2013 IL App (1st) 122024-U

FIFTH DIVISION
June 7, 2013

No. 1-12-2024

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHARLES GROSS, Special Administrator of the Estate of Sylvia Gross, Deceased, Plaintiff-Appellee, v. JAMES D. WRIGHT, M.D., JOLIET HOSPITALIST GROUP, LLC, and PROVENA ST. JOSEPH HOSPITAL, Defendants-Appellants (Yatin M. Shah, M.D., Ramalingappa Mukunda, M.D., Y.M. Shah, M.D., S.C. t/n Primary Care Joliet, an Illinois Corporation, Claude A. Sadovsky, M.D., and Prairie Emergency Services, S.C., an Illinois Corporation, Defendants).	)	Appeal from the Circuit Court of Cook County, Illinois. No. 2011 L 009726 Honorable James N. O'Hara, Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Justices Howse and Palmer concurred in the judgment.

ORDER

HELD: In medical malpractice case, the trial court abused its discretion in denying defendants' *forum non conveniens* motion where plaintiff resided in the transferee county, as did one of the four individual defendants; all four health care provider defendants were located in the transferee county; all of the medical care at issue occurred in the transferee county; three out of four individual defendants practiced medicine exclusively in the transferee county, and none of them practiced medicine in plaintiff's chosen forum; and multiple defendants and several potential witnesses filed affidavits stating that the transferee county would be more convenient.

¶ 1 This case arises from the circuit court's denial of appellants' *forum non conveniens* motion to transfer this case from Cook County to Will County. On September 20, 2009, Sylvia Gross died while at Provena St. Joseph Medical Center (Provena). Her husband, Charles Gross (plaintiff), brought a wrongful death suit alleging medical negligence against eight defendants. Three of those defendants – Dr. James Wright, Joliet Hospitalist Group, LLC, and Provena – moved to transfer the suit to Will County. The trial court denied their motion. For the reasons that follow, we reverse and remand.

¶ 2 I. BACKGROUND

¶ 3 Plaintiff brought suit in the circuit court of Cook County as the administrator of decedent's estate, seeking damages from four health care professionals and four health care providers for wrongful death in connection with decedent's death at Provena. The four health care professionals named as defendants are Dr. Wright, resident of Will County; Dr. Ramalingappa Mukunda and Dr. Yatin M. Shah, both residents of DuPage County; and Dr. Claude Sadovsky, resident of Cook County. The four health care providers named as defendants are Joliet Hospitalist Group, of whom Dr. Wright is the sole member; Y.M. Shah, M.D., S.C., which employed Dr. Shah and Dr. Mukunda; Prairie Emergency Services, S.C., which employed Dr. Sadovsky; and Provena. All four of these health care providers are located in Will County.

¶ 4 In his complaint, plaintiff alleges that on September 16, 2009, Sylvia Gross arrived at the emergency department of Silver Cross Hospital, complaining of chest pains. (Silver Cross Hospital, which is not a named defendant in this action, is also located in Will County.) She remained there for two days under the care of defendants Dr. Shah and Dr. Mukunda before being discharged on September 18. Plaintiff alleges that Dr. Shah and Dr. Mukunda discharged her prematurely and negligently failed to obtain a cardiac consultation prior to her discharge.

¶ 5 Plaintiff further alleges that on September 20, 2009, Sylvia Gross arrived at the emergency department of Provena, complaining of epigastric pain. She was placed under the care of defendants Dr. Wright and Dr. Sadovsky. She died later that same day, allegedly as a result of their negligence.

¶ 6 Subsequently, defendants Dr. Wright, Joliet Hospitalist Group, and Provena (collectively appellants) petitioned the court to transfer venue from Cook County to Will County under the doctrine of *forum non conveniens*. They contended that transfer was warranted because Will County was a significantly more convenient forum for defendants and witnesses and, unlike Cook County, had a predominant connection to the litigation, since all the medical care at issue was provided in Will County.

¶ 7 In support of their motion, appellants presented affidavits and answers to *forum non conveniens* interrogatories from the parties and from several potential witnesses. The first such document is the affidavit of Dr. Wright. Dr. Wright states that his medical practice is conducted entirely in Will County. He further states that he is the sole member of Joliet Hospitalist Group, which has its primary place of business in Will County and does business entirely within Will

County. According to Dr. Wright, due to his residence and his medical obligations as part of his practice, it would be inconvenient for him to travel for Cook County for trial, and Will County would be a far more convenient county. Likewise, he states that it would be inconvenient for Joliet Hospitalist Group to participate in trial in Cook County, and it would be far more convenient if it were in Will County.

