

NOTICE

Decision filed 01/14/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120019-U

NO. 5-12-0019

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

DIANE BAKER, MARCIA BAKER, Individually)
and on Behalf of the Estate of JOHN K. BARBER,)
CAROLYN BODDY, BRADLEY BRANDT,)
VIVIAN BROWN, MARCHERIE CAMERON,)
ADDIE COLLINS, EVELYN CORMAN, CLAUDE)
DIXON, MARKEASE DOE, MOLLY DUNPHY,)
OTHA FORT III, NINA GRAY, CARL HABIS,)
TONYA HALBERSTADT, PATRICIA HALLMAN,)
BOBBI HYATT, LEANDREA JOHNSON, KENNY)
JONES, MARY JONES, JESSICA KENT, MARK)
LANDERS, STEVE LAWSON, HEATHER LEE,)
JULIE LINDSAY, LINDA SUE MAHN,)
CHRISTINA MARTINEZ, PAUL MATHENY,)
VIRGINIA McLAREN, Individually and on Behalf of)
the Estate of JOHN JOHNSON, GUSTORIA)
MEADOWS, AAMIR MEMOM, BERNICE)
MERRY, RICHARD MESEY, PAULETTE MILLER,)
LORI MOSS, INEZ MOUTON, JOEY MURPHY,)
RICHARD L. NELSON, SR., Individually and on)
Behalf of the Estate of ELIZABETH NELSON,)
LOUIS PRESTWOOD, GARY ROBERTS, SR.,)
CHESTER SCHROEDER, DAWN SCHROEDER,)
JEREMIAH SHELTON, LATASHA SHELTON,)
EDRICCA SNOW, Individually and on Behalf of the)
Estate of EDDIE MAY JONES, Deceased, PATRICIA)
SPANKS, KARL STATEN, THOMAS STRAIGHT,)
JR., DIANE TERRY, Individually and on Behalf of)
the Estate of NAOMI TUCKER, Deceased, LENA)
THOMAS, RICHARD TUCKER, LILLIE TURNER,)
GARY WATKINS, Individually and on Behalf of the)
Estate of MARTHA WATKINS, Deceased,)
MARGARET WELBORN, STEVEN WESTBROOK,)
MARSHA WILLIAMS, PATRICIA WILLIAMS,)
ANGELA WILSON, SHARON WILSON,)
MARGARET PEBEAHSY, BARBARA ALLRED,)
MELISSA CHICKER, Individually and on Behalf of)
HAL EDWIN CHICKER, Deceased, TREVOR)
HAMILTON, JANET HONE, COY MARSHALL,)
Individually and on Behalf of CYNTHIA ADAIR)

Appeal from the
Circuit Court of
St. Clair County.

MARSHALL, Deceased, RODNEY MILLARD,
ELLEN MORTON, DEBRA PATTERSON,
TAMMY RIVET, Individually and on Behalf of the
Estate of RITA RIVET, Deceased, PENNY
McKINNEY, KENNETH WICKS, JR., ELISA
DONAHUE, Individually and on Behalf of the
Estate of CAROLINA G. CORCUCHIA, Deceased,
BARBARA GREEN, and CYNTHIA TIDWELL,

Plaintiffs-Appellees,

v.

JOHNSON & JOHNSON, ORTHO-McNEIL
PHARMACEUTICAL, INC., JOHNSON AND
JOHNSON PHARMACEUTICAL RESEARCH AND
DEVELOPMENT, LLC, and JANSSEN
PHARMACEUTICA, INC.,

Defendants-Appellants.

No. 10-L-91

Honorable
Andrew J. Gleeson,
Judge, presiding

NO. 5-12-0141

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

LEON CANFIELD, JR., ZABRINA FISHER, INEZ
GARNER, SUSIE GUYTON, Individually and on
Behalf of the Estate of STELLA MAE GUYTON,
WILLA HILL, CONNIE IRWIN, DONNA LYLE,
BONNIE McCALLUM, Individually and on Behalf of
the Estate of ROSE MARIE MUTRIE, MARSHA
MORRIS, MARGARET PEARSON, Individually and
on Behalf of the Estate of JERRY PEARSON, JOHN
PFIFFNER-SCHMIDT, ALEJANDRO SANCHEZ,
JAMIE SCOTT, Individually and on Behalf of the
Estate of CLARA SCOTT, VIKRAM SHARMA,
LEAH SHARP, Individually and on Behalf of the
Estate of EARNESTINE HENDERSON, NANCY
SHAUM, JOAN SHEHANE, CARLA TATE, RUBY
WATSON, JEFFREY WINTERS, ROBBIE POWELL,
DIANA JEANNE SLAVICH, BARBARA
AKERBERG, ANNIE BURROWS, CHARLES
EASTERLING, PATRICIA FINELLI, SHARON
GREY, Individually and on Behalf of the Estate of

Appeal from the
Circuit Court of
St. Clair County.

