IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Paul M. Bobak and Donna Bobak, Plaintiffs, v. CDH-Delnor Health System, a corporation, d/b/a Cadence Health, Northwestern Memorial Healthcare, a corporation, Central DuPage Hospital Association, a corporation, d/b/a Northwestern Medicine Central DuPage Hospital, Central DuPage Physician Group, a corporation, d/b/a Cadence Physician Group, OAD Orthopaedics, Ltd., a corporation and Aaron A. Bare, M.D., Defendants.	)	No. 15 L 4681
West Central Anesthesiology Group, Ltd., Vihang Shah, M.D., and Daniel J. O'Donnell, PA-C, Respondents in Discovery.	)	

MEMORANDUM OPINION AND ORDER

The doctrine of *forum non conveniens* permits a circuit court to transfer a case to another jurisdiction, but only after weighing a variety of public- and private-interest factors and determining that they strongly favor the transfer. The record in this case supports the presumption that the plaintiffs are forum shopping since they live and the alleged malpractice occurred in DuPage County. Further, other than a post-surgical consult and referral, the central plaintiff did not receive medical care or treatment in Cook County. For those reasons and as explained further below, the defendants' motion to transfer venue based on *forum non conveniens* must be granted.

Facts

A significant number of facts relevant to this court's *forum non conveniens* analysis are date and location driven. This court prefers to provide these facts in the form of a timeline.

Date	Event
12/17/13	Paul Bobak was admitted to Central DuPage Hospital (CDH) in Winfield (DuPage County) for a left-shoulder arthroscopy and release of the suprascapular nerve.[1] Dr. Aaron Bare conducted the surgery; Dr. Vihang Shah administered general anesthesia and an interscalene nerve block; Certified Physician Assistant Daniel O'Donnell assisted with the surgery. Bare was an agent of OAD Orthopaedics (OAD). Following the surgery, Bobak experienced severe left-arm pain radiating to his thumb and index fingers, numbness, and a flail left arm.
12/19/13	Bare conducted a follow-up examination of Bobak at CDH concerning his continued complaints of numbness and loss of function.
1/10/14	Bare conducted a follow-up examination of Bobak at CDH. Bare referred Bobak to Dr. Daniel Mass at the University of Chicago Hospitals (UCH).
1/16/14	Mass examined Bobak at UCH (Cook County). Mass diagnosed Bobak with brachial plexus injury at levels C5, C6, and C7 and recommended an electromyography (EMG).
1/30/14	Dr. Mary Norek conducted an EMG on Bobak at OAD (DuPage County), the results of which confirmed the diagnosis.

[1] Boyd misstates that his admission was to "Northwestern Medicine CDH." This cannot be possible since Northwestern Memorial Healthcare (NMH) did not acquire Cadence Health until September 1, 2014. *See* www.chicagobusiness.com/article/.../northwestern-cadence-come-to-terms-on-merger.

2/5/14	Bare conducted a follow-up examination of Bobak at CDH. Bare recommended that Bobak consider going to the Mayo Clinic for a second opinion.
2/14/14	Mass and Dr. Tyler Krummenacher conducted a follow-up examination at UCH. The doctors also recommended a second opinion at the Mayo Clinic.
3/10/14	Bobak went to the Mayo Clinic (Rochester, Minnesota) where he was examined by Drs. Partha Ghosh and Eric Sorenson. Sorenson recommended an EMG and potential surgery.
3/11/14	Dr. Ruple Laughlin of the Mayo Clinic conducted an EMG. A Mayo Clinic brachial-plexus team consisting of Drs. Allen Bishop, Alexander Shin, and Robert Spinner examined Bobak and recommended a left brachial plexus nerve exploration.
3/14/14	Bishop, Shin, and Spinner with the assistance of Drs. Murphy, Endress, and Nicholson conducted a brachial plexus exploration and neurolysis with nerve harvesting grafting.
3/15/14	Bobak was discharged from the Mayo Clinic.
9/10/14	Bobak returned to Mayo Clinic where Dr. William Letchy performed a second EMG that showed reinnervation. Bishop, Spinner, and Shin recommended a second surgery.
9/11/14	Bishop and Shin performed a second surgery involving various nerve transfers.
12/10/14	Bobak returned to the Mayo Clinic where Dr. Christopher Klein performed a third EMG. C.M. Mulrine, an occupational therapist, examined Bobak and recommended various therapies and fitted him with a nerve palsy splint.
5/7/15	Bobak returned to the Mayo Clinic where Dr. Michelle Mauermann performed a fourth EMG that showed continued reinnervation. Shin also examined Bobak.
5/8/15	Bishop and Shin performed a third surgery for tendon-extension transfers to the thumb, finger, and wrist.
6/19/15	Bobak returned to the Mayo Clinic for the removal of his cast. Bishop conducted a follow-up examination. Bobak

also consulted with Renee Anderson, an occupational therapist.

