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2019 IL App (3d) 180299-U

Order filed January 3, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

HUSSEIN ALI YASSINE,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellee,)	Kankakee County, Illinois.
)	
v.)	
)	
JOHN WEBB,)	
)	Appeal No. 3-18-0299
Defendant-Appellee)	Circuit No. 17-L-79
)	
(Anthony Iaderosa Jr., Jennifer Helsel)	
Iaderosa, Anthony Iaderosa Sr., Advanced)	
Inventory Management, Inc., Silex Capital,)	
L.P., and Trident Holdings, LLC,)	
)	Honorable Adrienne W. Albrecht,
Intervenors-Appellants).)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in denying Intervenors' motion to transfer based on the doctrine of *forum non conveniens*.
- ¶ 2 In August 2017, plaintiff, Hussein Ali Yassine, an inmate in a Texas prison, filed a complaint in Kankakee County against defendant, John Webb, a Florida resident, pursuant to

section 28-8 of the Illinois Loss Recovery Act (Recovery Act) (720 ILCS 5/28-8 (West 2016)). Plaintiff sought to recover a money judgment from defendant for money he won via illegal gambling from two online sports books owned and operated by the following nonparties: Anthony Iaderosa Jr., Jennifer Helsel Iaderosa, Anthony Iaderosa Sr., Advanced Inventory Management, Inc., Silex Capital, L.P., and Trident Holdings, LLC. In December 2017, the trial court granted the nonparties' motion to intervene (hereinafter "Intervenors"). Subsequently, Intervenors filed a motion to transfer the action to Will County pursuant to section 2-106 of the Code of Civil Procedure (Code) (735 ILCS 5/2-106 (West 2016)) or *forum non conveniens*. Following a hearing, the trial court denied Intervenors' motion. We granted Intervenors leave to file this interlocutory appeal pursuant to Illinois Supreme Court Rule 306(c) (eff. Nov. 1, 2017). We affirm.

¶ 3

BACKGROUND

¶ 4

In August 2017, plaintiff filed the Kankakee County complaint at issue against defendant, seeking to recover a money judgment pursuant to the Recovery Act (720 ILCS 5/28-8 (West 2016)). Specifically, the complaint alleged that between 2012 and 2017, defendant knowingly and illegally wagered on sporting events via two online sports books (www.Action321.com and www.Lock1in.com) owned and operated by Intervenors and that defendant's winnings "were greater than \$50,000." In particular, plaintiff noted that Intervenors acknowledged in a separate Florida action, subsequently dismissed for lack of subject matter jurisdiction, that defendant won \$625,000 and lost \$1,471,000. Plaintiff asserted that under the Recovery Act, he is entitled to triple the amount won by defendant in the five years preceding the filing of his complaint. Plaintiff attached an exhibit to his complaint, purportedly from the Florida lawsuit, that appears

to be a screen shot of defendant's wins and losses over an approximately four-month period in 2015.

¶ 5 On November 1, 2017, defendant filed his answer to plaintiff's complaint admitting he won more than \$50,000 from Intervenor between 2012 and 2017.

¶ 6 On November 20, 2017, Intervenor filed their motion to intervene as of right under section 2-408(a)(2) of the Code (735 ILCS 5/2-408(a)(2) (West 2016)), or alternatively, with permission pursuant to section 2-408(b)(2) of the Code (*id.* § 2-408(b)(2)). Intervenor asserted that they "are directly interested in the resolution of this lawsuit because Plaintiff's [Recovery Act] claim is necessarily premised upon his allegation that they were losers to wagers to [defendant] in violation of the [Recovery Act]; an allegation that parrots those made against them by Defendant Webb and Sandra Lawson in the Will County Action." Intervenor attached a March 2017 Will County complaint to their motion. In that complaint, Sandra Lawson (defendant's mother) and defendant sought to recover defendant's gambling losses from Intervenor.

¶ 7 In December 2017, the trial court allowed Intervenor's petition to intervene over plaintiff's and defendant's objections. In its written order, the court stated that "Intervenor shall be bound by any orders or judgements [*sic*] entered in this case, and intervenor shall not interfere with judicial control or cause undue delay."

¶ 8 In February 2018, Intervenor filed a motion to transfer due to improper venue or under the doctrine of *forum non conveniens*. Intervenor requested a transfer to Will County so that it could be consolidated with the Will County action. Intervenor maintained that plaintiff brought the action in Kankakee County despite having "no connection whatsoever to Plaintiff's allegations" "solely for the purpose of fixing venue" in violation of section 2-101 of the Code

(735 ILCS 5/2-101 (West 2016)). Alternatively, Intervenors argued that even if venue is appropriate, the matter should still be transferred to Will County under the doctrine of *forum non conveniens*. Thereafter, both plaintiff and defendant filed respective motions to strike Intervenors' motion to transfer.