¶ 8 Appellants also presented the court with answers to *forum non conveniens* interrogatories from the other individual defendants. In those answers, Dr. Sadovsky states that in addition to his work at Provena in Will County, he also serves as an emergency physician in Champaign, Coles, and Vermilion Counties, but does not conduct any business in Cook County. Dr. Shah states that he does not conduct business in any county other than Will County. Similarly, in an affidavit, Dr. Mukunda states that all of his medical duties and responsibilities take place in Will County.

¶ 9 With regard to the health care provider defendants, appellants presented the affidavit of Provena's registered agent, Meghan Kieffer. Kieffer stated that Provena is located in Will County and does not transact any business, operate any facility, or own any property within Cook County. Appellants further presented the answers to *forum non conveniens* interrogatories of Prairie Emergency Services, which states that it does not conduct business in any county other than Will County.

¶ 10 In addition, appellants attached a copy of plaintiff's answers to *forum non conveniens* interrogatories. In those interrogatories, plaintiff states that he resides in Will County. He is currently unemployed but has previously held jobs in the counties of Will, Cook, Peoria, and

Kane. When asked to state the facts which indicate a connection between his cause of action and Cook County, plaintiff states that Dr. Sadovsky is a resident of Cook County, and Sylvia Gross was employed in Cook County for the past 18 years. He lists her work address as 8450 185th Street in Tinley Park, Illinois.[1] Finally, when asked to identify every witness or other source of proof at trial which he contends is more accessible in Cook County than in Will County, plaintiff states, "Investigation continues."

¶ 11 With regard to potential witnesses, appellants presented the affidavits of four nurses whose names appear in the medical chart for Sylvia Gross at Provena. These nurses are Rexie Montesa, a former Provena employee, who resides in Will County; Judy Hopkins and Lisa O'Neill, current Provena employees, who reside in Will County; and June Starks, a current Provena employee, who resides in Grundy County. All four nurses state that Will County would be a "much more convenient county" for the continuance of the case than Cook County. They also affirmatively state that it would be inconvenient for them if the case were to continue in Cook County.

¶ 12 Plaintiff filed a response to appellants' *forum non conveniens* motion in which he argued that appellants had failed to meet their burden of demonstrating that the relevant public and private interest factors strongly favored transfer, as required to overcome the deference granted to plaintiff's choice of forum.

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[1] In his interrogatories, plaintiff additionally states his belief that Y.M. Shah, M.D. "coordinated an HMO with a connection to Cook County." However, plaintiff presents no support for this assertion and does not argue it on appeal.

¶ 13 In support of his response, plaintiff attached his own affidavit, in which he states that he would not be inconvenienced if the case were to proceed in Cook County. Plaintiff further avers that if the case were moved to Will County, his attorneys would need to obtain office space in Will County, and he would prefer to have the case proceed in Cook County where no such additional expense would be incurred.

¶ 14 Plaintiff also attached a copy of Dr. Wright's answers to *forum non conveniens* interrogatories. In his answers, Dr. Wright states that he does no business outside of Will County and, in particular, does no business in Cook County. However, he also states that he served as an expert witness in a medical malpractice case in Cook County on November 18, 2009.

¶ 15 Plaintiff additionally submitted a series of printed directions from Google Maps. The first set shows that Dr. Sadovsky's residence in Cook County is 0.8 miles from the Cook County courthouse, but 46.6 miles from the Will County courthouse. The second set shows that Dr. Shah's residence in DuPage County is 1.6 miles from the border with Cook County.

¶ 16 Finally, plaintiff attached excerpts from the Illinois Supreme Court's Annual Review of the Illinois Courts. These excerpts show that from 2005 to 2010, Cook County disposed of its jury cases over $50,000 in 37.3 months, while Will County disposed of similar cases in 41.5 months.

¶ 17 In addition to the foregoing, the parties submitted conflicting documents to the court on the issue of whether the decedent's work address was located in Will County or in Cook County. Appellants submitted a printed page from the website of the Will County Supervisor of Assessments, titled "Will County Property Record Card," which lists lot 13A of the decedent's

work address. In response, plaintiff submitted a printed page from the website of the United States Environmental Protection Agency which lists the decedent's work address as being in Cook County. However, plaintiff conceded in his sur-reply brief that the appellants' exhibit reveals that lot 13A of the decedent's workplace was taxed and assessed from Will County.

