2017 IL App (1st) 160934-U
No. 1-16-0934
Order filed September 12, 2017
Second Division

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JAMES RUDESILL, as Administrator of the Estate of KIANNA RUDESILL, Deceased, Plaintiffs-Appellees, v. THE BABY FOLD, JOSHUA LAMIE, HEATHER LAMIE, WILLIAM PUGA, M.D., individually and as agent of BHC STREAMWOOD HOSPITAL, INC., Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 15 L 3146 The Honorable John H. Ehrlich, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Neville and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying defendant's motion to transfer the case from Cook County to Livingston County under *forum non conveniens.*

¶ 2 After four-year-old Kianna Rudesill died at the hands of her foster mother, Heather Lamie, Kianna's biological father James Rudesill filed suit in Kankakee County against Heather, her husband Joshua Lamie, and The Baby Fold, a social service agency that had placed Kianna with the Lamies. Rudesill later voluntarily dismissed the suit and re-filed it in Cook County,

adding defendants Dr. William Puga and Streamwood Hospital. The defendants moved to transfer the case to Livingston County under the doctrine of *forum non conveniens.*

¶ 3 We find that the trial court did not abuse its discretion in denying this motion. The case has factual connections to both Cook and Livingston Counties, and the trial court considered all of the relevant factors. The defendants did not meet their burden to justify transfer, and so we affirm. We also deny defendants' motion to strike portions of the plaintiff's brief.

¶ 4 BACKGROUND

¶ 5 In 2010, Kianna Rudesill and four of her siblings were taken from their parents, James Rudesill and Tawnee Jones, and placed into foster care. The Baby Fold, a social-services nonprofit headquartered in McClean County and providing services in McClean, Livingston, and DeWitt Counties, arranged for Kianna and her siblings to be placed in the care of foster parents Joshua and Heather Lamie, who lived in Livingston County.

¶ 6 Over the course of Kianna's stay with the Lamies, she was seen by a number of medical professionals, including Dr. William Puga, a child psychiatrist who practiced in both Livingston County and Cook County. Kianna also spent seven days as an inpatient at Streamwood Hospital, in Cook County.

¶ 7 In 2011, Kianna died at the hands of Heather Lamie. Heather was convicted of Kianna's murder in the Circuit Court of Livingston County, and is now serving a life sentence.

¶ 8 Following Kianna's death, James Rudesill was appointed administrator of Kianna's estate. In April 2013, Rudesill filed a lawsuit against The Baby Fold and the Lamies in the Circuit Court of Kankakee County. The suit proceeded for almost two years before Rudesill moved to voluntarily dismiss the suit in January 2015.

¶ 9 In April 2015, Rudesill re-filed—but this time, he filed it in the Circuit Court of Cook County, and he added two new defendants: Dr. Puga and Streamwood Hospital. All three sets of defendants (the Baby Fold, the Lamies, and Dr. Puga and Streamwood) moved to transfer the case to the Circuit Court of Livingston County, under the doctrine of *forum non conveniens*. The defendants alleged that most of the witnesses and documents were either in Livingston County or the surrounding counties, most of the relevant events had occurred in or around Livingston County, and that the Livingston County court system was much less congested than the Cook County courts. It also alleged that Rudesill had re-filed in Cook County as "forum shopping" after an adverse evidentiary ruling in his original Kankakee case, and had added Dr. Puga and Streamwood to the case only to create a connection to Cook County.

¶ 10 Rudesill objected, arguing that many of the witnesses did not live in Livingston County. In particular, Dr. Puga lived in DuPage County but worked in Cook County, and was much closer to Cook than Livingston. Streamwood Hospital (and many of the witnesses associated with it) lived in either Cook or the surrounding counties. Finally, he denied that he engaged in "forum shopping," and argued that he re-filed the case in Cook County after adding new defendants on the advice of new counsel.

¶ 11 According to a bystander's report, the trial court denied the motion on March 8, 2016. After reviewing the relevant case law and the timeline of events, the trial court considered the "private" and "public" interest factors. The trial court found that each of the "private" factors was neutral—convenience of the parties, ease of access to testimonial evidence, availability of compulsory process, cost of obtaining attendance, viewing the premises, and other practical considerations.

¶ 12 For the "public" factors, the court first analyzed the interest in allowing localized controversies to be decided locally. The court found that Cook County did have an interest in the litigation, while allowing that other counties also had an interest. The court decided that this factor favored Cook County because Cook County residents would have an interest in the care provided by a hospital and doctor located in Cook County. Similarly, the court found that imposing the expense of the trial also favored Cook County, since the controversy had a locus in Cook County. Finally, the court found that administrative considerations favored Livingston County, because its court system was smaller and less congested than Cook County's. The court concluded, based on all these factors, that the analysis favored Cook County, and denied the motion to transfer.