Bobak apparently continues to have follow-up examinations at the Mayo Clinic and at UCH.

Based on this series of events, Bobak filed suit against the defendants and named various respondents in discovery. Bobak alleges that each of the defendants breached a standard of professional negligence that caused his injuries. Donna Bobak is also a named plaintiff against the defendants based on loss-of-consortium claims. The Bobaks raise claims against Bare personally and as an employee of other defendants under the *respondeat superior* doctrine as well as against various entities for institutional claims.

The parties have also supplied information concerning the work and home locations of the parties and various potential witnesses. That list includes:

Party or Witness	Residence	Work Location
Paul Bobak	Wheaton, DuPage	Chicago, Cook
Donna Bobak	Wheaton, DuPage	Wheaton, DuPage
CDH-Delnor Health System		Wheaton, DuPage
CDH		Winfield, DuPage
Central DuPage Physician Group		Warrenville & Winfield, DuPage
Dr. Aaron Bare	Glen Ellyn, DuPage	Warrenville & Winfield, DuPage; Geneva, Kane
Dr. Lenard LaBelle	Wheaton, DuPage	Warrenville & Winfield, DuPage
Dr. Vihang Shah	Bolingbrook, Will	Winfield, DuPage
Daniel O'Donnell	Oak Park, Cook	Warrenville & Winfield, DuPage; Geneva, Kane
Dr. Daniel Mass	Unknown	Chicago, Cook

37 CDH Caregivers	22 in DuPage, 10 in Kane, 2 in Will, 2 in Cook, 1 in DeKalb	Winfield, DuPage
14 Mayo Clinic Caregivers	Rochester, Minnesota	Rochester, Minnesota

Various parties and witnesses supplied affidavits. For her part, Donna Bobak averred that it would be more convenient and economical for her to testify in Cook County and that it would be inconvenient for her to testify in DuPage County. She indicates Paul works within walking distance of the Daley Center and that they are in the process of selling their house in Wheaton and moving to Cook County. She omits, however, that she works as a teacher's aide at St. Michael's Catholic Church in Wheaton. The Bobaks' daughter, Kristy Visich, avers that she lives in Woodbury, Minnesota, and that she will need to fly into one of Chicago's airports, and that the use of public transportation in Chicago will save her car rental and fuel expenses if in the suburbs. A second daughter, Lori Bobak, lives in the Dominican Republic and makes the same averments. Krista Gnau and Kim Patchak, both family friends, and Jee Hae Sok, Paul's co-worker, each a Chicago resident, averred that it would be more convenient and economical for them to testify in Cook County.

The defendants and respondents also supplied affidavits. Bare averred that it would be more convenient for him to testify in DuPage County and inconvenient for him to travel to Chicago to testify. He further averred that the care of his patients would suffer in his absence. Dr. Lenard LaBelle also supplied an affidavit, apparently as the corporate representative of OAD. He averred that he lives and works in DuPage County and that it would be inconvenient for him to travel to Cook as opposed to DuPage County. Respondents in discovery Dr. Vihang Shah and Daniel O'Donnell, a certified physician's assistant, also submitted affidavits that repeat the same averments as Bare and LaBelle.

Analysis

There exists an extensive body of law governing a court's consideration of a motion to transfer litigation based on the doctrine of *forum non conveniens*. At its essence, the doctrine "is founded in considerations of fundamental fairness and sensible and effective judicial administration." *Gridley v. State Farm Mut. Auto. Ins. Co.*, 217 Ill. 2d 158, 169 (2005). The modern application of the doctrine came with the United States Supreme Court's decision in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), a decision Illinois courts have consistently followed. *See Fennell v. Illinois. Cent. R.R.*, 2012 IL 113812, ¶ 12 (2012), *citing* cases.

