2018 IL App (1st) 170414-U

No. 1-17-0414

Order filed on November 27, 2018.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

KOFFI GADEGBESSO, Plaintiff-Appellee, v. SMITHFIELD FOODS, INC., SFK SYSTEMS A/S, and DANFOTECH, INC., Defendants, (SFK Systems A/S and Danfotech, Inc., Defendants-Appellants).	)	Appeal from the Circuit Court of Cook County. No. 15 L 10569 The Honorable Daniel T. Gillespie, Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in denying defendants' motion to transfer venue on the grounds of *forum non conveniens* where it afforded proper deference to plaintiff's choice of forum and found that the relevant private and public interest factors did not weigh in favor of transfer to Warren County. We affirm.

¶ 2 This interlocutory appeal arises from the denial of a *forum non conveniens* motion

brought by defendants SFK Systems A/S (SFK) and Danfotech, Incorporated (collectively, defendants) against plaintiff Koffi Gadegbesso to transfer his personal injury action from Cook County to Warren County, Illinois. On appeal, defendants contend that the circuit court erred in denying their motion because Warren County is a more convenient venue under Illinois Supreme Court Rule 187 (eff. Dec. 29, 2017), which governs intrastate transfer pursuant to the doctrine of *forum non conveniens*. Specifically, they assert that the court gave undue deference to plaintiff's choice of forum because it failed to consider evidence that he engaged in forum shopping. Additionally, they assert that the court improperly considered the private and public interest factors because it found that they did not weigh in favor of transfer to Warren County.

¶ 3 I. BACKGROUND

¶ 4 In this permissive interlocutory appeal brought pursuant to Illinois Supreme Court Rules 306(a)(2) and 306(c)(1) (eff. Nov. 1, 2017), we note that defendants have provided a limited supporting record with their petition for leave to appeal, which contains the pleadings, the circuit court's order and the deposition of Soren Rasmusen, the former Managing Director of Danfotech, and reveals the following pertinent facts and procedural history.

¶ 5 In November 2013, plaintiff's two fingers were severed, and ultimately had to be amputated, while he was operating a bacon-press machine in a meatpacking facility. The facility was owned by Farmfield Foods, Incorporated, and located in Warren County. Thereafter, plaintiff apparently filed a pre-suit discovery petition in Warren County against Farmfield, pursuant to Illinois Supreme Court Rule 224 (eff. Dec. 29, 2017).

¶ 6 In spite of that petition, plaintiff ultimately settled on filing his complaint in Cook County against an affiliated company of Farmfield, Smithfield Foods, Incorporated,[1] for negligence and wilful and wanton misconduct; against SKF, the company that designed and manufactured the

[1]Smithfield is not a party to this appeal.

bacon-press, for negligence and product liability; and against Danfotech, the seller of the press, for negligence and product liability. SFK is a Denmark-based company that has an office in Missouri, and Danfotech is headquartered in Chicago. At the time of the accident, plaintiff resided in Rock Island County, Illinois, but currently resides in Iowa.

¶ 7 Subsequently, defendants moved to transfer the action from Cook County to Warren County under the doctrine of *forum non conveniens*.[2] Ill. S. Ct. R. 187 (eff. Dec. 29, 2017). They argued that venue would be more convenient in Warren County because the accident occurred there and, thus, if the trial court were to eventually allow the jury to visit the accident site, the jury would have to do so in Warren County. Defendants also argued that the majority of potential witnesses lived or worked in or around Warren County, and that plaintiff lived closer to Warren County. In response to defendants' motion, plaintiff argued that the action should remain in Cook County because Danfotech was headquartered in Cook County, Smithfield had a registered agent in Cook County and SFK had evidence pertaining to the bacon-press in Cook County. Plaintiff further argued that he received medical treatment for the accident in Cook County and that his experts were located in Cook County.

¶ 8 The circuit court denied defendants' motion to transfer, finding that defendants failed to show that the relevant private and public interest factors "strongly favored" transfer to Warren County, such as to warrant disturbing plaintiff's choice of forum. In its order, the court stated that defendants failed to show that Cook County was inconvenient to *all* parties where (1) Smithfield was not a party to defendants' motion and, thus, it was not contesting the convenience of plaintiff's forum choice; (2) Danfotech was headquartered in Chicago and its argument that Cook County was inconvenient, therefore, was without merit; and (3) SFK was headquartered in Denmark and, as such, either forum would be equally inconvenient.

