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Decision filed 11/16/15. 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.

2015 IL App (5th) 150119-U

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).

NO. 5-15-0119

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JOE CLARK, MEGAN CLARK, BOB NORRIS,)	Appeal from the
and TOM GALL,)	Circuit Court of
)	St. Clair County.
Plaintiffs-Appellees,)	
)	
v.)	No. 12-L-111
)	
TOSH PORK, LLC, DYKHUIS FARMS, LLC,)	
and SILVER CREEK PIG, INC.,)	
)	
Defendants-Appellants)	
)	Honorable
(Fragrant 40, LLC, Jeff Seabaugh, and Alan)	Vincent J. Lopinot,
Investments, Inc., Defendants).)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Stewart and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court abused its discretion in denying the defendants' motion to transfer, based on the doctrine of *forum non conveniens*, the plaintiff's complaint for nuisance, continuing trespass, and negligent operation of a swine facility because all relevant factors, but especially the public-interest factors, strongly favor transfer to the county where the alleged nuisance, as well as all affected property, is located.

¶ 2 The defendants, Tosh Pork, LLC, Dykhuis Farms, LLC, and Silver Creek Pig, Inc., appeal the March 6, 2015, order of the circuit court of St. Clair County that denied

their respective motions to transfer to Macoupin County, the claims of the plaintiffs, Joe Clark, Megan Clark, Bob Norris, and Tom Gall, based on the doctrine of *forum non conveniens*. See Ill. S. Ct. R. 187 (eff. Jan. 4, 2013). For the reasons that follow, we reverse and remand with directions that the circuit court enter an order transferring this cause to Macoupin County.

¶ 3

FACTS

¶ 4 On February 28, 2012, the plaintiffs filed a complaint in the circuit court of St. Clair County, against these defendants, as well as other entities that are not parties to this appeal. The complaint alleged that the defendants own and/or operate a swine facility in Macoupin County in proximity to the plaintiffs' homes and property. Fragrant 40, LLC, the entity alleged to be the owner of the swine facility, and its registered agent, Ronald Seabaugh, were alleged to be located in St. Clair County. According to the complaint, offensive and noxious odors, particulate matter, discharges of manure and urine, flies, insects, and other emissions that frequently emanate from the defendants' swine facility have impaired the plaintiffs' ability to enjoy their property and have caused substantial damage to the plaintiffs and their quality of life. The complaint alleged causes of action for negligent operation of the facility, nuisance, and continuing trespass. The plaintiffs filed a first amended complaint on April 17, 2013, adding additional defendants who are not parties to this appeal. On August 14, 2013, the plaintiffs filed a second amended complaint, which dismissed Ronald Seabaugh as a defendant and added other defendants.

¶ 5 On September 19, 2013, Tosh Pork filed a motion to transfer the case to Macoupin County on the basis of *forum non conveniens*. In support of its motion, Tosh Pork

attached exhibits reflecting 2011 civil case law statistics for, *inter alia*, Macoupin County and St. Clair County. According to these exhibits, in 2011, 1,894 new civil cases were filed in Macoupin County, while 14,429 new civil cases were filed in St. Clair County. In addition, the average time lapse between the time of filing law cases over \$50,000 and the time of verdict was 29.8 months in Macoupin County, and 49.2 months in St. Clair County.

¶ 6 On September 20, 2013, Dykhuis Farms filed an amended motion to transfer to Macoupin County on grounds of *forum non conveniens*. In support of its motion, Dykhuis Farms attached the affidavit of its president, Robert Dykhuis, who stated that Dykhuis Farms does not do business in St. Clair County, that it has no agents, employees, or other offices in St. Clair County, and that it does not own or lease any property in St. Clair County. Silver Creek Pig joined in both motions on October 29, 2013.

¶ 7 A review of the supporting record reveals the following regarding the current location of the current parties to this lawsuit. The four plaintiffs live in Macoupin County, and the subject swine facility is located in Macoupin County. Ronald Seabaugh was a St. Clair County resident and served as registered agent for Fragrant 40 when the plaintiffs' initial complaint was filed. However, the plaintiffs voluntarily dismissed Ronald Seabaugh, and he ceased serving as Fragrant 40's registered agent prior to Tosh Pork being added as a defendant. Fragrant 40's current registered agent resides in Sangamon County, and its principal place of business is in Greene County. Jeff Seabaugh, the operator of the swine facility, resides in Montgomery County. Silver

Creek Pig is a Missouri corporation, whose registered agent is located in Hancock County. The registered agent for Alan Investments is located in Logan County.

