2018 IL App (1st) 170313-U
Order filed: June 1, 2018

FIRST DISTRICT
FIFTH DIVISION

No. 1-17-0313

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RONALD KRONENBERGER, as Independent Executor the Estate of Geraldine Kronenberger, Deceased, Plaintiff-Appellee, v. HELIA SOUTHBELT HEALTHCARE, LLC, an Illinois Limited Liability Company d/b/a Helia Southbelt Healthcare; BRIDGEMARK HEALTHCARE, LLC, an Illinois Limited Liability Company; ROSEWOOD CARE CENTER, INC. OF SWANSEA, an Illinois Limited Liability Corporation d/b/a Rosewood Care Center Swansea; and HSM MANAGEMENT SERVICES, INC., an Illinois Corporation, Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 16 L 3727 Honorable Larry G. Axelrod, Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Reyes and Justice Hall concurred in the judgment.

ORDER

¶ 1 ***Held***: Where plaintiff-appellee did not reside in Cook County, the alleged incidents occurred in St. Clair County, the decedent had resided in St. Clair County, and the other relevant private and public interest factors weighed in favor of transfer of this suit to St. Clair County, that county represented a substantially more convenient forum than the chosen forum of Cook County. Therefore, we reverse

the denial of the motions of defendants-appellants to transfer on *forum non conveniens* grounds.

¶ 2 Plaintiff-appellee, Ronald Kronenberger, as independent executor of the estate of his mother, Geraldine Kronenberger (the decedent), filed this wrongful death and survival action in the circuit court of Cook County against defendants-appellants, Helia Southbelt Healthcare, LLC d/b/a Helia Southwest Healthcare (Helia LLC), Rosewood Care Center Inc. of Swansea d/b/a Rosewood Care Center Swansea (Rosewood Inc.), Bridgemark HealthCare, LLC, (Bridgemark), and HSM Management Services, Inc. (HSM). Plaintiff alleged that defendants were negligent and violated the Illinois Nursing Home Care Act (210 ILCS 45/1-101 *et seq*. (West 2014)) (Act) in caring for the decedent during her stays at their long-term care facilities, located in St. Clair County, Illinois. Defendants moved to transfer the action to St. Clair County on *forum non conveniens* grounds, and the circuit court denied their motions. Defendants have appealed pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. July 1, 2017). We reverse, after finding that plaintiff's choice of forum was entitled to less deference and that the relevant public and private interest factors strongly weighed in favor of transfer to St. Clair County.

¶ 3 I. BACKGROUND

¶ 4 Helia LLC is the licensee of a long-term care facility located in Belleville, St. Clair County, Illinois. Helia LLC was operated and managed by Bridgemark. Rosewood Inc. is the licensee of a long-term care center located in Swansea, St. Clair County, Illinois. Rosewood Inc. was operated and managed by HSM. The decedent, who was born on June 8, 1930, resided at Helia LLC from January 15, 2013, to September 15, 2014. During that time, the decedent had very limited mobility and required assistance for her daily activities. While residing at Helia LLC, the decedent fell several times and suffered a fractured left hip. The decedent later resided at Rosewood Inc. from September 30, 2014, through December 3, 2014. During that time, the

decedent required assistance with her daily activities, including turning and repositioning, and treatment to prevent complications with her gastrostomy tube. While residing at Rosewood Inc., the decedent developed cellulitis, sepsis, and pneumonitis, which required her to be intubated and placed on a ventilator. She died on December 23, 2014.

¶ 5 In his April 13, 2016, complaint, plaintiff alleged that, through their employees, defendants Helia LLC and Rosewood Inc. had improperly cared for and treated the decedent while she was a resident at their facilities, and that Bridgemark and HSM had not properly managed and supervised the facilities. The complaint included counts charging each defendant with violations of the Act, and common-law negligence.

