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

Wayne Daniels, as independent co-executor of the estate of Gregory Daniels, deceased,	)	
Plaintiff,	)	
v.	)	No. 18 L 7998
John Brassfield and Hoffman Burial Supplies, Inc., an Illinois corporation,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

A case may be transferred pursuant to the *forum non conveniens* doctrine if a multi-factor analysis establishes that such a transfer would be fair, sensible, and provide for the effective administration of justice. Here, those factors support the conclusion that a transfer of this case is fully warranted. As a result, the defendants' motion is granted and this case is transferred to the Circuit Court of Dane County, Wisconsin.

Facts

On July 31, 2016, Gregory Daniels was riding a motorcycle behind a delivery truck driven by John Brassfield during the course of his employment with Hoffman Burial Supplies, Inc. Both vehicles were proceeding east on Highway T in Sun Prairie, Dane County, Wisconsin. At some point, Daniels attempted to pass Brassfield's truck (allegedly in a no-passing zone) by crossing over the centerline and proceeding in the westbound traffic lane. As Daniels was passing, Brassfield began turning left into a driveway adjoining the westbound lane of traffic. Daniels' motorcycle collided with the driver's side of Brassfield's truck, and Daniels died from the injuries he suffered.

On December 21, 2016, a Cook County circuit court judge opened a probate estate and appointed Wayne Daniels as co-executor of Gregory's estate. On July 27, 2018, Wayne filed on behalf of Gregory's estate a four-count lawsuit against Brassfield and Hoffman. Counts 1 and 3 are against Brassfield brought under the Survival Act, *see* 755 ILCS 5/27-6, and the Wrongful Death Act, *see* 735 ILCS 5/13-209(a)(2), respectively, while counts 2 and 4 are brought against Hoffman under the same statutes, respectively. Each count claims that Brassfield operated his truck without keeping a proper lookout, travelling too fast, abruptly coming to a stop, failing to engage a left-turn signal, failing to have adequate brake lights, failing to maintain control over his vehicle, and failing to take evasive action to avoid the collision.

On October 10, 2018, the defendants filed a motion to transfer the case to the circuit court of Dane County, Wisconsin under the doctrine of *forum non conveniens*. *See* Ill. S. Ct. R. 187. The parties fully briefed the motion and provided a record that includes: (1) a stipulation as to Brassfield's employment status with Hoffman; (2) MapQuest website printouts indicating various locations and distances; (3) an affidavit from Bret Paulson, a manager for Hoffman's Dane County warehouse, averring that it would be inconvenient for him to travel to Cook County for participation in this litigation; (4) a page from the Illinois Supreme Court's 2016 annual report indicating the volume of cases by county; (5) a printout concerning the same information for the Dane County circuit court; (6) affidavits from William Neggleton and Carla Coats, both witnesses to the accident, both of whom live in Wisconsin, and both of whom aver that it would be more convenient for them to testify in Dane County rather than Cook County; (7) a page from Hoffman's website indicating that it does business in Illinois, Iowa, Wisconsin, Indiana, and Missouri; and (8) a printout from the QuickFacts website as to the population of and other statistics concerning Cook and Dane Counties.

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, in a wrongful death case, if the decedent's residence and the state of the accident are not the same as the plaintiff's chosen forum, the plaintiff's choice is given less deference, but not no deference. *See Ellis v. AAR Parts Trading, Inc.*, 357 Ill. App. 3d 723, 742-43 (1st Dist. 2005), *citing Dawdy*, 207 Ill. 2d at 173-74; *Guerine* 198 Ill. 2d at 517.

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*. As stated, 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.

I. Private Factors

A. Convenience Of The Parties

Courts have recognized that it is relatively easy for a party to declare its forum preference as convenient and the opposing party's as inconvenient. "If we follow this reasoning, the convenience of the parties means little. . . ." *Hale v. Odman*, 2018 IL App (1st) 180280, ¶ 34 (quoting *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 20). "To avoid this inevitable conflict, we must look beyond the declarations of convenience and realistically evaluate convenience and the actual burden each party bears when traveling to the plaintiff's chosen forum." *Id.* at ¶ 35.

