SECOND DIVISION
March 29, 2024

No. 1-23-0060

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARK KASHIRSKY and JAME KASHIRSKY, Plaintiffs-Appellees, v. PRESENCE CENTRAL AND SUBURBAN HOSPITALS NETWORK d/b/a AMITA HEALTH SAINT JOSEPH MEDICAL CENTER JOLIET, ALEXIAN BROTHERS-AHS MIEDWEST REGIONAL HEALTH CO. d/b/a AMITA HEALTH AND AMITA HEALTH MEDICAL GROUP, CARY R. TEMPLIN, M.D., STACY R. BAKER, R.N., and HINDSDALE ORTHOPEDIC ASSOCIATES, S.C., d/b/a HINSDALE ORTHOPAEDICS, Defendants (Presence Central and Suburban Hospitals Network d/b/a Amita Health Saint Joseph Medical Center Joliet and Stacy R. Baker, R.N., Defendants-Appellants).	)	Appeal from the Circuit Court of Cook County 21 L 7237 Honorable Kathy M. Flanagan, Judge Presiding

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JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Howse and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Court did not abuse discretion in denying *forum non conveniens* motion seeking to transfer case to Will County.

¶ 2 Plaintiff Mark Kashirsky (Mark) underwent back surgery at AMITA Health Saint Joseph Medical Center in Joliet. He alleges that defendants failed to explain a serious medication interaction and, as a result, he suffered serious, permanent injuries.

¶ 3 Defendants Presence Central & Suburban Hospitals Network (Presence) and Nurse Stacy R. Baker filed a *forum non conveniens* motion to transfer the case from Cook County to neighboring Will County, where the alleged negligence took place. The circuit court allowed discovery on the convenience of litigating in Cook Couty and, after arguments, denied the motion to transfer. Defendants appeal. We find no abuse of discretion and affirm.

¶ 4 BACKGROUND

¶ 5 On July 17, 2019, Mark underwent back surgery, performed by defendant Dr. Templin, at AMITA Saint Joseph Medical Center in Joliet (the hospital), located in Will County. The surgery went fine. But plaintiffs allege that Dr. Templin and Nurse Baker failed to properly consider and explain a potential interaction between his pain medication and another medication he was taking. The morning after discharge, Mark suffered an "anoxic event at his home"—a lack of oxygen. This resulted in an "anoxic brain injury with permanent neurologic, cognitive, physical, emotional, and psychiatric" effects.

¶ 6 Almost exactly two years later, on July 16, 2021, plaintiffs filed their medical malpractice suit against defendants stemming from the alleged failure to properly administer and advise Mark regarding his pain medication.

¶ 7 In December 2021, several defendants, including Presence and Nurse Baker, moved to transfer the case from Cook County to Will County, arguing that it would be more convenient to litigate plaintiffs' claims there. In support of their motion, defendants included the affidavits of Nurse Baker and Herb Buchanan, a senior vice president with the hospital.

¶ 8 In her affidavit, Nurse Baker stated that she resided in Will County and was, at all relevant times, an employee at the hospital. She claimed that it would be inconvenient for her, "both personally and professionally" to defend this case in Cook County. Buchanan's affidavit confirmed that several medical professionals listed in the complaint were employed at the hospital. He went on to state that, based on their professional registrations, each of these 11 professionals lived in either Will or Grundy Counties. He concluded that "it would be inconvenient and more expensive to litigate this matter in Cook County instead of Will County." According to Buchanan, a transfer to Will County "would minimize caretaker time away from patients, avoid staff disruptions, and permit the continuity of care to patients."

¶ 9 To allow plaintiffs to fairly respond, the court allowed limited discovery for the purposes of litigating the *forum non conveniens* motions. After discovery, plaintiffs responded that the defendants—all of them, not just the defendants before us on appeal—had sufficient connections to Cook to warrant denying the motions to transfer.

¶ 10 For example, while they acknowledged that the specific doctor who performed Mark's back surgery worked in Will, they claimed that the orthopedic group with which that doctor worked (also a named defendant) had locations all around the state—including Cook County. In fact, that group "has done business in Cook County for the past five (5) years and generated more than 10% of its revenue in 2021 from its Cook County business operations." Plaintiffs also presented evidence that four of his treating physicians—all potential witnesses—resided in Cook County.

¶ 11 After briefing, the court denied the motion. In its written order, the court went through each of the required private and public interest factors in detail. We only provide a brief synopsis.

¶ 12 The circuit court concluded that, due to technological advancements, there was no particular inconvenience in accessing and transporting the documentary evidence relevant to the case. As for live witnesses, the court acknowledged that the defendants identified several witnesses they intended to call at trial who are located in Will County, which tipped the scales in favor of a transfer to Will County. Regarding convenience of the parties, the court recognized that it was likely more convenient for defendants to defend the case in Will County, though not so overwhelmingly so that a transfer was warranted. Given the relatively small distance between the courthouses in Will and Cook County, the court found travel inconvenience to be minimal.