¶ 6 On May 20, 2016, Bridgemark and Helia LLC moved to transfer the action to St. Clair County, pursuant to Illinois Supreme Court Rule 187 (eff. Jan. 1, 2018), and the doctrine of intrastate *forum non conveniens*. On June 17, 2016, HSM and Rosewood Inc. filed a similar motion also requesting that the case be transferred to St. Clair County. Defendants argued that, based on the totality of the circumstances, St. Clair County was a more appropriate and convenient venue. The parties engaged in limited discovery, propounding interrogatories only as to the *forum non conveniens* issue.

¶ 7 The record reveals the following additional facts relevant to the *forum non conveniens* issue.

¶ 8 The decedent is survived by: plaintiff, a resident of St. Clair County; another son, Daryl Kronenberger, a resident of Clinton County, Illinois; and her granddaughter, Tracy Brown, who resides in St. Clair County. Both plaintiff and Daryl provided an affidavit stating that they would not be inconvenienced by traveling to Cook County for depositions or trial.

¶ 9 Helia LLC has facilities located in 13 counties in Illinois and in Missouri, but none are located in Cook County. Helia LLC's principal place of business is in Oak Park, Cook County, Illinois, and its registered agent is located in Sangamon County, Illinois. Bridgemark also has its principal office in Oak Park, Cook County, Illinois, and its registered agent is in Sangamon County.

¶ 10 The president and secretary of Rosewood Inc., n/k/a Mercy Rehab and Care Center, Inc. is located in St. Louis, Missouri, which is adjacent to St. Clair County. The registered agent for Rosewood Inc. is located in Sangamon County. At the time of the suit, Rosewood Inc. had facilities in locations throughout Northeast Illinois, including: Elgin, Inverness, Joliet, Northbrook, Rockford, and St. Charles, as well as facilities throughout Central Illinois and in the greater St. Louis metropolitan area.

¶ 11 HSM is an Illinois corporation whose registered agent resides in Sangamon County, and its president and secretary reside in St. Louis. HSM's principal place of business is located in St. Louis.

¶ 12 The decedent received medical treatment for her injuries in Belleville, St. Clair County, as well as in St. Louis and Chesterfield, Missouri. Her death occurred in St. Clair County.

¶ 13 In response to the motion to dismiss, plaintiff identified (in addition to himself and Daryl) witnesses who had "actual involvement in the case" and held positions at either Helia LLC or Rosewood Inc. at the time of the incidents. Plaintiff identified the following witnesses associated with Helia LLC: (1) Tiffany Rogers, a licensed practical nurse, who cared for the decedent when she fell on September 7, 2014, a resident of Madison County, Illinois; (2) Regina Scarbrough, formerly a quality assurance nurse for fall investigations, who investigated one or more of the decedent's falls, a resident of Clinton County, Illinois; (3) Amy Menitt, a former employee and

administrator, a resident of Monroe County, Illinois; (4) Christi Schrader, director of nursing, a resident of Randolph County, Illinois; (5) Melody Marthaler, MDS coordinator, a resident of Jefferson County, Illinois; (6) Eileen Heisel, a dietician, a resident of St. Louis, Missouri; and (7) Dr. Michelle Van Dorn, the decedent's attending physician, a resident of Clinton County, Illinois. Plaintiff also identified the following witnesses from Rosewood Inc.: (1) Brian Koontz, a former administrator of Rosewood Inc. and current administrator of Helia LLC, a resident of Madison County, Illinois; (2) Michelle Pearce, a former administrator, a resident of Macoupin County, Illinois; (3) Amber Dawn Brandt, a former physical therapy coordinator, a resident of St. Louis; and (4) Jennifer L. Camillo, a former dietary consultant, a resident of Madison County, Illinois.

