

NOTICE
Decision filed 11/12/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 140007-U

NO. 5-14-0007

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

JOE CLARK, MEGAN CLARK, BOB NORRIS, and)	Appeal from the
TOM GALL,)	Circuit Court of
)	St. Clair County.
Plaintiffs-Appellees,)	
)	
v.)	No. 12-L-111
)	
TOSH PORK, LLC, and DYKHUIS FARMS, INC.,)	
)	
Defendants-Appellants)	
)	Honorable
(Fragrant 40, LLC, Jeff Seabaugh, Alan Investments,)	Vincent J. Lopinot,
Inc., and Silver Creek Pig, Inc., Defendants).)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Chapman and Spomer concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's judgment is vacated, and the cause remanded with directions, because the appellate court cannot properly review the circuit court's order for abuse of discretion where the circuit court failed to specify its findings, either in oral or written form, regarding the private- and public-interest factors involved in a *forum non conveniens* analysis.

¶ 2 The plaintiffs, Joe Clark, Megan Clark, Bob Norris, and Tom Gall, filed nuisance, negligence, and trespass claims in the circuit court of St. Clair County against the defendants, Fragrant 40, LLC, Jeff Seabaugh, Alan Investments, Inc., Silver Creek Pig,

Inc., Dykhuis Farms, Inc., and Tosh Pork, LLC. Tosh Pork, Dykhuis Farms, and Silver Creek Pig requested that the circuit court transfer the cause to the circuit court of Macoupin County on the basis of *forum non conveniens*, and the circuit court denied the motion. For the reasons that follow, we vacate the circuit court's order and remand the cause to the circuit court to include in the record an analysis of the *forum non conveniens* factors.

¶ 3

BACKGROUND

¶ 4 On February 28, 2012, the plaintiffs, each a resident of Macoupin County, filed their initial complaint alleging damage caused by the defendants' swine breeding and gestation facility located in Macoupin County. In their complaint, the plaintiffs alleged that the defendants intentionally, negligently, and improperly disregarded duties for the proper handling and storage of animal manure and urine, the maintenance of lagoons, and the burial and burning of dead swine, thereby subjecting them to frequent additional odor and particulate matter, discharges of hog manure and urine, and other emissions and pests. On August 14, 2013, the plaintiffs filed their second amended complaint which, *inter alia*, substituted Tosh Pork for Bacon By Gosh, Inc. The plaintiffs' complaint alleged nuisance, negligence, and trespass that interfered with the use and enjoyment of their Macoupin County properties.

¶ 5 On September 19, 2013, Tosh Pork, a Tennessee corporation with its registered agent in Tennessee, filed a motion to transfer the cause to Macoupin County on the basis of *forum non conveniens*. On September 20, 2013, Dykhuis Farms filed an amended request to transfer on grounds of *forum non conveniens*. Dykhuis Farms attached the

affidavit of its president Robert Dykhuis. Robert stated that Dykhuis Farms was a Michigan corporation with its principal place of business in Michigan, that it did not do business in St. Clair County, that it had no agents, employees, or offices in St. Clair County, and that it did not own or lease any real estate in St. Clair County. Silver Creek Pig joined in both motions on October 29, 2013.

¶ 6 The record thus reveals that the four plaintiffs live in Macoupin County, and Fragrant 40's livestock facility is located in Macoupin County. Ronald Seabaugh was a St. Clair County resident and served as registered agent for Fragrant 40 when the plaintiffs' initial complaint was filed. However, the plaintiffs voluntarily dismissed Ronald Seabaugh, and he ceased serving as Fragrant 40's registered agent prior to Tosh Pork being added as a defendant. Fragrant 40's current registered agent resides in Sangamon County, Illinois, and its principal place of business is in Greene County, Illinois. Jeff Seabaugh resides in Montgomery County, Illinois. Silver Creek Pig is a Missouri corporation, whose registered agent is located in Hancock County, Illinois. The registered agent for Alan Investments is located in Logan County, Illinois.

¶ 7 After hearing arguments on October 30, 2013, the circuit court took the matter under advisement. On December 9, 2013, the circuit court denied the motions to transfer but did not include a *forum non conveniens* analysis or findings in its decision. On January 10, 2014, Tosh Pork filed an interlocutory petition for leave to appeal under Illinois Supreme Court Rule 306(a)(2) (eff. Feb. 16, 2011). Dykhuis Farms joined in the petition, and we allowed it on February 20, 2014.