¶ 9 Following an April 2018 hearing on the matter, the trial court denied Intervenors' motion to transfer. In announcing its decision, the court stated:

“This Court allowed intervention in this case *** only because of the peculiar nature of this statute. This statute allows a third party to collect damages for *** someone else's illegal gambling and because the intervenors are people who are alleged to have committed illegal gambling, I—the Court believed that they had a particular interest in protecting their *** reputation.

However, *** this is not a traditional intervention case *** because, for example, *** the motion to dismiss and the motion *** to transfer venue, those are motions. They're not *** traditional pleadings and the 2408 requires that the parties have pleadings.

This Court allowed intervention because of the peculiar nature of this statute but the fact that these intervenors are witnesses whose *** reputation might be at stake (*sic*) because of findings of the Court in this matter, the Court allowed intervention.

So the Court is going to—but—but the case is still being prosecuted and defended by the Plaintiff and the Defendant. This is not a

traditional intervention situation where the Intervenors are asking for some affirmative relief.

With regards to the motion to transfer venue for *Forum Non Conveniens*, the Court doesn't find that the fact that there is another case—another similar case pending in Will County to be a compelling factor because *** the Court doesn't have enough information about the case in Will County. They're not involving [all] of the parties to this case. So *** the Court considers that as evidence but does not find it to be compelling.

Further, again, treating the Intervenors a[s] witnesses—specially interested witnesses, but that's what they are at this state of the game because they don't have any pleading asking for affirmative relief, and the fact that they are located in Frankfort and that Kankakee County adjoins Will County and that Frankfort is roughly equal distance between Kankakee and Joliet and that *** both parties vehemently oppose the transfer of venue and the Court believes that the parties *** to the litigation have superior interests when it comes to the issue of *Forum Non Conveniens*, that there doesn't seem to be any particular public factor by which Will County would have a superior interest. Will county is not—the citizens of Will County are not—tax dollars of Will County are not at issue and other typical issues with regards to the public interests. Will County doesn't have any special kind of interest in this kind of litigation that the Court is aware of.

This Court’s looked at the affidavit—the only affidavit in support of it is *** signed by [the attorney for the Intervenors] and the Court has examined that affidavit and considering the factors contained in the motion *** the case law with regards to *Forum Non Conveniens*, the Court finds that considering all of those factors that they do not favor the Intervenors and that *** in addition to that, the Court finds that in its initial order—pronouncement, allowing the Intervenors to come into this case it indicated that it would not allow them to control or delay the litigation and allowing a—under these circumstances would violate that particular pronouncement.

So *** the Court believes that it’s [sic] ruling denying the motion to transfer venue for *Forum Non Conveniens* is both consistent with the principles of *Forum Non Conveniens* and the statute with regards to intervention so that motion will be denied.”

¶ 10 Thereafter, this court allowed Intervenors’ petition for leave to file an interlocutory appeal pursuant to Illinois Supreme Court Rule 306(c) (eff. Nov. 1, 2017).

¶ 11 ANALYSIS

¶ 12 On appeal, Intervenors abandon their contention that venue in Kankakee County is improper. They assert only that the trial court abused its discretion in denying their motion to transfer based on the doctrine of *forum non conveniens*. Specifically, they argue that the court erred in its (1) application of section 2-408(f) of the Code (735 ILCS 5/2-408(f) (West 2016)), (2) balancing of the relevant factors, and (3) grant of undue influence to plaintiff’s choice of forum.

¶ 13 *Forum non conveniens* is an equitable doctrine “based on considerations of fundamental fairness and sensible and effective judicial administration.” *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 171 (2003). It “allows the court in which the action was filed to decline jurisdiction and direct the lawsuit to an alternative forum that the court determines can better serve the convenience of the parties and the ends of justice.” *Id.* at 171-72.

¶ 14 In ruling on a motion to transfer based on *forum non conveniens*, a court must balance both public and private interests to determine the appropriate forum for the case to be tried but should not rely solely on any one factor. *Id.* at 172, 176. “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.” *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 15 (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947)). “The relevant public interest 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.” *Id.* ¶ 16. Yet, another factor that should be given substantial deference is a plaintiff’s choice of forum. *Id.* ¶ 18. While a plaintiff’s choice of forum should rarely be disturbed when the litigation is connected to the forum, less deference is afforded to a plaintiff’s chosen forum “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.*