[2]We also note that Smithfield was not a party to defendants' motion to transfer.

¶ 9 The circuit court entered its order denying defendants' motion on January 23, 2017, and they timely filed their petition for leave to appeal before this court. We initially denied defendants' petition, prompting them to appeal to the Supreme Court. On September 27, 2017, the Illinois Supreme Court vacated our decision and directed us to consider the appeal on the merits. Accordingly, this court has jurisdiction pursuant to Rules 306(a)(2) and 306(c)(1) (eff. Nov. 1, 2017), governing interlocutory appeals by permission.

¶ 10 II. ANALYSIS

¶ 11 As stated, defendants contend that the circuit court erred in denying their motion to transfer because it gave undue deference to plaintiff's choice of forum and found that the relevant private and public interest factors did not weigh in favor of transfer to Warren County.

¶ 12 Before proceeding to the merits, however, we must address both parties' flagrant disregard for the Illinois Supreme Court Rules, which are mandatory, not optional. See *Miller v. Lawrence*, 2016 IL App (1st) 142051, ¶ 18. Defendants did not provide transcripts of the hearing on their motion to transfer, or an appropriate alternative, such as a bystander's report or an agreed statement of facts, pursuant to Illinois Supreme Court Rule 323 (eff. July 1, 2017). As the appellants, defendants bear the burden of presenting a sufficiently complete record of the proceedings below to support their claims of error, and any doubts arising from the record's inadequacy are resolved against them. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). In the absence of a complete record, we must presume that the circuit court acted in conformity with the law and had a sufficient factual basis for its ruling. *Id*.

¶ 13 To the extent defendants assert that plaintiff's brief violates the Supreme Court Rules because "in [his] purported Appendix *** he purportedly attaches an additional 'Supporting Record' with a supporting affidavit purportedly pursuant to Rule 328," we find the "purported"

Rule 342 Appendix proper. See Ill. S. Ct. R. 342 (eff. July 1, 2017) (stating, "[t]he appellee's brief may include in a supplementary appendix other materials from the record that also are the basis of the appeal or are essential to any understanding of the issues raised in the appeal"). That said, we will only consider the evidence on appeal which was presented to the court below. See *County of Lake ex rel. Lake County Stormwater Management Commission v. Fox Waterway Agency*, 326 Ill. App. 3d 100, 103-04 (2001) (stating that evidence which was not presented, or not in existence at the time of the lower court proceedings, is outside the scope of the record and our review).

¶ 14 In any event, our review of the limited record before us reveals that both parties' briefs lack any substantial conformity with the high court's rules. See *Miller*, 2016 IL App (1st) 142051, ¶ 18 (where a party's brief lacks compliance with Supreme Court Rules, that party risks this court's discretionary power to strike the brief and dismiss the appeal). Here, defendants' brief violates Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017), insofar as the argument section begins with a list of bullet points setting forth, without citation to the record or authorities relied upon, a recitation of their particularly skewed version of the facts in this case. See *id*.; Ill. S. Ct. R. 341(h)(6) (eff. Nov. 1, 2017) (requiring the appellant to set forth on appeal facts, without argument, and contentions and the reasons thereof, with citation to the record or authorities relied upon); *Enadeghe v. Dahms*, 2017 IL App (1st) 162170, ¶ 23. Their reply is similarly deficient. See *id*. For the same reasons, plaintiff's brief violates Rules 341(h)(6) and 341(h)(7). See Ill. S. Ct. R. 341(i) (eff. Nov. 1, 2017); *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1100-01 (2008) (stating that an appellee is not required to submit a statement of facts section, but if he elects to do so, he must comply with Rule 341(h)(6)).

¶ 15 Adherence to the proper format of briefs is not an inconsequential matter and, where

parties make arguments absent appropriate citation, we decline to address them. See *Enadeghe*, 2017 IL App (1st) 162170, ¶ 23. Although these deficiencies would clearly justify the striking of the parties' briefs, we will proceed to consider the merits of defendants' appeal.

