2015 IL App (1st) 15-0565-U
No. 1-15-0565
December 29, 2015

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PARENT DOE A, as parent of JOHN DOE A; PARENT DOE B, as parent of JOHN DOE B and JOHN DOE C; JOHN DOE B; and JOHN DOE C,	)	Petition for Review of an Order of the Illinois Education Labor Relations Board
Plaintiffs-Appellees,	)	No. 14 L 9758
v.	)	The Honorable Daniel T. Gillespie,
THE ROMAN CATHOLIC DIOCESE OF JOLIET, a religious corporation,	)	Judge Presiding.
Defendant-Appellant.	)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: After reviewing the relevant private and public interest factors, in light of the diminished deference afforded to the plaintiffs' second choice of venue, we do not find that the circuit court acted unreasonably, and thus abused its discretion when it granted the defendant's motion to transfer the case from Cook County but transferred the case to Will County.

¶ 2 On September 18, 2014, the plaintiffs, Parent Doe A, John Doe A, Parent Doe B, John Doe B, and John Doe C, filed a complaint against the defendant, The Roman Catholic Diocese of Joliet, alleging that a former Diocesan priest, Reverend Leonardo Mateo, sexually abused John Does A, B, and C between the years of 1980-82. The plaintiffs filed their complaint in Cook County. The defendants filed a motion to transfer venue to DuPage County. The plaintiffs responded to the defendant's motion to transfer on January 5, 2015, conceding that venue was improper in Cook County and requesting that the circuit court transfer the case to Will County. The circuit court conducted a hearing on February 20, 2015. At the hearing, the circuit court stated that Cook County was an improper venue, granted the defendant's motion to transfer, but deferred to plaintiffs' second choice of venue by transferring the case to Will County, instead of DuPage County.

¶ 3 On March 13, 2015, this court granted the defendant's petition for leave to appeal. On April 21, 2015, the defendants timely filed their appeal pursuant to Supreme Court Rules 306(a)(2) and 306(a)(4), seeking review of the circuit court's order transferring the case to Will County. We find that the circuit court did not abuse its discretion when it granted the defendant's motion to transfer the case from Cook County, but transferred the case to Will County.

¶ 4 BACKGROUND

¶ 5 On September 18, 2014, the plaintiffs filed a complaint against the defendant, alleging that Father Mateo sexually abused John Does A, B, and C between the years 1980 and 1982. After the plaintiffs filed their complaint in Cook County, the defendants filed a motion to transfer venue to DuPage County. In the plaintiffs' response to the defendant's motion to

transfer, the plaintiffs conceded that venue was improper in Cook County and requested that the circuit court transfer the case to Will County. According to the bystander's report, at the hearing on the motion on February 20, 2015, the circuit court: (1) acknowledged that it "had considered the arguments in the briefs;" (2) granted the motion to transfer, "holding that venue was improper in Cook County;" and (3) stated that "for all the reasons contained in the briefs and giving Plaintiffs deference to their choice of venue, the case will be transferred to Will County."

¶ 6 On March 13, 2015, this court granted the defendant's petition for leave to appeal. On April 21, 2015, the defendants timely filed their brief in this appeal, pursuant to Supreme Court Rules 306(a)(2) and 306(a)(4), seeking review of the circuit court's order transferring the case to Will County.

¶ 7 The plaintiffs set forth the following to support their argument that Will County is the more appropriate venue: (1) the Diocese's principal place of business is in Will County; (2) the Diocese's administrative offices and the sole trustee of the Diocese are in Will County; (3) both Father Mateo and the Immaculate Conception parish in DuPage County were under the supervision and control of the Will County Diocese; (4) two of the plaintiffs reside in Will County; and (5) John Doe C.'s relative, who witnessed one of the alleged incidents of sexual molestation by Father Mateo, resides in Will County.

¶ 8 The defendants set forth the following to support their argument that DuPage County is the more appropriate venue: (1) two of the plaintiffs reside in DuPage County; (2) the Diocese ministers the Catholic faith to parishioners in DuPage County; (3) the parish to which Father Mateo was assigned is located in DuPage County; (4) Parent Doe B and Does B

and C were parishioners at the parish and met Father Mateo when he was a pastor in the Joliet parish; (5) the YMCA, where the abuse is alleged to have occurred, is located in DuPage County; (6) the rectory, where the abuse is alleged to have occurred, is located in DuPage County; and (7) Parent Doe B and Does B and C were residents of DuPage when the alleged sexual abuse occurred.