¶ 8 After hearing arguments on the motions to transfer, the circuit court entered an order on December 9, 2013, denying the motions to transfer but did not include a *forum non conveniens* analysis or findings in its decision. On January 10, 2014, Tosh Pork filed an interlocutory petition for leave to appeal under Illinois Supreme Court Rule 306(a)(2) (eff. Feb. 16, 2011). Dykhuis Farms joined in the petition, and we allowed it on February 20, 2014. On November 12, 2014, this court entered an order vacating the circuit court's judgment and remanding with directions that the circuit court enter into the record express findings regarding the *forum non conveniens* factors. *Clark v. Tosh Pork, LLC*, 2014 IL App (5th) 140007-U.

¶ 9 On remand, the circuit court entered an order on March 6, 2015, detailing its findings as to the relevant *forum non conveniens* factors in support of its decision to deny the motions to transfer. The specifics of the circuit court's findings will be outlined in the analysis section of this order. On April 6, 2015, Tosh Pork, Dykhuis Farms, and Silver Creek Pig filed another petition for leave to appeal under Illinois Supreme Court Rule 306(a)(2) (eff. Feb. 16, 2011). We allowed the petition on May 14, 2015.

¶ 10 ANALYSIS

¶ 11 The circuit court has broad discretion when deciding a motion based on *forum non conveniens*, and its ruling will not be overturned unless the circuit court abused its discretion. *Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217, 223 (1987). The circuit court abuses its discretion if it acts arbitrarily, fails to employ conscientious judgment, or

ignores recognized legal principles. *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 336 (1994). In resolving *forum non conveniens* questions, the circuit court must balance private-interest factors affecting the convenience of the parties and public-interest factors affecting the administration of the court. *Bland*, 116 Ill. 2d at 223-24. Private-interest factors include: (1) the convenience of the parties; (2) the relative ease of access to testimonial, documentary, and real evidence; (3) the availability of compulsory process over unwilling witnesses; (4) the cost to obtain willing witnesses' attendance; (5) the possibility of viewing the premises; and (6) all other practical considerations that make a trial easy, expeditious, and inexpensive. *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 15. Public-interest factors to be considered 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; and (3) the policy that local interests should be decided locally. *Id.* ¶ 16; *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 443-44 (2006).

¶ 12 The circuit court should grant the motion to transfer if the defendants establish that the relevant factors strongly favor transfer from the plaintiff's chosen forum. Although the plaintiff's chosen forum should be given deference, 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 is accorded less deference. *Fennell*, 2012 IL 113812, ¶ 18. With these principles in mind, we review the circuit court's analysis of the relevant factors to determine whether it abused its discretion.

¶ 13 As to the convenience of the parties, the circuit court found that it is more convenient to the defendants to have this case heard in St. Clair County, due in part to the ease of air travel and its convenient proximity to Lambert International Airport in St. Louis, Missouri. The circuit court found that the defendants had not identified any other parties or witnesses who are located in Macoupin County other than the plaintiffs. Finally, the circuit court found that the defendants have failed to show that Macoupin County is more convenient to all parties. This analysis fails to acknowledge that no party resides in St. Clair County, and each defendant's residence in Illinois is located in closer proximity to Macoupin County than St. Clair County. Jeff Seabaugh, the operator of the swine facility at issue, resides in Montgomery County, which is located in close proximity to Macoupin County. The other defendants have registered agents in Greene County, Sangamon County, Logan County, and Hancock County, all of which are closer in proximity to Macoupin County than St. Clair County. We find that the circuit court failed to take these facts into account when analyzing the convenience of the parties.

¶ 14 As to the ease of access to testimonial, documentary, and real evidence, the circuit court found that this factor would not warrant transferring the case to Macoupin County, as much of the testimonial and documentary evidence could easily be given in St. Clair County. In drawing this conclusion, the circuit court fails to acknowledge that the subject swine facility, as well as all allegedly affected property, is located in Macoupin County. It is easy to contemplate that many witnesses and much of the documentary evidence concerning the condition of the properties will be more readily available in Macoupin County. Also, it appears that no witness or evidence is located in St. Clair County, which

has absolutely no connection with this case other than the fact that one of the defendants had a registered agent located there at the time that this case was filed. We find that the circuit court failed to take these factors into account in its analysis as well.

