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FOURTH DIVISION
September 12, 2013

No. 1-13-0358

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

USMAN KHAN and ZAMAN KHAN,)	
Co-Special Administrators of the Estate of)	
INAM KHAN, Deceased,)	
Plaintiffs-Appellants,)	
v.)	Appeal from the Circuit Court
)	of Cook County, Illinois,
)	County Department, Law Division.
STOCKDALE TRUCKING LLC, CARL E.)	
BERGMAN, RYDER INTEGRATED)	
LOGISTICS, INC., JIM E. MORRIS, and)	No. 12 L 6722 (consolidated with
SOHAIL SHAKIR,)	No. 12 L 7340)
Defendants-Appellees.)	
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SOHAIL SHAKIR,)	
Plaintiff,)	Honorable Kathy M. Flanagan,
v.)	Judge Presiding.
)	
)	
STOCKDALE TRUCKING LLC, a foreign)	
limited liability company, CARL E. BERGMAN,)	
RYDER TRUCK RENTAL, INC., a foreign)	
corporation; and JIM E. MORRIS,)	
Defendants.)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse concurred in the judgment.
Justice Epstein specially concurred.

ORDER

¶ 1 *Held:* The circuit court of Cook County did not abuse its discretion in granting the

defendants' motion to dismiss the plaintiffs' negligence and wrongful death/survival actions on the basis of *forum non conveniense*. Both the private and the public interest factors heavily weighed in favor of Montgomery County, Indiana, as the more convenient forum.

¶ 2 This cause arises from a multiple vehicle collision accident that occurred in Montgomery County, Indiana, on May 16, 2012, resulting in the death of Inam Khan (hereinafter Inam). The plaintiffs, Usman Khan and Zaman Khan (hereinafter Usman and Zaman), co-special administrators of their deceased father's estate brought a wrongful death/survival action in the circuit court of Cook County, alleging negligence against the defendants, Stockdale Trucking LLC (hereinafter Stockdale), Carl E. Bergman (hereinafter Bergman), Jim E. Morris (hereinafter Morris), Ryder Integrated Logistics, Inc. (hereinafter Ryder), and Sohail Shakir (hereinafter Shakir). Shakir, who was driving the vehicle in which his employee, Inam, was a passenger when the accident occurred, filed a separate negligence action in the circuit court of Cook County against Stockdale, Bergman, Morris and Ryder. After the two actions were consolidated in the circuit court, the defendants moved to dismiss on the grounds of *forum non conveniens*, arguing that Montgomery County, Indiana, was a far more convenient forum in which to litigate both cases. The circuit court granted the defendants' motions to dismiss in favor of Montgomery County, Indiana. The plaintiffs petitioned this court for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(2). Ill. S. Ct. R. 306(a)(2) (eff. Sept. 1, 2006). On appeal, they contend that the circuit court abused its discretion in ruling that the relevant private and public interest factors strongly favor suit in Indiana. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4 We initially note that because this is an interlocutory appeal taken pursuant to Illinois Supreme Court Rule 306(a)(2) (Ill. S. Ct. R. 306(a)(2) (eff. Sept. 1, 2006))¹ the plaintiffs were required to attach a "supporting record" to their petition for leave to appeal (Ill. S. Ct. R. 306© (eff. Sept. 1, 2006)),² authenticated either by a certificate of the circuit court clerk or "by the affidavit of the attorney or party filing it" (Ill. S. Ct. R. 328 (eff. Feb. 1, 1994)).³ In the case at bar, the supporting record was authenticated by an attorney's affidavit. After the petition for leave to appeal was granted, this court did not order the defendants to file a record, as permitted by Supreme Court Rule 306(h) (eff. Sept. 1, 2006); and no party to the appeal requested that additional portions of the record be prepared, as permitted by Supreme Court Rule 306(f) (Ill. S.

¹See Ill. S. Ct. 306(a)(2) (eff. Sept. 1, 2006): "(a) *** A party may petition for leave to appeal to the Appellate Court from the following orders of the trial court: *** (2) from an order of the circuit court allowing or denying a motion to dismiss on the grounds of *forum non conveniens* ***."

²See Ill. S. Ct. R. 306(c) (eff. Sept. 1, 2006): "The petition shall contain a statement of the facts of the case, supported by reference to the *supporting record*, and of the grounds for the appeal." (Emphasis added.)

³See Ill. S. Ct. R. 328 (eff. Feb. 1, 1994): "Any party seeking relief from the reviewing court before the record on appeal is filed shall file with his or her application an appropriate supporting record containing enough of the trial court record to show an appealable order or judgment ***. The supporting record must be authenticated by the certificate of the clerk of the trial court or by the affidavit of the attorney or party filing it."

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Ct. 306(f) (eff. Sept. 1, 2006)). Accordingly, this appeal proceeds based solely on the supporting record filed by the plaintiffs with their petition for leave to appeal. That supporting record reveals the following pertinent facts and procedural history.

