf, cannot and should not be equated with instances of forum shopping. *Buettner*, 217 Ill. App. 3d at 322. Similar to *Buettner*, and contrary to defendant's argument, plaintiff's utilization of treatment from medical specialists located in Cook County does not equate to forum shopping.

¶ 35 As to the documentary evidence, the trial court found that this factor was not significant given the fact that the majority of depositions had been taken remotely due to COVID-19 restrictions. This finding was not an abuse of discretion. See, *e.g.*, *Ammerman v. Raymond Corp.*, 379 Ill. App. 3d 878, 890 (2008) (noting "that the location of documentary evidence has become less significant because today's technology allows documents to be copied and transported easily and inexpensively").

¶ 36 3. Practical Problems

¶ 37 Lastly, the court must take into consideration that which makes a trial easy, expeditious, and inexpensive. The possibility of the jury viewing the site of an accident is one of these considerations. See *Brown v. Cottrell, Inc.*, 374 Ill. App. 3d 525, 533 (2007).

¶ 38 The trial court found that since the accident occurred in Kankakee County, this factor slightly favored transfer to Kankakee. However, the trial court did not find that this factor strongly favored transfer to Kankakee. Defendant argues the trial court erred in failing to make such a finding. We disagree.

¶ 39 The trial court determined that modern technology enabled jurors to view the site of the accident remotely using Google maps. See, *e.g.*, *United States v. Perea-Rey*, 680 F.3d 1179, 1182

n.1 (9th Cir. 2012) (taking judicial notice of Google maps as source whose authenticity could not be questioned). We do not believe the trial court erred in this regard considering there is nothing unique about the site of the accident, a four-lane roadway, that would require jurors to physically examine and view the site.

¶ 40 For the foregoing reasons, we find the trial court did not abuse its discretion in finding that the private interest factors did not strongly weigh in favor of transfer to Kankakee County. We now address the public interest factors.

¶ 41 B. Public Interest Factors

¶ 42 The first public interest factor addresses local controversies being decided locally. The trial court found that the local-controversy factor favored transfer to Kankakee County. The trial court, however, did not find that this factor strongly favored transfer to Kankakee. Defendant argues the trial court erred in failing to make such a finding. We disagree.

¶ 43 Evidence in the record shows that at the time of accident, defendant was driving an employer-leased vehicle under the terms of his employer's Motor Vehicle Safety Program. The program is designed to protect not only the employer's employees such as defendant, but also citizens of the communities in which the employer conducts its business. One of those communities is Cook County. Residents of Cook County have an interest in seeing that companies who conduct business in Cook County enforce their motor vehicle safety programs designed to maintain safe streets and roadways for pedestrian traffic.

¶ 44 The fact that the accident occurred in Kankakee County does not diminish this interest. Therefore, it follows that with respect to jury duty, it would not be unfair to burden Cook County jurors with determining whether defendant was operating his vehicle in a negligent manner when he struck plaintiff.

¶ 45 Finally, we consider the comparative court congestion between the two counties. Defendant provided statistics showing that Kankakee County has a smaller caseload than Cook County. However, these statistics fail to account for the relative size of each judicial system and they do not provide any evidence that a court in Kankakee County would resolve the case more quickly than a court in Cook County. "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. After reviewing the public interest factors, we find the trial court did not abuse its discretion in finding that these factors did not strongly weigh in favor of transferring the case to Kankakee County.

¶ 46 III. CONCLUSION

¶ 47 Based on our review of the record and the private and public interest factors at issue, we conclude that the trial court did not abuse its discretion in denying defendant's *forum non conveniens* motion.

¶ 48 Accordingly, we affirm the judgment of the trial court.

¶ 49 Affirmed.