A motion to transfer based on *forum non conveniens* differs from one based on venue. In Illinois, venue is a product of statute. *See* 735 ILCS 5/2-101. In contrast, *forum non conveniens* arises from the common law and is based on equitable principles. *See Lagenhorst v. Norfolk S. Ry.*, 219 Ill. 2d 430, 441 (2006), *citing Vinson v. Allstate Ins. Co.*, 144 Ill. 2d 306, 310 (1991). In short, a circuit court is instructed to "look beyond the criteria of venue when it considers the relative convenience of a forum." *Id., quoting Bland v. Norfolk & W. Ry.*, 116 Ill. 2d 217, 226 (1987).

Circuit courts are given "considerable discretion in ruling on a *forum non conveniens* motion. *Id.* at 441-42, *citing Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 336 (1994). A circuit court's decision will be reversed only if the court abused its discretion in balancing the relevant factors; in other words, if no reasonable person would adopt the view taken by the circuit court. *See Dawdy v. Union Pacific R.R.*, 207 Ill. 2d 167, 176-77 (2003). At the same time, courts are cautioned to exercise their discretion "*only in exceptional circumstances* when the interests of justice require a trial in a more convenient forum." *Lagenhorst*, 116 Ill. 2d at 442, *citing* cases (emphasis in original); *see also Dawdy*, 207 Ill. 2d at 176 ("the test . . . is whether the relevant factors, viewed in their totality, *strongly* favor transfer to the forum suggested by defendant") (emphasis added)), *quoting Griffith v. Mitsubishi Aircraft Int'l, Inc.*, 136 Ill. 2d 101, 108 (1990).

The consideration given to a *forum non conveniens* motion rests on several relevant presumptions. First, as to a plaintiff's choice of forum, "[w]hen the home forum is chosen, it is reasonable to assume that the choice is convenient. [Second,] [w]hen the plaintiff is foreign to the forum chosen . . . this assumption is much less reasonable and the plaintiff's choice deserves less deference." *First Am. Bk. v. Guerine*, 198 Ill. 2d 511, 517-18 (2002), *citing* cases. Third, "[w]hen the plaintiff is foreign to the chosen forum and the action that gives rise to the litigation did not occur in the chosen forum, 'it is reasonable to conclude that the plaintiff engaged in forum shopping to suit his individual interests, a strategy contrary to the purposes behind the venue rules.'" *Bruce v. Atadero*, 405 Ill. App. 3d 318, 328 (1st Dist. 2010), *citing Dawdy*, 207 Ill. 2d at 174, *quoting, in turn, Certain Underwriters at Lloyd's London v. Illinois Cent. R.R.*, 329 Ill. App. 3d 189, 196 (1st Dist. 2002).

A fourth presumption is especially pertinent if the disputed fora are two adjoining counties, as they often are in the Chicago metropolitan area. In those instances, "the battle over the forum results in a battle over the minutiae." *Lagenhorst*, 219 Ill. 2d at 450, *quoting Guerine*, 198 Ill. 2d at 519-20, *quoting*, in turn, *Peile*, 163 Ill. 2d at 335, *quoting*, in turn, *Peile v. Skelgas, Inc.*, 242 Ill. App. 3d 500, 522 (5th Dist. 1993) (Lewis, J., specially concurring). As has been explained, "a trial court abuses its discretion in granting an intrastate *forum non conveniens* motion to transfer venue where . . . the potential trial witnesses are scattered among several counties, including the plaintiff's chosen forum, and no single county enjoys a predominant connection to the litigation." *Guerine*, 198 Ill. 2d at 526, *citing Peile*, 163 Ill. 2d at 345.

As to the applicable presumption in this case, the facts establish that the Bobaks live in DuPage County and that the malpractice about which they complain occurred at CDH, also located in DuPage County. Given those facts, the only possible presumption is that the Bobaks engaged in forum shopping by filing their complaint in Cook versus DuPage County. The Bobaks' averments that they are interested in moving to Cook County at some undefined time in the future carry little weight. The simple facts are that they were not

Cook County residents at the time of the alleged malpractice and they still are not Cook County residents. There is a wide gulf between wishing and being.