¶ 13 The court did not find that the public-interest considerations favored a transfer, either. While defendants were correct that Cook County has significantly more cases, the court noted that there were far more judges in Cook County and cases actually were disposed of *more quickly* on average.

¶ 14 Perhaps the court's most contentious conclusion was that Cook County had an interest in the case. Defendants argued that this case concerned an incident that occurred in Will County, which thus had a significantly greater interest in its resolution than Cook. Plaintiffs were quick to note that several of the defendants also conducted the same business dealings in Cook County.

¶ 15 The court concluded that, unlike an "automobile accident or a slip-and-fall in a particular location," this case was not particularly site-specific. And given the close proximity of the two counties and the defendants' practices in each county, it is entirely plausible that a Cook County resident could receive care from defendants in either county. Thus, it would not be unfair to a Cook County jury to decide an issue that had the potential to affect them.

¶ 16 The court acknowledged that plaintiffs were entitled to less deference in their choice of forum since they are not residents of Cook County. Still, defendants had failed to meet their burden of showing the balancing test strongly favored a transfer to Will County.

¶ 17 Per Illinois Supreme Court Rule 306(a)(2) (eff. Oct. 1, 2020), defendants timely filed their petition for leave to appeal the denial of motion to transfer, which this court allowed.

¶ 18 ANALYSIS

¶ 19 The doctrine of *forum non conveniens* allows courts to decline jurisdiction over a case if "another forum can better serve the convenience of the parties and the ends of justice." *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 12. The doctrine is premised on the notion of fundamental fairness and sensible, effective administration of justice. *Id.* ¶ 14. Our supreme court has repeatedly noted that this transfer power "should be exercised *only in exceptional circumstances* when the interests of justice require a trial in a more convenient forum." (Emphasis added.) *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 442 (2006). We review the court's ruling for an abuse of discretion. *Fennell*, 2012 IL 113812, ¶ 21. The court abuses its discretion when no reasonable person would adopt the circuit court's view. *Id.*

¶ 20 The court must consider several private and public interest factors. The private factors include: the convenience of the parties; ease of access to evidence; the availability of compulsory process for unwilling witnesses; the cost of obtaining 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*, 2012 IL 113812, ¶ 15. The public interest factors include the administrative congestion of the chosen forum; the unfairness of imposing jury duty on residents in a community with no connection to the dispute; and the interest in having local controversies decided locally. *Id.* ¶ 16.

¶ 21 It is the defendant's burden to show that the balancing of these factors warrants changing forums. *Langenhorst*, 219 Ill. 2d at 444. But it is an "unequal balancing test," as the "plaintiff's choice of forum is already in the lead." *First American Bank v. Guerine*, 198 Ill. 2d 511, 521 (2002). A plaintiff has a "substantial" right to choose the forum in which to resolve the dispute. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 173 (2003). Unless these "factors weigh strongly in favor of transfer, the plaintiff's choice of forum should rarely be disturbed." *Id*.

¶ 22 The amount of deference to plaintiff's choice of forum depends on whether it is the "home" forum, meaning (1) it is the forum where plaintiff lives or (2) it is the forum where the injury occurred. *Fennell*, 2012 IL 113812, ¶ 18; *Dawdy*, 207 Ill. 2d at 173. When plaintiffs choose a home forum, it is reasonable to assume the choice is convenient. *Fennell*, 2012 IL 113812, ¶ 18. If they choose a foreign forum, the choice is entitled to "less deference." *Id*. How much less is not reduceable to some mathematical formulae. As our supreme has said, plaintiff is only entitled to "*somewhat* less deference." *Langenhorst*, 219 Ill. 2d at 448. This is specifically " 'only *less*, as opposed to *none*.' " *Id*. (quoting *Guerine*, 198 Ill. 2d at 518).

¶ 23 Defendants claim the court erred in balancing the various factors, emphasizing two points in particular. First, the court failed to appreciate the strength of Will County's connection to this action. Second, the court granted too much deference to plaintiffs' choice of Cook County, a choice that defendants view as forum shopping.

¶ 24 As to the latter point, defendants are correct that our " 'courts have never favored forum shopping.' " *Fennell*, 2012 IL 113812, ¶ 19 (quoting *Dawdy*, 207 Ill. 2d at 174). As our supreme court has noted, "a concern animating our *forum non conveniens* jurisprudence is curtailing forum shopping." *Guerine*, 198 Ill. 2d at 521. That concern is reflected in the reduced deference given to a plaintiff's choice of a non-home forum. *Dawdy*, 207 Ill. 2d at 175-76.

¶ 25 The circuit court thoughtfully considered all the private interest factors, even those defendants did not address. It is undisputed that the relevant conduct took place in Will County, that the named defendants reside there, and that the defendants stated in their affidavits that it would be more convenient to litigate this matter there. The circuit court credited those statements and even agreed with defendants that the consideration of convenience *did* favor Will County over Cook, though not strongly enough to tip the scales of the uneven balancing test.