¶ 18 On June 14, 2012, the trial court denied appellants' motion to transfer to Will County. In its order, the court found that neither private interest factors nor public interest factors strongly favored transfer. With regard to private interest factors, the court noted that three of the four individual defendants did not reside in Will County, and the remaining individual defendant, Dr. Wright, had previously served as an expert witness in a medical malpractice case in Cook County. With regard to public interest factors, the court stated that Cook County had an interest in the litigation because Dr. Sadovsky resides in Cook County and because "Plaintiff's decedent worked in Cook County for eighteen years." The court additionally found that court congestion favored keeping the case in Cook County, because of the shorter average disposition time of Cook County cases compared to Will County cases. Based upon these findings, the trial court held that a trial in Cook County would better serve the convenience of the parties and the ends of justice, and it denied appellants' motion to transfer. Appellants filed the instant interlocutory appeal pursuant to Supreme Court Rule 306. Ill. S. Ct. R. 306(a) (eff. Feb. 26, 2011) (allowing a party to appeal an order of the circuit court denying a motion to transfer a case to another county on the grounds of *forum non conveniens*).

¶ 19 II. ANALYSIS

¶ 20 The sole issue before us in this appeal is whether the trial court erred in denying

defendants' *forum non conveniens* motion. Defendants contend that both the private interest factors and the public interest factors in this case strongly favor a move to Will County. Plaintiff, on the other hand, contends that these facts are not so weighty as to justify disturbing the plaintiff's choice of forum.

¶ 21 Although broad discretion is vested in the trial court in ruling on a *forum non conveniens* motion, the court's decision shall be reversed on appeal if it is an abuse of that discretion. *Hackl v. Advocate Health and Hospitals Corp.*, 382 Ill. App. 3d 442, 447 (2008); *First American Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002). Such an abuse occurs where no reasonable person would take the position adopted by the trial court. *Hackl*, 382 Ill. App. 3d at 447; *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 442 (2006).

¶ 22 Under the Illinois venue statute, an action must be brought either (1) in a county where a defendant joined in good faith resides or (2) in the county where the cause of action arose. 735 ILCS 5/2-101 (West 2006); *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 171 (2003). If venue is proper in multiple counties, then the equitable doctrine of *forum non conveniens* may be invoked to determine which forum is most appropriate. *Id.* at 171-72; *Moore v. Chicago & North Western Transp. Co.*, 99 Ill. 2d 73, 76 (1983) ("Implicit in the doctrine of *forum non conveniens* is the existence of at least two forums in which the controversy may be litigated").

¶ 23 In making this determination, the court must balance private interest factors affecting the litigants as well as public interest factors affecting court administration. *Dawdy*, 207 Ill. 2d at 172. Relevant private interest factors include: (1) convenience of the parties; (2) ease of access to evidence; (3) availability of compulsory process over unwilling witnesses; (4) cost of

obtaining attendance of willing witnesses; and (5) possibility of viewing the premises, if appropriate. *Id.* (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947) (superseded by statute on other grounds)); *First American Bank v. Guerine*, 198 Ill. 2d 511, 517 (2002). Relevant public interest factors include: (1) interest in having local disputes decided locally; (2) unfairness of imposing the expense of a trial and jury duty upon residents of a county with little or no connection to the litigation; and (3) administrative difficulties caused by handling litigation in a forum with more crowded dockets instead of dealing with it in its county of origin. *Dawdy*, 207 Ill. 2d at 172 (citing *Gulf Oil*, 330 U.S. at 508); *Guerine*, 198 Ill. 2d at 517. In balancing these factors, the court must take into account the totality of the circumstances and adopt a flexible, case-by-case approach. *Id.* at 518 (citing *Bland v. Norfolk and Western Ry. Co.*, 116 Ill. 2d 217, 227 (1987) (" 'If central emphasis were placed on any one factor, the *forum non conveniens* doctrine would lose much of the very flexibility that makes it so valuable' ") (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 250 (1981))).

¶ 24 When applying these factors, courts do not weigh the defendants' desired forum equally with the plaintiff's choice of forum. Rather, a plaintiff has a substantial interest in choosing the forum in which to seek vindication of his rights, and "the plaintiff's forum choice should rarely be disturbed unless the other factors strongly favor transfer." *Guerine*, 198 Ill. 2d at 517; see *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 442 (2006) (transfer is appropriate "*only in exceptional circumstances* when the interests of justice require a trial in a more convenient forum."). However, less deference is accorded to plaintiff's forum choice where, as in the present case, neither the plaintiff's residence nor the site of the injury is within the chosen

