2014 IL App (1st) 13-0688-U
No. 1-13-0688
Order filed August 20, 2014

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LUIS TERAN and INEZ TERAN, Plaintiff-Appellants, v. TRAPPERS TRANSPORT, LTD., a Canadian Corporation, ROBERT SERBLOWSKI, and MCDONALD'S CORPORATION, Defendant-Appellees.	)))))))))))	Appeal from the Circuit Court of Cook County. No. 2011 L 10842 The Honorable William E. Gomolinski, Judge, presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion when it granted defendants' motion to transfer based on the doctrine of *forum non conveniens*, where the trial court reasonably found the balance of private and public interest factors favored transfer to Michigan due to its predominant connection to the litigation.

¶ 2 Plaintiffs Luis Teran and his wife, Inez Teran, sued defendants Trappers Transport, Ltd., Robert Serblowski, and McDonald's Corporation as a result of major injuries Luis sustained in a motor vehicle accident in Berrien County, Michigan. The circuit court dismissed the case based

on the doctrine of *forum non conveniens*. The Terans appeal the trial court's decision, arguing the case should remain in Cook County. The sole issue is whether the trial court committed an abuse of its discretion in balancing the private and public interest factors of *forum non conveniens*. After reviewing the record and the trial court's ruling, we find nothing to justify a conclusion that the trial court abused its discretion, and affirm.

¶ 3 BACKGROUND

¶ 4 Plaintiffs, Luis Teran and his wife, Inez Teran, are citizens of the Republic of Ecuador. From 2000 to 2009, Luis visited the United States once or twice a year for a couple of months to sell Ecuadorian crafts. Luis, who does not speak or read English, testified he and his wife considered Chicago their home in the United States. The Terans stayed in Chicago with relatives or friends when they visited the United States and Luis would travel around the Midwest on weekends to sell his crafts. Luis received a United States temporary visitor visa in March 2006; the visa expired in January 2011, which was extended. The record does not clarify Luis's current status.

¶ 5 On November 20, 2009, Luis was driving from Chicago to a shopping mall in Monroe, Michigan, in a van registered in Illinois. His driver’s license, issued by the State of Illinois, listed Chicago as his residence. Around 6:30 p.m., the van encountered mechanical problems and stopped in the right lane of traffic on I-94 near Bridgman, Berrien County, Michigan. Soon a semi-truck, owned by Trappers, a Canadian Corporation and driven by Robert Serblowski, a citizen of Alberta, Canada, rear-ended the van, causing serious injuries to Luis. Trappers maintains a registered agent for service of process in every state its agents travel through, including Illinois. The semi-truck was carrying frozen potato fries destined for McDonald's, a company with its headquarters in Oak Brook, Illinois.

¶ 6 According to the accident report, eight eyewitnesses reported either seeing the van stop or the accident occur: five resided in Michigan; two resided in London, England; and one resided in Evanston, Illinois. In response to the accident, the Bridgman Fire Department, Bridgman City Police Department, Berrien County Sherriff's Department, Michigan State Police, and Michigan Department of Transportation provided emergency services and produced a traffic crash report. At least 10 of the first responders from the various departments remain available in Michigan, including eight emergency medical technicians who arrived on the scene to provide treatment.

¶ 7 Initially, Luis was taken to Lakeland Regional Hospital in St. Joseph, Michigan, and later transferred to Memorial Hospital of South Bend, Indiana. After he was stabilized, he was taken s to Oak Forest Hospital, Oak Forest, Illinois for rehabilitation and treatment. Thereafter, Luis received ongoing treatment and rehabilitation at John H. Stroger, Jr. Hospital in Cook County. Stroger Hospital has placed a medical lien in Illinois for its services. Luis named three potential witnesses from South Bend Memorial, three from Oak Forest Hospital, and one from Stroger Hospital.

¶ 8 Originally, Luis's immigration attorney referred Luis's case to an Illinois personal injury attorney, who contacted a Michigan personal injury attorney to file suit. Neither personal injury attorney spoke or understood Spanish. In July 2010, Luis filed a complaint in the Berrien County Court against Trappers and Serblowski; however, neither Luis, nor anyone in his family, communicated with the Michigan attorney or reviewed the complaint before its filing. The Michigan complaint erroneously alleged that Luis is a United States citizen, which the attorneys assumed from the statement in the accident report that Luis has an Illinois driver's license. Then, on the basis of diversity of citizenship, the defendants removed the case to the United States District Court for the Western District of Michigan.