EDDIE GREY, MARY JOHNSON-NAUGLE,)
WILLIAM KLAHN, ADDIE OWENS, TANGELA)
PATTERSON, TESSIE ROBILLARD, Individually)
and on Behalf of the Estate of LOUIS ROBILLARD,)
JACQUELINE STEIN-LYLES, CLAY)
STEPHENSON, Individually and on Behalf of the)
Estate of MARTHA H. STEPHENSON, GAIL)
HOLMES, and VIRGINIA WOZNICK,)

Plaintiffs-Appellees,)

v.)

JOHNSON & JOHNSON, ORTHO-McNEIL)
PHARMACEUTICAL, INC., JOHNSON AND)
JOHNSON PHARMACEUTICAL RESEARCH AND)
DEVELOPMENT, LLC, JANSSEN)
PHARMACEUTICA, INC., and JANSSEN)
PHARMACEUTICALS, INC.,)

Defendants-Appellants.)

No. 10-L-438

Honorable
Andrew J. Gleeson,
Judge, presiding.

PRESIDING JUSTICE SPOMER delivered the judgment of the court.
Justices Goldenhersh and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appellees did not have standing to move to dismiss the appeal on the basis that they consented to the relief requested by the appellants, but because they have consented, the relief requested by the appellants is granted.
- ¶ 2 In these cases, which this court consolidated for purposes of argument and decision, the defendants appeal, pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Sept. 1, 2006), the orders of the circuit court of St. Clair County which, *inter alia*, denied their motions to sever and dismiss or transfer, based on the doctrine of *forum non conveniens*, the claims of various plaintiffs that reside outside of Illinois or in counties other than St. Clair County.
- ¶ 3 The complaints in each of these cases allege that the various plaintiffs, the vast majority of whom live outside of the State of Illinois, suffered injuries as a result of purchasing and ingesting Levaquin, a prescription antibiotic manufactured and marketed by

the defendants.¹ The complaints allege a wide variety of common law and statutory causes of action against the defendants. In each case, the defendants filed a motion that, *inter alia*, sought to sever and dismiss or transfer the claims of the various plaintiffs that reside out of state or outside of St. Clair County, based on the doctrine of *forum non conveniens*. In each case, the circuit court denied the motion.² In each case, the defendants filed a timely petition for leave to appeal, pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Sept. 1, 2006).³ This court granted both petitions.

¶ 4 After briefs were filed and this court held oral argument, the plaintiffs filed a motion to dismiss this appeal, stating that they are consenting to the relief requested by the defendants. The defendants objected to the motion to dismiss. We hereby deny the motion to dismiss, because the plaintiffs, as appellees, do not have standing to request that the appeal be dismissed. However, due to the consent of the plaintiffs to the relief requested by the defendants, we reverse that portion of the circuit court's order in each case that denied the

¹In appeal number 5-12-0019, only one of the 74 plaintiffs is a resident of St. Clair County. Four plaintiffs reside in four other counties located in Illinois, and the remaining plaintiffs reside in 23 different states outside of Illinois. In appeal number 5-12-0141, only one of the 36 plaintiffs is a resident of St. Clair County. Three plaintiffs reside in other counties located in Illinois, and the remaining plaintiffs reside in 17 different states outside of Illinois.

²The order denying the motion to sever and dismiss or transfer in appeal number 5-12-0019 was entered on December 19, 2011. The order denying the motion to sever and dismiss or transfer in appeal number 5-12-0141 was entered on March 15, 2012.

³In appeal number 5-12-0019, the defendants filed a petition for leave to appeal on January 12, 2012. In appeal number 5-12-0141, the defendants filed a petition for leave to appeal on March 21, 2012.

defendants' motion to dismiss or transfer for *forum non conveniens* and remand with directions that the circuit court dismiss, under the conditions set forth in Illinois Supreme Court Rule 187(c)(2) (eff. Aug. 1, 1986), the claims of all of the plaintiffs in each case who reside outside of Illinois. In addition, we direct the circuit court to transfer to their respective counties, pursuant to Illinois Supreme Court Rule 187(c)(1) (eff. Aug. 1, 1986), the claims of all of the plaintiffs in each case who reside outside of St. Clair County. Further, we direct the circuit court to order the complaints in each case to be amended to state only those claims brought by plaintiffs who reside within St. Clair County. Finally, we find that the defendants are entitled to recover their costs on appeal.

¶ 5 Motion denied; reversed and remanded with directions.