forum. *Guerine*, 198 Ill. 2d at 517 (citing *Griffith v. Mitsubishi Aircraft Int'l*, Inc., 136 Ill. 2d 101, 106 (1990)). This reduced deference is logical in light of the private and public interest factors discussed above. The primary purpose of the *forum non conveniens* doctrine is to assure a convenient trial. *Guerine*, 198 Ill. 2d at 525 (calling convenience "the touchstone of the *forum non conveniens* doctrine"). When plaintiff's home forum is chosen, it is reasonable to assume that this choice is convenient; when an alternate forum is chosen, this assumption becomes less reasonable. *Wieser v. Missouri Pacific R. Co.*, 98 Ill. 2d 359, 368 (1983) (according less deference to plaintiff's choice of forum because it was neither her county of residence nor the site of the injury) (citing *Piper Aircraft*, 454 U.S. 235 at 255-56); *Bland v. Norfolk and Western Ry. Co.*, 116 Ill. 2d 217, 227-28 (1987). Likewise, the public interest in having a case tried in a particular forum is lessened when that forum is not the site of the injury. See *Brummett v. Wepfer Marine, Inc.*, 111 Ill. 2d 495, 499-500 (1986).

¶ 25 Furthermore, this reduced deference is in line with judicial concern about parties engaging in forum shopping for strategic advantage. A plaintiff's private tactical considerations cannot be allowed to override the public interest in the orderly administration of justice that is served when cases are heard in appropriate forums. *Dawdy*, 207 Ill. 2d at 175, citing *Espinosa v. Norfolk & W. Ry. Co.*, 86 Ill.2d 111, 122-23 (1981) (speaking of judicial efforts to protect defendants from " 'the practice of seeking out soft spots in the judicial system in which to bring particular kinds of litigation' "); see also *Guerine*, 198 Ill. 2d at 521 ("A concern animating our *forum non conveniens* jurisprudence is curtailing forum shopping by plaintiffs").

¶ 26 In the case at hand, the parties do not dispute that venue is proper in Cook County, as it is

agreed that one of the eight defendants, Dr. Sadovsky, resides in Cook County. The appellants' sole contention is that transfer to Will County is appropriate under the doctrine of *forum non conveniens*. Given the totality of circumstances in this case, particularly the fact that numerous defendants and witnesses reside in Will County and that Cook County's connection with this case is extremely tenuous, we find that the trial court abused its discretion in denying the requested transfer.

¶ 27 A. *Guerine* and *Dawdy*

¶ 28 In their briefs, the parties present us with two key Illinois Supreme Court *forum non conveniens* cases, both dealing with situations where, as in the present case, the plaintiff chose not to bring the action in the plaintiff's home county or the county where the cause of action arose, and a defendant moved for transfer of venue. In *Guerine*, 198 Ill. 2d 511, which the trial court in this case relied upon, our supreme court found that transfer was not warranted; however, in *Dawdy*, 207 Ill. 2d 167, our supreme court granted the requested transfer.

¶ 29 *Guerine* arose out of a fatal automobile collision in De Kalb County. *Guerine*, 198 Ill. 2d at 512. Relatives of the deceased woman brought suit in the circuit court of Cook County against the driver of the other car and against the manufacturer of the trailer that the other car had been pulling. *Id.* at 513. The defendant manufacturer filed a *forum non conveniens* motion to transfer venue to De Kalb County. *Id.* The defendant driver's vehicle and trailer were stored in De Kalb County; multiple witnesses and the police officers who investigated the crash scene were from De Kalb as well. *Id.* However, the defendant driver (who did not join in the motion for transfer) lived in Cook County and presumably drove his car on Cook County roads. *Id.* at 512. Plaintiffs

were residents of Kane County, but they filed affidavits that a trial in Cook County would not be inconvenient for them, as did two potential witnesses from De Kalb County. *Id.* at 524-25. In addition, there were other possible witnesses residing in Winnebago County and Du Page County, and the defendant manufacturer had its headquarters in Indiana. *Id.*

¶ 30 Based upon this evidence, the *Guerine* court held that the trial court abused its discretion in granting the defendant manufacturer's *forum non conveniens* motion to transfer the case to De Kalb County. *Id.* at 526. With regard to private interest factors, the court noted that plaintiffs had filed affidavits stating that Cook County was convenient; the defendant driver lived in Cook County; and the defendant manufacturer would have to travel through Cook County in order to reach De Kalb County. Thus, the court found that Cook County was a more convenient forum for all parties, including defendants. *Id.* at 525. The court further observed that the issue of convenience had to be evaluated in light of the fact that modern means of travel and methods of communication made for a "smaller world" than in the past. *Id.* at 525-26. With regard to public interest factors, the court stated that Cook County bore "significant ties" to the litigation, because of the fact that the defendant driver lived and presumably drove the car and the trailer at issue in Cook County. *Id.* at 525.