¶ 9 Once in federal court, Luis's personal injury attorney withdrew and an attorney fluent in Spanish appeared for Luis. This attorney learned Luis was a citizen of Ecuador, and without diversity of citizenship, the district court remanded the case to Berrien County Court. Thereafter, Luis decided he would prefer to proceed in Cook County. In granting Luis's motion to voluntarily dismiss without prejudice, the Berrien County Court was under the impression Luis resided in Cook County.

¶ 10 In October 2011, Luis, joined by his wife Inez, initiated an action against Trappers and Serblowski, and added McDonald's. Defendants moved to dismiss or transfer on *forum non conveniens* grounds.

¶ 11 In April 2012, the Terans engaged a private investigator to contact the five Michigan eyewitnesses and determine their willingness to testify in Illinois. According to the investigator's affidavit, all of the witnesses agreed to cooperate with a Cook County subpoena and testify in Illinois at a trial or hearing as long as reasonable advance notice and reimbursement of expenses would be provided. Four of the five eyewitnesses signed certifications confirming the accuracy of the investigator's affidavit. Although the fifth eyewitness did not certify, the investigator stated in his affidavit that the fifth witness verbally agreed to submit to an Illinois subpoena. None of the witness certifications contained a statement that a trial in Cook County would be convenient. Additionally, the Terans' investigator met with the Bridgman Police Department Chief and the Berrien County Sheriff. The investigator confirmed the chief of police and the sheriff would accept subpoenas on behalf of their departments and permit witnesses within their departments to testify in Cook County as long as they were provided reasonable advance notice and compensation for travel expenses. The chief of police and the sheriff provided certifications confirming the accuracy of the investigator's affidavit.

¶ 12 The investigator also submitted an addendum to the affidavit summarizing his encounters with the witnesses located in Michigan during which he informed the witnesses that any forum for trial would be inconvenient to their daily lives, not just a trial in Illinois.

¶ 13 Defendants hired a private investigator as well. Their investigator observed Luis from December 2010 through July 2012. His affidavit states that he observed Luis residing at various locations in Michigan, including Lansing, East Lansing, Holt, and Okemos. Additionally, defendants filed an affidavit from the general manager of the Meridian Mall, Okemos, Michigan, who testified Luis leased a kiosk at the mall from November 2010 through 2012. The manager testified Luis used a Chicago address for the kiosk lease.

¶ 14 In January 2013, the circuit court granted defendants' motion to transfer, finding that Michigan had a predominant connection, and the balance of the private and public interest factors strongly outweighed the Terans' choice of forum.

¶ 15 The Terans filed an interlocutory petition for leave for appeal under Illinois Supreme Court Rule 306(a)(2) (eff. Feb. 26, 2011), which we allowed. The sole issue is whether the trial court abused its discretion in granting defendants' motion to transfer based on the doctrine of *forum non conveniens*.

¶ 16 STANDARD OF REVIEW

¶ 17 A trial court has broad discretion when deciding a motion based on *forum non conveniens*, and its ruling will be overturned only for abuse of discretion. See *Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217, 223 (1987). Illinois courts have determined that an abuse of discretion occurs when the trial court fails to use judgment, ignores established legal principles, or arbitrarily makes the decision to transfer. See *Laverty v. CSX Transportation, Inc.*, 404 Ill. App. 3d 534, 536 (2010). Put another way, reversal is compelled when the court adopts a view

that no reasonable person would take in balancing the relevant factors for *forum non conveniens*. See *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 442 (2006).

¶ 18 ANALYSIS

¶ 19 The equitable doctrine o*f forum non conveniens* is "founded in considerations of fundamental fairness and sensible and effective judicial administration." *First American Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002) (quoting *Adkins v. Chicago, Rock Island & Pacific R.R. Co.*, 54 Ill. 2d 511, 514 (1973)). Hence, a court may only decline jurisdiction under *forum non conveniens* for an exceptional case when another jurisdiction and venue are not only proper, but "would better serve the ends of justice." *Guerine*, 198 Ill. 2d at 515 (quoting *Vinson v. Allstate*, 144 Ill. 2d 306, 310 (1991)). The court must balance both private and public interest factors to determine whether the doctrine applies. *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶17.