¶ 16 A. *Forum non conveniens*

¶ 17 *Forum non conveniens* is an equitable doctrine based upon considerations of fundamental fairness, which allows a circuit court to decline jurisdiction when it determines that another forum would be more convenient to the parties and better serve the ends of justice. *First American Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002). This authority, however, should be exercised by the court "only in *exceptional circumstances* when the interests of justice require a trial in a more convenient forum." (Emphasis in original.) *Langenhorst v. Norfolk Southern Railway Company*, 219 Ill. 2d 430, 442 (2006). The determination of a *forum non conveniens* motion lies within the sound discretion of the circuit court and will not be reversed unless the defendants have shown that the court abused its discretion in balancing the relevant factors, that is, only where no reasonable person would take the view adopted by the court. *Id.*; *Dawdy v. Union Pacific Railroad Co.*, 207 Ill. 2d 167, 176-77 (2003).

¶ 18 1. Plaintiff's Choice of Forum

¶ 19 Initially, defendants contend that the circuit court erred in giving plaintiff's choice of forum undue deference because it failed to consider evidence that he engaged in forum shopping.

¶ 20 Our supreme court has recognized that *forum non conveniens* jurisprudence initially emerged in an effort to curtail forum shopping by plaintiffs, however, it has since recognized that both parties invariably engage in forum shopping. *Guerine*, 198 Ill. 2d at 521. Given that, courts are well aware of the tactical maneuvers employed by both parties as they compete for the forum in which they believe they will achieve the best result. *Decker v. Union Pacific Railroad Co.*,

2016 IL App (5th) 150116, ¶ 20 (citing *Guerine*, 198 Ill. 2d at 521).

¶ 21 When a defendant challenges a plaintiff's choice of forum, the circuit court conducts an unequal balancing test where the plaintiff's choice is already in the lead and intrastate transfer is proper only when the case has no practical connection to, or nexus with, the chosen forum. *Taylor v. Lemans Corp.*, 2013 IL App (1st) 130033, ¶¶ 15, 18 (citing *Guerine*, 198 Ill. 2d at 521). The court considers all relevant factors, including private and public interest factors (which we discuss later in this order), as well as the plaintiff's choice of forum, and evaluates the total circumstances of the case. *Langenhorst*, 219 Ill. 2d at 443-44. The circuit court should first consider how much deference is accorded to the plaintiff's choice of forum. *Decker*, 2016 IL App (5th) 150116, ¶ 19.

¶ 22 It is well-settled that the plaintiff's choice of forum is accorded significant deference as he has a substantial interest in choosing the forum where his rights will be vindicated. *Guerine*, 198 Ill. 2d at 517. Unless the other factors weigh strongly in favor of transfer, his choice should not be disturbed. *Id*. While we acknowledge that the plaintiff's choice receives somewhat less deference when the chosen forum is neither his residence nor the site of the accident, the deference accorded is only less as opposed to none. *Decker*, 2016 IL App (5th) 150116, ¶ 19. Even then, the defendants must show that the plaintiff's chosen forum is inconvenient to them, and that another forum is more convenient to *all* parties. (Emphasis added.) *Id*. In doing so, they cannot argue that the plaintiff's chosen forum is inconvenient to the plaintiff. *Id*.

¶ 23 Defendants offer several unavailing arguments asserting there was evidence that plaintiff engaged in forum shopping, namely, where he was not a Cook County resident and the accident did not occur there, and since he filed a Rule 224 pre-suit discovery petition in Warren County, indicating that he intended to file the suit there. See Ill. S. Ct. R. 224 (eff. Jan. 1, 2018). To the

extent defendants assert evidence of forum shopping where plaintiff drafted a proposed complaint containing a Warren County caption, this ignores that unfiled documents are not part of the record on appeal and thus, will not be considered. See *Dopp v. Village of Northbrook*, 257 Ill. App. 3d 820, 824 (1993) (stating that documents in the record on appeal may only consist of those which were filed in the case).

¶ 24 At the outset, we note that the order entered by the circuit court made no mention of forum shopping. To the extent the court made any implicit finding, the order shows that the court acknowledged that plaintiff's choice of forum received somewhat less deference because he was not a Cook County resident and the accident did not occur there. Yet, in light of the other factors, this lesser deference was insufficient to disrupt plaintiff's choice of forum. Given the limited record before us, the circuit court's ruling on forum shopping in that regard betrays no abuse of discretion. Furthermore, without an explicit ruling on forum shopping or a transcript of the hearing, we must presume that the court found no evidence that plaintiff actually engaged in forum shopping. See *Foutch*, 99 Ill. 2d at 392.