¶ 31 Thus, despite the fact that neither the plaintiffs' residence nor the site of the accident giving rise to the action were in the plaintiff's chosen forum, the *Guerine* court found that the public and private interest factors did not strongly favor transfer. *Id.* at 526. It concluded that "a trial court abuses its discretion in granting an intrastate *forum non conveniens* motion to transfer venue where, as here, the 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." *Id.*

¶ 32 Plaintiff argues that the instant case is analogous to *Guerine*. Appellants, on the other hand, urge that the facts of this case are significantly closer to *Dawdy*, 207 Ill. 2d at 177, in which our supreme court held that the circuit court abused its discretion in denying defendants' motion to transfer. *Dawdy* involves an automobile crash in Macoupin County in which plaintiff was severely injured. *Id.* at 169. Plaintiff brought suit in Madison County against the driver of the truck he collided with as well as the driver's employer, Union Pacific. *Id.* Plaintiff was a Greene County resident; the defendant driver was a Macoupin county resident; Union Pacific was a Nebraska company which did business in both Macoupin County and Madison County. *Id.* at 170. Of the 18 potential trial witnesses identified by the parties, four resided in Macoupin County, and most of the remaining ones resided closer to Macoupin County than to Madison County. *Id.* at 178. None resided in Madison County. *Id.*

¶ 33 The *Dawdy* court held that the trial court erred in denying the motion to transfer. *Id.* at 177. It found that the private interest factors weighed in favor of transfer, as a move to Macoupin County would facilitate witness convenience as well as a potential jury view of the accident site, if the trial court would later deem it necessary. *Id.* at 178-79. It also found that the public interest factors weighed in favor of transfer, stating that "the residents of Madison County should not be burdened with jury duty given the fact that the action did not arise in, and has no relation to, their county." *Id.* at 183. In making this determination, the court gave little weight to the fact that defendant Union Pacific conducted business in Madison County. While this fact

was sufficient to make venue proper in Madison County, the court stated that the *forum non conveniens* analysis had to look beyond the facts establishing venue in considering the relative convenience of a forum; to do otherwise would be to eviscerate the doctrine of *forum non conveniens*, as the doctrine presupposes that venue in plaintiff's chosen forum is proper. *Id.* at 183. Thus, the court concluded, "[t]he sole fact that one defendant maintains a post office box in Madison County does not give Madison County a legitimate interest in or connection to this case." *Id.* at 184. The court also found that the case was distinguishable from *Guerine* because, unlike in *Guerine*, the transferee county had a predominant connection to the action. *Id.*

¶ 34 In this case, upon examining the private and public interest factors, we find that the facts are analogous to those in *Dawdy* rather than those in *Guerine*. We turn now to that analysis.

¶ 35 B. Private Interest Factors

¶ 36 We first consider the private interest factors. As discussed above, the factors that enter into this analysis are convenience of the parties, ease of access to evidence, availability of compulsory process over unwilling witnesses, cost of obtaining attendance of willing witnesses, and the possibility of viewing the premises, if appropriate. *Dawdy*, 207 Ill. 2d at 172; *Guerine*, 198 Ill. 2d at 517.

¶ 37 We begin with the convenience of the parties. Plaintiff resides in Will County, but he has filed an affidavit stating that Cook County is not inconvenient for him, and, in any event, a defendant cannot assert that plaintiff's chosen forum is inconvenient for him. See *id.* at 518. However, all four of the health care provider defendants are located in Will County. As for the individual defendants, Dr. Wright resides in Will County, Dr. Mukunda and Dr. Shah reside in

DuPage County, and only Dr. Sadovsky resides in Cook County. Furthermore, Dr. Wright affirmatively stated, on behalf of himself and on behalf of Joliet Hospitalist Group, that trial in Cook County would be inconvenient and trial in Will County would be significantly more convenient.

¶ 38 Thus, the party convenience factors, when viewed as a whole, weigh more strongly for transfer than did the party convenience factors in *Guerine*. In that case, one of the defendants lived in Cook County, and the other would have to travel through Cook County to reach the transferee county. *Guerine*, 198 Ill. 2d at 525. Based upon these facts, the *Guerine* court found that "Cook County is a more convenient forum for all parties, especially the defendants." *Id.* By contrast, in the present case, only one out of eight defendants resides in Cook County, while five defendants either reside in or are located in the transferee county.