The presumption that the Bobaks forum shopped their complaint in Cook County is just that, a presumption. Such a presumption does not necessarily defeat the argument that Cook County is a convenient forum for all of the parties and witnesses in this case. The reason is that, as noted above, circuit courts are instructed to balance a variety of private- and public-interest factors to determine the appropriate forum in which a case should be tried. *See Dawdy,* 207 Ill. 2d at 172. The test is "whether the relevant factors, viewed in their totality, strongly favor transfer to the forum suggested by defendant." *Id.* at 176, *quoting Griffith,* 136 Ill. 2d at 108. It is the defendant's burden to show that the relevant factors strongly favor the defendant's choice of forum to warrant disturbing the plaintiff's choice. *See Lagenhorst,* 219 Ill. 2d at 444, *citing Griffith,* 136 Ill. 2d at 107. A court is not to weigh the private- and public-interest factors against each other, but evaluate the totality of the circumstances before deciding whether the defendant has proven that the balance of factors strongly favors transfer. *Id., citing Guerine,* 198 Ill. 2d at 518. "The defendant must show that the plaintiff's chosen forum is inconvenient to the defendant and that another forum is more convenient to all parties." *Id.* The defendant may not, however, assert that the plaintiff's chosen forum is inconvenient to the plaintiff. *Id.*

In *Guerine,* the Illinois Supreme Court listed the private- and public-interest factors a circuit court is to consider when addressing a motion to transfer based on *forum non conveniens.* The private factors are:

> (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 a trial of a case easy, expeditious, and inexpensive – for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain

attendance of willing witnesses, and the ability to view the premises (if appropriate).

198 Ill. 2d at 516, *citing Griffith*, 136 Ill. 2d at 105-06; *Bland*, 116 Ill. 2d at 224; and *Adkins v. Chicago, Rock Island & Pac. R.R.*, 54 Ill. 2d 511, 514 (1973). Courts have generally broken down the third element to address each aspect separately and have often reorganized the order of the factors, as this court does below.

A. Private Factors

1. Convenience of the Parties

This court begins by stressing that this factor focuses on the parties, not other witnesses, and not the attorneys. As noted above, the Bobaks live in Wheaton, where the DuPage County courthouse is located. Although Paul works in downtown Chicago, that fact is not conclusive of convenience. Paul has already been deposed, so the only issue of convenience concerns his trial testimony, for which his work location is irrelevant. It is a fair assumption that Paul will not be going to work during the trial but will be present in court. To that extent, it would be far easier for him to travel a couple of miles from his home in Wheaton to the Wheaton courthouse rather than approximately 30 miles to the Daley Center. For her part, Donna avers that it is move convenient and economical for her to testify in Cook County, but she fails to supply any facts to support her conclusion. In addition, Donna works at a church in Wheaton, raising doubt about the truth to her averment. As with Paul, it defies logic that it is more convenient and economical for Donna to travel approximately 30 miles from Wheaton to Chicago rather than approximately two miles from her home to the Wheaton courthouse.

Of the one individual defendant (Bare), three corporate defendants, and two respondents in discovery, only one – O'Donnell – lives in Cook County. Each, however, works in either DuPage or Kane Counties; none works in Cook County. This court gives no weight to the defendants' and respondents' averments that their patients would suffer if depositions and trial proceeded in Chicago

rather than Wheaton. If patient suffering were the determinant of the defendants' and respondents' work schedules, they would not take vacations or play golf. This court recommends that such exaggerated averments be omitted from any future filings.

Despite the defendants' and respondents' bravado, this court notes that it is common practice and professional courtesy in this county for medical care providers to be deposed at their workplace. That means Bare, the corporate representatives, and the respondents in discovery would be deposed in DuPage County, even if this case were to proceed in Cook County. To that extent, DuPage County is far more convenient for them. As to trial testimony, it is reasonable to assume that at least Bare and the corporate representatives will appear live, meaning that for them a trial in DuPage County would be far more convenient.

On balance, the Bobaks have failed to provide any reasons why providing deposition and trial testimony 30 miles away from their home is more convenient than providing the same testimony only two miles from their home. In contrast, the residence of each defendant and respondent, except one, plus the workplace of each indicates that DuPage County is more convenient. Given the state of the record, this court concludes that this factor favors DuPage County.

2. The Relative Ease of Access to Evidence

This factor reveals a certain antique nature of the *forum non conveniens* analysis. Technology has made document transfer possible at the press of a few buttons, while the portability of real and demonstrative evidence is rarely a substantial hurdle. The result is that this factor is now focused primarily on the availability of testimonial evidence.