¶ 20 Private interest factors include: (1) convenience of the parties; (2) ease of access to testimonial, documentary, and real evidence; (3) availability of compulsory process over unwilling witnesses; (4) cost to obtain a willing witnesses' attendance; (5) possibility of viewing the premises; and (6) "all other practical considerations that make a trial easy, expeditious, and inexpensive." *Fennell*, 2012 IL 113812, ¶15. Public interest factors to be considered include: (1) court congestion; (2) the policy that local interests should be decided locally; and (3) the unfairness of imposing expenses and burdening a jury with litigation that has little or no connection to the forum. *Langenhorst*, 219 Ill. 2d at 443-44. Another factor which the Illinois Supreme Court call "significant" is the applicability of a foreign jurisdiction's law. *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 175 (2005) (quoting *Moore v. Chicago & North Western Transportation Co.*, 99 Ill. 2d 73, 80 (1983)).

¶ 21 When weighing all of these factors, the court may not emphasize one factor over another. *Fennell*, 2012 IL 113812, ¶17. Instead, the totality of the circumstances matters. *Id*. The defendants must establish that the relevant private and public interest factors strongly favor transfer from plaintiff's chosen forum. *Langenhorst*, 218 Ill. 2d at 444. Illinois courts have made the burden on the defense steep by applying the "unequal balancing test" to evaluate the doctrine of *forum non conveniens*. *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill. 2d 101, 107 (1990). The unequal balancing test begins with "plaintiff's choice already in the lead." *Guerine*, 198 Ill. 2d at 521. In essence, the court should only grant defendant's motion to transfer where defendant demonstrates the litigation has "no practical connection to [plaintiff's chosen] forum," (*Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 336 (1994)) or "when the balance of factors strongly favors litigation in another forum." *Guerine*, 198 Ill. 2d at 521.

¶ 22 A. Private Interest Factors

¶ 23 In support of their claim that the private interest factors do not weigh strongly in favor of Berrien County, the Terans argue the following: (1) the convenience of the parties in Berrien County does not grant an advantage over Cook County; (2) ease of access to sources of proof is insignificant; (3) the witnesses are scattered and lack a dominant location; (4) the court erred in evaluating the cost and availability of witnesses; and (5) a jury view is unnecessary.

¶ 24 With regard to the convenience of the parties, "defendant must show that the plaintiff's chosen forum is inconvenient to the defendant and that another forum is more convenient to all parties." *Langenhorst*, 219 Ill. 2d at 444 (citing *Guerine*, 198 Ill. 2d at 518). Defendants may not assert that plaintiffs' chosen forum is inconvenient to the plaintiffs. *Id.* The trial court did not directly address this factor in its *forum non conveniens* evaluation. For defendants, the convenience of Cook County compared to Berrien County does not weigh strongly in favor of

one county over the other. Defendants Trappers and Serblowski would both have to travel from Canada; the difference between traveling to Cook County or Berrien County would be negligible. Additionally, McDonald's does business nationally, although it is headquartered in Illinois, and would not likely be burdened by litigation in Michigan.

¶ 25 Although, defendants' private investigator's affidavit indicates Luis frequently traveled to, and stayed in, Michigan, the Terans argue Luis relied on a cousin in Chicago for housing, translation, and support, and he must remain there for monthly medical treatment. Litigation in Berrien County, however, would not require the Terans to move to Michigan, but be there for trial, and thus does not interfere with Luis's on-going medical treatment in Illinois. The court did not directly discuss the convenience of the parties.

¶ 26 Second, we consider the private interest factor of ease of access to testimonial, documentary, and real evidence. With the development of "interstate highways, bustling airways, telecommunications, and the world wide web," the ease of travel, communication, and transport has changed the meaning of convenience under the doctrine of *forum non conveniens*. *Guerine*, 198 Ill. 2d at 525. Thus, this factor has lessened in significance as the current state of technology allows evidence to be reproduced and transmitted inexpensively and easily. *Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261, 281 (2011). Nevertheless, ease of access to documentary and real evidence remains a factor. The trial court found ease of access to documentary and real evidence favors Michigan. As the accident occurred in Michigan and documents related to the accident remain in Michigan, we hold the trial court did not abuse its discretion regarding this factor.