¶ 14 Rosewood Inc. and HSM, in their reply brief in support of their motion, maintained that the inconvenience of plaintiffs' potential witnesses from Rosewood Inc., could be shown by comparing the distance in miles from their residences to the courthouses. Mr. Koontz resides 294 miles from the Daley Center and 19.3 miles from the St. Clair County Courthouse. Ms. Pearce resides 260 miles from the Daley Center and 47.1 miles from the St. Clair County Courthouse. Ms. Brandt lives 299 miles from the Daley Center and 16.5 miles from the St. Clair County Courthouse. Ms. Camillo lives 280 miles from the Daley Center and 29.1 miles from the St. Clair County Courthouse. Rosewood Inc. and HSM admitted that they did "not have affidavits of inconvenience" from these individuals.

¶ 15 In their reply in support of their motion, Helia LLC and HSM submitted the affidavits of the potential witnesses identified by plaintiff who were, then or now, associated with Helia LLC: Ms. Scarbrough; Ms. Schrader; Ms. Marthaler; and Mr. Koontz. Helia LLC and HSM also submitted the affidavits of individuals associated with Helia LLC who were revealed in their answers to plaintiff's *forum non conveniens* interrogatories, but not identified by plaintiff as

witnesses in his response to the motion to transfer: Jovanna Killion and Tam Gordon, both St. Clair County residents; and Chandra Miller, a resident of Madison County, which is adjacent to St. Clair County. Each individual averred that he or she "would be inconvenienced by traveling to Cook County, Illinois for trial." Helia LLC and HSM also contended that additional individuals who had knowledge or information regarding the decedent's care and were named in their answers to *forum non conveniens*, included: St. Clair County residents Renita Hall, Daniel Smith, Mary Graham, Belinda Carter, and Keith Eiler; and Madison County residents Teresa McNeese, Tiffany Rogers, and Robert Vermeulin. Helia LLC and HSM did not submit affidavits from these individuals.

¶ 16 In his response to the *forum non conveniens* motions, plaintiff submitted a 2014 court report relating to law jury verdicts. The report showed that, in Cook County, the average lapse of time between the date of filing to the date of verdict, was 37.5 months, and that the average time between the date of filing to the date of verdict in St. Clair County was 36.6 months.

¶ 17 On December 28, 2016, the circuit court, after weighing the private and public interest factors, denied defendants' motions to transfer venue. In denying the motions, the court afforded less deference to the chosen forum and then balanced the private and public-interest factors. The court found that defendants did not demonstrate that St. Clair County was a more convenient forum for all of the parties in that defendants may not assert that plaintiff is inconvenienced and defendants Helia LLC and Bridgemark have their principal places of business in Cook County. The circuit court concluded that the private-interest factors of ease of access to sources of evidence and availability of compulsory process to secure the attendance of unwilling witnesses weighed "slightly" in favor of transfer to St. Clair County. The court disregarded as inconsequential the possibility of the jury viewing the premises. Further, the court concluded

that, overall, the private interest factors did not strongly weigh in favor of transfer to St. Clair County.

¶ 18 As to the public interest factors, the circuit court first determined that administrative court congestion slightly favored transfer, while also noting that both counties are "similarly congested based on court statistics as to the average lapse of time to resolution of cases." The court also found that the unfairness of imposing jury duty upon Cook County residents did not "weigh strongly" in favor transfer. Finally, the court found that Cook County had a "local interest" in the dispute which involved "resident [d]efendants."

¶ 19 Defendants, under Illinois Supreme Court Rule 306(a)(2) (eff. Mar. 8, 2016), timely filed a petition for leave to appeal from the circuit court's denial of their motions to transfer venue pursuant to the doctrine of intrastate *forum non conveniens*. This court denied the petition on March 9, 2017, with one justice dissenting.

¶ 20 Thereafter, defendants timely filed a petition for leave to appeal in the supreme court under Illinois Supreme Court Rule 315 (eff. Mar. 15, 2016). On September 27, 2017, our supreme court issued a supervisory order directing this court to vacate the denial of defendants' petition for leave to appeal, grant the petition, and review the merits of the appeal. Pursuant to that supervisory order, we vacated the denial of defendants' petition, granted the petition, and now address the merits.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendants maintain that the circuit court erred in denying their motions to transfer this action to St. Clair County, on intrastate *forum non conveniens* grounds, where plaintiff's choice of venue should be given little deference and the public and private interest factors weigh strongly in favor of transfer.

