

NOTICE
Decision filed 12/28/16. 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.

2016 IL App (5th) 140265-U

NO. 5-14-0265

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).

WILLIAM E. LOUCKS and DANITA LOUCKS,)	Appeal from the
)	Circuit Court of
Plaintiffs-Respondents,)	St. Clair County.
)	
v.)	No. 13-L-365
)	
RED DOT CONSTRUCTION AND EQUIPMENT)	
RENTALS, INC., and KURT SCHROEDER,)	Honorable
)	Andrew J. Gleeson,
Defendants-Petitioners.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in denying the defendants' motion to transfer the case from St. Clair County to Randolph County based on improper venue where the accident occurred in Randolph County, the individual defendant resided in Randolph County, the corporate defendant had its registered office in Randolph County, the corporate defendant had no offices in St. Clair County, and the corporate defendant was not "doing business" in St. Clair County under the general venue provisions in the Illinois Code of Civil Procedure (735 ILCS 5/2-101, 2-102(a) (West 2012)).

¶ 2 The defendants, Red Dot Construction and Equipment Rentals, Inc. (Red Dot), and Kurt Schroeder, filed a petition for leave to appeal from an order of the circuit court of St. Clair County, denying their amended motion to transfer this case to Randolph

County on grounds of improper venue, and alternatively, *forum non conveniens*. The petition was filed pursuant to Illinois Supreme Court Rule 306 (eff. Feb. 16, 2011). We granted the petition, and for reasons that follow, we now reverse the circuit court's order denying the defendants' motion to transfer, and remand the case with directions.

¶ 3 On July 15, 2011, William E. Loucks was driving his vehicle north on State Route 150, near Briar Hill Road, when he came up behind a truck and attached trailer. The truck and trailer were owned by Red Dot, and the truck was being driven by Kurt Schroeder, the president of Red Dot. Loucks decided to pass the truck. He guided his vehicle into the southbound lane of Route 150, but then reconsidered. As Loucks was steering his vehicle back into the northbound lane, the truck was slowing down to make a right turn. The front of Loucks' vehicle collided with the rear of the trailer, and Loucks' vehicle left the roadway. Loucks suffered severe injuries in the accident.

¶ 4 On July 12, 2013, the plaintiffs, William Loucks and his wife, Danita Loucks, filed a negligence action against Red Dot and Schroeder in the circuit court of St. Clair County. They alleged that Schroeder, individually, and as the agent of Red Dot, failed to timely activate his turn signal, and/or failed to activate his brake lights, and that Schroeder's negligence was the proximate cause of the accident and resulting injuries.

¶ 5 In August 2013, the defendants filed a motion to transfer the case from St. Clair County to Randolph County on grounds of improper venue, and alternatively, *forum non conveniens*. The defendants argued that venue was improper in St. Clair County because the accident did not occur in St. Clair County, and because the defendants neither resided in nor conducted their usual and customary business in St. Clair County. The defendants

claimed that Randolph County provided a proper venue and a more convenient forum for the case because all parties resided in or were doing business in Randolph County, the accident occurred in Randolph County, the investigating police officer was in Randolph County, and St. Clair County had no connection with the case. A supporting affidavit from Kurt Schroeder, dated August 19, 2013, was attached to the motion to transfer. In the affidavit, Schroeder stated that he resides in Randolph County and that he is the president of Red Dot. Schroeder further stated that Red Dot has its registered office in Randolph County, that Red Dot has no offices in St. Clair County, and that Red Dot does not do business in St. Clair County. The defendants' motion to transfer had been scheduled for a hearing, but the court continued the matter to allow the plaintiffs to conduct discovery on the venue and *forum non conveniens* issues.

¶ 6 On April 2, 2014, the plaintiffs filed a memorandum in opposition to the defendants' motion to transfer. In the memorandum, the plaintiffs argued that the defendants had the burden to prove that the chosen venue was improper, and that the defendants failed to set forth sufficient facts to establish that Red Dot does not do business in St. Clair County. The plaintiffs claimed that Schroeder's affidavit provided no support for the defendants' motion to transfer because it contained conclusions rather than facts. The plaintiffs also cited to certain statements that Schroeder made during his discovery deposition on February 25, 2014, in support of their contention that the defendants failed to establish a clear right to a transfer of the case to Randolph County. It is not clear whether the plaintiffs attached the actual pages from the discovery deposition for the circuit court's benefit. Based on the plaintiffs' memorandum, Schroeder testified

or admitted the following: that Red Dot has done business in St. Clair County, and that he would have to talk to the bookkeeper and accountant to determine the extent of the business; that Red Dot rented out equipment in St. Clair County; that he could not say which businesses in St. Clair County Red Dot works with because he does not know the boundaries; that Red Dot rented equipment and purchased parts in St. Clair County; that Red Dot's vehicles operated in St. Clair County to pick up and drop off goods, and that he did not review invoices, records, or maps before he signed his affidavit.