¶ 27 The trial court considered the locations of the potential witnesses and found the majority reside in Michigan. As the Terans note, a trial court abuses its discretion when it grants transfer

away from plaintiff's chosen forum even though "potential trial witnesses are scattered among several counties, including plaintiff's chosen forum, and no single county enjoys a predominant connection to the litigation." *Guerine*, 198 Ill. 2d at 526. The Terans rely on *Guerine* to argue the present matter is one of scattered witnesses. In *Guerine*, the witnesses were truly scattered over "eight Illinois counties and two additional states." *Id.* at 523. In contrast, the majority of potential witnesses are located in Michigan: five eyewitnesses and at least ten first responders remain in Michigan, one eyewitness and four medical providers remain in Illinois, three medical providers remain in Indiana, and two eyewitnesses remain in London. Therefore, this is not a case of scattered witnesses, in which there are a number of states where one or two witnesses reside. The witnesses predominantly reside in Michigan, as required by *Guerine*. Accordingly, we hold the trial court did not abuse its discretion in finding ease of access to witnesses and testimonial evidence favors transfer.

¶ 28 We next consider the availability of compulsory process over unwilling witnesses and the cost of obtaining willing witnesses. According to Illinois Supreme Court Rule 187(b) (eff. Jan. 4, 2013), parties may use affidavits to support or oppose motions to transfer under *forum non conveniens*. Rule 187(b) further provides that "[i]n determining issues of fact raised by affidavits, any competent evidence adduced by the parties shall also be considered." Ill. Sup. Ct. R. 187(b) (eff. Jan. 4, 2013). Trial courts evaluate the sufficiency of affidavits filed in support of *forum non conveniens* motions by a less stringent standard than Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013) requires for motions for summary judgment, to contest jurisdiction over a person, or for involuntary dismissal. *Botello v. Illinois Central R.R. Co.*, 348 Ill. App. 3d 445, 451 (2004). Courts allow affidavits in support of *forum non conveniens* to have "less specificity and less detail." *Botello*, 348 Ill. App. 3d at 451 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S.

235, (1981)); see also *Walker v. Iowa Marine Repair Corp.*, 132 Ill. App. 3d 621, 630 (1985) ("At this stage of litigation, some leeway in specificity must be given."). Essentially, courts measure the extent to which the affidavit in support of a motion for *forum non conveniens* allows the court to weigh the private and public interest factors to determine whether an alternate forum would be more convenient. See *Botello*, 348 Ill. App. 3d at 451; see also *Walker*, 132 Ill. App. 3d at 630; see also *Haring v. Chicago & North Western Transportation Co.*, 103 Ill. 2d 530, 533 (1984).

¶ 29 The trial court knew the location of the witnesses and determined that the majority of witnesses were out of Illinois subpoena power. In response, the Terans contend the trial court erred in failing to consider the affidavit provided by their private investigator and the attached certifications signed by the Michigan witnesses in support of the investigator's affidavit. The certifications attached to the affidavit confirm that the Michigan witnesses voluntarily agreed to testify in Illinois even though they were outside the scope of Illinois subpoena power. The trial court considered the investigator's affidavit and witnesses' willingness to testify in Illinois, yet, it reasonably concluded that bringing a willing witness to Cook County would be costly. Therefore, we hold the trial court reasonably concluded availability and cost of obtaining witnesses weigh in favor of Michigan, and the trial court did not abuse its discretion in so finding.

¶ 30 Next, we consider the fifth private interest factor–the possibility of viewing the scene of the accident. Our supreme court determined that "a party does not have an absolute right to have the jury view the scene of the accident." *Boner v. Peabody Coal Co.*, 142 Ill. 2d 523, 535 (1991). Even so, a trial court may allow a jury view of the accident scene to enhance a jury's understanding and ability to apply evidence. *Boner*, 142 Ill. 2d at 535; see also *Munjal v. Baird*

& Warner, Inc., 138 Ill. App. 3d 172, 185 (1985). The court in *Dawdy v. Union Pacific Railroad Company* clarified that "[t]his convenience factor is not concerned with the *necessity* of viewing the site of the injury, but rather is concerned with the *possibility* of viewing the site, if appropriate." (Emphases in original.) *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 178 (2003). Although the court in *Dawdy* stressed the possibility of viewing the site over the necessity of viewing the site, other courts focus on a realistic evaluation of whether viewing the site will improve a jury's understanding of the conditions that caused the accident.