This narrower evidentiary focus has resulted in parties exaggerating the number and importance of deponents and trial witnesses, and that is certainly true in this case. For example, the Bobaks argue that the majority of trial witnesses work and reside in Cook County or Minnesota. That statement is simply not born out by

the facts. The only known Cook County residents are O'Donnell and Norek, both of whom work in DuPage County. Mass is a likely witness who works in Cook County, and while he will be deposed at UCH, it is unclear whether he would appear live at trial. Given Mass's prominent role in Paul's care and treatment, it is less likely that Krummenacher would be a necessary witness in discovery or at trial. Regardless, neither Mass nor Krummenacher supplied an affidavit indicating which venue would be more convenient. Further, the Bobaks have listed as witnesses their two daughters, two friends, and one of Paul's co-worker without indicating the necessity or subject matter of their testimony. It is unexplained whether the Bobaks' children – one of whom lives in another state and the other in another country – have any personal knowledge of their parents' day-to-day activities that might be insightful for a jury. The same holds true for the Bobaks' friends and Paul's co-worker. That the three of them live in Chicago and supplied affidavits failing to identify the particular subject matter of their potential testimony makes the affidavits appear contrived and of little value.

The Bobaks are, however, correct that a large number of their witnesses are medical providers located in Rochester, Minnesota. Yet this fact has no impact on this court's analysis. The Mayo Clinic providers will be deposed in Rochester regardless of the venue of this case. Further, it is unlikely that the Bobaks will pay what would be extraordinary high costs of having any one of these treaters appear live at trial. Rather, it is highly probable that any of the Mayo Clinic treaters providing trial testimony will do so via a pre-recorded, visual, evidence deposition, also taken in Rochester.

For their part, the defendants supplied a chart in their motion indicating the resident counties for 41 caregivers. That is generally unhelpful information since, as noted above, the typical practice is for medical care providers to be deposed at their place of business. It is fair to assume that each of the 41 caregivers work at CDH, yet that fact is also unhelpful because it is unknown how many of these caregivers would also be trial witnesses. (This is also true for the two caregivers who live in Cook County but live closer to Wheaton than Chicago.) It is, however, unquestionable that only a small subset of

these caregivers will be deposed, let alone testify at trial. The affidavit of Tracy Wolford, a Cadence Health claims associate, averring as to the likely inconvenience of a Cook County venue for the CDH witnesses is also not useful since it is based on speculation.

In contrast, the affidavits of inconvenience provided by Bare, LaBelle, Shah, and O'Donnell provide useful information. The care providers were directly involved in the surgery during which the alleged malpractice occurred and, therefore, are essential witnesses for both sides discovery and trial. As a result, their averments of inconvenience carry weight.

This court's analysis is also informed, if only by contrast, by various court decisions, particularly *Prouty v. Advocate Health & Hosp. Corp.*, 348 Ill. App. 3d 490 (1st Dist. 2004), and *Hackl v. Advocate Health & Hosp. Corp.*, 382 Ill. App. 3d 442 (1st Dist. 2008). In *Prouty*, the witnesses who would testify against the treating pediatrician and his associated hospital lived in three northern Illinois counties. *See* 348 Ill. App. 3d at 491-93. The plaintiff's mother filed suit in Cook County, where she lived, although the alleged malpractice occurred at Advocate Good Shepherd Hospital in Lake County. *See id.* The hospital sought to transfer the action to Lake County since the hospital was located there and the doctor worked and lived in Lake County. *See id.* The court affirmed the circuit court's decision to deny the motion to transfer based on *forum non conveniens*, in part, because of the case's "unique circumstances." *Id.* at 496. The court found the accusation of forum shopping unfounded because the physician and hospital, not the plaintiff, had selected Lutheran General Hospital in Cook County as the place where the daughter should be transferred to receive additional treatment. *See id.* at 497. Since Good Shepherd Hospital had made the transfer decision, it could not later complain that the majority of the medical witnesses necessary for either party in discovery or trial lived or worked in Cook County. *Id.* at 496-97. In addition, *Prouty* found that the majority of the records relative to the alleged malpractice existed at Lutheran General because the majority of her treatment occurred there.