¶ 25 We also firmly reject defendants' contention that plaintiff's Rule 224 pre-suit discovery petition was evidence of forum shopping. Rule 224 allows a plaintiff to file a pre-suit discovery petition to identify potential defendants who may be liable, but are unknown to him at that time. Rule 224 states in relevant part that "[a] person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery." See Ill. S. Ct. R. 224(a)(1)(i) (eff. Jan. 1, 2018), Committee Comments (stating, "[t]he rule will be of particular benefit in industrial accident cases where the parties responsible may be known to the plaintiff's employer, which may immunize itself from the suit"). Therefore, a Rule 224 petition must be filed in the forum where

the known defendant from whom the discovery is sought resides. See Ill. S. Ct. R. 224(a)(1)(ii) (eff. Jan. 1, 2018) (stating, "[t]he action for discovery shall be initiated by the filing of a verified petition in the circuit court of the county *** in which one or more of the persons or entities from whom discovery is sought resides").

¶ 26 Here, when plaintiff filed his Rule 224 petition, plaintiff's employer Farmland was the only involved corporate entity and it was located in Warren County. The record shows that plaintiff filed the petition in order to identify potential defendants, not to identify a potential forum. See *id.* As a result of his Rule 224 petition, plaintiff was able to identify the additional defendants, Danfotech and SFK. Plaintiff's Rule 224 petition, rather than demonstrating evidence that he engaged in forum shopping, merely demonstrates that plaintiff was diligently pursuing his cause of action. Again, given the limited recorded and the lack of an explicit ruling by the circuit court as to plaintiff's Rule 224 petition, we presume that the court's ruling was correct. See *Foutch*, 99 Ill. 2d at 392.

¶ 27 Based on the foregoing, we conclude that the circuit court afforded proper deference to plaintiff's choice of forum. *Cf. Fennell v. Illinois Central Railroad Co.*, 2012 IL 113812, ¶¶ 25-26 (finding that the circuit court abused its discretion in failing to accord diminished deference where the plaintiff originally filed the complaint in his home forum, but dismissed it three years later and re-filed it in another state).

¶ 28 2. Private Interest Factors

¶ 29 As stated, defendants contend that the circuit court erred in finding that the private and public interest factors did not weigh in favor of transfer to Warren County. The court first considered the private interest factors and found that, as a whole, they favored plaintiff. In Illinois, the private interest factors include (1) the convenience of the parties; (2) the relative ease

of access to sources of testimonial, documentary and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious and inexpensive. *Guerine*, 198 Ill. 2d at 444.

¶ 30 Regarding the first factor, the convenience of the parties, defendants assert that venue in Warren County would be more convenient because the accident occurred there, and plaintiff lived closer to Warren County than to Cook County. We disagree.

¶ 31 As stated, it is a well-settled rule of law that defendants are not permitted to argue a plaintiff's own chosen forum is inconvenient to the plaintiff, likely because a plaintiff should know what is and isn't an accessible venue. *Decker*, 2016 IL App (5th) 150116, ¶ 19. Therefore, defendants' claim that Cook County is inconvenient to plaintiff fails. See *id*. In addition, the record shows that Cook County was actually more convenient for defendants since Danfotech was headquartered in Chicago and therefore a resident of Cook County. As noted in the circuit court's order, SFK was a Denmark-based company, making Cook County with its ease of international transportation more amenable. See *Boner v. Peabody Coal Co.*, 142 Ill. 2d 523, 533-34 (1991) (finding no abuse of discretion where the circuit court did not place significant emphasis on the consideration of each county's access to airport facilities regarding the location of the parties and witnesses). Accordingly, we cannot disagree with the circuit court's conclusion that the first factor favored plaintiff.

¶ 32 Next, the circuit court properly found that the second factor, the ease of access to the source of testimonial, documentary and real evidence, slightly favored plaintiff. Although defendants presented the statements of 25 Farmland employees, some of whom witnessed plaintiff's accident, and although Farmland is located in Warren County, the statements did not constitute proof of residency for any of the employees. That is, the statements did not provide the employees' addresses, and they were taken in 2013, making any reported address subject to

change. To that end, as defendants did not obtain affidavits from any potential witnesses stating that Cook County was inconvenient, we find that they failed to show that Warren County would be more convenient to *all* parties. See *Taylor*, 2013 IL App (1st) 130033, ¶ 20.