¶ 39 Plaintiff argues that, since only three defendants joined in the motion to transfer, the other defendants must not find Cook County to be an inconvenient forum. However, this argument is somewhat disingenuous in light of the fact that the trial court specifically barred Dr. Mukunda from joining in the *forum non conveniens* motion. (Apparently, Dr. Mukunda was originally defaulted. The trial court later entered an order vacating the default but prohibiting him from joining the motion.) Moreover, we note parenthetically that during the pendency of this appeal, three of the nonmoving defendants – Dr. Mukunda, Dr. Shah, and Y.M. Shah, M.D., S.C. – moved to join the appeal and adopt their codefendants' brief. On December 13, 2012, we ruled that they could not do so because of their failure to join in their codefendants' motion below. See *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 36, 42. Nevertheless, these defendants' desire

to join the appeal would seem to undercut plaintiff's argument that they are content to have the trial continue in Cook County.

¶ 40 Plaintiff additionally argues that Cook County is a convenient location for trial because his attorneys, as well as the attorneys for two of the defendants, are located in Cook County. He states that a transfer to Will County would be inconvenient for him because it would cause him to incur the additional expense of obtaining Will County office space for his attorneys. However, Illinois courts have traditionally accorded little weight to the location of the parties' attorneys in *forum non conveniens* analysis. *Wieser*, 98 Ill. 2d at 372 (finding it not significant that the plaintiff's attorney resided in plaintiff's chosen forum); *Wagner v. Eagle Food Centers, Inc.*, 398 Ill. App. 3d 354 (2010) (transfer of case from Cook County to Will County was warranted notwithstanding the fact that plaintiff and defendant had Cook County attorneys, a factor to which the court accorded " 'little weight' ") (quoting *Boner v. Peabody Coal Co.*, 142 Ill. 2d 523, 534 (1991)). Indeed, if the location of the parties' attorneys were given undue weight, it would encourage forum shopping by enabling parties to skew the *forum non conveniens* analysis through their selection of counsel. *Cf. Bland v. Norfolk and Western Ry. Co.*, 116 Ill. 2d 217, 227 (1987) ("One should be cautious, however, not to give undue weight to the fact that a plaintiff's treating physician or expert has an office in the plaintiff's chosen forum. To do so would allow a plaintiff to easily frustrate the *forum non conveniens* principle by selecting as a witness a treating physician or expert in what would, in reality, be an inconvenient forum."). Consequently, we find the location of the attorneys in this case to be less significant than the other convenience factors discussed above.

¶ 41 Plaintiff finally argues that Cook County is not an inconvenient place for Dr. Wright, because he testified as an expert witness in an unrelated medical malpractice case in Cook County on November 18, 2009. However, the fact that Dr. Wright gave testimony in Cook County on a single occasion does not mean that the significantly greater burden of defending a lawsuit in Cook County is thereby made convenient for him. Indeed, our supreme court considered and rejected an argument similar to plaintiff's argument in *Bland*, 116 Ill. 2d at 226. In that case, defendant filed a motion to transfer venue from Madison County to Macon County. Plaintiff argued, among other things, that Madison County was a convenient location because he performed switching operations in that county " 'from time to time.' " *Id.* at 222. The court accorded minimal weight to this assertion, stating, "There is no reason to assume that trial in Madison County would be convenient simply because the plaintiff is occasionally in that county performing duties as a brakeman." *Id.* at 226. Similarly, there is no reason to assume in the present case that trial in Cook County would be convenient simply because Dr. Wright testified there on a single day, particularly where he has stated via affidavit that his home county, Will County, is more convenient.

¶ 42 The second factor, ease of access to evidence, weighs strongly in favor of transfer. With regard to testimonial evidence, Provena identified four nurses whose names appeared in the decedent's nursing chart. All four of those nurses stated that Will County would be a much more convenient trial location than Cook County, which would be inconvenient. In addition, three of those nurses reside in Will County, and the fourth resides in Grundy County, which is closer to Will County than to Cook County. Appellants also asserted to the trial court that decedent's

autopsy was performed in Will County by Dr. Tomas, who is a Will County resident. Although appellants did not provide any support for this assertion, plaintiff did not challenge it before the trial court or before this court. Moreover, plaintiff has not identified any non-party witnesses who reside in Cook County or who would find a Cook County trial to be more convenient than a Will County trial.

¶ 43 Furthermore, all of the medical records that would be relevant to this case are located in Will County, although we recognize that this factor is less significant in light of our modern age of Internet, fax, and copying machines. See *Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261, 281 (2011) (collecting cases).