¶ 5 A. The Plaintiffs' Complaint

¶ 6 On June 17, 2012, the plaintiffs Usman and Zaman, as co-special administrators of their deceased father's estate filed a wrongful death/survival action in the circuit court of Cook County against Stockdale, Bergman, Morris, Ryder and Shakir. In their complaint they alleged that on May 16, 2012, defendant Morris was driving a Freightliner truck, heading southbound on US 231, a two-lane interstate highway in Montgomery County, Indiana. The Freightliner truck was pulling a box trailer owned by Ryder. At about 1 p.m., defendant Morris negligently stopped his vehicle in the middle of the interstate highway, without providing any warning to passengers traveling behind him that his vehicle was stopped. In the police report attached to the supporting record, Morris told the officers that he had been stopped in the roadway by Indiana emergency crews working to extinguish two grass fires in the area. A motorist proceeding directly behind Morris saw Morris' parked vehicle and stopped behind him. A short time later, Shakir, who was also traveling southbound on US 231 in his Mercedes Benz, together with his employee Inam, riding as a passenger, observed the stopped vehicles, and pulled over the center line to see what was happening. According to the complaint, he subsequently negligently stopped his vehicle in the roadway. The complaint further alleged that another motorist driving a Ford utility pick-up truck stopped his vehicle behind Shakir's. Shortly thereafter, Bergman, driving a Freightliner truck, pulling an empty grain trailer, owned by Stockdale, "negligently crashed" into the Ford

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utility pick-up truck, pushing it into Shakir's parked Mercedes Benz and causing serious injuries to Inam. After the emergency vehicles arrived, both Shakir and Inam were transported by a ground ambulance and then airlifted to a hospital in Indianapolis. According to the complaint, as a result of the injuries he sustained during the collision, Inam died upon arriving to the Indianapolis hospital.

¶ 7 On June 29, 2012, Shakir filed a separate negligence action in the circuit court of Cook County against Stockdale, Bergman, Morris and Ryder. Shakir alleged that he suffered serious injuries as a direct result of the collision caused by the defendants' negligence. As a private business owner, he claimed that because of his injuries, he was unable to attend to his daily tasks and as a result lost both revenue and business opportunities.

¶ 8 B. The Defendants' Various Motions to Dismiss or Transfer Venue

¶ 9 After the two cases were consolidated in the circuit court, on September 17, 2012, as the defendant in plaintiffs wrongful death/survival action, Shakir filed a motion to transfer venue from Cook County, Illinois, to Montgomery County, Indiana, pursuant to the doctrine of *forum non conveniens*. Shakir argued that Indiana was a more convenient forum because: (1) the accident occurred in Montgomery County; (2) six of the seven potential occurrence witnesses identified by the plaintiffs resided in Indiana; (3) all of the investigating and emergency personnel who responded to the accident resided in Montgomery County, Indiana; and (4) immediately after the accident Inam was airlifted to a hospital in Indianapolis, so that most of his medical treaters, as well as any documents relating to that treatment were located in Indiana. Shakir also argued that Montgomery County was the proper forum because the lawsuit has

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"practically no connection at all to Cook County," and because Montgomery County "undoubtedly [has a] less congested docket [which] would allow the parties to expedite the resolution of this suit." In support of this contention, Shakir pointed out that the statistics published by the Administrative Office of Illinois Courts show that in 2010, there were 441 cases in Cook County in which jury verdicts over \$50,000 were rendered, with a period of time from filing to verdict of 36.4 months.

¶ 10 In support of his motion to dismiss, Shakir attached a copy of the plaintiffs' answer to the *forum non conveniens* interrogatories, which enumerates the following relevant witnesses that the plaintiffs anticipated calling at trial. The occurrence witnesses are: (1) the defendant Shakir, who resides and runs a business from his home in Northbrook (Cook County, Illinois); (2) the defendant Morris, who resides in Frankfort (Clinton County, Indiana); (3) the defendant Bergman, who resides in Veedersburg (Fountain County, Indiana); (4) Lacy N. Lasata (hereinafter Lasata), who resides in Chesterton, (Porter County, Indiana); (5) Lee T. Lewis (hereinafter Lewis), who resides in West Lafayette (Tippecanoe County, Indiana); (6) Josh Fuller (hereinafter Fuller), who resides in Lafayette (Tippecanoe County, Indiana); and (7) Michelle Peterson (hereinafter Peterson), who resides in Crawfordsville (Montgomery County, Indiana). The investigating and emergency personnel and agencies that were present at the scene of the accident are: (1) several Indiana state police troopers from Lafayette 14 (all from Montgomery County, Indiana)⁴; (2) the Montgomery County Sheriff's Department (Montgomery County,

⁴The list initially included four Indiana State police troopers: (1) Trooper David Millburg (hereinafter Millburg); (2) Trooper Ben Fullenwider (hereinafter Fullenwider); (3) Trooper

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Indiana); (3) Crawfordsville Indiana Fire and Rescue (Montgomery County, Indiana); (4) Crawfordsville Indiana Emergency Medical Services (EMS) (Montgomery County, Indiana); (5) the Indiana Department of Transportation and (4) the Stat Flight Air Ambulance. The relevant medical providers who treated Inam are divided into those who treated him prior to and after the accident. The post-occurrence treaters are located in Indiana and include: (1) St. Vincent Hospital, in Indianapolis (Marion County, Indiana); (2) Crawfordsville Indiana Fire and Rescue (Montgomery County, Indiana); (3) Crawfordsville Indiana EMS (Montgomery County, Indiana); and (4) the Stat Flight Air Ambulance. Inam's medical providers prior to the accident are all located in Illinois and include: (1) Aftab Khan, M.D., in Morris (Grundy County, Illinois); (2) APPNA in Westmont (DuPage County, Illinois); (3) Adventist Hinsdale Hospital in Hinsdale (DuPage County Illinois); and (4) Central DuPage Hospital in Winfield (DuPage County Illinois).