¶ 15 Although we agree with the circuit court that the availability of compulsory process over unwilling witnesses and the cost of obtaining the attendance of willing witnesses are not significant factors in this case, we find that the circuit court's unwillingness to evaluate the factor regarding the possibility of viewing the premises in favor of transfer is an indication of an arbitrary analysis in favor of the plaintiffs. It is obvious that this factor weighs in the favor of the defendants. A site visit very well may come into play and would undoubtedly be more convenient from Macoupin County, where all affected properties are located.

¶ 16 Although we find some indication of an abuse of discretion in the circuit court's evaluation of the private-interest factors in this case, it is the circuit court's evaluation of the public-interest factors that lead us to conclude that the circuit court's order must be reversed and this cause remanded with directions that the circuit court enter an order transferring it to Macoupin County. With regard to the relative congestion of the dockets in Macoupin County versus St. Clair County, although the court congestion factor, by itself, is relatively insignificant, it is well established that it is an appropriate consideration. *Fennell*, 2012 IL 113812, ¶ 43 (citing *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 181 (2003)). As in *Fennell*, the defendants presented statistical data indicating that the docket of St. Clair County is more congested than that of Macoupin County, but added data to indicate the speed of disposition as well, which the defendants

failed to provide in *Fennell*. *Id.* In any event, a conscientious evaluation of this factor, considering the origin of this lawsuit lies in Macoupin County, should result in, at the very least, slightly favoring Macoupin County. As in *Fennell*, however, it is the remaining public-interest factors that weigh so heavily in favor of Macoupin County as the appropriate forum in this case that we conclude it was an abuse of discretion to deny the motions to transfer.

¶ 17 The circuit court found that there was no unfairness in imposing jury duty upon St. Clair County residents and that the citizens of St. Clair County have an interest in deciding this case because a St. Clair County resident, Fragrant 40, LLC, is a St. Clair County citizen. The fact that Fragrant 40, LLC, had a registered agent in St. Clair County was the only basis upon which venue was proper in St. Clair County. Our supreme court has emphasized that a *forum non conveniens* motion causes a court to look beyond the criteria of venue when it considers the relative convenience of a forum. *Id.* ¶ 47. The circuit court failed to do so here.

¶ 18 This case is based on an alleged nuisance and trespass, along with the alleged negligent operation of a swine facility in Macoupin County, where all of the property interests involved are situated in Macoupin County. Our supreme court has repeatedly recognized the uniquely local interests involved in considering the merits of such a case. See *Gardner v. International Shoe Co.*, 386 Ill. 418, 485-86 (1944); see also *People v. City of St. Louis*, 10 Ill. 351, 365-66 (1848). In such cases, an amount of odor might amount to a nuisance in one locality, but under different circumstances in another locality might be entirely proper and unobjectionable. *Gardner*, 386 Ill. at 485-86. Here, the

plaintiffs seek to have a St. Clair County jury balance the property interests between a swine facility and other property owners in Macoupin County, the exact type of situation that the supreme court was describing in *Gardner*. We cannot conceive of many situations where the interest in having local interests determined locally would be greater than in a case such as this. The Macoupin County residents have a strong interest in balancing the interests of farming and enjoyment of neighboring property in Macoupin County. Because of the uniquely local character of the causes of action at issue, the only reasonable analysis of the public-interest factors involving the burden of jury duty and the interests of the local community in deciding local interests locally results in a clear finding that these factors overwhelmingly favor Macoupin County.

¶ 19 In sum, the weight of the private-interest factors favors Macoupin County, and the weight of the public-interest factors overwhelmingly favors Macoupin County. Further, the deference to the plaintiffs' choice of forum is significantly lessened because the plaintiffs do not reside in St. Clair County and this uniquely local cause of action has no connection to St. Clair County. Accordingly, we find that the circuit court abused its discretion in denying the motions to transfer. See *Fennell*, 2012 IL 113812, ¶¶48-49.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we reverse the March 6, 2015, order of the circuit court of St. Clair County, which denied the defendants' motion to transfer this cause to Macoupin County, and remand with directions that the circuit court enter an order transferring this case to Macoupin County.

¶ 22 Reversed and remanded with directions.