¶ 7 On that same date, the defendants filed an amended motion to transfer the case based on improper venue, and alternatively, *forum non conveniens*. In support of the motion, the defendants attached Schroeder's initial affidavit, dated August 19, 2013, several pages from Schroeder's discovery deposition taken February 25, 2014, and a supplemental affidavit from Schroeder, dated March 31, 2014.

¶ 8 During the deposition, Schroeder stated that Red Dot had never done much work in St. Clair County. He testified that Red Dot did not do any construction work in St. Clair County from six months prior to the accident through the date of his deposition. Schroeder recalled that Red Dot had a construction project at Scott Air Force Base in the 1990s, but had not done much work in St. Clair County since then. Schroeder also recalled that Red Dot had done a lot of crane rentals before his father died in 1990, but did not do many rentals after his father's death. Schroeder noted that Red Dot occasionally purchases parts for its two backhoes from a supplier in St. Clair County, but he stated that Red Dot's main supplier for equipment parts is a dealer in Mt. Vernon, Illinois. Schroeder also noted that Red Dot's vehicles occasionally travel through St.

Clair County to pick up parts or materials. Schroeder testified that most of Red Dot's construction work is in Randolph, Perry, and Jackson counties, and that most of its vendors are located in those counties or in St. Louis, Missouri. Schroeder stated that he was unclear about the precise boundaries of St. Clair County, and because of that, it would be difficult to say whether Red Dot had done other construction work within its boundaries. Schroeder testified that to his knowledge, Red Dot has not done any construction work in St. Clair County from six months prior to the accident through the date of his deposition.

¶ 9 In the supplemental affidavit, Schroeder acknowledged that at the time of his deposition, he was unsure of the exact boundaries of St. Clair County, and which municipalities were within its boundaries. Schroeder stated that he reviewed a map of St. Clair County following his deposition, and that having done so, he could confirm that Red Dot was not doing any work projects in St. Clair County at the time of the accident, and that Red Dot had not done any work projects in St. Clair County since the accident.

¶ 10 The defendants' motion to transfer was called for hearing on May 13, 2014. Following the arguments of counsel, the circuit court denied the defendants' motion to transfer on grounds of improper venue and *forum non conveniens*. We granted the defendants' petition for leave to appeal and now consider whether the court erred in denying the defendants' motion to transfer.

¶ 11 Proper venue is an important statutory privilege. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154, 839 N.E.2d 524, 531 (2005). A defendant has the burden to prove that the plaintiff's venue selection is improper. *Weaver v. Midwest Towing, Inc.*, 116 Ill.

2d 279, 285, 507 N.E.2d 838, 840 (1987). To meet its burden, a defendant must set out specific facts, by affidavit or other evidence, to show venue is not proper in the chosen forum. *Weaver*, 116 Ill. 2d at 285, 507 N.E.2d at 840. Any doubts arising from the inadequacy of the record will be resolved against the defendant. *Weaver*, 116 Ill. 2d at 285, 507 N.E.2d at 840.

¶ 12 The determination of proper venue raises questions of fact and law, and so it necessarily requires a trial court to rule on the legal effect of its factual findings. *Corral*, 217 Ill. 2d at 153-54, 839 N.E.2d at 530. The court's findings of fact are reviewed under the manifest weight of the evidence standard, and its conclusions of law are reviewed *de novo*. *Corral*, 217 Ill. 2d at 154, 839 N.E.2d at 530.

¶ 13 The general venue provisions are found in section 2-101 of the Code of Civil Procedure (Code) (735 ILCS 5/2-101 (West 2012)). Section 2-101 states that except as otherwise provided, every cause of action must be commenced "(1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, 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). Section 2-102(a) of the Code states that any private corporation organized under Illinois law is a resident of any county in which it has a registered office or other office or is doing business. 735 ILCS 5/2-102(a) (West 2012).

¶ 14 In this case, it is undisputed that the accident took place in Randolph County, that defendant Schroeder resides in Randolph County, that defendant Red Dot has its

registered office in Randolph County, and that Red Dot has no offices in St. Clair County. As such, venue in St. Clair County is proper only if Red Dot was "doing business" in St. Clair County at the time the suit was commenced. 735 ILCS 5/2-101, 2-102(a) (West 2012).

