2019 IL App (1st) 180473-U

No. 1-18-0473

Order filed March 29, 2019

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ERIC ZINZER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 17 L 274
	)	
STEVEN HUPKE and BARRISTER INVESTIGATIONS	)	
& FILING SERVICE, INC.,	)	Honorable
	)	Kathy M. Flanagan,
Defendants-Appellants.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion by denying defendants' *forum non conveniens* motion to transfer venue from Cook County to Grundy County even though plaintiff resided in and was injured in Grundy County because defendants did not meet their burden to show that the relevant private and public interest factors strongly favored Grundy County.

¶ 2 In this negligence action that arose from an automobile accident, defendants moved to transfer the suit, which was filed in Cook County, to Grundy County under the doctrine of *forum*

non conveniens. The circuit court denied defendants' motion, and this court granted their petition for interlocutory appeal. On appeal, defendants argue that the total circumstances of this case strongly favored a transfer to Grundy County.

¶ 3 For the reasons that follow, we affirm the judgment of the circuit court.[1]

¶ 4 I. BACKGROUND

¶ 5 On March 20, 2015, plaintiff Eric Zinzer was a pedestrian when he was struck by a vehicle driven by defendant Steven Hupke. At the time of the incident, Hupke was employed as a process server by defendant Barrister Investigations & Filing Service, Inc. (Barrister) and had recently attempted to serve process on another individual at plaintiff's residence. The incident occurred at or near 9025 Queens Lane in Morris, Grundy County, Illinois, where plaintiff resided. Hupke resided in Lockport in Will County, and Barrister's office was located in Joliet in Will County. Shortly after the incident, members of the sheriff's office and fire department arrived at the scene. Plaintiff was transported to a hospital in Morris, Grundy County.

¶ 6 Plaintiff filed his negligence claim in Cook County and alleged that Hupke negligently operated his vehicle on the day of the incident and, as a result of his negligence, plaintiff was violently struck by Hupke's vehicle and suffered serious injuries. Plaintiff also alleged that Hupke failed to change the course of his vehicle, decrease its speed, or stop when he knew or should have known that plaintiff was in imminent danger, and plaintiff suffered serious injuries as a result of Hupke's willful and wanton acts or omissions. Plaintiff further alleged that Hupke was an actual or apparent agent and employee of Barrister and was acting in the course and scope of his agency or employment at the time of the incident.

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 7 Defendants filed a motion to transfer venue from Cook County to Grundy County based on the doctrine of *forum non conveniens*. The circuit court continued the matter to August 23, 2017, for a ruling on defendants' *forum non conveniens* motion. The record contains a printout of the electronic case information summary for this case, which indicates that on August 23, 2017, the case was continued for a case management conference. This printout also indicates that on August 28, 2017, the court allowed defendants' motion to transfer the venue from Cook County. The record also contains a copy of this five-page order, which shows on the fifth page that it was originally stamped as entered on August 23rd, but then an "8" is written in and superimposed over the "3" to reflect that the order was actually entered on August 28th.

¶ 8 On September 26, 2017, plaintiff filed a motion to reconsider the order granting the transfer. Defendants moved to strike this motion as untimely.

¶ 9 On November 9, 2017, the court vacated its August 28, 2017 order and set a briefing schedule on defendants' *forum non conveniens* motion. On February 9, 2018, the court denied defendants' motion, finding that they failed to meet their burden because the relevant private and public interest factors, when viewed in their totality, did not strongly favor the suggested forum of Grundy County. In considering the relevant factors, the court stated that the convenience of the parties did not favor transfer to Grundy County, noting that defendants failed to provide information on where many witnesses actually resided and gave little information about the substance of their testimony. The court found that the possibility of the jury viewing the scene favored transfer. Also, Cook County's docket was more congested than Grundy's, but Cook County was much more efficient at disposing of its great number of jury cases over $50,000 and, thus, this factor alone did not justify a transfer. And although Cook had some interest in the

litigation involving a defendant that does business in Cook, the injuries occurred in Grundy and were suffered by a resident of Grundy, so Grundy had a greater interest in the matter and thus it would be fairer to burden Grundy residents with jury duty in this matter. Moreover, plaintiff's choice of Cook as the forum was entitled to less deference because he was not a resident of Cook.