¶ 23 The doctrine of *forum non conveniens* is an equitable remedy that "allows a circuit court to decline jurisdiction in the exceptional case where trial in another forum with proper jurisdiction and venue would better serve the ends of justice." (Internal quotation marks omitted.) *First National Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002). The doctrine has two potential applications: interstate *forum non conveniens*, and intrastate *forum non conveniens*. *Lambert v. Goodyear Tire and Rubber Co.*, 332 Ill. App. 3d 373, 377 (2002).

¶ 24 In determining whether to grant or deny a *forum non conveniens* motion, a court weighs the relevant private-interest factors affecting the convenience of the litigants and public-interest factors affecting the administration of the courts. *Guerine*, 198 Ill. 2d at 516; *Bird v. Luhr Brothers*, 334 Ill. App. 3d 1088, 1093-93 (2002). Private factors are not weighed against public factors but, rather, the circuit court must evaluate the totality of the circumstances in determining "whether the defendant has proven that the balance of the factors strongly favors transfer." *Guerine*, 198 Ill. 2d at 518.

¶ 25 Circuit courts are afforded considerable discretion in a ruling on a *forum non conveniens* motion. See *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 441-42 (2006). A decision on *forum non conveniens* will be reversed only where the circuit court abused its discretion in balancing the relevant factors such that no reasonable person would take the view adopted by the circuit court. *Id.* at 442. An abuse of discretion also occurs when a "ruling rests on an error of law." *In re Marriage of Khan*, 2014 IL App (2d) 131306, ¶ 44.

¶ 26 A. Plaintiff's Choice of Forum

¶ 27 In considering a *forum non conveniens* motion, a court begins with the premise that venue is proper and a plaintiff has a substantial interest in trying the case where the lawsuit is filed. See *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 171-73 (2003). Thus, prior to

balancing the relevant factors, a court must first determine the amount of deference to give a plaintiff's choice of forum (*Dowd v. Berndston*, 2012 IL App (1st) 122376, ¶ 27), a determination which depends on where the plaintiff resides or where the controversy occurred (*Langenhorst*, 219 Ill. 2d at 448).

¶ 28 The circuit court properly found that plaintiff's choice of Cook County as the forum here was not entitled to substantial deference where plaintiff does not reside and the incidents did not take place in Cook County. However, "the test is still whether the relevant factors viewed in their totality, strongly favor transfer to another forum." *Elling v. State Farm Mutual Automobile Insurance Co.*, 291 Ill. App. 3d 311, 318 (1997) (citing *Schoon v. Hill*, 207 Ill. App. 3d 601, 607 (1990)).

¶ 29 Before beginning our own analysis of the relevant factors, we consider defendants' argument that, by denying their motions, the circuit court "improperly permit[ted] [p]laintiff to engage in forum shopping with impunity." See *Dawdy*, 207 Ill. 2d at 174 (Citation omitted.) ("This court has acknowledged that a plaintiff, in choosing a forum, might shop for the most favorable forum."). However, it has also been recognized that " '[t]he truth of the matter is that both plaintiffs' counsel and defendants' counsel are jockeying for position by seeking a judge, jury and forum that will enable them to achieve the best possible result for their clients.' " *Guerine*, 198 Ill. 2d at 521 (quoting G. Maag, *Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis, and Proposal for Change*, 25 So. Ill. L.J. 461, 510 (2001)). In the end, fears as to forum shopping practices are to have *no* part in the *forum non conveniens* analysis and we will not further discuss this particular attack on the circuit court's decision. *Dawdy*, 207 Ill. 2d at 175.