¶ 15 In the context of our venue provisions, "doing business" requires more than the "minimum contacts" required to subject a defendant to the jurisdiction of the courts in Illinois. *Baltimore & Ohio R.R. Co. v. Mosele*, 67 Ill. 2d 321, 328, 368 N.E.2d 88, 91 (1977). The test is whether the defendant is conducting its usual and customary business within the county in which venue is sought. *Stambaugh v. International Harvester Co.*, 102 Ill. 2d 250, 258, 464 N.E.2d 1011, 1014 (1984); *Mosele*, 67 Ill. 2d at 329-30, 368 N.E.2d at 92. In making that determination, a relevant consideration is the quantity or volume of business done by a company in a county as compared to the amount of business generated by the company as a whole, or throughout the State of Illinois. *Stambaugh*, 102 Ill. 2d at 258, 464 N.E.2d at 1014; *Bucklew v. G.D. Searle & Co.*, 138 Ill. 2d 282, 292, 562 N.E.2d 186, 191 (1990).

¶ 16 After reviewing the record, we find that Red Dot presented sufficient evidence to meet its burden to show that it was not doing its usual and customary business within St. Clair County. Red Dot is a small construction business with its registered office in Randolph County. Red Dot has no offices in St. Clair County. Red Dot's president, Kurt Schroeder, testified that Red Dot had never done much work in St. Clair County, and that Red Dot had not done any construction work in St. Clair County during the period from six months prior to the accident through the date of his deposition. During his deposition,

Schroeder readily admitted that he was unsure about the precise boundaries of St. Clair County. In the supplemental affidavit, Schroeder stated that he reviewed a map of St. Clair County after his deposition, and that having done so, he was able to confirm that Red Dot had not been doing any construction work in St. Clair County at the time of the accident and thereafter. Schroeder acknowledged that Red Dot occasionally purchases parts for two Case backhoes from a supplier in St. Clair County, but stated that his primary supplier is in Mt. Vernon, Illinois. He also acknowledged that Red Dot's vehicles occasionally travel through St. Clair County to pick up parts and materials. In our view, the occasional purchase of parts from a supplier in St. Clair County, and the act of driving through St. Clair County to pick up materials are activities that are incidental, rather than integral to Red Dot's business. *Gardner v. International Harvester Co.*, 113 Ill. 2d 535, 541, 499 N.E.2d 430, 432-33 (1986); *Mosele*, 67 Ill. 2d at 334, 368 N.E.2d at 94. In other words, these activities are not sufficient to constitute doing business for venue purposes.

¶ 17 The plaintiffs maintain that the defendants have not met their burden to show that venue was not proper in St. Clair County. They argue that Schroeder's initial affidavit contains legal conclusions rather than facts, and that at the time of his deposition, Schroeder was unsure of St. Clair County's boundaries, and could not testify with certainty that Red Dot was not doing construction work or transacting business within St. Clair County. They conclude that Schroeder's affidavits and testimony are not credible, and do not provide adequate facts to prove that venue is improper in St. Clair County. We do not agree. When Schroeder's affidavits and his deposition testimony are

considered together and in context, his testimony is sufficient to establish that Red Dot was not doing its usual and customary business in St. Clair County. We pause here to note that the plaintiffs relied exclusively on their arguments challenging the weight to be given to Schroeder's affidavits and deposition testimony. The plaintiffs did not offer any affidavits, admissions, or documents to rebut Schroeder's testimony, despite being granted leave to conduct discovery on the venue issues. In this case, the defendants set out specific facts to show that venue did not lie in the plaintiffs' chosen forum, and the plaintiffs presented no evidence to rebut Schroeder's testimony.

¶ 18 After reviewing the record, we conclude that the defendants met their burden to show that Red Dot was not "doing business" in St. Clair County for venue purposes. Accordingly, we find that the circuit court erred when it denied the defendants' motion to transfer this case to Randolph County based on improper venue. Given our disposition of the venue issue, we have no occasion to consider whether the court erred in denying the defendants' motion to transfer under the doctrine of *forum non conveniens*.

¶ 19 Accordingly, the circuit court's order denying the defendants' motion to transfer based on improper venue is hereby reversed, and the cause is remanded to the circuit court with directions to enter an order granting the defendants' motion to transfer this case to the circuit court of Randolph County.

¶ 20 Reversed and remanded with directions.