¶ 26 The court, hewing closely to case law, noted that access to physical evidence has become significantly less impactful as technological advancements have made access to and transportation of vast amount of data far simpler. See *Meier*, 2023 IL App (1st) 211674, ¶ 33 (affirming conclusion that this factor was "insignificant" in modern age). As to testimonial evidence, it found that there were only a few examples of witnesses whom the parties indicated *would* be called at trial, though all of whom were located in Will County. The court also not unreasonably concluded that because this was about different counties within Illinois, compulsory process was available in both counties, and thus this factor was "neutral." See *Evans*, 2020 IL App (1st) 200528, ¶ 44.

¶ 27 Defendants claim the circuit court "virtually ignored" that witnesses involved in providing health care to patients in Will County, who reside in Will or Grundy Counties, will have to travel to Chicago for trial and the increased cost obtaining their presence in Cook County entails. True, the circuit court did not discuss this consideration at this particular point in the order, but the court did not altogether ignore that fact. Elsewhere in its written decision, the court specifically addressed the differences in travel time and costs between the Daley Center and the Will County courthouse. The court noted that the Daley center was only "26.1 miles further and this distance would not be sufficient to warrant transfer to Will County." We do not find that

thinking unreasonable in the least. See *Langenhorst*, 219 Ill. 2d at 450 (there is little inconvenience when travel distances for witness are relatively small).

¶ 28 The circuit court also properly gave only a slight nod in favor of transfer regarding the possibility of viewing the premises in Will County, as it was unlikely that the premises would need to be viewed. See *Evans*, 2020 IL App (1st) 200528, ¶ 46 (factor is less impactful when viewing premises is highly unlikely); see also *Hackl v. Advocate Health and Hospitals Corp.*, 382 Ill. App. 442, 452 (2008) (viewing premises is almost never necessary in medical malpractice claims).

¶ 29 As to all other practical considerations, the circuit court found that none strongly favored transfer. Before this court, defendants claim the circuit court completely ignored "the increased time and cost of meals, parking, travel, and lodging for all parties." True, the circuit court didn't focus on those specific costs. But that's because they weren't raised in defendant's motion—at least not from the supporting record that we can see. We will not find an abuse of discretion based on an argument that was not raised.

¶ 30 Turning to the public factors, the circuit court first considered court congestion. The court determined that, while Cook County has far more cases overall than Will County, the Annual Report of the Administrative Office of the Courts (AOIC) for 2021 shows that Cook County disposes of cases of comparable nature (jury trials with alleged damages over $50,000) at 75.34% of the time that Will County disposes of them. In other words, though Cook County has more cases overall by a wide margin, it disposes of them more efficiently. Defendants attack the reliability of that number in light of a backlog caused by COVID, but the supreme court has endorsed these annual AOIC reports in considering court congestion (see *Dawdy*, 207 Ill. 2d at 181), and even if defendants were entitled to a "discount" for COVID delays—a debatable

point—at most these numbers would result in a wash, certainly nothing that strongly favors transfer to Will County.

¶ 31 By far the most contested balancing factors are the last two public-interest ones: having controversies decided locally, and the unfairness of burdening foreign courts. The circuit court's take on these two factors flows from the notion that Cook County has an interest in this controversy because its citizens might avail themselves of defendants' services. The evidence presented showed that several of the defendants conduct the same type of business in Cook County as in Will County. And defendants' services in Will County are readily accessible by Cook County residents.

¶ 32 Our supreme court has noted that the location of the incident resulting in the litigation is the most significant fact giving any county a local interest. See *Schuster v. Richards*, 2018 IL App (1st) 171558, ¶ 37 (citing cases). But when a defendant is conducting *the same* business in multiple forums, our courts have been more willing to find that a foreign forum has a local interest in the controversy. For example, in *Langenhorst*, 219 Ill. 2d at 451, the supreme court concluded that residents in a neighboring county had an interest in resolving a controversy when the case involved the same railway line that bisected the chosen forum.

¶ 33 The circuit court applied much the same logic: because defendants' services are available to Cook County residents, they very much have an interest in overseeing the conduct of these healthcare professionals. While this obviously does not give Cook County a more significant interest than Will County, it is unfair to say, as defendants argue, that Cook County has *no* interest. See *Evans*, 2020 IL App (1st) 200528, ¶¶ 52-55 (fact that defendant practiced in Cook County gave it an interest despite incident occurring elsewhere).

¶ 34 Ultimately, the question is not whether we would have granted defendants' motion. Our job is to uphold the trial court's decision unless we find that no reasonable person would agree with it. *Fennell*, 2012 IL 113812, ¶ 21. Given the court's careful reasoning and logic, defendants have not met that standard here.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court is affirmed.

¶ 37 Affirmed.