2019 IL App (1st) 181246 -U

SECOND DIVISION
February 26, 2019

No. 1-18-1246

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 JUDICIAL DISTRICT

NOAH LENNE and LORRI LENNE,	)	
	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County
	)	
v.	)	No. 2017 L 04886
	)	
ARKADIUSZ GROCHOWSKI, M.D., PEKIN MEMORIAL HOSPITAL n/k/a UNITYPOINT HEALTH-PEKIN, PEKIN HOSPITAL PAIN MANAGEMENT, LLC, TAZEWELL PAIN MANAGEMENT, LLC, CHICAGO INTERVENTIONAL PAIN MEDICINE, S.C., and PAIN MANAGEMENT GROUP, LLC,	)	Honorable John P. Callahan, Jr., Judge Presiding.
	)	
Defendants-Appellees.	)	

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justice Lavin and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Order transferring case to Tazewell County reversed. The defendant doctor who allegedly misadministered epidural steroid injection lived and worked in Cook County and although certain factors favored transfer, the moving parties did not establish that the balance of those factors strongly favored transfer.

¶ 2 Plaintiffs, Noah and Lorri Lenne, residents of Tazewell County, filed this action in Cook County against Dr. Arkadiusz Grochowski, Chicago Interventional Pain Medicine., S.C. (Dr.

Grochowski's professional corporation), both residents of Cook County, and others, arising out of an epidural steroid injection to Noah Lenne's cervical spine administered at defendant Pekin Memorial Hospital ("Pekin Hospital")[1] on July 13, 2015. According to the complaint, Dr. Grochowski is alleged to have failed, for a number of reasons, to properly place the needle, which punctured Noah's spinal cord resulting in permanent neurological damage. The Lennes also allege that Dr. Grochowski was negligent in diagnosing the injury following the procedure. In addition to Pekin Hospital, two other defendants—Pekin Hospital Pain Management, LLC, and Tazewell Pain Management—are entities doing business in Tazewell County. Pekin Hospital Pain Management is a joint venture between Pekin Hospital and Tazewell Pain Management. The remaining defendant—Pain Management Group, LLC—is the parent company of Tazewell Pain Management and is headquartered in Findlay, Ohio.

¶ 3 Dr. Grochowski entered into a Physician's Services Agreement with Pain Management Group, pursuant to which he agreed to render services "up to four days a week" at pain management clinics managed by Pain Management Group in Pekin, Illinois. Under the contract, Dr. Grochowski is obligated to provide patient information to Pain Management Group so that the latter can bill and collect payment for services rendered. Dr. Grochowski receives a yearly salary from Pain Management Group; all income from physician services rendered belongs to Pain Management Group.

¶ 4 Pekin Hospital and Pekin Hospital Pain Management moved to transfer the case to Tazewell County, asserting that Tazewell County was a more convenient forum for litigation of the dispute. Tazewell Pain Management, Dr. Grochowski and his professional corporation, as

[1] The hospital was formerly known as Pekin Hospital and is now known as Unitypoint Health-Pekin.

well as Pain Management Group, all separately joined in the motion. Pekin Hospital's motion was supported by a variety of Mapquest maps comparing distances between various locations in Tazewell and Peoria counties and the Tazewell County courthouse and between those same locations and the Daley Center courthouse in Cook County. The motion was also supported by the affidavit of Pekin Hospital's Risk Manager identifying 11 doctors, 14 nurses, and nine other health care professionals associated with Noah's care at Pekin Hospital during the period from June 10 through August 24, 2015. Other than identifying those individuals and their places of residence in Tazewell or nearby counties, the affidavit does not indicate what involvement they had in Noah's care or the likelihood that they will be called as witnesses at trial.

¶ 5 In their joinder, both Tazewell County Pain Management and Pain Management Group alleged that with respect to Noah's treatment, they conducted business only at Pekin Hospital. Pain Management Group, which has a registered agent in Cook County, did not contend that it would be inconvenienced by litigating the case in Cook County. Dr. Grochowski and his professional corporation separately argued that they provided patient care to Noah only at Pekin Hospital and that no services were rendered in Cook County. Dr. Grochowski did not contend that litigating the case in Cook County would be inconvenient for him.

¶ 6 Plaintiffs argued that the fact that two named defendants—one of whom was the primary tortfeasor—resided in Cook County, precluded a finding that Tazewell County was a more convenient forum. Further, plaintiffs maintained that the affidavit from Pekin Hospital's Risk Manager simply provided a "head count" of medical personnel who had come in contact with Noah. Without any showing as to how those health care professionals were involved in Noah's care or which of them would be likely to be called at trial, plaintiffs maintained that the location of those witnesses in Tazewell and nearby counties was insufficient to sustain defendants'

burden. Plaintiffs identified a number of damages witnesses they planned to call at trial who reside in a variety of locales: Terre Haute, Indiana; Newaygo, Michigan; Bettendorf, Iowa; and Monee, Illinois. Finally, plaintiffs noted that Noah had been treated for his ongoing neurological problems at Northwestern Memorial Hospital in Cook County and that those doctors would likely testify to the nature and extent of Noah's injuries. Finally, plaintiffs noted that both plaintiffs and defendants were represented by Chicago law firms.

