

NOTICE

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2014 IL App (5th) 130364-U

NO. 5-13-0364

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).

SARAH DEATHERAGE, as Special
Administrator of the Estate of Kyle
Deatherage, Deceased,

Plaintiff-Appellee,

v.

DOT TRANSPORTATION, INC., a Delaware
Corporation, DOT FOODS, INC., an Illinois
Corporation, and JOHNNY B. FELTON,

Defendants-Appellants.

) Appeal from the
) Circuit Court of
) Madison County.
)
)
)

) No. 13-L-37
)
)

) Honorable
) Dennis R. Ruth,
) Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.

Presiding Justice Welch and Justice Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in denying the defendants' motion to dismiss or transfer based on improper venue where accident did not occur in county where suit was filed, the individual defendant did not reside in the county where suit was filed, and the corporate defendants did not have a registered office or other office in the county where suit was filed, nor were the corporate defendants' activities in the county where suit was filed quantitatively or qualitatively sufficient for them to be considered to be "doing business" within that county for purposes of section 2-102(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-102(a) (West 2012)).

¶ 2 The defendants, DOT Transportation, Inc., a Delaware corporation, DOT Foods, Inc., an Illinois corporation, and Johnny B. Felton, filed, pursuant to Illinois Supreme Court Rule 306(a)(4) (eff. Feb. 6, 2011), a petition for leave to appeal the June 24, 2013, order of the circuit court of Madison County which denied their motion to dismiss or transfer this lawsuit, pursuant to section 2-104 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-104 (West 2012)), on the basis that Madison County is an improper venue. This court initially denied the petition for leave to appeal, but pursuant to a supervisory order filed by the Illinois Supreme Court, vacated our order denying the petition for leave to appeal and entered an order allowing said petition. For the following reasons, having considered the merits of the appeal, we reverse the circuit court's order and remand with directions that the circuit court enter an order granting the defendants' motion and transfer this cause to the circuit court in a proper venue, subject to any equitable terms and conditions that the circuit court finds to be appropriate, pursuant to section 2-106 of the Code (735 ILCS 5/2-106 (West 2012)).¹

¹Upon the record before us, Montgomery County, where the accident occurred, Brown County, the location of the corporate defendants' principal place of business, and Sangamon County, the location of the defendants' registered agent, are three counties where venue is proper. We decline to mandate the location of the transfer, and leave it to the circuit court to determine the county of transfer, with the input of the plaintiff.

¶ 3

FACTS

¶ 4 On January 9, 2013, the plaintiff, Sarah Deatherage, as special administrator of the estate of Kyle Deatherage, deceased, filed a complaint in the circuit court of Madison County. According to the complaint, the plaintiff's decedent was killed on November 26, 2012, when a semitruck owned by the defendants DOT Foods, Inc. (DOT Foods), and DOT Transportation, Inc. (DOT Transportation), and driven by the defendant Johnny B. Felton, who the complaint alleged was an employee of both DOT Foods and DOT Transportation, struck and killed Mr. Deatherage on Interstate 55. Counts I and II alleged causes of action for wrongful death against DOT Foods and DOT Transportation, respectively, alleging that both these entities willfully and wantonly hired Felton and entrusted him to drive the semitruck. Count III alleged a cause of action for wilful and wanton misconduct against Felton for operating the tractor-trailer when he was medically unfit to do so.

¶ 5 On February 28, 2013, Felton filed a motion to dismiss or transfer on the basis of wrongful venue pursuant to section 2-104 of the Code (735 ILCS 5/2-104 (West 2012)). The motion pointed out that the complaint did not contain allegations that any defendant is a resident of Madison County or that the occurrence that is the subject of the complaint took place in Madison County. In support of the motion, Felton filed an affidavit averring that he is a resident of Georgia and has never been a resident of Madison County. Felton also attached the Illinois traffic crash report to the motion to dismiss or transfer, which indicated that the accident that is the subject of the complaint took place in Montgomery County.

¶ 6 On March 8, 2013, DOT Foods filed a motion to transfer venue to Montgomery County. In support of its motion, DOT Foods attached the affidavit of its chief executive officer. According to the affidavit, DOT Foods is an Illinois corporation having its corporate headquarters and principal place of business in Brown County. DOT Foods is primarily in the business of selling packaged food and related items to its distributors. All accounting and clerical activities performed in Illinois occur at its facility located in Brown County. DOT Foods is the sole shareholder of DOT Transportation, a Delaware corporation.