¶ 33 In fact, the documentary evidence in the record actually militates against finding Warren County to be a more convenient forum to try the case. In his deposition, Soren Rasmusen testified that the relevant SFK documents "are supposed to be in Chicago." Furthermore, when asked specifically whether there was a hard copy containing all of the documents related to the bacon-press, he testified that "if there was one, and I am sure there was one, then it would have been in Kansas City, and it would have been transferred to Chicago *** after the acquisition." Accordingly, we cannot disagree with the circuit court's conclusion that the second factor favored plaintiff.

¶ 34 Finally, the circuit court properly found that the possibility of a site visit favored neither party. See *Boner*, 142 Ill. 2d at 535 (stating that it is within the circuit court's discretion to permit a jury to view the premises which are part of the subject matter of the litigation). Contrary to defendants' assertion otherwise, the circuit court considered the possibility of a site visit. In fact, it agreed "with Defendants that a jury visit to the site [could not] be ruled out," but also noted that neither party indicated a desire to visit the premises. For all these reasons, we find that the circuit court properly balanced the relevant private interest factors.

¶ 35 3. Public Interest Factors

¶ 36 The circuit court next considered the public interest factors, which include (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the

administrative difficulties presented by adding litigation to already congested court dockets. *Guerine*, 198 Ill. 2d at 444.

¶ 37 Here, the circuit court found that the first factor, the interest in deciding controversies locally, favored plaintiff where Smithfield, as the only Warren County party to the case, was not a party to defendants' motion, and where Danfotech resided in Cook County. Regarding the first factor, residents generally have a greater interest in deciding controversies involving accidents that occur in their county. *Taylor*, 2013 IL App (1st) 130033, ¶ 22. Where the primary issue is one of product liability, however, the location of the accident is less significant because the local interest is largely supplanted by a more general interest in resolving defective product claims, which are not inherently local. *Id*. ¶ 23. Furthermore, while the circuit court considers the possibility of a jury visit to the site, it may also consider a party's claim that the subject property is no longer in the same condition. See *Boner*, 142 Ill. 2d at 535. With that, the trial court may refuse to allow the jury to view the premises if the scene is accurately portrayed by photographs or if no useful purpose would be served by the visit. *Decker*, 2016 IL App (5th) 150116, ¶ 19.

¶ 38 Although plaintiff's accident occurred in Warren County, that significance was diminished given that Smithfield was not a party to defendants' motion to transfer, and that the claims against defendants primarily centered on product liability. Moreover, it is unlikely that the trial court would find a jury visit to the meatpacking facility necessary. As noted in the circuit court's order, plaintiff claimed that the bacon-press had been altered several times and was moved to a different location within the facility, making a jury visit not that informative. In any event, post-accident photographs were taken by Patrick Anderson as part of the Occupational Safety and Health Administration investigation. Accordingly, the first factor favored plaintiff.

¶ 39 For the same reasons stated above, the circuit court found that the second factor, the fairness of imposing trial expense and the burden of jury duty on a county with little connection to the litigation, did not favor transfer to Warren County. Finally, the court found that the third factor, court congestion, favored neither party in this case. "When deciding *forum non conveniens* issues, the trial court is in the better position to assess the burdens on its own docket." *Langenhorst*, 219 Ill. 2d at 451 (citing *Boner*, 142 Ill. 2d at 538-39). Furthermore, court congestion is not a significant factor, particularly when the record does not show, and the defendants have not demonstrated, that their proposed forum can resolve the case more quickly. See *Brown v. Cottrell, Inc.*, 374 Ill. App. 3d 525, 534 (2007) (citing *Langenhorst*, 219 Ill. 2d at 451-52).

¶ 40 Here, the number of cases on the court docket in Cook County is obviously greater than in Warren County, but that does not necessarily mean that it is more congested. See *Taylor*, 2013 IL App (1st) 130033, ¶ 23. Nonetheless, we conclude that defendants have failed to show that the case would be resolved more quickly in Warren County. Accordingly, we find that the circuit court properly balanced the relevant public interest factors.

¶ 41 In sum, we conclude that defendants have failed to meet their burden to show that Cook County is inconvenient to them, and that Warren County would be a more convenient forum for *all* parties to try this case. Accordingly, the circuit court did not abuse its discretion in denying defendants' motion to transfer venue on the grounds of *forum non conveniens*.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 44 Affirmed.