¶ 10 Defendants petitioned for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Nov. 1, 2017), and this court granted defendants' petition.

¶ 11 II. ANALYSIS

¶ 12 A. Timeliness of Plaintiff's Motion to Reconsider

¶ 13 Defendants argue that the circuit court abused its discretion by failing to strike as untimely plaintiff's motion to reconsider the court's initial decision to grant defendants' motion to transfer the venue to Grundy County. Defendants cite section 2-1203(a) of the Code of Civil Procedure (Code), 735 ILCS 5/2-1203 (West 2016), which requires a party to "file a motion for a rehearing, or retrial, or modification of the judgment or to vacate the judgment or for other relief" within 30 days after the entry of the judgment. Defendants assert that the initial order was entered and stamped on August 23, 2017, and not on August 28, 2017. In the alternative, defendants argue that if plaintiff's motion to reconsider is deemed timely, plaintiff failed to follow Rule 306(a)(2) as the proper procedural tool to contest the circuit court's original order. Finally, defendants argue that plaintiff's motion to reconsider failed to contain any newly discovered evidence that was not available at the time of the hearing.

¶ 14 Defendants' arguments lack merit. Contrary to defendants' assertions on appeal, the record establishes that the circuit court's initial order granting the motion to transfer venue was

allowed and entered on August 28, 2017 (*supra* ¶ 7), and thus plaintiff's September 26, 2017 motion to reconsider that order was timely. Because plaintiff's motion to reconsider before the circuit court was timely, plaintiff did not need to pursue a permissive appeal under Rule 306(a)(2) to challenge the order granting the motion to transfer venue. We find no abuse of discretion in the circuit court's decision to allow plaintiff's motion to reconsider the August 28, 2017 order. The purpose of a motion to reconsider includes bringing to the court's attention errors in the court's previous application of existing law. See *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140 (2004).

¶ 15 B. *Forum Non Conveniens*

¶ 16 Defendants argue that the circuit court abused its discretion when it denied their *forum non conveniens* motion to transfer venue to Grundy County because the court failed to properly evaluate and balance the private and public interest factors and failed to recognize the complete lack of connection between this litigation and Cook County.

¶ 17 According to defendants, the court gave no consideration to the location of the witnesses and the fact that nearly all of the occurrence witnesses resided or worked in Grundy. Defendants argue that a transfer to Grundy would significantly reduce the expense of securing the attendance of the willing witnesses and increase the ease of securing the attendance of the unwilling witnesses because travel to Chicago, a highly traffic-congested city, would be more time consuming and cost more for parking and gas. Defendants argue that the court improperly gave the distance between Grundy and Cook the "central emphasis" and ignored the affidavits of the first responding sheriff officers, who averred that travel to Cook would be inconvenient.

¶ 18 Defendants also argue that the court abused its discretion because it failed "to equally balance the public interest factors with the private interest factors." Defendants agree with the court's findings that (1) Grundy's docket was less congested than Cook's, (2) Grundy had an interest to locally decide a controversy that happened in Grundy and resulted in injuries to a Grundy resident, and (3) it would be fairer to impose jury duty upon the residents of Grundy; defendants, however, argue that the "court clearly placed more importance on the private interest factors over the public interest factors."