¶ 7 The affidavit of DOT Foods' chief executive officer further avers that DOT Foods does not have a registered agent, registered office, or any other office in Madison County. DOT Foods files annual reports with the Illinois Secretary of State, designating its registered agent and office in Sangamon County. DOT Foods does not own, lease, have any interest in, or otherwise maintain any real estate, property, manufacturing plants, facilities, or operations in Madison County. DOT Foods had 4,044 customers in 2012. Of those 4,044 customers, 5 were located in Madison County. DOT Foods makes no sales to consumers. The affidavit concludes by averring that according to DOT Foods' sales records, the total dollar volume of sales in 2012 in Madison County was \$108,627, representing .0024% of its total sales that year, which totalled \$4,584,022,029. DOT Foods had 2,159 employees in 2012, none of whom resided in Madison County. Additional facts were presented by DOT Foods regarding products purchased in Madison County, and those will be set forth as necessary to our analysis of the issue on appeal.

¶ 8 On March 11, 2013, DOT Transportation filed its motion to transfer for improper venue, requesting the circuit court to transfer this lawsuit to Montgomery County, Brown County, or such other county where venue is proper. In support of its motion, DOT Transportation attached the affidavit of its president. According to the affidavit, DOT Transportation is a Delaware corporation, authorized to transact business in Illinois, and is a wholly owned subsidiary of DOT Foods. The location of DOT Transportation's principal place of business and principal office is in Brown County. Its registered agent is located in Sangamon County. It does not have a place of business, an office, or other facility in Madison County, and does not own or have an interest in real estate there. DOT Transportation does not have any employees who reside in Madison County.

¶ 9 According to the affidavit, DOT Transportation is primarily in the business of hauling food and other related products for DOT Foods. In 2012, DOT Transportation picked up 1,523,637,941 pounds of products for DOT Foods. Of that total, 18,142,243 pounds of products were picked up in Madison County, consisting of 1.19% of the total products picked up by DOT Transportation for DOT Foods in 2012. In 2012, DOT Transportation delivered products for DOT Foods to 4,044 customers of DOT Foods, and 5 of those customers were located in Madison County, which is .12% of those customers.

¶ 10 The affidavit also contains averments regarding the number of miles that DOT Transportation trucks drove in Madison County in 2012, as its revenue is generated according to the miles it drives to haul freight for its customers. According to the affidavit, the total number of miles driven by DOT Transportation trucks in 2012 was 92,025,893 miles. Of that total, the affidavit stated that approximately 480,000 miles

were driven in or through Madison County, consisting of .52% of total miles driven in 2012. Finally, the affidavit contained statistics regarding revenue it generated from "custom hauls" for companies other than DOT Foods. In 2012, DOT Transportation generated approximately \$6,680,000 in revenue from custom hauls. Of that total, DOT Transportation generated \$10,600 in revenue from custom hauls to and from Madison County, consisting of .16% of the total revenue generated by DOT Transportation from custom hauls in 2012.

¶ 11 As additional documentation in support of its motion to transfer venue, DOT Transportation attached the following: (1) DOT Transportation's answers, amended answers, and supplemental answers to the plaintiff's venue interrogatories, (2) the transcript of the discovery deposition of DOT Transportation's president, (3) the transcript of the discovery deposition of a corporate representative of DOT Foods, and (4) the supplemental affidavit of DOT Transportation's president. According to DOT Transportation's answers, amended answers, and supplemental answers to the plaintiff's venue interrogatories, between 2009 and 2013, DOT Transportation made 5% of its total purchases from Madison County vendors. These purchases include the purchase of truck and trailer parts, repairs and parts on fuel equipment, and the purchase of a substantial amount of fuel from the Hartford Wood River Terminal. In 2012, DOT Transportation's purchases of fuel from that terminal totaled \$17,502,873.

¶ 12 In his discovery deposition, DOT Transportation's president testified that when DOT Transportation buys products from Madison County vendors, it either transports or hires another entity to transport the products to one of its distribution centers, most often

its distribution center that is located in Brown County. He also testified that beginning in 2012, DOT Transportation began using a global positioning system that was capable of giving a more precise figure on the number of miles driven by DOT Transportation trucks in Madison County. According to the figures set forth in supplemental answers to the plaintiff's venue interrogatories, DOT Transportation trucks drove a total of 328,117 miles in Madison County, which is less than the 480,000 miles that was reported in its president's original affidavit.