¶ 13 After a different division of this court denied the petition for leave to appeal, our Supreme Court ordered the issue be decided as an interlocutory appeal. See Ill. S. Ct. R. 306(a)(2) (eff. Jan. 1. 1970) (allowing interlocutory appeal by permission from trial court order allowing or denying motion to transfer case on grounds of *forum non conveniens*).

¶ 14 STANDARD OF REVIEW

¶ 15 We review the trial court's denial of a *forum non conveniens* motion for an abuse of discretion. *Fennell v. Illinois Central Railroad Co.*, 2012 IL 113812, ¶ 21. A trial court abuses its discretion only when its ruling is "arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." (Internal citation omitted) *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 22.

¶ 16 ANALYSIS

¶ 17 As this case has connections to both Cook and Livingston counties, there is "more than one forum with the power to hear the case." *Fennel*, 2012 IL 113812, ¶ 12. But the doctrine of

forum non conveniens allows a court to decline jurisdiction if another forum can better serve the parties' convenience and the ends of justice. *Id.* The doctrine is grounded in "considerations of fundamental fairness and sensible and effective judicial administration." *Id.* ¶ 14.

¶ 18 Plaintiffs have a "substantial" right to select the forum, and unless the factors weigh strongly in favor of transfer, plaintiff's choice should not be disturbed. *Fennel*, 2012 IL 113812, ¶ 18. But, we do not favor forum shopping. *Id.* ¶ 19. Defendants bear the burden to show that the chosen forum is inconvenient to the defendants and another forum is more convenient to all parties. *Id.* ¶ 20. Each case must be considered on its own facts. *Id.* ¶ 21.

¶ 19 In ruling on a motion to transfer for *forum non conveniens*, the trial court must balance the "public" and "private" interest factors—not against each other, but in the totality. *Id.* ¶ 17. The private interest factors include: "the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical considerations that make a trial easy, expeditious, and inexpensive." (internal citations omitted) *Id.* ¶ 15. Public factors include "the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; the unfairness of imposing jury duty upon residents of a community with no connection to the litigation; and the interest in having local controversies decided locally." (internal citations omitted) *Id.* ¶ 16.

¶ 20 According to the bystanders' report, the trial court did consider all these factors in denying the motion to transfer. While we might reweigh those factors differently under a less deferential standard of review, we cannot say that the trial court abused its discretion. There are three groups of defendants with different connections to different counties: The Baby Fold and

the Lamies are centered in or around Livingston County, but Streamwood Hospital is in Cook County. Dr. Puga resides in DuPage County, but divides his working hours between Cook and Livingston. And the mileage distance between Kankakee County and Cook County, versus Kankakee and Livingston County, is nearly the same. As the trial court noted, no matter which forum is used, some of the witnesses will be inconvenienced.

¶ 21 The defendants argue that Cook County has no significant factual connections. They are incorrect—Rudesill's claim against Streamwood Hospital stems from that institution's treatment of Kianna at its Cook County facility. The complaint is not limited to Kianna's death (which occurred in Livingston), but involves the care she received from Streamwood, Dr. Puga, and The Baby Fold in the months leading up to her death. Undoubtedly Livingston County courts are less clogged than Cook County courts, but the trial court's finding that the other factors favored Cook was not arbitrary or fanciful. The defendants assert that Rudesill filed the case in Cook solely because of an adverse ruling in the Kankakee case, but we will not try to deduce Rudesill's motives. The record is insufficient to establish that Rudesill was forum shopping. (Indeed, one might conclude that defendants were forum shopping, since they wanted to move the case to Livingston rather than Kankakee, where it had originally been filed, and apparently did not object to that case being heard in Kankakee.) On the whole, the factors do not weigh strongly in favor of transfer to Livingston, and so Rudesill's choice of Cook County will control. See *Fennel*, 2012 IL 113812, ¶ 18.

¶ 22 Finally, during the course of briefing the defendants moved to strike a number of statements in Rudesill's brief as factual misrepresentations without support in the record. Rudesill attempted to justify inclusion of these statements by relying on documents that were not part of the stipulated record on appeal, or arguing that these statements were allowable

inferences from the record on appeal. (Rudesill also tried to supplement the record on appeal with additional documents, but that motion was denied as not properly bound and certified by the trial court.)

¶ 23 Many of the factual statements in Rudesill's brief are indeed outside the record, and his attempts to justify them require stretches of logic. That said, we deny the motion to strike. The complained-of factual statements have little or nothing to do with the issues on appeal, so have no bearing on our ruling.

¶ 24 This ongoing case is undoubtedly hard-fought and stems from a tragic set of circumstances. But the tone of both defendants' motion to strike and plaintiff's response verges on hysteria, and hysteria over minutiae at that. Counsel for both sides are reminded that professionalism requires treating one another with civility, respect, and courtesy, in this court and before the trial court, in written submissions and in person.

¶ 25 We deny defendant's motion to strike, and we affirm the trial court's judgment.

¶ 26 Affirmed.