¶ 9 ANALYSIS

¶ 10 The defendant filed a motion to transfer venue and alleged that venue was improper in Cook County or, in the alternative, alleged that the doctrine of *forum non conveniens* mandated transfer to DuPage County. The record reflects that the plaintiffs conceded that Cook County was an improper venue. The defendant is not challenging the circuit court's partial grant of the motion to transfer by transferring the case out of Cook County, but rather, the defendant is challenging the deference the circuit court gave to the plaintiffs' second choice of venue in its *forum non conveniens* analysis by transferring the case to Will County. Therefore, because the plaintiffs concede Cook County is an improper venue, we will review this case solely under the doctrine of *forum non conveniens* since it is distinct from an objection based on improper venue. *Kerry No. 5, LLC v. Barbella Group, LLC*, 2012 IL App (1st) 102641, ¶ 19.

¶ 11 Standard of Review

¶ 12 The *forum non conveniens* doctrine is applicable in both interstate and intrastate cases. *Fennell v. Illinois Central Railroad Co.*, 2012 IL 113812, ¶ 13. The circuit court must balance the public and private interest factors in determining whether the *forum non conveniens* doctrine applies. *Fennell*, 2012 IL 113812, ¶ 17. The court does not weigh the

public interest factors against the private, but looks at the totality of circumstances in its determination of whether the balance of factors favors dismissal. *Fennell*, 2012 IL 113812, ¶ 17.

¶ 13 The circuit court will also consider the plaintiff's choice of forum. *Fennell*, 2012 IL 113812, ¶ 18. "Unless the factors weigh strongly in favor of transfer or dismissal, the plaintiff's choice of forum should rarely be disturbed. However, when the plaintiff is foreign to the chosen forum and when the action giving rise to the litigation did not occur in the chosen forum, the plaintiff's choice of forum is accorded less deference." *Fennell*, 2012 IL 113812, ¶ 18. Further, the circuit court should accord "diminished deference in its *forum non conveniens* analysis to what was plaintiff's *second* choice of forum." (Emphasis in original.) *Fennell*, 2012 IL 113812, ¶ 25.

¶ 14 The burden is on the defendant to establish that the plaintiff's chosen forum is inconvenient to the defendant and another forum is more convenient to all parties. *Fennell*, 2012 IL 113812, ¶ 20. "The determination of a *forum non conveniens* motion lies within the sound discretion of the circuit court. On review, the circuit court's determination will be reversed only if it can be shown that the court abused its discretion in balancing the relevant factors." *Fennell*, 2012 IL 113812, ¶ 21. "This court has previously stated that it is not 'aware of any authority[] supporting the proposition that the circuit court's ruling on a *forum non conveniens* motion must be reversed solely for an inadequate record of it analysis.' " *Ruch v. Padgett*, 2015 IL App (1st) 142972, ¶ 40. Consequently, this court may affirm a circuit court's *forum non conveniens* order "on any basis found in the record." *Ruch*, 2015 IL App (1st) 142972, ¶ 40.

¶ 15 *Forum Non Conveniens* Principles

¶ 16 Section 2-101 of the Code of Civil Procedure (Code) provides "every action must be commenced (1) in the county of residence of any defendant ***, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose." 735 ILCS 5/2-101 (West 2012). "If there exists more than one potential forum, the equitable doctrine of *forum non conveniens* may be invoked to determine the most appropriate forum." *Dawdy v. Union Pacific Railroad Co*., 207 Ill. 2d 167, 171 (2003). In this case, Will County and DuPage County are the potential forums.

¶ 17 In determining the most appropriate forum, the court must consider the private interest factors that affect the litigants and the public interest factors that affect court administration. *Fennell*, 2012 IL 113812, ¶ 15-17. The private interest 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; (6) and all other practical considerations that make a trial easy, expeditious, and inexpensive. *Fennell*, 2012 IL 113812, ¶ 15.

¶ 18 The public interest factors include: (1) the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; (2) the unfairness of imposing jury duty upon residents of a community with no connection to the litigation; (3) and the interest in having local controversies decided locally. *Fennell*, 2012 IL 113812, ¶ 16.

¶ 19 This court has previously found that when no verbatim transcript is available, a party can prepare a bystander's report and "we must assume a bystander's report is materially complete on the points it addresses." *People v. Majka*, 365 Ill. App. 3d 362, 368 (2006). According to the bystander's report in this case, the circuit court granted the defendant's motion to transfer, "holding that venue was improper in Cook County", but it transferred the case to Will County instead of DuPage County for "all of the reasons contained in the briefs and in giving Plaintiffs deference to their choice of venue." The record reflects that both parties discussed the *forum non conveniens* factors in their briefs. Because we have no verbatim transcript and only a bystander's report of the February 20, 2015, hearing on the motion to transfer, we must assume that the bystander's report is materially complete (*Majka*, 365 Ill. App. 3d at 368), and that because the circuit court stated that it transferred the case to Will County based on "all of the reasons contained in the briefs", that it considered the public and private interests factors set forth in the *forum non conveniens* arguments in the briefs. Therefore, we must now determine whether the circuit court abused its discretion when it weighed the private and public interest factors.