¶ 7 The trial court granted the motion. The court recited the well-established private and public interest factors that guide any decision on a motion to transfer venue based on *forum non conveniens*. See *Fennell v. Illinois Central Ry. Co.*, 2012 IL 113812, ¶¶ 15-16; *Dawdy v. Union Pacific R.R.*, 207 Ill. 2d 167, 172-73 (2003) (listing six private interest factors: 1) the convenience of the parties, 2) the relative ease of access to sources of testimonial, documentary, and real evidence, 3) the availability of compulsory process to secure the attendance of unwilling witnesses, 4) the cost to obtain attendance of willing witnesses, 5) the possibility of viewing the premises, if appropriate, and 6) all other practical considerations that make a trial easy, expeditious, and inexpensive; and three public interest factors: 1) the interest in deciding localized controversies locally, 2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation, and 3) administrative difficulties presented by adding further litigation to the court docket in an already congested forum).

¶ 8 Because plaintiffs chose to file suit in Cook County, the court presumed that venue was convenient to plaintiffs. The court likewise found that Cook County was a convenient forum for Dr. Grochowski and his professional corporation. Tazewell County would be more convenient for Pekin Hospital, Pekin Hospital Pain Management, and Tazewell Pain Management, while

litigation in Cook or Tazewell counties would be "equally inconvenient" for the Ohio defendant. Ultimately, the court determined that the convenience of the parties was "a wash."

¶ 9 Given that the only fact witness who resided in Cook County was Dr. Grochowski and the remaining health professionals resided in or near Tazewell County, the court determined the convenience of witnesses favored transfer. As to the damages experts identified by plaintiff, the court found that Cook County would be more convenient to two of those witnesses, while Tazewell County would be more convenient for the remaining two. Because documents relating to the procedure and post-procedure treatment were portable, the court found this consideration neutral and it gave little weight to the location of Noah's treating physicians in Cook County because they "generally testify through evidence depositions." On balance, the court determined that consideration of the relative ease of access to sources of testimonial evidence favored transfer.

¶ 10 The court found the availability of compulsory process to compel the attendance of witnesses was neutral since Illinois residents could be compelled to attend whether the trial was held in Cook or Tazewell County and out-of-state damages witnesses would presumably appear willingly wherever the trial was held.

¶ 11 Finding that most of the occurrence witnesses live in or near Pekin Hospital, the court determined the cost of obtaining the attendance of willing witnesses favored transfer, noting again that treating physicians will likely testify through evidence depositions, "making the cost of their attendance moot."

¶ 12 The court afforded "very little weight" to the fifth and sixth private interest factors. The court determined that it would likely be unnecessary to view the premises, but nevertheless found that it favored transfer. Regarding the catch-all "other considerations", the court

determined this factor favored retaining the case in Cook County since counsel for all parties were located in Chicago.

¶ 13 The court found two of the three public interest factors favored transfer, while the third was neutral. In light of Tazewell County as the site of the procedure and Dr. Grochowski's alleged negligence, the court determined that Tazewell County had an interest in deciding the controversy and that the citizens of Cook County should not bear the expense of trial and the burden of jury duty. Finally, the court found the third public interest factor, docket congestion, to be neutral.

¶ 14 Ultimately, the trial court found that defendants had sustained their burden to show that the private and public interest factors strongly favored disturbing plaintiff's choice of forum. "The movants have shown that it would be substantially more convenient for *all* parties and *all* witnesses to try this case in Tazewell County." (Emphasis added).

¶ 15 Pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Nov. 1, 2017), plaintiffs filed a petition for leave to appeal, which we granted on August 30, 2018. The parties elected to file additional briefs and briefing was completed on January 25, 2019.

¶ 16 We reverse. Because half of the named defendants cannot show that litigation of this case in Cook County would be inconvenient for them and because defendants did not sustain their burden to demonstrate that the other relevant factors strongly favor transfer of this case to Tazewell County, defendants' *forum non conveniens* motion should have been denied.

¶ 17 We have recited above the well-established private and public interest factors that guide a court's decision on a motion to transfer based on *forum non conveniens*. No one factor deserves more weight than another; rather, "the trial court must evaluate the total circumstances of the case in deciding whether the defendant has proven that the balance of factors strongly favors

transfer." *First American Bank v. Guerine*, 198 Ill. 2d 511, 518 (2002); *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 442-43 (2006).

