2017 IL App (5th) 150455-U

NO. 5-15-0455

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MELISSA YARBER, Special Administrator of the Estate of Logan Steven Adams, Deceased,	)	Appeal from the Circuit Court of St. Clair County.
Plaintiff-Appellee,	)	
v.	)	No. 14-L-629
JESSICA R. PATTON,	)	
Defendant-Appellant,	)	
and	)	
BRANDON ADAMS,	)	Honorable Randall W. Kelley,
Defendant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Trial court's judgment is vacated, and remanded with directions, for failure to specify findings, either in oral or written form, pertaining to defendant's motion to transfer on the grounds of intrastate *forum non conveniens*.

¶ 2 Plaintiff, Melissa Yarber, acting as special administrator of the estate of Logan Steven Adams, deceased, filed suit in St. Clair County, Illinois, against defendants, Jessica R. Patton and Brandon Adams. Plaintiff is the mother of the deceased and

defendant Adams is the father of the deceased. Plaintiff and Adams were never married, but had two children together, one of them being the decedent. The decedent was 4½ years of age at the time of his death. He was struck and killed by a vehicle, driven by defendant Patton, at approximately 4:20 p.m. on June 29, 2014, in West Frankfort, Franklin County, Illinois. Patton was driving her vehicle on one of the town's roadways, proceeding slowly through a group of children who had separated and gone on both sides of the street. The decedent apparently crossed from west to east, and entered the path of Patton's vehicle. The front of her vehicle struck the child, causing a fatal injury.

¶ 3 Prior to the day of the accident, Adams took the decedent and his seven-year-old sister to Buckner, located in Franklin County, Illinois. They traveled to Buckner with Adams' girlfriend/fiancée and her four children, and stayed with her family for a few days. On June 29, they traveled to visit Adams' brother in West Frankfort to attend a birthday party for another family member. Near the time of the accident, Adams and his brother were in the kitchen preparing meat for a barbeque. The wife of Adams' brother decided to give all the children a snack. As she was handing out the snacks, all eight children, ranging from ages 4 to 11, ran out of the house before anyone could stop them. The wife put away the remaining snacks and intended to go outside after the children, accompanied by Adams' girlfriend. Before any of the adults made it outside, however, the children came running back, and reported that decedent had been hit by a vehicle. Adams testified that he was unaware that the decedent had gone outside, or that the decedent had been in the roadway at the time of the accident.

¶ 4 Numerous first responders, all from Franklin County, came to the scene of the accident. The decedent was pronounced dead at the scene by the Franklin County coroner, and the death was ruled to be accidental. The accident was subsequently investigated and reconstructed by the Franklin County sheriff's office.

¶ 5 On September 9, 2014, plaintiff, a resident of St. Clair County, filed suit in St. Clair County against defendants Patton and Adams. Defendant Patton, a resident of Franklin County, timely filed a motion to transfer venue from St. Clair County to Franklin County, the scene of the accident. She also filed a timely motion to transfer venue based on intrastate *forum non conveniens*. Her motions were supported by numerous affidavits from those that were first responders to the accident who indicated that they would be greatly inconvenienced if they were required to travel to St. Clair County to testify. They further averred that traveling to St. Clair County would be disruptive to the orderly administration of services to be provided to the citizens of Franklin County.

¶ 6 Plaintiff subsequently filed a first amended complaint. Her original complaint charged Adams with negligent supervision of the decedent. In her amended complaint, plaintiff added another count charging Adams with willful and wanton failure to supervise the decedent. Adams was alleged to be a resident of St. Clair County. Although Adams had no permanent address, he generally stayed at various places in the Belleville area with friends and family. He was not employed, and did not pay child support for his surviving daughter. After hearing arguments on Patton's motions, the court denied them both on September 30, 2015. While the court gave reasons for its

ruling denying the motion to transfer venue, the court did not include any specific *forum non conveniens* analysis or findings in its decision.

¶ 7 Patton first argues on appeal that the court erred in denying her motion to transfer venue because defendant Adams was not joined in good faith within the meaning of the venue statute. The venue statute, section 2-101 of the Code of Civil Procedure (735 ILCS 5/2-101 (West 2014)), provides:

> "[E]very 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."