Gregory was a resident of Barrington, Cook County, at the time of his death. His two children, Nicole and Ryan, currently live in Cook County as does Gregory's brother and co-executor, Wayne. Each residence in Cook County certainly supports the presumption that this is a convenient forum for them and is proper for a Wrongful Death Act lawsuit. At the same time, the testimony of Nicole and Ryan will be limited to damages since they were not witnesses to the accident or post-accident occurrences.

On the defendants' side, Hoffman is an Illinois corporation headquartered in Peoria. As noted above, Hoffman does business in several Midwestern states, including Illinois and Wisconsin. Yet the mere location of a business in any particular location may not be particularly insightful in a *forum non conveniens* analysis. *See Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261, 276 (1st Dist. 2011) (party's principal place of business is an "acceptable factor" to be weighed, but "may not be dispositive"); *see also Dawdy*, 207 Ill. 2d at 182. In this

case, the issues do not involve Hoffman's business practices or governance, but a tragic vehicle collision that neither party has explained turns on Hoffman's state of incorporation. Rather, Hoffman is a defendant because it owned the truck driven by its employee, Brassfield. To that end, Brassfield's testimony will be far more insightful than that provided by any corporate representative, including Paulson, Hoffman's Dane County warehouse manager. Paulson may, however, be a necessary witness as he averred to having relevant knowledge as to Brassfield's use and operation of the delivery truck. Regardless, both Brassfield and Paulson are Dane County residents, each who averred that traveling to Cook County for this litigation would be inconvenient.

In sum, the damages witnesses and true plaintiff parties in interest – Nicole and Ryan – favor keeping this litigation in Cook County. In contrast, the liability witnesses and defendants in interest – Brassfield and Hoffman (through Paulson) – favor transferring the case. Given this split in number of witnesses as well as importance of their testimony, this court concludes that this factor is evenly divided and, therefore, neutral.

B. The Relative Ease Of Access To Evidence

The defendants argue unconvincingly that they need to parade 18 post-occurrence witnesses into court in order to present its defense. Hoffman's claims are certainly exaggerated, yet there is no question that all liability witnesses and many damages witnesses are residents of Dane County or Wisconsin. The two independent eyewitnesses to the collision, Nettleton and Coats, each lives in Genoa City, located in Wadsworth and Kenosha Counties, Wisconsin. Each averred that travelling to the Dane County courthouse in Madison would be more convenient that travelling to the Cook County courthouse in Chicago. It is also reasonable to assume that the responding police officer who completed the incident report or, perhaps, a second officer, will be a necessary witness or witnesses and that each lives in or around Dane County. The same can be said for any medical first responders who will be able to testify as to Gregory's conscious pain and suffering, if any, as a basis for the Survival Act causes of action.

The number of witnesses residing and working in Wisconsin is substantial compared to the Gregory's damages witnesses, Nicole and Ryan. As a result, this factor favors transfer to Dane County circuit court.

C. Compulsory Process Of Unwilling Witnesses

This factor raises concerns for both the litigation's discovery and trial phases. As to the former, Cook and Dane county judges lack jurisdiction to obtain process over witnesses from the other state. Deposition subpoenas could, however, be secured through the Uniform Interstate Depositions and Discovery Act since both states have enacted that law. As to the trial phase of the litigation, it has been noted that "[t]here is no compulsory process to secure the attendance of unwilling witnesses" located in another jurisdiction. *Jones v. Searle Labs.*, 93 Ill. 2d 366, 374 (1982). And, "[a]lthough defendant could depose these witnesses, depositions have been deemed an inadequate substitute for live testimony" at trial. *Id.* (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 511 (1947); *Mergenthaler Linotype Co. v. Leonard Storch Enterp's, Inc.*, 66 Ill. App. 3d 789, 802 (1st Dist. 1978)).

In this case, the unwilling witnesses to litigation in Cook County are all those located in Wisconsin. Nettleton and Coates, key independent eyewitnesses, each signed an affidavit averring that, if called to testify at trial, each would find it more convenient to travel to the Dane County courthouse in Madison rather than to the Cook County courthouse in Chicago. Brassfield and Paulson each live in Dane County and each also averred that Dane County is more convenient. Although there is no evidence in the record, it is safe to assume that any testifying post-accident first responders – police or medical – also lived and worked in or around Dane County. Put quite simply – this court has no jurisdiction over these essential Wisconsin residents to testify in an Illinois court. In contrast, Nicole and Ryan (and Wayne) might find it inconvenient to proceed with this litigation in Dane County, but they would apparently be willing to litigate anywhere considering that they are seeking monetary damages for both Gregory's

estate and their own pecuniary losses. Compulsory process over Nicole and Ryan is unnecessary because they are willing witnesses.