¶ 9 The Illinois venue statute provides that an "action must be commenced (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose." 735 ILCS 5/2-101 (West 2012). Where more than one potential forum exists, the court may invoke the doctrine of *forum non conveniens* to determine the most appropriate forum. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 171 (2003). "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, if it appears that another forum can better serve the convenience of the parties and the ends of justice." *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 12. *Forum non conveniens* is an equitable doctrine " '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)).

¶ 10 In resolving *forum non conveniens* questions, the trial court must balance private-interest factors affecting the convenience of the parties and public-interest factors affecting the administration of the court. *Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217, 223-24 (1987). Private-interest factors include: (1) the convenience of the parties, (2) the relative ease of access to testimonial, documentary, and real evidence, (3) the availability of compulsory process over unwilling witnesses, (4) the cost to obtain

willing witnesses' attendance, (5) the 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) the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin, (2) the unfairness of imposing jury duty upon residents of a community with no connection to the litigation, and (3) the policy that local interests should be decided locally. *Fennell*, 2012 IL 113812, ¶ 16; *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 443-44 (2006).

¶ 11 When weighing all of these factors, the court may not emphasize one factor over another but instead must consider the totality of the circumstances. *Fennell*, 2012 IL 113812, ¶ 17. The defendants must establish that the relevant private- and public-interest factors strongly favor transfer from plaintiff's chosen forum. *Langenhorst*, 219 Ill. 2d at 444.

¶ 12 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 v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 170 (2005); see also *Dawdy*, 207 Ill. 2d at 173-74. "However, 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, the plaintiff's choice of forum is accorded less deference. *Fennell*, 2012 IL 113812, ¶ 18. "[C]ourts have never favored forum shopping." *Dawdy*, 207 Ill. 2d at 174. "Decent judicial administration cannot tolerate forum shopping as a persuasive or even legitimate reason for burdening

communities with litigation that arose elsewhere and should, in all justice, be tried there." *Fennell*, 2012 IL 113812, ¶ 19. "Indeed, '[a] concern animating our *forum non conveniens* jurisprudence is curtailing forum shopping by plaintiffs.' " *Fennell*, 2012 IL 113812, ¶ 19 (quoting *Guerine*, 198 Ill. 2d at 521).

¶ 13 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*, 116 Ill. 2d at 223. A trial court abuses its discretion if it acts arbitrarily, fails to employ conscientious judgment, or ignores recognized legal principles. *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 336 (1994).

Accordingly, the sole issue on appeal is whether the trial court abused its discretion in denying the motions to transfer based on the doctrine of *forum non conveniens*. The circuit court's decision will be reversed if it abused its discretion in balancing the relevant factors. See *Vinson v. Allstate*, 144 Ill. 2d 306, 309 (1991). Our supreme court has recently cautioned circuit courts to "include all of the relevant private[-] and public[-]interest factors in their analyses." (Emphasis omitted.) *Fennell*, 2012 IL 113812, ¶ 24.

¶ 14 In its written order, the circuit court here failed to include analysis or findings regarding the private- and public-interest factors involved in a *forum non conveniens* analysis, nor did it address the factors at the hearing. Indeed, the record on appeal is devoid of analysis or findings by the circuit court regarding the *forum non conveniens* factors. The circuit court's exercise of its discretion cannot be reviewed adequately when the *forum non conveniens* factors are not included in the analysis. See *Fennell*, 2012 IL

113812, ¶ 75 (Kilbride, C.J., dissenting upon denial of rehearing) (trial court's exercise of discretion cannot be reviewed adequately when the *forum non conveniens* factors are not included in the analysis). Because the circuit court failed to include in its decision its analysis or findings regarding the *forum non conveniens* factors, we remand the cause to the circuit court to make findings on its analysis of the factors.

¶ 15

CONCLUSION

¶ 16 For the reasons stated, we vacate the judgment of the circuit court of St. Clair County and remand the cause with directions for the circuit court to enter into the record express findings regarding the *forum non conveniens* factors.

¶ 17 Vacated and remanded with directions.