¶ 44 The final two factors, availability of compulsory process over unwilling witnesses and the possibility of viewing the premises, are of lesser importance given the facts of this particular case. As for availability of compulsory process, neither side has identified any out-of-state non-defendant witnesses that they intend to call at trial. The in-state witnesses listed by the parties will be subject to compulsory process; thus, this factor is neutral given the facts before us. See *Lint v. Missouri Pacific R. Co.*, 200 Ill. App. 3d 1047, 1050 (1990) (finding that Illinois witnesses who lived outside the forum county could be subpoenaed to testify at trial, so their accessibility at trial was not impaired for *forum non conveniens* purposes).

¶ 45 As for the possibility of viewing the premises, a Will County trial would facilitate such a viewing because the medical facilities at issue are all in Will County. However, appellants concede that, since this is a medical malpractice action, there is nothing that would suggest that it would be helpful for the jury to view the facilities where the events at stake allegedly occurred.

See *Hackl*, 382 Ill. App. 3d at 452 (stating that "as a practical matter, a viewing of the site is rarely or never called for in a medical negligence case"). We therefore accord little weight to this factor. See *Langenhorst*, 219 Ill. 2d at 448-49 (discounting the significance of a view of the accident site where changed circumstances would make such a view unhelpful); *Grachen v. Zarecki*, 200 Ill. App. 3d 336, 340 (1990) (finding that the possibility a jury view of an accident site was relatively unimportant to the *forum non conveniens* analysis where "defendants do not suggest any specific facts that would make viewing the site of this accident helpful to a jury").

¶ 46 In sum, plaintiff resides in Will County, as does one of the individual defendants, and all of the defendant health care providers are in Will County. Three out of four non-party witnesses reside in Will County, the fourth resides closer to Will County than to Cook County, and all four have stated that Will County is the more convenient county for trial. All relevant medical records are also located in Will County. On the whole, we find that the private interest factors strongly favor the convenience of a Will County forum over a Cook County forum.

¶ 47 C. Public Interest Factors

¶ 48 The public interest factors in this case also strongly favor a transfer to Will County, where Cook County has scarcely any interest in or connection to this case besides the bare minimum needed to establish venue.

¶ 49 Our supreme court has stated that the public interest favors transfer where the plaintiff's chosen forum does not have a sufficient factual connection with the litigation to justify imposition of the burdens of litigation upon the citizens and court system of that county. *Bland*, 116 Ill. 2d at 229. In this case, Cook County's only connection with this suit is that one of the

eight defendants resides in Cook County and plaintiff's decedent may have been employed in Cook County prior to her death. None of the individual defendants provide medical care in Cook County, and, in fact, three of the four individual defendants provide medical care exclusively in Will County. All of the health care provider defendants are located in Will County. All of the medical care at issue in this case occurred in Will County. Plaintiff himself resides in Will County, as did the decedent. From these facts, it is apparent that the instant case has a predominant connection to Will County and scarcely any connection to plaintiff's chosen forum. See *id.* at 229 (plaintiff's chosen forum had insufficient connection with litigation where defendant corporation resided there, plaintiff occasionally worked there, and two out of five treating physicians were located there).

¶ 50 In its order, the trial court stated that Cook County has an interest in this case because Dr. Sadovsky resides in Cook County. However, in and of itself, this fact carries only minimal weight. A *forum non conveniens* motion assumes that the plaintiff's chosen forum is a proper venue for the action. If Dr. Sadovsky did not reside in Cook County, it would have been an improper venue for the case. See 735 ILCS 5/2–101 (West 2000) (action must be commenced in county of residence of a defendant or the county where the action arose). The *forum non conveniens* analysis requires the court to look beyond the criteria of venue in determining the relative convenience of a forum. *Dawdy*, 207 Ill. 2d at 182 (the fact that defendant conducted business and maintained a post office box in the plaintiff's chosen forum "does not affect the *forum non conveniens* issue"); *Fennell v. Illinois Cent. R. Co.*, 2012 IL 113812, ¶ 43; *Bland*, 116 Ill. 2d at 226. If the criteria of venue were also dispositive with regard to the *forum non*

conveniens analysis, it would effectively vitiate the doctrine, as no transfer would ever be obtained. *Dawdy*, 207 Ill. 2d at 182 (citing *Franklin v. FMC Corp.*, 150 Ill. App. 3d 343, 347 (1986) (residence of corporate defendants in Cook County was not adequate reason for Cook County to retain the case)).