¶ 30 B. Private-Interest factors

¶ 31 We turn to consider the relevant private-interest factors: (1) the convenience of the parties; (2) the relative ease of access to testimonial, documentary, and real evidence; (3) the availability of compulsory process to secure the attendance of unwilling witnesses; (4) the costs to secure the attendance of willing witnesses; the possibility of viewing the site where the accident occurred, if appropriate; and (5) all other practical considerations that make a trial easy, expeditious and inexpensive. *Guerine,* 198 Ill. 2d at 516.

¶ 32 As to the first private-interest factor, a movant must prove the plaintiff's chosen forum is inconvenient and that another forum is more convenient for all parties. See *Langenhorst*, 219 Ill. 2d at 448.

¶ 33 Plaintiff has submitted an affidavit which states that Cook County is not inconvenient to him. Additionally, although plaintiff does not reside in the chosen forum, defendants may not assert that the chosen forum is inconvenient to plaintiff. *Erwin ex rel. Erwin v. Motorola, Inc*., 408 Ill. App. 3d 261, 275 (2011). Two of the defendants, Helia LLC and Bridgemark, do have their principal places of business in Cook County. The choice of Cook County cannot be considered inconvenient for the corporate officials of these entities. However, as will be discussed below, the potential witnesses who were employed by Helia LLC at the long-term facility at issue all reside in or near St. Clair County. The principal place of business for Rosewood Inc. and HSM is in St. Louis, Missouri, which is adjacent to St. Clair County. Thus, it is reasonable to conclude that St. Clair County is more convenient to these two defendants. Overall, the first private-interest factor weighs in favor of a St. Clair County venue.

¶ 34 As to the second private-interest factor, other than a conclusory statement in their appellant’s brief that access to evidence would be more costly if the case proceeded in Cook County, defendants have made no substantial argument, below or on appeal, which explains how

a Cook County venue poses more of a burden as to ease of access to sources of documentary or real evidence, and this consideration has therefore been forfeited. However, we do conclude that St. Clair County provides the far more convenient venue for access to testimonial evidence.

¶ 35 Plaintiff, in his response to the motions to dismiss, contended that he and Daryl would be witnesses, and each submitted affidavits stating that Cook County was an inconvenient forum. Plaintiff, however, also identified a number of other individuals who were associated with Helia LLC and Rosewood Inc. at the time the decedent was a resident at these facilities and had involvement in the case. These potential witnesses reside in various counties in Illinois: Madison; Clinton; Monroe; Randolph; Jefferson; and Macoupin Counties, as well as St. Louis, Missouri. Additionally, the decedent received medical care both in St. Clair County, and in Missouri. Thus, plaintiff's potential witnesses are scattered across several counties in this state and in Missouri.

¶ 36 Plaintiff argues that the scattered location of the potential witnesses does not weigh heavily in favor of transfer to St. Clair County. See *Guerine*, 198 Ill. 2d at 524 (discussing the *forum non conveniens* analysis where the parties and witnesses are dispersed among several venues). It is true that, where witnesses are scattered across several counties and states, it is reasonable for a court to conclude that no one forum can be said to be more convenient. *Woodward v. Bridgestone/Firestone, Inc.*, 368 Ill. App. 3d 827, 834 (2006); *Hinshaw v. Coachmen Industries, Inc.*, 319 Ill. App. 3d 269, 277 (2001).

¶ 37 In response, defendants argue that in comparison to a St. Clair venue, the Cook County forum would be far more costly for access to witnesses because of the time and expense involved in travelling to Cook County, and the time which would be missed from work by their employees and the treating medical personnel. Rosewood Inc. and HSM did not provide affidavits of

inconvenience for those witnesses who were their employees, but showed that the distance to the Cook County courthouse, the Daley Center, was far greater for them than the distance to the St. Clair County courthouse. It is not an abuse of discretion to consider the distance of witnesses from the chosen forum, even "without affidavits from each witness stating his or her unwillingness to travel." *Koss Corp. v. Sachdeva*, 2012 IL App (1st) 120379, ¶ 107.