¶ 11 On September 20, 2012, the defendants Stockdale and Bergman filed a motion similar to defendant Shakir's, seeking a dismissal or, alternatively a transfer of their action to Montgomery County, Indiana. Stockdale and Bergman essentially repeated Shakir's arguments, pointing out that the majority of the relevant witnesses in this case resided in Indiana rather than Cook County, Illinois, so that the convenience of the parties strongly favored transfer to Indiana. In support, they contributed three additional "occurrence witnesses with knowledge of the accident facts," including: (1) two Ryder Truck investigators, Johnny Hawn and Daryl Burt, both from _____ Nelson Davis (hereinafter David); and (4) Sergeant D. Ziegler (hereinafter Ziegler), but was subsequently amended to include a fifth, Sergeant Jim Cody (hereinafter Cody).

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Lafayette (Tippecanoe County, Indiana) and (2) Wes Stockdale from Veedersburg (Fountain County, Indiana). In support of their motion to transfer venue, Stockdale and Bergman attached, *inter alia*: (1) a copy of the plaintiffs' answer to the *forum non conveniens* interrogatories, listing the relevant occurrence, emergency, investigatory and medical provider witnesses; (2) a copy of the Indiana State Police Crash Report confirming the Indiana addresses of the various relevant civilian and police witnesses listed by both parties; and (3) a map of the state of Indiana, pinpointing the exact location of Montgomery County.

¶ 12 Shortly thereafter, on September 27, 2012, Stockdale's and Bergman's motion was adopted as a responsive pleading to both of the consolidated cases. The defendants Morris and Ryder then moved to join the motions of the other defendants to transfer venue to Montgomery County, Indiana, and the circuit court granted their request.

¶ 13 C. The Plaintiffs' Response to the Motions to Transfer Venue

¶ 14 On October 25, 2012, the plaintiffs Usman and Zaman filed a response to the defendants' motions, arguing that the totality of factors in this case did not strongly favor transfer of the action to Montgomery County, Indiana.⁵ The plaintiffs argued that they were both residents of

⁵We note that on that same day and somewhat inconsistently, Shakir, acting as plaintiff in the negligence action against Stockdale, Bergman, Ryder and Morris, filed a response to Stockdale's, Bergman's, Ryder's and Morris's motion to transfer venue, arguing, contrary to his motion to transfer venue in the plaintiffs' cause against him, that Cook County, Illinois, rather than Montgomery County, Indiana was the proper forum. Shakir contended that because he was making a claim for lost revenues and business caused by the accident, all of the documents

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Cook County, as well as beneficiaries of their deceased father's estate, and that as such their choice of their home forum as the venue for the suit should be given great deference. The plaintiffs further argued that many of the damages evidence will likely come from witnesses residing in or documents found in Cook County. They pointed out that prior to his death Inam worked for Shakir in his Northbrook home office (Cook County, Illinois). They further pointed out that the remaining beneficiaries of Inam's estate (his wife, Yasmeen, daughter Nida and son Affan) reside in Lisle (DuPage County, Illinois). The plaintiffs also contended that all of Inam's pre-accident medical care came from providers in Illinois, including: (1) Aftab Khan, M.D., in Morris (Grundy County, Illinois); (2) APPNA in Westmont (DuPage County, Illinois); (3) Adventist Hinsdale Hospital in Hinsdale (Dupage County Illinois); and (4) Central DuPage Hospital in Winfield (DuPage County, Illinois).

¶ 15 The plaintiffs further argued that the defendant Shakir's motion to transfer venue to Montgomery County should be given little weight since before he filed that motion, as the plaintiff in the cause of action against Stockdale, Bergman, Ryder and Morris, arising from the same exact occurrence, he chose to file his complaint in Cook County, Illinois.

relevant to this claim would come from his home in Northbrook, Cook County, Illinois, where his business is registered. Shakir also argued that Cook County was the proper forum because the majority of his post-accident treatment has been in Illinois. He disclosed the following three medical providers, none of which are located in Cook County: (1) Advocate Condell Hospital in Libertyville (Lake County, Illinois); (2) Health First Wellness Center in Gurnee (Lake County, Illinois); and (3) Illinois Bone & Joint Center in Libertyville (Lake County, Illinois).

¶ 16 In their response to the motions to dismiss, the plaintiffs further acknowledged that Montgomery County (with a population of about 38,000 in 2010) is a much smaller county than Cook County and therefore probably has fewer pending cases. However, they pointed out that Montgomery County does not compile statistics showing the average time it takes between filing a complaint and reaching a jury verdict.⁶ In addition, they argued that statistics compiled by the Administrative Office of Illinois Courts reveal that in the past ten years the time lapse between filing and verdict has "generally decreased." In support, the plaintiffs attached the 2001-2010 statistics compiled by the Administrative Office of Illinois Courts, which revealed the following average time lapse: in 2010, 36.4 months; in 2009, 37.7 months; in 2008, 37.5 months; in 2007, 37.2 months, in 2006, 38.1 months; in 2005, 37.1 months; in 2004, 35.3 months; in 2003, 36.6 months; in 2002, 38 months and in 2001 38.1 months.

¶ 17 D. The Circuit Court's Ruling

¶ 18 After considering all of the pleadings and supporting documents, the circuit court ruled in favor of the defendants. In a written order explaining its reasoning, the court dismissed the cause of action in Cook County in favor of Montgomery County, Indiana, on the basis of *forum non conveniens*. In holding that Montgomery County was the more convenient forum, the circuit court first noted that the ease of access to proof factor weighed in favor of dismissal because

⁶In support of this contention, they attached an affidavit of Hary C. Lee, who averred that he spoke to the compiler of court statistics for both the Indiana Supreme Court and Montgomery County and was informed that neither the State of Indiana, nor Montgomery County compile statistics on the average time it takes from filing to verdict.