In *Hackl*, Advocate Good Shepherd Hospital, once again, sought to transfer the lawsuit from Cook County to Lake County because the decedent received treatment and died at the hospital. *See* 382 Ill. App. 3d at 443-44. The circuit court denied the motion, and the hospital appealed. *See id.* The court noted that four of the defendants lived in Cook County, two in Lake County, one in DuPage County, and one in Arizona. *See id.* at 450. While the defendants appeared to have legitimate transportation concerns, the court found the private-interest factors between the two counties "more or less evenly balanced" because the potential witnesses were spread out over multiple Illinois counties and two states; therefore, these factors did not "strongly favor" a transfer. *Id.* at 451.

Unlike *Prouty* and *Hackl*, this case does not involve the same type of care and treatment in more than one Illinois county. Here, although Bare referred Paul to Mass at UCH, the Mass's participation was limited to providing a consult and a diagnosis based on an EMG taken in DuPage County. Unlike Prouty, Paul was never admitted to the UCH. There is also nothing in the record to indicate that Mass provided any sort of care and treatment similar to that Paul received either at CDH or the Mayo Clinic. Indeed, Mass referred Paul to the Mayo Clinic for treatment. To that extent, Mass is important as a medical conduit, but he did not provide the same type of care and treatment as did Bare, Shah, and the Mayo Clinic caregivers.

Given this distinction, it is important to note that the court in *Prouty* addressed a similar situation. Quoting *Bland*, the *Prouty* court wrote:

> One should be cautious, however, not to give undue weight to the fact that a plaintiff's treating physician or expert has an office in the plaintiff's chosen forum. To do so would allow a plaintiff to easily frustrate the *forum non conveniens* principle by selecting as a witness a treating physician or expert in what would, in reality, be an inconvenient forum.

348 Ill. App. 3d at 497. As applied to this case, the presence of Mass in Cook County is certainly an important fact, but not a controlling one, in this court's consideration of the ease of access to evidence.

Unlike *Hackl*, this case does not concern defendants who live and work in Cook County. While NMH owns and operates medical facilities in Cook, this fact has little currency. NMH provided no care or treatment to Paul. Further, the mere presence of NMH in Cook County may establish venue, but does not translate into convenience for any CDH employees who live or work in DuPage County. This is true even though the Bobaks have brought institutional claims against NMH because the evidence the Bobaks need for those claims, such as policies and procedures in effect at the time, will be at CDH, not NMH.

Based on the available record, this court finds that the Bobaks are asking this court to give greater weight to one physician (potentially two) at UCH who provided only a post-surgical diagnosis and referral as opposed to the evidence available from the alleged malefactors in DuPage County and subsequent caregivers at the Mayo Clinic. Such a request seeks too much and is not supported by the body of law governing the *forum non conveniens* analysis. This court concludes, therefore, that this factor favors DuPage County.

3. Compulsory Process of Unwilling Witnesses

The parties have not suggested that any witness would need to be compelled to be deposed or testify; consequently, this court considers this factor to be neutral.

4. Cost of Obtaining Attendance of Willing Witnesses

This factor makes little analytic sense because witnesses willing to be deposed or testify at trial would also likely be willing to bear the cost rather than shift it to a party. Regardless, this factor is not particularly insightful in this case. For example, if the Bobaks' children are deposed or testify at trial, each would fly into one of Chicago's airports regardless of where the case proceeds. Despite

their affidavits, it would likely be cheaper for them if this case proceeded in DuPage County as they could stay at their parents' house, rather than pay for a Chicago hotel room. The cost of Mayo Clinic or UCH providers is also not a consideration since their depositions will proceed where they work and their trial testimony will likely be provided by audio-visual recordings. These costs do not appear to be exceptional or unusual, and would be the same regardless of the venue.

Some of the parties indicate that parking costs would be more expensive in downtown Chicago than in Wheaton. This expense may not be substantial individually, but could be in the aggregate. Since most of the local witnesses are in DuPage County, it is fair to assume that overall parking costs would be substantially lower there.

Based on the record and these reasonable assumptions, this court concludes that this factor may favor DuPage County, but is better classified as neutral.

5. Viewing the Premises

Neither party has argued that viewing the premises is necessary in this case, and there are no allegations that the physical space in which Bare performed Bobak's surgery was a factor causing the alleged malpractice. Since viewing the premise would not provide the jury with any useful insight, this court concludes that this factor is neutral.