¶ 31 For instance, the Terans rely on *Blake v. Colfax Corporation*, which stated that the possibility of viewing a site, standing alone, fails to sufficiently support transfer. *Blake v. Colfax Corp.*, 2013 IL App (1st) 122987, ¶22. In *Blake*, an accident occurred at an intersection at 10 p.m. on an icy winter night. See *id.*, ¶23. The court in *Blake* reasoned that "a juror's ability to view road crossings, signs, and sight lines from the perspective of the parties [did] not seem to be a significant issue in this case" because the relevant conditions could not be duplicated for a jury. *Id.* Likewise, the court in *Grachen v. Zarecki* concluded that where an accident occurred on a relatively straight stretch of highway, it could not weigh the possibility of a jury view in favor of defendants "[w]ithout some indication as to the importance of a jury view of the site***." *Grachen v. Zarecki*, 200 Ill. App. 3d 336, 340 (1990).

¶ 32 Similar to the road conditions in *Blake*, the road conditions leading to the accident here could not realistically, or safely, be reproduced for a jury. The accident occurred on a busy highway at night, with Luis's van blocking the right lane of traffic. Undoubtedly, a jury would be unable to view the accident site under the same conditions. Further, defendants did not place anything in the record to establish the section of I-94 where the accident occurred has special characteristics that would make a jury view necessary or helpful. As defendants did not offer

evidence to suggest an actual viewing of the site would be necessary, this factor becomes diminished, though not completely negated. The trial court found the possibility of viewing the accident site may be necessary, and it would be irrational for the jury to travel from Cook County to the site. We hold the trial court did not abuse its discretion in finding the possibility of a jury view favored Michigan.

¶ 33 The parties' briefs do not dispute or address the final factor–"all other practical considerations that make a trial easy, expeditious, and inexpensive." *Fennell*, 2012 IL 113812, ¶15. We agree with the trial court's finding that "[e]ven though both parties' attorneys maintain offices in Chicago, the other private factors, such as the location of the witnesses and situs of the accident, *** [favor] the convenience of a Michigan forum." We hold that under the circumstances the trial court did not abuse its discretion in finding the balance of private interest factors favor Michigan.

¶ 34 B. Public Interest Factors

¶ 35 The Terans argue that the trial court erred in its consideration of public interest factors. Specifically, they make the following claims: (1) court congestion is not a significant factor for *forum non conveniens*; (2) Illinois has an interest in providing forum for this litigation; (3) Illinois courts can apply law from alternate jurisdictions; and (4) an Illinois jury would not be burdened in hearing this case because Illinois has a significant connection to the litigation.

¶ 36 Although Illinois courts commonly recognize court congestion as a "relatively insignificant" factor, it remains appropriate for the court to consider. *Fennell*, 2012 IL 113812, ¶43; see also *Dawdy*, 207 Ill. 2d at 181; see also *Guerine*, 198 Ill. 2d at 517. The trial court compared adjudication data from the Michigan Supreme Court Annual Report of 2011, which was not county-specific, to adjudication data from the Annual Report of the Illinois Courts,

produced by the Administrative Office of the Illinois Courts, which had data specific to Cook County. From that, the trial court found congestion is greater in Cook County than in Berrien County. The Terans argue the trial court erred because it did not base its conclusion on reports that allowed a direct county by county comparison, or on evidence of the size and speed of each forum. Still, the trial court did not err in its reasoning. Under the Federal Rules of Evidence, "[a] court may judicially notice a fact that is not subject to reasonable dispute because it *** can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b) (2) (eff. Dec. 1, 2012). The trial court reasonably used statistics from annual reports produced by the Illinois and Michigan courts. The trial court could readily and accurately determine the information it required for its analysis from these sources, and the sources cannot reasonably be questioned. According to the *Annual Report of the Illinois Courts*, in 2012 parties filed 347,251 civil cases in the Circuit Court of Cook County, and the circuit court disposed of 368,285 civil cases. Administrative Office of the Illinois Courts, *Annual Report of the Illinois Courts: Statistical Summary – 2012*, 29 (2012), http://www.state.il.us/court/SupremeCourt/AnnualReport/2012/StatsSumm/2012_Statistical_Summary.pdf. Whereas in 2012, parties filed 2,234 civil cases in the 2nd Circuit Court of Berrien County, and the court disposed of 1,857 civil cases. Michigan Courts, 2012 Caseload Report, 1 (2012) http://courts.mi.gov/education/stats/Caseload/Documents/Caseload/2012/Berrien.pdf.