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"nearly all of the [occurrence] witnesses" and relevant documents are located in Indiana.

Accordingly, the court also found that most of the witnesses would not be amenable to the Illinois compulsory process. The court further noted that since the accident occurred in Montgomery County any jury viewing of the scene, if necessary, would be more convenient in that county. The court next observed that because this cause arose from a multi-vehicle collision in Montgomery County, it was a local controversy to which Indiana law would likely apply. It therefore held that Indiana residents had a far more significant interest in litigating this matter and that they, rather than Illinois residents should be burdened with jury duty. The court also found relevant that the likely less congested docket of a fairly unpopulated county in Indiana versus one of the largest cities in the country favored dismissal. For all of these reasons, the circuit court dismissed the cause of action in Illinois and instructed the plaintiffs' that if they elected to, they could file their suit in Indiana. The plaintiffs now appeal.

¶ 19

II. ANALYSIS

¶ 20 We begin our analysis by setting forth the well-established principles regarding *forum non conveniens*. The *forum non conveniens* doctrine is an equitable doctrine grounded on considerations of " 'fundamental fairness and sensible and effective judicial administration.' " *First American Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507 (1947)). It permits the circuit court to decline jurisdiction of a case, even though it may have proper jurisdiction over the subject matter and the parties, where a trial in another forum with proper jurisdiction and venue would better serve "the convenience of the parties and the ends of justice." *Fennel v. Illinois Central Railroad Co.*, 2012 IL 113812 ¶ 12;

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see also *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 171 (2003); *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 441-42 (2006). A defendant may invoke the doctrine of *forum non conveniens* to transfer an action from one county in Illinois to another Illinois county (intrastate transfer), or, as in this case, to transfer an action from a county in Illinois to a county in a different state (interstate transfer). *Fennel*, 2012 IL 113812 at ¶ 13; see also *Dawdy*, 207 Ill. 2d at 176; *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 335 (1994). "The same considerations of convenience and fairness" apply in deciding the motion in either setting. *Fennel*, 2012 IL 113812 at ¶ 13; *Dawdy*, 207 Ill. 2d at 176.

¶ 21 In determining whether *forum non conveniens* applies, the trial court must balance private interest factors affecting the convenience of the litigants and public interest factors affecting the administration of the courts. *Fennel*, 2012 IL 113812 at ¶ 17; *Langenhorst*, 219 Ill. 2d at 442. Relevant private factors include: (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; (3) the availability of compulsory process to secure attendance of unwilling witnesses; (4) the cost to obtain attendance of willing witnesses; (5) the possibility of viewing the premises, if appropriate; and (6) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *Fennel*, 2012 IL 113812 at ¶ 15; see also *Langenhorst*, 219 Ill. 2d at 443 (citing *Guerine*, 198 Ill. 2d at 516). Relevant public interest factors include: "(1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets." *Langenhorst*, 219 Ill. 2d at 443-44; see also

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Fennel, 2012 IL 113812 at ¶ 16.

¶ 22 In balancing the private and public interest factors, no single factor is controlling. *Fennel*, 2012 IL 113812 at ¶ 17; see *Langenhorst*, 219 Ill. 2d at 443 ("In deciding a *forum non conveniens* motion, a court must consider all of the relevant factors, without emphasizing any one factor."); see also *Dawdy*, 207 Ill. 2d at 176 ("If central emphasis were placed on any one factor, the *forum non conveniens* doctrine would lose much of the very flexibility that makes it so valuable.") (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981)). Moreover, in determining whether the doctrine applies, the trial court should not balance the private interest factors against the public interest factors; rather it should evaluate the totality of circumstances of the case in order to determine whether the balance of all factors strongly favors transfer. *Fennel*, 2012 IL 113812 at ¶ 17; see also *Langenhorst*, 219 Ill. 2d at 444; see also *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 169-70 (2005); see also *Lambert v. Goodyear Tire & Rubber Co.*, 332 Ill. App. 3d 373, 378-79 (2002).

¶ 23 In addition to balancing the private and public interest factors, the court must also consider its deference to the plaintiff's choice of forum. *Fennel*, 2012 IL 113812 at ¶ 18; see also *Dawdy*, 207 Ill. 2d at 173. Generally, a plaintiff's right to select a forum is substantial, unless the factors weigh strongly in favor of dismissal. *Dawdy*, 207 Ill. 2d at 173; see also *Guerine*, 198 Ill. 2d at 521 (acknowledging that "the battle over forum begins with plaintiff's choice already in the lead"). In practice, our courts have given less deference to the plaintiff's chosen forum where that forum is neither the plaintiff's residence, nor the location in which the cause of action arose. *Fennel*, 2012 IL 113812 at ¶ 18; see also *Langenhorst*, 219 Ill. 2d at 448; *Dawdy*, 207 Ill. 2d at

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173-74.

¶ 24 Throughout the proceedings, the burden remains on the party seeking dismissal to establish that the relevant factors strongly favor transfer. *Fennel*, 2012 IL 113812 at ¶ 20; see also *Langenhorst*, 219 Ill. 2d at 444 (quoting *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill. 2d 101, 108 (1990)). Each *forum non conveniens* case is unique and must be considered on its own facts. *Fennel*, 2012 IL 113812 at ¶ 21; see *Moore v. Chicago & North Western Transportation Co.*, 99 Ill. 2d 73, 83 (1985) ("all factors essential to the trial of a particular case must be balanced in determining whether to dismiss an action on *forum non conveniens* grounds.").