¶ 8 Adams is being sued for negligent and willful and wanton supervision of his deceased son. Patton argues that any cause of action for negligent supervision grows directly out of parental supervision and the parent-child relationship, and is therefore barred by the doctrine of parent-child immunity. See *Cates v. Cates*, 156 Ill. 2d 76, 619 N.E.2d 715 (1993) (immunity afforded to conduct inherent to parent-child relationship). She further contends that, in an effort to avoid immunity, plaintiff amended her complaint charging Adams with willful and wanton supervision, conduct which falls outside the immunity doctrine. Patton points out, however, there are no facts in the complaint or record which would establish Adams' conduct as being willful and wanton. She also points out that Adams is basically homeless, and has no permanent address in St. Clair County. He also has no employment or insurance coverage. She believes that Adams

was not joined in good faith, as required by statute, and that he was joined solely for the purpose of fixing venue in St. Clair County.

¶ 9 In general, the negligent supervision of a child falls within the realm of conduct included in the parent-child relationship. See *Hartigan v. Beery*, 128 Ill. App. 3d 195, 198-99, 470 N.E.2d 571, 573 (1984). When the family relationship is dissolved by death, however, the policy basis for the immunity doctrine ceases to exist as well. See *Johnson v. Myers*, 2 Ill. App. 3d 844, 846, 277 N.E.2d 778, 779 (1972). While the immunity doctrine operates as a bar to prevent a parent representative of a deceased child's estate from maintaining a wrongful death action against a parent/spouse tortfeasor, the basis for upholding the immunity despite the death of the child is to prevent the tortfeasor parent from sharing in any benefits which might inure to the tortfeasor because of the marriage between the two parents. See *Lawber v. Doil*, 191 Ill. App. 3d 323, 547 N.E.2d 752 (1989). Here the parents are not married. Adams therefore cannot share in any benefits which plaintiff might acquire as a result of her son's death. It would appear therefore that the parental immunity doctrine is inapplicable in this situation, and that venue in St. Clair County is proper. Moreover, even defendant Patton places responsibility for the accident upon the shoulders of the adult who was supposed to be supervising the decedent at the time of the incident, namely Adams, thereby establishing that plaintiff joined Adams in good faith.

¶ 10 The issue of *forum non conveniens* presents a different matter. The doctrine of *forum non conveniens* allows a court to decline jurisdiction of a case, even though it may have proper jurisdiction over the subject matter and the parties, if it appears that another

forum can better serve the convenience of the parties and the ends of justice. *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 12, 987 N.E.2d 355. In resolving *forum non conveniens* questions, the court must balance private-interest factors affecting the convenience of the parties and public-interest factors affecting the administration of justice. *Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217, 223-24, 506 N.E.2d 1291, 1294 (1987). When weighing all of these factors, the court may not emphasize one factor over another but instead must consider the totality of the circumstances. *Fennell*, 2012 IL 113812, ¶ 17, 987 N.E.2d 355. A trial court has broad discretion when deciding a motion based on *forum non conveniens*, and its ruling will be overturned only for an abuse of discretion. *Bland*, 116 Ill. 2d at 223, 506 N.E.2d at 1293. Accordingly the remaining issue is whether the trial court abused its discretion in denying the motion to transfer based on the doctrine of *forum non conveniens*.

¶ 11 In its written order, the trial court failed to include any discussion or findings regarding the private- and public-interest factors involved in a *forum non conveniens* analysis, nor did it address the factors at the hearing. Although a court's failure to provide an adequate analysis will not always be a basis for reversal, we believe that judicial economy in this case is best served by having the trial court provide the parties, as well as the reviewing court, with its analysis of the relevant factors used to deny Patton's motion. Our supreme court has cautioned circuit courts to "include *all* of the relevant private[-] and public[-]interest factors in their analyses" (emphasis in original) (*Fennell*, 2012 IL 113812, ¶ 24, 987 N.E.2d 355), as the court's exercise of its discretion cannot be reviewed adequately when the record is devoid of any discussion regarding

these *forum non conveniens* factors (see *Fennell*, 2012 IL 113812, ¶ 75, 987 N.E.2d 355 (Kilbride, C.J., dissenting upon denial of rehearing)). This court has recently urged litigants to be more diligent in creating an adequate record, and in doing so, has reminded parties that they bear some responsibility to aid the trial court in issuing its orders. See *Decker v. Union Pacific R.R. Co.*, 2016 IL App (5th) 150116, ¶ 50, 56 N.E.3d 1121. Because the court failed to include any analysis or findings pertaining to the *forum non conveniens* factors, we believe the proper remedy is to remand this cause to the trial court for further proceedings to allow the parties and the court the opportunity to make an adequate record regarding the decision to deny Patton's motion for transfer.

¶ 12 For the reasons stated, we vacate the judgment of the circuit court of St. Clair County and remand the cause to the circuit court to include in the record express findings and analysis of the *forum non conveniens* factors.

¶ 13 Vacated and remanded with directions.