¶ 20 Private Interest Factors

¶ 21 In their briefs, the parties focused their analysis on the private interest factors as enumerated in the *Langenhorst v. Norfolk Southern Railway Co.*, 219 Ill. 2d 430 (2006) case. The *Langenhorst* court listed three private interest factors: "(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 trial of a case easy, expeditious, and

inexpensive." *Langenhorst*, 219 Ill. 2d at 443. We will first review the circuit court's decision based on the private interest factors in *Langenhorst*.

¶ 22 1. Convenience of the Parties

¶ 23 The defendant contends that it is more convenient to defend the litigation and attend a trial in DuPage County, instead of in Will County. However, the convenience of the parties does not strongly favor either county. Of the five plaintiffs in this litigation, two reside in Will County and two reside in DuPage County. The defendant, the Diocese of Joliet, has its principle plan of business in Will County. The parish and Father Mateo are under the supervision and control of the Diocese which is headquartered in Will County. Moreover, the sole trustee of the Diocese, Bishop R. Daniel Conlon, resides in Will County, which is a significant factor to the *forum non conveniens* analysis. *Langenhorst*, 219 Ill. 2d at 447. The alleged sexual abuse occurred in the church rectory and the YMCA located in DuPage County. It is the burden of the defendant to demonstrate that the relevant factors strongly favor transfer. *Langenhorst*, 219 Ill. 2d at 453-454. Venue is proper in the county of residence of the defendant (735 ILCs 5/2-101 (West 2012)), and Will County is the principal place of business of the Diocese. Therefore, we find that the defendant has failed to meet its burden and establish that the convenience of the parties strongly favors transfer to DuPage County.

¶ 24 2. Ease of Access to Testimonial, Documentary and Real Evidence

¶ 25 Next, we examine the relative ease of access to testimonial, documentary and real evidence. Our supreme court has established that where potential witnesses to trial are in more than one county, including the plaintiff's chosen forum, no single county has a

predominant connection to the litigation and therefore, the plaintiff cannot be deprived of his or her chosen forum. *Langenhorst*, 219 Ill. 2d at 445. The defendant argues that the fact that "many of the witnesses to the alleged abuse reside in DuPage County" favors transfer to DuPage. But, defendant's argument fails to explain why the residence of the two plaintiffs in DuPage County should be given more weight than the residence of the two plaintiffs in Will County. Further, the record reflects that the potential witnesses live in several counties, including Will, DuPage, and Kane County. Therefore, with witnesses living in several counties, no single county has a predominant connection to the litigation. *Langenhorst*, 219 Ill. 2d at 445.

¶ 26 The defendant also argues that because the Elmhurst Police Department will likely be an important witness because of its investigation of the criminal allegations against Father Mateo, that transfer to DuPage County is warranted. The defendant relies on *Botello v. Illinois Central Railroad Co.*, 348 Ill. App. 3d 445 (2004), stating that the *Botello* court affirmed a transfer from Cook County to DuPage County under *forum non conveniens* principles where the police reports and medical records were located in DuPage County. *Botello*, 348 Ill. App. 3d at 457. We note, however, that this court has more recently held that "the location of documents, records and photographs has become a less significant factor in *forum non conveniens* analysis in the modern age of email, internet, telefax, copying machines and world-wide delivery services, since they can now be easily copied and sent." *Vivas v. Boeing Co.*, 392 Ill. App. 3d 644, 659 (2009). Because the police reports and medical records could easily be transported to Will County, we find that the ease of access to evidence does not strongly favor either forum. *Vivas*, 392 Ill. App. 3d at 659.

¶ 27 3. All Other Practical Considerations

¶ 28 The defendant has not identified any other practical considerations that would favor DuPage County over Will County. Accordingly, we find no abuse of the circuit court's discretion when it transferred the case from Cook County to Will County based on the private interest factors.