¶ 25 Broad discretion is vested in the trial court in determining whether particular facts and circumstances warrant dismissal of a case based upon *forum non conveniens*. *Fennel*, 2012 IL 113812 at ¶ 21; see also *Langenhorst*, 219 Ill. 2d at 441-42. The decision to grant or deny such a motion will be reversed on review only if it can be shown that, in deciding the motion, the trial court abused its discretion. *Fennel*, 2012 IL 113812 at ¶ 21; see also *Langenhorst*, 219 Ill. 2d at 441-42. "A circuit court abuses its discretion in balancing the relevant factors only where no reasonable person would take the view adopted by the circuit court." *Langenhorst*, 219 Ill. 2d at 442; see also *Vivas v. Boeing Co.*, 392 Ill. App. 3d 644, 657 (2009) ("[t]he issue *** is not what decision [the reviewing court] would have reached if [it] were reviewing the facts on a clean slate, but whether the trial court acted in a way that no reasonable person would").

¶ 26 With these principles in mind, we consider the relevant factors as they apply to the facts of this case.

¶ 27

A. Private Interest Factors

¶ 28 First, with respect to the private interest factors, we take into account the deference owed to the plaintiffs' chosen forum and the convenience of the parties. The plaintiffs contend that the circuit court failed to accord substantial deference to their choice of their home state as the forum for this litigation. In considering the plaintiffs' chosen forum, the trial court below acknowledged the level generally accorded a plaintiff's choice but then indicated that it was according less deference to the plaintiffs' choice in this case, because the plaintiffs' father Inam, on whose behalf they were bringing the wrongful action suit was not a resident of Cook County where the lawsuit was filed, but rather a resident of DuPage County. With respect to Shakir, the trial court also found that any deference to be accorded his chosen forum was at best "debatable," because Shakir was simultaneously attempting to litigate the lawsuit in Cook County, but defend it in Indiana. The trial court then held that regardless of the level of deference accorded to the plaintiffs' choice, that choice was outweighed by the remaining *forum non conveniens* factors, a totality of which, strongly favored transfer to Indiana. We find nothing illogical in this reasoning by the trial court.

¶ 29 As already noted above, a plaintiff's chosen forum is given "substantial deference" unless it is outweighed by the relevant factors favoring transfer. See *e.g.*, *Fennel*, 2012 IL 113812 at ¶ 18; see also *Langenhorst*, 219 Ill. 2d at 448; *Dawdy*, 207 Ill. 2d at 173-74. The plaintiff's chosen forum deserves "less deference" where the accident did not occur in the chosen forum and where the plaintiff is not a resident of the chosen forum. See *e.g.*, *Fennel*, 2012 IL 113812 at ¶ 18; see also *Langenhorst*, 219 Ill. 2d at 448; *Dawdy*, 207 Ill. 2d at 173-74; see also

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Smith v. Jewel Food Stores, Inc., 374 Ill. App. 3d 31, 33-34 (2007) ("the Illinois Supreme Court has stated that where the plaintiff chooses a forum that was neither the site of the accident nor the county in which she resides, her choice 'is not entitled to the same weight' as the choice of the county of her residence or the accident site").

¶ 30 In the present case, the parties agree that the accident occurred outside of the plaintiffs' chosen forum--Cook County, Illinois. They disagree, however, as to whether the plaintiffs' choice of Cook County, as their place of residence was given the proper deference.

¶ 31 With respect to the negligence action raised by Shakir, the plaintiffs assert that because he is a resident of Cook County, his choice of Cook County as the proper forum should have been accorded substantial deference, rather than some or no deference at all. We, however, find nothing unreasonable in the trial court's conclusion that the deference to be accorded Shakir's choice of Cook County is "debatable," since he simultaneously attempted to litigate his negligence action in Cook County, and defend against Usman's and Zaman's wrongful death/survival action in Indiana. Since both actions arose from the same exact occurrence, involving the same exact parties and witnesses, Shakir cannot have it both ways and avail himself of the better forum, depending on which hat he is wearing, that of plaintiff or the defendant. See *Fennel*, 2012 IL 113812 at ¶ 19 ("Decent judicial administration cannot tolerate forum shopping as a persuasive or even legitimate reason for burdening communities with litigation that arose elsewhere and should, in all justice, be tried there. [Citation.] Indeed, '[a] concern animating our *forum non conveniens* jurisprudence is curtailing forum shopping by plaintiffs.' [Citation.]").

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¶ 32 We next turn to Usman's and Zaman's choice of Cook County for filing their wrongful death/survival action. Usman and Zaman acknowledge that some Illinois cases have held that in a wrongful death action it is the decedent's residence at the time of death, rather than the residence of the estate's administrator or beneficiary that is relevant in determining the more convenient forum. See *e.g.*, *Bradbury v. St. Mary's Hospital of Kankakee*, 273 Ill. App. 3d 555 (1995) ("In a wrongful death action, it is the decedent's residence at the time of death that is of significance") (citing *Moore*, 99 Ill. 2d at 78); *but see Glass v. DOT Transp., Inc.*, 393 Ill. App. 3d 829, 835 (2009). They also acknowledge that their father, Inam was a resident of DuPage, rather than Cook County. The plaintiffs, however, argue that for purposes of an interstate forum analysis, such as the one here, the residence (or the "home forum") of the deceased is the decedent's home state rather than his county. Accordingly they contend that their choice of any Illinois county should have been afforded "substantial deference."