¶ 15 *Forum non conveniens* cases are *sui generis* and must be considered on their own facts. *Id.* ¶ 21. “The burden is on the [moving party] to show that relevant private and public interest factors ‘strongly favor’ the [moving party’s] choice of forum to warrant disturbing plaintiff’s choice.” *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 444 (2006) (quoting *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill. 2d 101, 107 (1990)). A trial court’s ruling on a *forum non conveniens* motion will not be disturbed absent a showing that the court abused its discretion in balancing the relevant factors. *Fennell*, 2012 IL 113812, ¶ 15. A trial court abuses its discretion only where no reasonable person would take the view adopted by the court. *Id.*

¶ 16 As indicated, intervenors first challenge the trial court’s application of section 2-408(f) of the Code (735 ILCS 5/2-408(f) (West 2016)). Section 2-408(f) provides:

“An intervenor shall have all the rights of an original party, except that the court may in its order allowing intervention, whether discretionary or a matter of right, provide that the applicant shall be bound by orders or judgments, theretofore entered or by evidence theretofore received, that the applicant shall not raise issues which might more properly have been raised at an earlier stage of the proceeding, that the applicant shall not raise new issues or add new parties, or that in other respects the applicant shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require.” *Id.*

Specifically, Intervenors argue that once the court granted their petition to intervene, they became full-fledged parties in the matter vested with all of the rights of an original party and that the court’s analysis at that point “should have been governed solely by application of the *forum non conveniens* factors and balancing test.”

¶ 17 The record shows that under the unique circumstances of this case, the trial court allowed the petition to intervene not because Intervenors possess some tangible stake in the outcome of the proceedings but because of the peculiar nature of the statute at issue. Further, while the trial court referred to Intervenors as “specially interested witnesses,” it nonetheless treated them as parties, evidenced by the fact that it heard arguments on and considered Intervenors’ petition to transfer.

¶ 18 At the hearing on their motion to transfer, Intervenors argued that all relevant private and public interest factors favored a transfer to Will County. Specifically, regarding the private interest factors, Intervenors argued that the convenience of the parties militated in favor of transferring to Will County because neither plaintiff nor defendant reside in the state of Illinois while the majority of Intervenors reside in Will County, Illinois. However, the trial court noted that the Intervenors actually reside in the town of Frankfort which “is roughly equal distance between Kankakee and Joliet,” making it no less convenient for them to litigate the case in Kankakee County rather than Will County, especially where plaintiff and defendant “vehemently opposed” transferring the case to Will County. Intervenors next asserted that the relative-ease-of-access-to-sources-of-proof factor favored a transfer to Will County where another case “which has the same factual underpains [*sic*] is currently pending.” The court, however, did not find the pending Will County case to be a compelling factor favoring transfer because it did not have enough information about the case and because the Will County case did not involve the same parties at issue here.

¶ 19 Regarding the public interest factors, Intervenors asserted that the dispute is not local to Kankakee County and “if this controversy is to be localized anywhere in the State of Illinois, it would be the place where the alleged losers reside that being Will County.” Intervenors also

asserted that moving the case to Will County would be less of an administrative burden because the two cases “would be essentially consolidated together.” Finally, Intervenors maintained that litigating the case in Kankakee County would put an undue burden on its residents given that Kankakee County has no connection to the dispute. Ultimately, the trial court found that none of the public interest factors favored a transfer to Will County, especially considering that Will County does not have a superior interest in the litigation because it does not involve its citizens or tax dollars.

¶ 20 Based on our review of the record, we find that the trial court committed no error in balancing the private and public interest factors applicable to this case. Even assuming, *arguendo*, that access to sources of proof in this case might be somewhat easier in Will County due to the pending case between defendant and Intervenors that involves some of the same factual underpinnings, no one factor is dispositive. See *Dawdy*, 207 Ill. 2d at 175-76 (in considered a *forum non conveniens* motion, a court must consider all relevant private and public interest factors without emphasizing any one factor). Further, Intervenors suggestion that the two cases would be consolidated if this case is transferred to Will County is pure speculation. In short, Intervenors did not meet their burden of showing the private and public interest factors “strongly favor” a transfer to Will County.

¶ 21 Finally, we reject Intervenors’ contention that the trial court granted undue deference to the plaintiff’s choice of forum in this matter. On this issue, Intervenors essentially argue that plaintiff must have engaged in forum shopping because neither he nor defendant resides in Kankakee County and because the underlying illegal gambling did not occur in Kankakee County. However, other than citing general legal authority in support of their assertion that

forum shopping is discouraged, Intervenors offer no persuasive argument to show that plaintiff's choice of forum is the result of forum shopping.

¶ 22

CONCLUSION

¶ 23

For the foregoing reasons, we affirm the judgment of the Kankakee County circuit court.

¶ 24

Affirmed.