¶ 13 DOT Transportation's supplemental answers to the plaintiff's venue interrogatories also contained detailed figures regarding the revenue DOT Transportation generated by custom hauls and hauls from DOT Foods in Madison County as compared to its total revenue for the years 2009 through 2013 year-to-date. According to these figures, DOT Transportation's total revenue for 2012 was \$229,139,463. The revenue generated from Madison County custom hauls was \$10,600 and the revenue generated from the loads DOT Transportation transported for DOT Foods from Madison County was \$607,344.57, for a combined total of \$617,944.57, which is .27% of its total revenue for 2012.

¶ 14 According to the supplemental affidavit of DOT Transportation's president, DOT foods and DOT Transportation are separate corporate entities. They maintain separate boards of directors and each entity creates and maintains its own separate annual budget. DOT Foods has not picked up or delivered its products since DOT Transportation was formed as an independent corporation in 1994. DOT Foods does not perform dispatching services for DOT Transportation or its drivers. Pursuant to a written commercial lease agreement, DOT Foods leases office space, maintenance facilities, parking lots, and

certain other real estate to DOT Transportation for its exclusive use and DOT Transportation pays annual rent to DOT Foods.

¶ 15 The supplemental affidavit of DOT Transportation's president further avers that DOT Transportation maintains its own corporate minutes and records separate from those minutes and records of DOT Foods, convenes separate meetings of its board of directors, and maintains its own employee handbook. Further, according to the affidavit, DOT Foods does not control the day-to-day operations of DOT Transportation and does not control disputes regarding DOT Transportation's staff.

¶ 16 Finally, the supplemental affidavit of DOT Transportation's president states that on the day of the accident that is the subject of this lawsuit, Felton was employed by DOT Transportation as a commercial, over-the-road truck driver, and was not an employee of DOT Foods. Felton worked exclusively for DOT Transportation, was supervised by DOT Transportation, was dispatched by DOT Transportation on the date of the accident, and was driving a semitruck that was owned by DOT Transportation.

¶ 17 On June 23, 2013, a hearing was held on the defendants' motion to transfer. Ruling from the bench, the circuit court found that the defendants did not meet their burden to prove that venue is improper in Madison County. The circuit court entered an order denying the defendants' motion to transfer on June 24, 2013. The defendants filed petitions for leave to appeal with this court pursuant to Illinois Supreme Court Rule 306(a)(4) (eff. Feb. 6, 2011). This court denied the petitions for leave to appeal on August 21, 2013, but on November 27, 2013, the Illinois Supreme Court entered a supervisory order directing this court to vacate its order denying the petitions for leave to

appeal and to grant the petitions. Pursuant to that directive, this court vacated its prior order and entered an order granting the petitions for leave to appeal on January 7, 2014.

¶ 18

ANALYSIS

¶ 19 We review an order disposing of a motion to transfer for improper venue *de novo*. *Reynolds v. GMAC Financial Services*, 344 Ill. App. 3d 843, 847 (2003). The burden of proving that venue is improper is on the defendants. *Id.* at 848 (citing *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 285 (1987)). In order to meet their burden, the defendants must set forth, by affidavit or other evidence, specific facts that show that venue is not proper in the requested forum. *Id.* Any doubts that arise from inconsistencies in the record will be resolved against the defendants. *Id.*

¶ 20 Section 2-101 of the Code (735 ILCS 5/2-101 (West 2012)) provides that a cause of action may only be filed: "(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." Here, it is undisputed that the accident at issue took place in Montgomery County and that Felton is a resident of Georgia. Accordingly, venue will only be proper in Madison County if either of the corporate defendants, DOT Foods or DOT Transportation, is joined as a defendant in good faith and is a resident of Madison County.