¶ 18 *Forum non conveniens* is an equitable doctrine, "which allows a trial court to decline jurisdiction in the exceptional case where trial in another forum with proper jurisdiction and venue 'would better serve the ends of justice.' (*Vinson v. Allstate*, 144 Ill. 2d 306, 310 (1991))." *Guerine*, 198 Ill. 2d at 515; *Langenhorst*, 219 Ill. 2d at 442. A defendant seeking to transfer venue on *forum non conveniens* grounds must show not only that the plaintiff's chosen forum is inconvenient to the defendant, but also that another forum is more convenient to all parties. *Guerine*, 198 Ill. 2d at 518; *Langenhorst*, 219 Ill. 2d at 444. Each *forum non conveniens* case is unique and must be decided on its own facts. *Fennell*, 2012 IL 113812, ¶ 21; *Langenhorst*, 219 Ill. 2d at 443.

¶ 19 When a plaintiff selects a forum other than the plaintiff's residence, that choice is entitled to less deference than one made by a resident plaintiff but, by the same token, we do not disregard completely a non-resident plaintiff's choice of forum as a factor in the analysis. *Guerine*, 198 Ill. 2d at 517-18 (citing *Elling v. State Farm Mutual Automobile Ins. Co.*, 291 Ill. App. 3d 311, 318 (1997) (emphasis in original) (" '[W]hile the deference to be accorded to a plaintiff regarding his choice of forum is less when the plaintiff chooses a forum other than where he resides *** nonetheless the deference to be accorded is only *less*, as opposed to *none*.' ")). Further, parties moving to transfer venue based on *forum non conveniens* cannot argue that the forum selected for the lawsuit is inconvenient to the plaintiff. *Guerine*, 198 Ill. 2d at 518.

¶ 20 We review a trial court's decision on a motion to transfer venue based on *forum non conveniens* for an abuse of discretion. *Langenhorst*, 219 Ill. 2d at 444.

¶ 21 Based on Dr. Grochowski's contract with Pain Management Group obligating him to provide services to pain clinics operated by Pain Management Group in Tazewell County, it appears that he rendered services to Noah at Pekin Hospital through Tazewell Pain Management, a Pain Management Group subsidiary. We do know that Dr. Grochowski resides in Bartlett, practices medicine in Cook County, and that his professional corporation has its offices in Schaumburg, also in Cook County.

¶ 22 We have no basis to discount entirely the non-resident plaintiffs' selection of Cook County as a forum for this litigation. Given that plaintiffs have been traveling regularly to Cook County for treatment for Noah's injuries since 2015—and we have no grounds to assume that the decision to pursue medical care at Northwestern Hospital was made for the purpose of bolstering plaintiffs' connections to Cook County[2]—this case is unlike those where the plaintiff has no connection to the forum other than the fact that venue lies there. See, *e.g., Ruch v. Padgett*, 2015 IL App (1st) 142972, ¶ 75 (only connection between case involving accident occurring in another county and Cook County was the fact that one defendant did business in Cook County)**.** Accordingly, we reject defendants' argument that plaintiffs' selection of Cook County amounts to forum shopping. So while plaintiffs' decision to file in Cook County is not entitled to "great weight," neither is it an insignificant factor in the *forum non conveniens* analysis.

¶ 23 Where convenience of all parties is not shown to flow from transfer of the case, that factor should be considered as weighing in favor of keeping the case in plaintiff's chosen forum. In other words, it is impossible for a defendant to meet its burden to show that the convenience of the parties strongly favors transfer when, in fact, several co-defendants will be decidedly

[2] *Cf. Fennell*, 2012 IL 113812, ¶ 33 (fact that plaintiff's expert witness maintained an office in plaintiff's chosen forum not sufficient to defeat *forum non conveniens* motion).

inconvenienced by the transfer. See *Kwazniewski v. Schaid*, 153 Ill. 2d 550, 555 (1992) ("Most significantly, the suit was brought in defendants' home county. It is all but incongruous for defendants to argue that their own home county is inconvenient.") It clearly is not more convenient for Dr. Grochowski and his professional corporation, both Cook County residents, to litigate in Tazewell County. Further, we disagree with the trial court's finding that it would be "equally inconvenient" for the Ohio resident, Pain Management Group, to litigate in Tazewell County. The only direct flights from airports near Findlay, Ohio are to either of Chicago's two major airports; any member of Pain Management Group attending the trial in Tazewell County and intending to fly in would have to take a connecting flight to Peoria International Airport through O'Hare International Airport in Chicago. See *Guerine*, 198 Ill. 2d at 524 (noting that representatives of non-resident corporate defendant would have to pass through Cook County on the way to proposed transferee forum). Alternatively, Pain Management Group witnesses would have to fly into O'Hare and drive the same distance as witnesses traveling from Tazewell County to Chicago, a distance defendants repeatedly stress renders trial in plaintiffs' chosen forum inconvenient. Further, Pain Management Group has designated an agent in Cook County to receive service of process, a factor that recognizes Cook County as an appropriate forum. *Langenhorst*, 219 Ill. 2d at 447 ("Norfolk, a foreign corporation, recognized St. Clair County as an appropriate forum by designating as its registered agent for service an individual residing in St. Clair County."). Because it is defendant's burden to show that the convenience of all parties weighs in favor of transfer, the fact that the transferee forum will instead be inconvenient for several of those parties means that rather than this factor being "a wash," it, in fact, weighs in favor of denying the motion to transfer.