¶ 29 Public Interest Factors

¶ 30 1. Administrative Difficulties When Litigation is Handled in Congested Venues

¶ 31 Next, we consider the public interest factors the parties addressed in their circuit court briefs. Although court congestion is a relatively insignificant factor standing alone, our supreme court has recognized that it is still an appropriate factor to consider. *Fennell*, 2012 IL 113812, ¶ 43. According to the 2013 Annual Report of the Illinois Courts, of which we take judicial notice (*Boston v. Rockford Memorial Hospital*, 140 Ill. App. 3d 969, 975 (1986)), DuPage had a pending case load of 17,374 cases, while Will County had a pending case load of 22,054 cases. This data however, fails to address "the relative size of each judicial system and the speed of disposition in each forum." *Fennell*, 2012 IL 113812, ¶ 43. Therefore, without knowing the number of judges or the time it takes to dispose of a case in each county, we cannot take this factor into account in our analysis. *Fennell*, 2012 IL 113812, ¶ 43.

¶ 32 2. Unfairness of Imposing Jury Duty Upon Residents not Connected to Litigation

¶ 33 The defendant contends that it would be unfair to impose jury duty on the residents of Will County when the Diocese operates in DuPage County and ministers the Catholic faith to parishioners in DuPage County. While the Diocese administers the Catholic faith in DuPage,

its headquarters are located in Will County and its current bishop resides in Will County, which our supreme court has determined is a significant factor in the *forum non conveniens* analysis. *Langenhorst*, 219 Ill. 2d at 447. Further, the Diocese's ministry of the Catholic faith to parishioners in DuPage, does not indicate that all of the parishioners live in DuPage. Of the five plaintiffs in this litigation, two reside in Will County and two reside in DuPage County. It is the burden of the defendant to demonstrate that the relevant factors strongly favor litigation in another forum. *Langenhorst*, 219 Ill. 2d at 453-454. We find that residents in both Will and DuPage County are connected to the litigation, and given the fact that Will County is the principal place of business of the Diocese, we find that the defendant has failed to establish that it would be unfair to impose jury duty on the residents of Will County.

¶ 34 3. The Interest in Having Local Controversies Decided Locally

¶ 35 The record reflects that both Will and DuPage County have an interest in deciding the controversy. *Langenhorst*, 219 Ill. 2d at 451. The Diocese is headquartered in Will County. Two plaintiffs reside in Will County and two plaintiffs reside in DuPage County. But, the alleged sexual abuse occurred in the church rectory and at the nearby YMCA located in DuPage County. It is the defendant's burden to demonstrate that the relevant factors strongly favor transfer. *Langenhorst*, 219 Ill. 2d at 453-454. We find that both Will and DuPage County have an interest in deciding the case and the defendant has failed to establish that DuPage has a greater interest than Will County in deciding the controversy.

¶ 36 Deference to Plaintiffs' Choice of Forum

¶ 37 The defendant argues that the circuit court erred by deferring to the plaintiffs' second choice of forum. The bystander's report states that the court "considered the arguments in the

briefs" and that "[t]he Court then granted the motion, holding that venue was improper in Cook County. The Court then stated that, for all the reasons contained in the briefs and in giving Plaintiffs deference to their choice of venue, the case will be transferred to Will County."

¶ 38 We find that the circuit court gave no deference to the plaintiffs' first choice of forum by indicating that Cook County was improper. The record reflects that the circuit court gave some deference to plaintiffs' second choice of forum when it ordered the case to be moved to Will County instead of to DuPage County. Our supreme court has held that the circuit court should accord "diminished deference in its *forum non conveniens* analysis to what was the plaintiff's *second* choice of forum" (Emphasis in original.), not zero deference, when the plaintiff is foreign to the chosen forum. *Fennell*, 2012 IL 113812, ¶¶ 18, 25. We note that two of the plaintiffs are not foreign to Will County, the plaintiffs chosen forum. Further, we cannot say that the circuit court gave more than "diminished deference" to plaintiffs' second choice of forum when after considering the relevant private and public interest factors, it found that the factors do not strongly favor transferring the case to DuPage County.

¶ 39 Because this court must apply an abuse of discretion standard of review, the issue is not what decision we would have made if we were reviewing the case on a clean slate, but whether the circuit court acted in a way that no reasonable person would. *Fennell*, 2012 IL 113812, ¶ 21; *Ruch*, 2015 IL App (1st) 142972, ¶ 40. We find nothing unreasonable about the circuit court's decision to transfer the case to Will County. Therefore, we hold that the circuit court did not abuse its discretion when it granted the defendant's motion to transfer the

case from Cook County, gave some deference to plaintiffs' second choice of venue, and transferred the case to Will County.

¶ 40 CONCLUSION

¶ 41 In this case, after reviewing the relevant private and public interest factors, in light of the diminished deference afforded to the plaintiffs' second choice of venue, we do not find that the circuit court abused its discretion when it granted the defendant's motion to transfer the case from Cook County, but transferred the case to Will County. Accordingly, we affirm the circuit court's order transferring the case to Will County.

¶ 42 Affirmed.