¶ 21 As an initial matter, we note that the plaintiff's complaint alleges that both DOT Foods and DOT Transportation, Inc., were employers of Felton and that both entities

negligently hired Felton and entrusted him with the semitruck he was driving in the course and scope of his employment at the time of the accident. However, as set forth above, the uncontradicted affidavits on file aver that DOT Transportation, Inc., a wholly owned subsidiary of DOT Foods, actually owned the semitruck and was Felton's employer. As a general rule, a parent corporation is not liable for the acts of its subsidiaries. *Gass v. Anna Hospital Corp.*, 392 Ill. App. 3d 179, 184-85 (2009) (citing *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 282 (2007)). One who seeks to have the courts apply an exception to the rule of separate corporate existence must seek such relief in his pleading and carry the burden of proving actual identity or misuse of the corporate form. *Id.* at 185-86. In the alternative, the plaintiff must plead and prove that a parent corporation was a "direct participant" in the actions of its subsidiary in that it mandated an overall course of action taken by the subsidiary and specifically directed the subsidiary to carry out a negligent act. *Forsythe*, 224 Ill. 2d at 290. Here, the plaintiff has not alleged any specific facts to support piercing the corporate veil or a cause of action against DOT Foods for direct participant liability. Accordingly, there is an issue as to whether DOT Foods is a defendant joined in good faith and with probable cause for the purpose of obtaining a judgment against it. However, for the purposes of our venue analysis, we will consider whether either DOT Foods or DOT Transportation is to be considered a resident of Madison County.

¶ 22 As to private corporations, section 2-102(a) of the Code (735 ILCS 5/2-102(a) (West 2012)) provides that such entities are to be considered residents of any county in which they have a registered or other office or are "doing business." Here, neither DOT

Foods nor DOT Transportation has a registered or other office in Madison County. Accordingly, venue in Madison County is only proper if the corporate defendants were "doing business" there at the time the suit was filed. The Illinois Supreme Court has explained that "doing business" in the context of the venue statute codified in section 2-102(a) of the Code (735 ILCS 5/2-102(a) (West 2012)) requires quantitatively more extensive contacts with a county than the "minimum contacts" required to subject a defendant to the jurisdiction of the courts in Illinois. *Stambaugh v. International Harvester Co.*, 102 Ill. 2d 250, 257-58 (1984). The test is whether the defendant is "conducting its usual and customary business within the county in which venue is sought." *Id.* at 258. In other words, the activity of the corporation must be of " 'such a nature so as to localize the business and make it an operation within the [county].' " *Id.* (quoting *Remington Rand, Inc. v. Knapp-Monarch Co.*, 139 F. Supp. 613, 617 (E.D. Pa. 1956)).

¶ 23 The Illinois Supreme Court has determined that the quantity or volume of business done by a company in a county as compared to the amount of business generated by the company as a whole, or throughout the State of Illinois, is a relevant consideration in determining, for purposes of venue, whether the company may be deemed to be doing business in the county.² *Bucklew v. G.D. Searle & Co.*, 138 Ill. 2d 282, 291-92 (1990)

²We note that in the transcript of the hearing on the defendants' motion to transfer, the circuit court focuses its questioning on the volume of business that DOT Foods and DOT Transportation does in Madison County as compared to other counties in Illinois.

(citing *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 286 (1987)); see also *Stambaugh v. International Harvester Co.*, 102 Ill. 2d 250, 259 (1984); *Gardner v. International Harvester Co.*, 113 Ill. 2d 535, 540 (1986). In the present case, as in the aforementioned cases, DOT Foods and DOT Transportation presented in the circuit court several affidavits of corporate officers, supplying information concerning the nature and extent of the defendants' business in Madison County, and there is also documentation in the record that was revealed by discovery procedures instituted in connection with the defendants' motion to transfer venue. See *Bucklew*, 138 Ill. 2d at 291; see also *Baltimore & Ohio R.R. Co. v. Mosele*, 67 Ill. 2d 321, 325 (1977). As in *Bucklew*, 138 Ill. 2d at 291, the plaintiff in this case did not submit any material contradicting the affidavits or

We agree with the defendants that there is no authority in Illinois to support consideration of this factor in determining whether a company can be said to be "doing business" in a county for purposes of venue. Although, as appeared to be the concern of the circuit court, such an analysis may result in a corporation not "doing business" in any county in the state, pursuant to the terms of section 2-101 of the Code (735 ILCS 5/2-101 (West 2012)), there will always be a county where venue is proper and the terms of section 2-102 of the Code (735 ILCS 5/2-102 (West 2012)) do not mandate that there always be some county in Illinois where a corporate defendant is "doing business." In such a case, venue will always be proper in the county where the accident or transaction occurred or the corporate defendant has a registered office or principal place of business. 735 ILCS 5/2-101 (West 2012).

discovery documentation. Instead, the plaintiff made arguments before the circuit court and before this court that question the credibility of DOT Foods and DOT Transportation, and as support for her arguments, points to her counsel's arguments in the circuit court regarding the actions of DOT Foods and DOT Transportation surrounding the hiring of Felton. However, the plaintiff provides no evidentiary materials in support of her arguments. As such, we cannot determine the venue issue in this case based on unsupported arguments questioning the credibility of the corporate defendants.