6. Other Practical Considerations that make a Trial Easy, Expeditious, and Inexpensive

The case law discussing this factor acknowledges that the Chicago metropolitan area is well connected by a series of multi-lane highways and commuter train systems. This court further notes that these highways and various train stations in both counties are generally convenient to both the Wheaton and Chicago courthouses, so a greater consideration may be time. While trains generally run on a schedule, travel by car across northern Illinois, particularly in

peak hours is often long and frustrating. To that extent, it is reasonable to presume that travel time either by car or train is reduced the shorter the distance. The parties do not, however, indicate how they or other witnesses would travel depending on whether the case proceeds in DuPage or Cook County.

It is certainly possible that, even if this case were to proceed in DuPage County, the Bobaks' depositions could proceed in Chicago. The only difference would be that travel time would be shorter for them if the trial proceeded in DuPage County given their close proximity to the Wheaton courthouse and that Paul would not be working during the trial. Time is less of a factor for the defendants and respondents during discovery since, as noted above, their depositions would occur at their place of business. For those defendants who are likely to testify live at trial, particularly Bare and hospital representatives, travel time would be substantially reduced if the trial proceeded in DuPage County.

Given this combination of facts, this court concludes that this factor favors DuPage County.

B. Public Factors

The court in *Guerine* also identified public-interest factors that a circuit court should consider in a *forum non conveniens* analysis. These factors are:

> (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) the administrative difficulties presented by adding further litigation to court dockets in already congested fora.

Guerine, 198 Ill. 2d at 516-17. This court's analysis of these factors follows seriatim.

1. Deciding Localized Controversies Locally

The Bobaks do not contest that the alleged malpractice on which they base their complaint occurred solely at CDH in DuPage County. The Bobaks attempt to minimize that fact by emphasizing that CDH is owned by NMH, a Chicago-based healthcare provider. While that fact was true as of September 2014, it was not true in December 2013 when the alleged malpractice occurred. It is also true that nothing in the record indicates that NMH employed any of the medical staff involved in Paul's care and treatment or provided any of them with staff privileges. To the extent that NMH is a defendant in this lawsuit, it is only because NMH purchased Cadence Health and presumably acquired all of the latter's assets and liabilities, including this lawsuit. A corporate acquisition is not, however, a relevant factor in a *forum non conveniens* analysis. Further, the headquarters of NMH in Cook County is a fact relevant only to venue, not convenience.

The fundamental fact in this case is that the alleged malpractice occurred in DuPage County. It is a reasonable assumption that residents of DuPage County, as opposed to those in Cook County, would have a high degree of interest in the type of medical care provided by a local hospital, such as CDH, and an equally high degree of concern over allegations of malpractice occurring at such a hospital. Given that reasonable assumption and the uncontested fact that the alleged malpractice occurred in DuPage County, this court concludes that this factor favors DuPage County.

2. Unfairness of Imposing Expense and Burden on a County with Little Connection to the Litigation

This public-interest factor generally follows from the first, as it does in this case. Given that the alleged malpractice occurred in DuPage County, there is no reason to impose on Cook County residents or their courts the time and expense necessary to take this case through discovery and to trial. Indeed, it is a fair assumption that Cook County residents empaneled in a jury in this case would question why they were having to devote time away from their work or leisure to consider a case that has little to no connection to them.

Given these circumstances, it is reasonable for this court to conclude that this factor favors DuPage County.

3. Administrative Difficulties

This factor typically calls for a court to consider the length of time a case is on the docket from filing to resolution. This court recognizes that such a statistic may not be especially reliable in a complex medical-malpractice case such as this, particularly since a substantial number of witnesses live and work in Rochester, Minnesota. Regardless, the latest information available indicates that the average length of time a case is on the docket in Cook County is 40.2 months while in DuPage County it is 39.3 months. *See* Annual Report of the Illinois Courts – 2015, at 60. This factor would carry some weight if the difference between the two counties were greater, but since the length of time differs by less than one month, this court concludes that this factor is neutral.

Conclusion

For the reasons presented above, this court concludes that the record strongly favors a transfer of this case from Cook to DuPage County. To that end, this court orders that:

1. the defendants' motion to strike certain affidavits and arguments is denied;
2. the defendants' motion to transfer venue based on the doctrine of *forum non conveniens* is granted;
3. this case is transferred to the Circuit Court of DuPage County; and
4. the defendants are to pay the costs of the transfer.

Judge John H. Ehrlich

APR 26 2017

Circuit Court 2075

John H. Ehrlich, Circuit Court Judge