¶ 37 Thus, the trial court did not abuse its discretion when it referenced statistics readily available on Illinois and Michigan court websites and found that Michigan courts are less congested.

¶ 38 We next consider the factor of local interests being decided locally. Under the doctrine of *forum non conveniens*, litigation must have a "practical connection" to plaintiff's chosen

forum. *Guerine*, 198 Ill. 2d at 521; see also *Peile*, 163 Ill. 2d at 336. Without this "nexus," the court may appropriately transfer the case if the defendant meets its burden under the doctrine. *Guerine*, 198 Ill. 2d at 521. Occurrence of an accident "gives the action local interest," which establishes a practical connection in the county where the accident occurred, and grants that county a "significant interest in the dispute." *Dawdy*, 207 Ill. 2d at 183. The Terans assert Cook County has a significant interest in providing a forum for its residents, but offer no case law in support of this assertion.

¶ 39 Further, the Terans argue the litigation has a significant connection to Illinois by asserting Cook County has an interest in providing a forum for the resolution of Stroger Hospital's substantial lien against Luis for medical services. The Terans' argument that the medical lien establishes a nexus in Cook County fails. Section 30 of the Health Care Services Lien Act of Illinois (770 ILCS 23/30 (West 2013)) grants jurisdiction to circuit courts to adjudicate and enforce medical liens once the injured party, health care professional, or health care provider files a petition and provides notice to all adverse parties with an interest in the adjudication. Additionally, section 20 of the Hospital Lien Act (770 ILCS 23/20 (West 2013)) provides that the medical lien must attach to "any verdict, judgment, award, settlement or compromise secured by or on behalf of the injured person." In other words, Stroger Hospital's lien against Luis does not become enforceable until a court establishes a judgment or the parties settle. The location where judgment or settlement occurs does not affect a party's right to adjudicate a lien in a different forum. A settlement or judgment for the Terans in Michigan would not affect Stroger Hospital's right to adjudicate its lien against Luis in Illinois. Thus, the existence of medical liens in Illinois does not favor Illinois as a forum. Plaintiffs did not establish that Cook County's interest in providing forum for its temporary residents or the existence of a medical lien in

Illinois outweighs the litigation's significant connection to Michigan. Therefore, the trial court did not abuse its discretion in finding Illinois has little relevant connection with this litigation.

¶ 40 The next public interest factor we consider – application of foreign law, specifically the Michigan No Fault Law – slightly favors Michigan as a forum. Illinois courts established that every state has "an interest in applying its law to its own courts." *Gridley*, 217 Ill. 2d at 175. Nonetheless, Illinois courts hold that "choice of law considerations cannot be deemed dispositive," (*Erwin*, 408 Ill. App. 3d at 283; see also *Grant v. Starck*, 96 Ill. App. 3d 297, 304 (1981)) and "Illinois courts can readily adapt to apply foreign laws to actions pending before them." *Ferguson v. Bill Berger Associates*, 302 Ill. App. 3d 61, 74 (1998). Defendants argue the opposite, referencing the following: "The need to apply the law of a foreign jurisdiction [is] considered a significant factor favoring dismissal of a suit on grounds of *forum non conveniens*." *Gridley*, 217 Ill. 2d at 175 (2005) (quoting *Moore v. Chicago & North Western Transportation Co.*, 99 Ill. 2d 73, 80 (1983)). Although a court should not be burdened in applying foreign law, a court may apply foreign law if there are strong policy reasons and a strong connection of the forum to the case. *Gridley*, 217 Ill. 2d at 175. Michigan's No-Fault Insurance Act, MCL 500.3101 *et seq* (West 2008), "guarantees personal protection insurance (PPI) to victims of motor vehicle accidents in return for restrictions on a victim's ability to file a tort action." *K.G. v. State Farm Mutual Automobile Insurance Co.*, 674 F. Supp. 2d 862, 866 (E.D. Mich. 2009). Whereas, under section 2-1116 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1116 (West 2012)), Illinois uses a "'modified' system in which a plaintiff cannot recover damages if his or her fault is more than 50% of the proximate cause of the injury." *Aimonette v. Hartmann*, 214 Ill. App. 3d 314, 319 (1991). Although the trial court did not directly address this factor, we

hold Illinois courts would not likely have a problem applying Michigan law; therefore, this factor does not weigh strongly in favor of Michigan.