¶ 24 Comparing the volume of sales information presented by DOT Foods and DOT Transportation³ to that in the aforementioned Illinois Supreme Court cases, it is clear that this factor weighs in favor of a finding that DOT Foods and DOT Transportation are not doing business in Madison County. In *Stambaugh*, 102 Ill. 2d at 258-59, the defendant sold \$2.6 million worth of its products in the county in question, constituting approximately 5/100ths of 1% of its annual sales volume, and in *Gardner*, 113 Ill. 2d at

³For purposes of our analysis, we are using the data for the year 2012, because that is the full year prior to the year the suit was filed, and will give a better picture of the business activity of DOT Foods and DOT Transportation during the relevant time period than would an analysis of the data for the first four months of 2013. However, if we were to consider the limited data that was available to the circuit court for the first quarter of 2013, the volume of sales or revenue generated by both DOT Foods and DOT Transportation in Madison County would also be a fraction of a percent of its total sales or revenue and would not change our analysis.

540, the same defendant sold even less. In *Bucklew*, 138 Ill. 2d at 291, the defendant sold \$289,760 worth of products to customers in the relevant county, representing 2.5% of the defendant's sales in Illinois, and .12% of national sales. In all three cases, the Illinois Supreme Court found that these volumes of sales in the relevant county were insufficient to support a finding that the defendant was "doing business" in that county for venue purposes. See *Stambaugh*, 102 Ill. 2d at 262-63; *Gardner*, 113 Ill. 2d at 542; *Bucklew*, 138 Ill. 2d at 293-94.

¶ 25 Here, according to the uncontradicted affidavits and materials produced in response to the plaintiff's venue interrogatories and requests to produce, DOT Foods' sales in Madison County in 2012 represented .0024% of its annual sales, substantially lower than those in *Bucklew* and similar to those in *Stambaugh*. Accordingly, as a matter of law, this factor, which is the factor primarily relied upon by the Illinois Supreme Court in determining whether a corporation is "doing business" in a county for venue purposes, weighs against a finding that DOT Foods is "doing business" in Madison County for venue purposes.

¶ 26 Although the total revenue generated by DOT Transportation for hauls originating in Madison County in 2012 is somewhat higher than that of DOT Foods, representing .27% of its total revenue for 2012, this is still a fraction of 1% of the revenue it generated in 2012. Based on the Illinois Supreme Court's analysis in *Stambaugh*, *Gardner*, and *Bucklew*, we find that this volume of sales in Madison County is insufficient to support a finding that DOT Transportation was "doing business" in Madison County for venue purposes.

¶ 27 In an attempt to call into question the credibility of the data that DOT Transportation provided in its affidavits and discovery responses regarding the issue of venue, the plaintiff points out inconsistencies in the mileage calculations provided by DOT Transportation with regard to the revenue it generated by hauls in Madison County. We are not persuaded. Although DOT Transportation provided different numbers with regard to miles driven in Madison County, it thoroughly explained how it made each calculation and why the different methods of calculation it used yielded different results. Its first estimation for miles traveled in Madison County in 2012 considered the number of times a DOT Transportation truck was in Madison County for any reason and assumed each truck traveled the entire length of Interstate 55 through Madison County. Subsequently, DOT Transportation calculated the miles traveled through Madison County using a GPS system that was installed and used in its trucks beginning in January 2012. We agree with DOT Transportation's explanation that because the first calculation included miles that were traveled for its own purposes for which it received no income, and because the first calculation assumed that each truck traveled the maximum number of miles within Madison County, that calculation yielded a higher estimation of the miles driven by DOT Transportation in Madison County than did the calculation based on GPS data. In any event, using either method of estimating the number of miles driven by DOT Transportation for which it generated revenue, the revenue it generated in Madison County is a fraction of 1% of DOT Transportation's total revenue. Accordingly, we find that DOT Transportation met its burden to prove that this factor weighs in favor of transfer.