¶ 38 Additionally, Helia LLC and HSM provided affidavits from those individuals associated with Helia LLC who were identified by plaintiff, as well as from other individuals identified in their answers to plaintiff's interrogatories. The affidavits included the relevant distance and time to travel to Cook County for each witness, and each affiant averred that it "would be inconvenienced by travelling to Cook County, Illinois for a trial." Helia LLC and HSM also contend that there are other Helia LLC employees who were named in the answers of Helia LLC and HSM to plaintiff's interrogatories and who live in St. Clair or adjacent counties. St. Clair County would therefore be more convenient to them.

¶ 39 The witnesses are scattered across several Illinois counties and in Missouri, but their "scattered" residences are either located in St. Clair County or in areas that are adjacent to or far closer to St. Clair County than Cook County. Defendants have shown that Cook County was substantially more inconvenient to the witnesses (other than plaintiff and his brother). Thus, the second private-interest factor weighs heavily in favor of transfer to St. Clair County.

¶ 40 Turning to the third factor, we find that the availability of compulsory process does not meaningfully distinguish Cook County from St. Clair County. However, the fourth factor strongly favors St. Clair County. The care and treatment of decedent, which is the subject of this suit, occurred at two long-term care facilities located in St. Clair County. A St. Clair County jury

would have better access to the sites than would a Cook County jury. Thus, the fourth private-interest factor does weigh substantially in favor of St. Clair County.

¶ 41 As to the final factor, on the record before us there does not appear to be a significant difference between the practical expense of trying this case in Cook or St. Clair County.

¶ 42 C. Public-Interest Factors

¶ 43 We next address the relevant public-interest factors which include: (1) the interest in deciding localized controversies locally; (2) the unfairness of imposing the expense of trial and burden of jury duty on a community with little connection and/or interest in the outcome of the dispute; and (3) administrative concerns of congested dockets. *Guerine*, 198 Ill. 2d at 516-17.

¶ 44 As to the first public-interest factor, we observe that the location of the injury giving rise to the litigation is the most significant factor in giving any county a local interest. *Dawdy*, 207 Ill. 2d at 183; *Pielle*, 163 Ill. 2d at 343. Here, plaintiff's cause of action arises out of the care provided to the decedent in St. Clair County. Defendants contend that Cook County has no connection to this litigation because it is neither the plaintiff's domicile nor the situs of the incidents. Cook County does have an interest in controversies involving parties that maintain their principal places of business within its boundaries. See *Erwin*, 408 Ill. App. 3d at 282. Helia LLC and Bridgemark are located in Cook County. However, any interest Cook County has in the subject of this litigation (*i.e.*, the safe operation of long-term care facilities) is shared by St. Clair County. As the situs of the incident and as the residence of the injured party, St. Clair County has the greater interest. This public-interest factor weighs substantially in favor of transfer.

¶ 45 It is the same for the second public-interest factor, because as St. Clair County has the far greater interest in the litigation, it is much fairer to impose the expenses and burdens of trial on

the residents of that county. This second public-interest factor weighs heavily in favor of transfer.

¶ 46 As to the third public-interest factor, defendants argue that administrative concerns make St. Clair County more favorable than Cook County. The court report shows that the length of time as to the disposition of cases, in both venues, was very similar. However, court congestion is generally a "relatively insignificant factor" in the *forum non conveniens* analysis. *Guerine,* 198 Ill. 2d at 517.

¶ 47 Ultimately, the public-interest factors therefore weigh heavily in favor of transfer.

¶ 48 In sum, we conclude that defendants met their burden of showing that litigation in St. Clair County would be substantially more convenient and that administrative fairness required transfer. See *Guerine*, 198 Ill. 2d at 520. Because the balance of private- and public-interest factors strongly favors transfer of this matter to St. Clair County, we reverse the decision of the circuit court.

¶ 49 III. CONCLUSION

¶ 50 For the foregoing reasons, the judgment of the circuit court is reversed, and this cause is remanded to the circuit court of Cook County with directions to transfer the cause to St. Clair County.

¶ 51 Reversed and remanded with directions.