¶ 33 Although we are inclined to agree with the plaintiffs that "[a] plaintiff's 'home forum' for purposes of an interstate *forum non conveniens* motion is the plaintiff's home state" (see *Fennel*, 2012 IL 113812 at ¶ 18 (quoting *Kwasniewski v. Schaid*, 153 Ill. 2d 550, 553 (1992)), in the present case, we need not determine whether the trial court accorded the plaintiffs' choice proper deference, since, regardless of the level of deference afforded, as shall be more fully discussed below, the totality of the relevant public and private factors overwhelmingly favored transferring suit to Indiana.

¶ 34 With respect to the private interest factors, the relative ease of access to sources of testimonial, documentary and real evidence, overwhelmingly weighs in favor of transfer to

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Indiana. The multi-vehicle accident central to this litigation took place in Montgomery County, Indiana. Immediately after the accident, Inam and Shakir were airlifted to a hospital in Indianapolis where Inam succumbed to his injuries. As a result, aside from Shakir all of the occurrence witnesses identified by the plaintiffs reside in Indiana. All of the investigatory and emergency personnel and agencies that responded to the scene of the accident are located in Montgomery County, Indiana. All of Inam's post-accident medical care providers, are also located in Indiana. Although Shakir's post-accident treaters are located in Illinois, none of them are in Cook County. Accordingly, the trial court was well within its discretion when it noted that under these circumstances, aside from the damage witnesses scattered between Cook and DuPage Counties, "nearly all of the witnesses in this case are located in Indiana."

¶ 35 Turning to the relative ease of access to documentary evidence, we reiterate that because the accident occurred in Montgomery County, the overwhelming majority of relevant documentary evidence is likely to be discoverable in Indiana. *Botello v. Illinois Cent. R. Co.*, 348 Ill. App. 3d 445, 456-57 (2004) (noting that while "[t]he record [wa]s devoid of facts relating to the location of sources of proof, such as police reports or medical reports," it nevertheless stood "to reason that the location of the sources of proof and the location of the witnesses is one and the same."). In the present case, there is no question that the police and investigatory reports written by the Indiana State Police troopers and emergency technicians on the scene are kept in their respective agencies in Montgomery County, or in their vicinities. As already noted above, all of the relevant agencies are located in Indiana, and include: the Montgomery Sheriff's Department (Montgomery County, Indiana); the Indiana State Police, Lafayette 14 (Montgomery

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County, Indiana); the Crawford, Indiana Fire and Rescue (Montgomery County, Indiana); the Crawford, Indiana EMS (Montgomery County, Indiana); and the Indiana Department of Transportation. Likewise, any documentation relative to the investigation of the crime scene completed by Ryder's investigators after the accident is likely to be located in those investigators' offices, identified by the defendants as being in Lafayette, Indiana (Tippecanoe County, Indiana).

¶ 36 The same is true for any medical records relevant to Inam's treatment at St. Vincent Hospital in Indianapolis (Marion County, Indiana). While we acknowledge that Shakir's and Inam's pre-accident medical records, and Shakir's post-accident medical records are probably discoverable with their providers, we note that the record reveals that none of those providers are in Cook County. Accordingly, we see no abuse of discretion in the trial court's determination that the ease of access to documentary proof favored transfer of the actions to Indiana.

¶ 37 Since the overwhelming majority of witnesses are in Indiana, the availability of the compulsory process to secure the attendance of unwilling witnesses factor, also favors dismissal. While we agree with the plaintiffs that a court cannot speculate as to witnesses' unwillingness to testify at trial, this is true only "where the witnesses have not yet been identified." *Koss Corp. v. Sachdeva*, 2012 IL App (1st) 120378, at ¶ 107 (citing *Cradle Society v. Adopt America Network*, 389 Ill. App. 3d 73, 76 (2009)). In the present case, the parties have identified at least 14 occurrence witnesses relevant to the cause at bar, all of whom are located in Indiana, including: (1) the defendant, Morris; (2) the defendant, Bergman; (3) Ryder's investigator, Hawn; (4) Ryder's investigator, Burt; (5) Wes Stockdale; (6) Lasata; (7) Lewis; (8) Fuller, (9) Peterson; (10) Trooper Millberg; (11) Trooper Fullenwider; (12) Probationary Trooper Nelson Davis; (13)

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Sergeant Ziegler; and (14) Sergeant Cody. Illinois courts would have no subpoena power over any of these 14 witnesses residing in Indiana. Accordingly, the defendants would be thwarted in securing their presence if they were unwilling to testify. While it is true that Indiana courts similarly would have no subpoena power over any unwilling Illinois witnesses, the plaintiffs have identified no witnesses who are unlikely to subject themselves to Indiana jurisdiction. The plaintiffs' named damages witnesses are either the plaintiffs themselves (Usman and Zaman), or the remaining beneficiaries of Inam's estate (his wife Yasmeen, and minor children, Nida and Affan). As such, they are likely to volunteer or be compelled as parties (or parties in interest) to testify in Indiana. Similarly, the plaintiffs identify only one witness relevant to Inam's earning potential, his employer Shakir. Since Shakir as the defendant in this cause of action seeks transfer to Indiana, or alternatively as the plaintiff seeks a judgment in his favor, he is similarly unlikely to refuse to subject himself to the jurisdiction of any court, including one in Indiana.