¶ 28 The plaintiff argues that the purchase of products by DOT Foods and DOT Transportation in Madison County shows that both entities are "doing business" in Madison County for venue purposes. According to the uncontradicted affidavits and discovery responses in the record, of the products DOT Foods purchased for resale in 2012, .00086% of those products were purchased from Madison County vendors. DOT Foods also purchased products for resale from vendors located outside of Madison County that were shipped from warehouses located in Madison County. However, these products represented less than 1% of all of its product purchases in 2012.

¶ 29 Evidence in the record also reflects that DOT Transportation purchased products or services for its own use from businesses located in Madison County. These products and services included primarily diesel fuel, but also truck and trailer parts, trailer repairs, and parts and repairs on DOT Transportation's fuel equipment. In 2012, DOT Transportation made purchases totaling \$17,502,873 from Madison County businesses, with the vast majority of this total going towards fuel purchased from the Hartford Wood River Terminal. Although DOT Transportation did not provide its total purchases for 2012, its purchases in Madison County for the years 2009–2013 averaged at about 5% of its total purchases over those years, with 2012 being the year that it made the most purchases in Madison County.

¶ 30 Having considered purchases made by DOT Foods and DOT Transportation from Madison County vendors, we cannot say that this factor compels a finding that these corporate entities are "doing business" in Madison County for venue purposes. The Illinois Supreme Court has held that purchases from suppliers in a county do not show

that a company is engaged in its usual and customary business there, as is required to establish venue, but rather, that such purchases are merely incidental to the company's business. *Gardner*, 113 Ill. 2d at 541 (citing *Hartung v. Central Illinois Public Service Co.*, 110 Ill. App. 3d 816, 819-20 (1982)). In *Hartung*, 110 Ill. App. 3d at 820, this court held that the defendant power company's contracts with Madison County vendors, including a \$3.5 million contract for the hauling of light oil to the defendant's power station, the purchase of \$462,000 of lime, \$255,000 of utility poles, \$81,000 of valves, fittings, and pipes, and \$50,000 of hydrogen, were not the usual and customary business of the defendant as required to establish the "doing business" prong of the venue statute, but instead were merely incidental to the defendant's business. See also *Degerlia v. First Bank & Trust Co.*, 121 Ill. App. 3d 658, 661 (1984) (for purposes of venue the defendant must be found to " 'be conducting its usual and customary business within the county in which venue is sought' " and it is not enough that the defendant make purchases or provide services incidental to its customary business in the county (quoting *Mosele*, 67 Ill. 2d at 329)).

¶ 31 We find the case cited by the plaintiff, *Turner v. Jarden*, 275 Ill. App. 3d 890 (1995), to be distinguishable from the case at bar. In *Turner*, the defendant owned and leased approximately 140 to 160 acres in Madison County, where venue was sought. *Id.* at 893. These properties were used to grow grain to feed the cattle that supplied the milk for the defendant's dairy business. *Id.* This court found that this constituted the operation of an integral part of the defendant's usual and customary business in the county, and found that the defendant could be said to be "doing business" in the county for venue

purposes. *Id.* Here, the defendants own no land where they are conducting operations in Madison County, but rather, have made purchases from Madison County vendors, which Illinois case law has repeatedly held is incidental to business. For all of these reasons, we find that purchases made by DOT Foods and DOT Transportation in Madison County do not constitute "doing business" in Madison County for venue purposes.

¶ 32

CONCLUSION

¶ 33 For the foregoing reasons, we conclude that DOT Foods and DOT Transportation were not "doing business" in Madison County at the time this lawsuit was filed as is required for them to be considered residents of Madison County for purposes of section 2-102(a) of the Code (735 ILCS 5/2-102(a) (West 2012)). Accordingly, the circuit court erred when it denied the defendants' motion to transfer. Therefore, we reverse the circuit court's order and remand with directions that the circuit court enter an order granting the defendants' motion and transfer this cause to the circuit court in a proper venue, subject to any equitable terms and conditions that the circuit court finds to be appropriate, pursuant to section 2-106 of the Code (735 ILCS 5/2-106 (West 2012)). Based on the record before us, there are multiple counties where venue is appropriate pursuant to sections 2-101 and 2-102 of the Code (735 ILCS 5/2-101, 2-102 (West 2012)), including Montgomery, Brown, and Sangamon. Accordingly, we direct that the plaintiff's choice be considered in determining the county of transfer.

¶ 34 Reversed and remanded with directions.