¶ 51 In this regard, we find our supreme court's recent decision in *Fennell*, 2012 IL 113812, to be instructive. In *Fennell*, plaintiff, a Mississippi resident, brought suit against his employer for injuries he sustained from asbestos exposure in Mississippi and Lousiana. *Id.* ¶ 4, 6. He filed his action in the circuit court of St. Clair County, Illinois. *Id.* ¶ 5. Venue was proper in that forum because the defendant employer conducted business within the county. *Id.* ¶ 10. Nevertheless, the *Fennell* court held that the trial court abused its discretion in denying defendant's *forum non conveniens* motion. *Id.* ¶ 26. With regard to the public interest factors, the court stated:

> "If Illinois had any relevant or practical connection with this litigation, then it would have an interest in providing a forum. However, plaintiff resides in Mississippi, works in Mississippi, and was allegedly exposed to asbestos in Mississippi or Louisiana. Illinois' only connection with this lawsuit is: the offices of the parties' counsel; accessible and transportable documents in the possession of defendant's counsel; and a compensated expert witness for plaintiff. This does not provide a significant factual connection with the instant case to justify imposition of the burdens of the litigation upon the citizens and court system of St. Clair County and Illinois." *Id.* ¶ 46.

Likewise, for the reasons that have been discussed, the factual connection between the present case and Cook County is insufficient to justify burdening Cook County with this litigation.

¶ 52 Plaintiff urges us to place greater weight upon the fact that the decedent was employed in Cook County, citing *Turner v. Jarden*, 275 Ill. App. 3d 890 (1995). We find *Turner* to be readily distinguishable on its facts. In that case, Turner was fatally injured in an automobile accident in Macoupin County. *Id.* at 892. The administrator of his estate brought a wrongful death suit against Richard Jarden and Jarden Farms (among others) in the circuit court of Madison County. *Id.* Defendants moved to transfer to Macoupin County, but the *Turner* court held that transfer was not warranted. *Id.* at 898. With regard to the public interest factors, the court stated:

> "[C]ontrary to defendants' assertions, it is clear that the citizens of Madison County have an interest in this 'localized' controversy. Jarden Farms is considered a resident of Madison County for venue purposes. The partnership owns and leases 140 to 160 acres in Madison County. The partnership farms this property in order to produce grain that is, in turn, fed to the cattle for the Jarden Farms' dairy operation. We can only assume that Richard Jarden and Jarden Farms pay real estate taxes on the property located in Madison County. Additionally, the decedent actually worked in Madison County." *Id.*

From these facts, it is apparent that the connection to the plaintiff's chosen forum in *Turner* was far stronger than it is in the present case. The *Turner* court does not purport to state that the decedent's place of employment alone is sufficient to give the citizens of a county an interest in a controversy; on the contrary, it relies heavily on the defendants' business ties to the county, a factor that is notably absent here. Indeed, in the present case, defendants do not conduct any business, medical or otherwise, in Cook County.

¶ 53 We note parenthetically that it is questionable whether the decedent's address of

employment actually was in Cook County, since appellants submitted Will County property tax records from that address. Indeed, in his sur-reply brief before the trial court, plaintiff conceded that "the defendants' exhibit reveals that lot 13A of the address listed is taxed and assessed from Will County." In light of these facts, appellants urge us to find that the trial court erred in stating that the decedent worked in Cook County prior to her death. We agree that the trial court's finding in this regard is questionable, but, in any event, we need not rule upon this issue, because the decedent's place of employment is not dispositive to the issue of public interest in light of Will County's predominant connection to the facts of this case.

¶ 54 Another factor relevant to the *forum non conveniens* analysis is docket congestion, although our supreme court has noted that this factor is "relatively insignificant" (*Dawdy*, 207 Ill. 2d at 180 (citing *Guerine*, 198 Ill. 2d at 517)). Appellants argue that Cook County's congestion favors transfer to Will County, citing statistics from the Annual Report of the Administrative Office of Illinois Courts that show that at the end of 2010, there were almost ten times as many cases pending in Cook County as in Will County. Plaintiff, on the other hand, cites statistics showing that Cook County cases have a shorter average disposition time than Will County cases. In any event, this factor is not dispositive in light of the other public interest factors cited above. See *Fennell*, 2012 IL 113812, ¶ 43, 46 (finding court congestion factor to be insignificant but nonetheless finding public interest factors favored transfer because the case lacked a significant factual connection to the plaintiff's chosen forum).

¶ 55 III. CONCLUSION

¶ 56 Considering all relevant private and public interests, we find that this case has a

predominant connection to Will County, and the balance of factors strongly favors appellants' requested transfer, such that no reasonable person would take the position of the circuit court. Therefore, we find that the circuit court abused its discretion in denying transfer. The order of the circuit court of Cook County is reversed, and the cause is remanded to the circuit court of Cook County with directions to transfer the cause to Will County.

¶ 57 Reversed and remanded.