This court concludes that the inconvenience Nicole and Ryan may experience by proceeding with this case in Dane County is greatly outweighed by this court's lack of compulsory process over the far greater number of essential Wisconsin resident-witnesses. In sum, this factor favors transferring the case to Dane County.

D. Cost Of Obtaining Attendance Of Willing Witnesses

Since neither party addressed this factor, this court considers it to be neutral.

E. Viewing The Premises

As noted above, the collision occurred in Dane County. The parties have not indicated that the accident site presents any particular or unusual physical configuration that would make a site visit useful or necessary for a jury (or even an accident reconstructionist). In fact, there does not appear to be a disagreement as to how the accident occurred and how responding officers reported the event in an incident report (which is not in the record). Moreover, neither party has argued why a combination of surface photographs, aerial photographs, and video recording would be insufficient for a jury to comprehend the physical setting of the area. Apart from the ease with which modern technology makes a site visit unlikely, it is quite safe to assume that no Cook County judge would order a jury to travel to Dane County simply to view the site of a tragic, but otherwise unremarkable, vehicle collision. This factor does not favor either venue.

F. Other Practical Considerations That Make Trial Easy, Expeditious, And Inexpensive

Since neither party addressed this factor, this court considers it to be neutral.

II. Public Factors

The court in *Guerine* also identified the public-interest factors a circuit court should consider in considering a motion to transfer venue based on *forum non conveniens*. They 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 these factors follows seriatim.

A. Deciding Localized Controversies Locally

A vehicle collision is inherently a controversy specific to the place where the collision occurred – in this case, Dane County. Illinois residents certainly have an interest in litigation involving one of their own but, at the same time, the same can be said for Wisconsin residents. Those competing interests do not move the needle off the center point.

At this stage of the litigation, this case appears to focus on disputed issues of liability – whether Brassfield stopped quickly and failed to use a turning signal versus Gregory crossing over the centerline in a no-passing zone. Those matters are subject to Wisconsin laws concerning driving and placement of traffic control devices and warnings. A Wisconsin court and jury are better able to apply Wisconsin law to this particular controversy. (This court notes that neither party indicated there might be a potential conflict of laws between Illinois and Wisconsin and, therefore, this court will not undertake such an analysis.) For these reasons, this court determines that this factor favors transferring the case to Dane County.

B. Unfairness of Imposing Expense And Burden On A County With Little Connection To The Litigation

This public-interest factor generally follows from the first, and it does in this case. It is doubtful that a Cook County jury would be confused in hearing a case involving an Illinois resident plaintiff and an Illinois corporate defendant. At the same time, the focus of this case concerns a Wisconsin traffic collision involving Wisconsin traffic laws. This factor also favors transferring the case to Dane County.

C. Administrative Difficulties

This factor generally calls for courts to consider the average length of time a case is on a docket in any particular county. The most recent statistics available from the Illinois Supreme Court indicate that, for cases initially valued at more than $50,000, the length of time a Cook County case stays on the docket from filing to disposition is 32.2 months. Illinois Supreme Court, "2017 Annual Report of the Illinois Courts," at 60. The defendants cannot supply comparable information concerning the Dane County circuit court. While it appears that Cook County had a substantially greater number of filings than Dane County, that fact does nothing to indicate how long a case remains active in either court. Given the lack of comparable statistics, this factor is neutral in this court's analysis.

Conclusion

For the reasons presented above, it is ordered that:

1. the defendants' motion to transfer venue pursuant to Illinois Supreme Court Rule 187 is granted;
2. this case is transferred to the circuit court of Dane County, Wisconsin, with the understanding that this court's ruling does not affect the plaintiff's right to re-file in that jurisdiction and does not trigger any preclusive affirmative defenses to the plaintiff's case; and

3. the defendants will pay all costs imposed for the transfer.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JAN 03 2019

Circuit Court 2075