¶ 38 In addition to the increased convenience of conducting the trial close to where the majority of the witnesses and documents are located, both Shakir's and Inam's injuries occurred on the highway in Montgomery County, Indiana. As such, it is undeniable that if the trier of fact determined that it should view the sight of the accident, such a viewing would be more conveniently and expeditiously accomplished if this action were tried in Montgomery County, Indiana. See *Botello*, 348 Ill. App. 3d at 457 ("The possibility of having a jury view the accident scene is an important consideration in ruling on a *forum non conveniens* motion"); *Dawdy*, 207 Ill. 2d at 178-79 ("This convenience factor is not concerned with the necessity of viewing the site of the injury, but rather is concerned with the *possibility* of viewing the site, if appropriate.

[Citation.] *** Further, the necessity or propriety of viewing the scene is a decision left within the discretion of the trial court. [Citations.]" (emphasis in original.))

¶ 39 Lastly, we consider the "practical problems that make trial of a case easy, expeditious, and inexpensive," (Internal quotation marks omitted.) *Langenhorst*, 219 Ill. 2d at 433. The plaintiffs argue that the circuit court improperly gave no consideration to the location of the five law firms chosen by the parties to represent them in this litigation. While we acknowledge that all of those law firms are located in Cook County, we note that our supreme court has repeatedly held that this particular factor should be accorded very little weight in *forum non conveniens* analysis. See *e.g.*, *Dawdy*, 207 Ill. 2d at 179 ("While a court may consider this factor, 'little weight should be accorded it.'") (quoting *Boner v. Peabody Coal Co.*, 142 Ill. 2d 523, 534 (1991)); see also *Erwin v. Motorola*, 408 Ill. App. 3d 261, 288 (2011) ("little weight should be accorded this factor.")

¶ 40 Accordingly, on the whole we conclude that the private interest factors strongly favor the convenience of Montgomery County, Indiana, over Cook County, Illinois.⁷

⁷We note that in considering the private interest factors, in its written order the trial court did not analyze to convenience of the parties. The plaintiffs make no argument as to this factor, and our review of the record reveals that it would not have favored either Cook County or Montgomery County as the more convenient forum. In that respect we note that, while all three plaintiffs, Usman, Zaman and Shakir reside in Cook County, all of the defendants aside from Ryder (with a principal place of business in Miami, Florida, but offices all over the country) reside in Indiana.

¶ 41

B. Public Interest Factors

¶ 42 We next turn to the public interest factors: (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the relative docket congestion of the two suggested forums. *Fennel*, 2012 IL 113812 at ¶ 16; see also *Langenhorst*, 219 Ill. 2d at 443.

With respect to the first two factors, the plaintiffs contend that the trial court abused its discretion when it found that Montgomery County, Indiana, would have a "much more significant" interest in deciding this controversy. They argue that Illinois has as much of a stake in this litigation as Indiana because the litigation involves its own residents. We disagree.

¶ 43 Our courts have repeatedly held that "[t]here is a local interest in having localized controversies decided at home." (*McClain v. Illinois Central Gulf*, 121 Ill. 2d 278, 289 (1988); see also *Dawdy*, 207 Ill. 2d at 173; see also *Washington v. Illinois Power Co.*, 144 Ill. 2d 395, 399 (1991)). The rationale has been twofold. First, public interest requires that "causes which are without significant factual connections to particular forums be transferred to convenient forums to insure that those jurisdictions are not unfairly burdened with litigation in which they have no interest or connection." *Botello*, 348 Ill. App. 3d 458; see also *Espinosa v. Norfolk & Western Ry. Co.*, 86 Ill. 2d 111, 121 (1981) ("Courts generally have a shared concern 'in protecting finite judicial resources' and the efficient functioning of their judicial systems, so that they are not impeded by nonresident litigation to the extent that their availability to local citizens is impaired or diminished."). What is more, "[t]here is an appropriateness *** in having the trial of a diversity case in a forum that is at home with the state law that most govern the case, rather

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than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself." *McClain*, 121 Ill. 2d at 289; see also *Satkowiak v. Chesapeake & Ohio*, 106 Ill. 2d 224, 232 (1985) ("the State has an interest in applying its own law in its own courts. Illinois courts have a corresponding interest in not being burdened with applying foreign law 'unless there are strong policy reasons and unless Illinois has strong connections to the case.' ").

¶ 44 For these reasons, our courts have repeatedly held that the forum where the injury occurred generally has the strongest interest in the outcome of litigation. See *e.g.*, *Woodward v. Bridgestone/Firestone, Inc.*, 368 Ill. App. 3d 827, 836 (2006); see also *Botello*, 348 Ill. App. 3d at 459; *Dawdy*, 207 Ill. 2d at 173; *Guerine*, 198 Ill. 2d at 525; *Washington*, 144 Ill. 2d at 403. In the present case, as already explained above, the multi-vehicle accident in which Inam and Shakir were injured occurred in Montgomery County, Indiana. What is more there is evidence in the record to suggest that accident was caused because defendant Morris was forced to stop his vehicle in the middle of the highway by Indiana emergency crews working to extinguish two grass fires in the area. Accordingly, we find no abuse of discretion in the circuit court's holding that Indiana has a "much more significant" interest in resolving this decidedly local controversy. See *Dawdy*, 207 Ill. 2d at 173 (finding that the public interest factors favored litigation in the county where the accident occurred because "*most significantly*, the fact that the accident occurred in Macoupin County gives the action a local interest" (emphasis added.)); see also *Guerine*, 198 Ill. 2d at 525 (noting that the county where the accident originated was the more convenient forum because the fact that the accident occurred in that county gave "the plaintiffs' negligence claim *** a local flavor."); see also *Washington*, 144 Ill. 2d at 403 (holding that the