¶ 41 Finally, we consider the unfairness of imposing jury duty on residents of a community lacking connection to the litigation. Defendants assert that jury duty is a burden (see *Wieser v. Missouri Pacific R.R. Co.*, 98 Ill. 2d 359, 371 (1983)), and cases "without significant factual connections to particular forums [must] be dismissed in favor of, or transferred to, convenient forums." *Fennell*, 2012 IL 113812, ¶44. The Terans do not discuss this factor. Instead, the Terans argue temporary residence in Cook County establishes a strong connection to Illinois. While the trial court did not discuss this factor in its analysis, it found Illinois has little relevant or practical connection to the litigation. We hold the trial court did not abuse its discretion in this finding, and, based on the record, was well aware of the Teran's residence here.

¶ 42 Overall, the public interest factors favor Michigan as the forum with significant interest in the resolution of this matter. Therefore, we hold the trial court did not abuse its discretion in finding Michigan has the predominant connection to this litigation.

¶ 43 C. Degree of Deference Given to Plaintiff's Choice of Forum

¶ 44 A fundamental principle of *forum non conveniens* is that "[a] plaintiff's right to select the forum is substantial and unless the factors weigh strongly in favor of transfer, the plaintiff's choice of forum should rarely be disturbed." *Gridley*, 217 Ill. 2d at 170; see *Dawdy*, 207 Ill. 2d at 173-74. While the Teran's choice of forum holds much weight, properly applying this standard requires granting plaintiff's choice of forum less deference "when the plaintiff is foreign to the chosen forum and when the action giving rise to the litigation did not occur in the chosen forum." *Id.* Moreover, our supreme court has recognized that a trial court should give plaintiff's

choice less deference when the current forum is plaintiff's second choice of forum. See *Fennell*, 2012 IL 113812, ¶25; *Peile*, 163 Ill. 2d at 344.

¶ 45 The trial court found Luis only became a temporary resident of Cook County after the accident in Berrien County. Additionally, the trial court found that Cook County is Luis's second choice of forum because he originally filed suit in Berrien County. Relying on these two findings, the trial court reasoned the Terans' choice of forum deserved less deference. In response, the Terans reiterated that the court must apply an unequal balancing test with the Terans' choice in the lead when weighing private and public interest factors. See *Guerine*, 198 Ill. 2d at 521. The Terans primarily assert that–counter to what the trial court found–Luis resided in Cook County before the accident. Regardless of residency at the time of the accident, the accident occurred outside of the Terans' chosen forum, and the balance of private and public interest factors strongly weighs in favor of Michigan over Cook County. In consideration of these factors, we hold the trial court did not abuse its discretion in granting the Terans' choice of forum less deference.

¶ 46 D. Cook County v. Berrien County

¶ 47 The trial court found the following private interest factors favored Michigan as the alternative forum: ease of access to documentary, real, and testimonial sources of evidence; the availability and convenience of witnesses; the cost of obtaining willing witnesses; and the possibility of a jury view of the site. We believe the trial court reasonably considered these factors. The trial court did not directly address the convenience of the parties as a private interest factor; however, this factor is neutral. Thus, we hold the trial court reasonably considered the private interest factors and did not abuse its discretion in finding the private interest factors favored Michigan.

¶ 48 The trial court reasonably found these public interest factors favored transfer to Michigan: court congestion, and the policy that local controversies should be decided locally. While the trial court did not directly name the factors of application of foreign law and the burden of jury duty on residents with no connection to the litigation, it found Illinois has very little relevant or practical connection with the litigation. The ability of Illinois to apply Michigan law does not weigh strongly in favor of Michigan, and Michigan's connection to the litigation outweighs the connection to Illinois. Therefore, we hold the trial court reasonably considered the public interest factors, and did not abuse its discretion in finding they favored transfer to Michigan.

¶ 49 Finally, we hold the trial court did not abuse its discretion in according less deference to the Terans' choice of forum, as this case has minimal connection to Cook County compared to Berrien County.

¶ 50 CONCLUSION

¶ 51 Overall, the factors strongly favor the alternative forum as found by the trial court's careful analysis. We hold the trial court did not abuse its discretion in granting defendants' motion to dismiss or transfer based on *forum non conveniens.*

¶ 52 Affirmed.