¶ 24 The trial court's discussion of the private interest factors makes clear that it was most influenced by the location of witnesses involved in Noah's care at Pekin Hospital. Given the list of health professionals provided by Pekin Hospital's Risk Manager, the court presumed that the second and fourth private interest factors—the relative ease of access to sources of testimonial evidence and the cost of obtaining willing witnesses' attendance at trial—favored transfer. But because the movants simply provided a "head count" with no indication of the nature of the identified individual's involvement in Noah's care, it is impossible to say with any certainty which or how many of those witnesses would likely be inconvenienced by a trial in Cook County. See *Langenhorst*, 219 Ill. 2d at 448 (although defendants listed ambulance, hospital, firefighter, and auto repair personnel as potential witnesses, they did not identify "what, if any, relevant testimony they might provide."). Any depositions of these witnesses would have to take place in the county where they reside or work and so will result in no inconvenience to them. See Ill. Sup. Ct. Rule 203 (eff. Jan. 1, 1996). Moreover, just as the trial court assumed that any of Noah's treating doctors at Northwestern would likely testify via evidence deposition, so too is it likely that other physicians involved in his care at Pekin Hospital will do the same whether trial is held in Cook County or Tazewell County. Accordingly, the only possible factors weighing in favor of transfer would be the added cost and inconvenience to non-physician witnesses of holding trial in Cook County. But, as noted, because movants have only provided a list of medical professionals who came in contact with Noah at Pekin Hospital,[3] with no indication of the nature of their involvement in Noah's care or the likelihood that they will ever be called as

[3] And the list may be over-inclusive given that it covers a period of months both before and after the injection procedure.

witnesses at trial, defendants simply did not sustain their burden to show that these factors favored transfer.

¶ 25 This case is not analogous to one involving an automobile accident where it is reasonable to anticipate that first responders, emergency medical personnel, and witnesses who live close by the accident scene will likely have relevant information regarding the accident and so identifying them and where they live is sufficient to satisfy the moving party's burden to show that trial in a distant county will be inconvenient for these witnesses. See, *e.g.*, *Haight v. Aldridge Electric Co.*, 215 Ill. App. 3d 353, 357-58 (1991) (circuit court did not abuse its discretion in granting defendant's motion to transfer case arising out of automobile accident from Cook to Lake County where all occurrence witnesses and first responders resided in Lake County and where the victim was initially treated at a Lake County hospital). Here, we cannot just assume, as defendants ask us to, that every medical professional who came in contact with Noah at Pekin Hospital is likely to possess information relevant to Dr. Grochowski's alleged negligence and, in fact, we would anticipate just the opposite.

¶ 26 With respect to the public interest factors, while Cook County does not have as strong an interest in the litigation as it would had Dr. Grochowski's alleged malpractice occurred here, neither can it be said that Cook County has no interest in a negligence claim against a doctor who lives and practices in Cook County and where plaintiff has sought treatment for those injuries in Cook County for an extended period of time. And the record discloses that Dr. Grochowski is defending another professional negligence claim in Cook County. So, although Tazewell's County's interest in the litigation is arguably more substantial, both Cook and Tazewell counties have an interest in this controversy. *Guerine*, 198 Ill. 2d at 525 (recognizing that while proposed transferee forum had significant ties to the accident because it occurred there and several

witnesses resided there, Cook County also had a legitimate connection to the litigation given plaintiff's Cook County residence). Accordingly, this factor weighs against transfer, and, for the same reason, it would not be unfair to impose the expense of trial and the burden of jury service on Cook County residents. We agree with the trial court's observation that the comparative length of time to trial was an insignificant factor. On balance, we conclude that consideration of the public interest factors does not strongly favor transfer of this case to Tazewell County.

¶ 27 In summary, because (i) transfer of this action to Tazewell County will inconvenience several co-defendants, (ii) defendants failed to satisfy their burden to show that the expense and inconvenience of trial in Cook County relating to non-party witnesses favor transfer, and (iii) the public interest factors do not support transfer, we find that the trial court abused its discretion in granting the *forum non conveniens* motion.

¶ 28 Reversed.