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greatest interest in the litigation was in the county "where the accident occurred."); see also *Botello*, 348 Ill. App. 3d at 459 (holding that the residents of DuPage County had a stronger connection to the cause of action because the plaintiff's injury occurred at railroad track located within their county; nothing that "[i]f those tracks are deemed unsafe, other DuPage County residents may be harmed. Thus, the interest of DuPage County in ensuring safety at local railroad tracks would strongly militate in favor of transferring this action to that county.").

¶ 45 The plaintiffs nevertheless argue that Cook County "might have an interest in this litigation" because one of the defendants, Stockdale, is an interstate trucker. They speculate that there is a high likelihood that an interstate trucker traveling the highways of Indiana, a state adjacent to Illinois, would also be traveling the highways of Illinois. Accordingly, they contend, the residents of Illinois, including Cook County, would "surely be interested in protecting those traveling their highways from such motorists."

¶ 46 We first note that this argument is waived since the plaintiffs never raised it before the circuit court. See *Hatch v. Szymanski*, 325 Ill. App. 3d 736, 741 (2001) ("Issues not raised in the lower court are waived and may not be raised for the first time on appeal"). What is more, even if we were to consider this argument, and were at liberty to speculate as the plaintiffs do, we would nevertheless find that Indiana's interest in deciding whether the defendant Stockdale was negligent in the manner in which one of its contractors drove a truck on an Indiana highway far outweighs any hypothetical interest Illinois would have in protecting its residents against Stockdale's possible future presence on an Illinois highway.

¶ 47 Turning to the third public interest factor, *i.e.*, the comparative congestion of the

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respective courts, the plaintiffs contend that the circuit court abused its discretion when it found that Cook County was more congested than Montgomery County. The plaintiffs do not contest that Cook County is congested, but rather point out that the trial court was without resources to determine that it was "more congested than Montgomery County" as it was without any comparable statistics from the Indiana courts. We disagree.

¶ 48 In analyzing this factor, the trial court had before it: (1) the annual reports of the Administrative Office of Illinois Courts dating between 2001 and 2010, which revealed that in 2010, there were 441 cases in Cook County in which jury verdicts over \$50,000 were rendered, with a period of time from filing to verdict of 36.4 months, and (2) the population of Montgomery County, Indiana, which was about 38,000 in 2010. The trial court acknowledged that it was without "comparable statistics" from Montgomery County, but then held that "assuming that a small county in Indiana would have a less congested docket than Cook County, which is located in the third largest city in the country, this factor would favor the suggested forum." The court then went on to state that "this factor alone would not justify a dismissal under the doctrine of *forum non conveniens* unless the other factors, appropriately weighed, also strongly favor dismissal." We find nothing unreasonable in this qualified conclusion by the trial judge. See *In re T. W.*, 313 Ill. App. 3d 890, 895 (2000) (Geiger, J., dissenting) ("Just as we do not require jurors to leave their common sense and life experience at the door, we similarly do not require that a trial judge operate in a vacuum when functioning in a fact finding role.")

¶ 49 Lastly, we reject the plaintiffs' assertion that *Glass*, 393 Ill. App. 3d 829 is dispositive because "each case must be decided based on a case-by-case consideration of convenience and

fairness." *Cradle Society*, 389 Ill. App. 3d at 79 (citing *Gridley*, 217 Ill. 2d at 168).

¶ 50 In conclusion, and after evaluating the record below, we find that the trial court carefully balanced all of the private and public interest factors relevant in a *forum non conveniens* analysis. We therefore hold that the trial court did not abuse its considerable discretion in granting the defendants' motions to dismiss the action in Cook County, Illinois, in favor of Montgomery County, Indiana. See *Vivas*, 392 Ill. App. 3d at 657 ("[t]he issue *** is not what decision [the reviewing court] would have reached if [it] were reviewing the facts on a clean slate, but whether the trial court acted in a way that no reasonable person would"); see also *Jones*, 93 Ill. 2d at 378 (noting that although it was "conceivable that [on the facts of that case] a different result could have been reached," "the question [was] not whether a reviewing court would have weighed the factors differently or would have resolved the issue as did the trial court" but, rather, whether the trial court's decision constituted an abuse of discretion); see also *Langenhorst*, 219 Ill. 2d at 433; *Woodward*, 368 Ill. App. 3d at 837-38.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 53 Affirmed.

¶ 54 JUSTICE EPSTEIN, specially concurring:

¶ 55 While I disagree with the majority that "the totality of the relevant public and private factors overwhelmingly favored transferring suit to Indiana" (¶ 33), I concur in the result because I cannot find that the trial court abused its discretion in granting defendants' motion to transfer.

¶ 56 "The issue *** is not what decision [the reviewing court] would have reached if [it] were

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reviewing the facts on a clean slate, but whether the trial court acted in a way that no reasonable person would." *Vivas v. Boeing Co.*, 392 Ill. App. 3d 644, 657 (2009).

¶ 57 The decision in this close case is determined by the deferential standard of review, abuse of discretion, mandated by a long line of precedents, including *Fennel v. Illinois Central Railroad Company*, 2012 IL 113812.