¶ 19 In determining a *forum non conveniens* motion, the sound discretion of the trial court is given great weight and is not to be reversed on appeal unless no reasonable person would take the view adopted by the trial court. *Dawdy v. Union Pacific Railroad Co.*, 207 Ill. 2d 167, 176-77 (2003). *Forum non conveniens* is an equitable doctrine "founded in considerations of fundamental fairness and sensible and effective judicial administration." *Adkins v. Chicago, Rock Island & Pacific R.R. Co.*, 54 Ill. 2d 511, 514 (1973). The doctrine of *forum non conveniens* is designed to give the courts "discretionary power which should be exercised *only in exceptional circumstances* when it has been shown that the interests of justice require a trial in a more convenient forum." (Emphasis in original, and internal quotation marks omitted.) *First American Bank v. Guerine*, 198 Ill. 2d 511, 520 (2002) (citing *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 335 (1994) and *Torres v. Walsh*, 98 Ill. 2d 338, 346 (1983)). "Essentially, it allows a trial court, which otherwise has proper jurisdiction over a cause, to decline jurisdiction and transfer it to another forum after a determination that the other forum would be better suited to hear it." *Schuster v. Richards*, 2018 IL App (1st) 171558, ¶ 20 (citing *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 12; *Ruch v. Padgett*, 2015 IL App (1st) 142972, ¶ 37). In order to disturb the

plaintiff's choice of forum, the defendant bears the burden to show that the relevant private interest factors affecting the litigants and public interest factors affecting court administration "strongly favor" the defendant's suggested forum. *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 444 (2006); *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill. 2d 101, 107 (1990). Each case is considered independently based on its respective facts, and a court must consider all relevant factors without emphasizing any one particular factor alone and must not balance the factors against each other. *Glass v. DOT Transportation, Inc.*, 393 Ill. App. 3d 829, 832 (2009); *see Langenhorst*, 219 Ill. 2d at 443-44.

¶ 20 The relevant private interest factors include "the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical considerations that make a trial easy, expeditious, and inexpensive." *Dawdy*, 207 Ill. 2d at 172. The public interest factors include "the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; the unfairness of imposing jury duty upon residents of a county with no connection to the litigation; and the interest in having local controversies decided locally." *Id.* at 173.

¶ 21 In most instances, assuming venue is proper, the plaintiff's original choice of forum will prevail so long as "the inconvenience factors attached to such forum do not greatly outweigh the plaintiff's substantial right to try the case in the chosen forum." (Internal quotation marks omitted.) *Guerine*, 198 Ill. 2d at 520. "Though the plaintiff's choice is not absolute, intrastate transfer is appropriate only when the litigation has 'no practical connection,' no nexus, with the

plaintiff's chosen forum." *Id.* at 521 (quoting *Peile*, 163 Ill. 2d at 336). "A plaintiff's right to select the forum is substantial." *Dawdy*, 207 Ill. 2d at 173. When the plaintiff's choice of forum is that of the accident site or the home forum of the plaintiff, that choice is given deference because it is reasonable to assume the choice is convenient or has the factor of deciding a local matter locally. *Id.* However, the deference given to the plaintiff's chosen forum is afforded less weight when neither the plaintiff's residence nor the site of the accident or injury is located in the chosen forum. *Guerine*, 198 Ill. 2d at 517-18. In such instances, the plaintiff's choice of forum is given *less deference*, as opposed to *no deference*. *Id.* at 518.

¶ 22 After considering both the private and public interest factors, we find that the circuit court did not abuse its discretion by concluding that defendants failed to meet their burden to show that the total circumstances of this case strongly favored a transfer from Cook County to Grundy County.

¶ 23 Although plaintiff resided in Grundy County and the incident occurred there, his choice to file suit in Cook County is still entitled to some deference.

¶ 24 Concerning the private interest factors, defendants cannot assert that plaintiff's chosen forum is inconvenient to plaintiff (*Langenhorst*, 219 Ill. 2d at 448); defendants must show that plaintiff's chosen forum is both inconvenient to defendants and another forum is more convenient to *all* parties. *Guerine*, 198 Ill. 2d at 518. Defendants provided affidavits from Hupke and Barrister's executive vice president, Ann Cochran, which listed the addresses of Hupke's residence in Lockport and Cochran's residence in Plainfield, and Cochran's work address at corporate headquarters in Joliet. All those addresses were in Will County, and Hupke and Cochran averred simply that it would be inconvenient for them to travel to Chicago to participate

in any trial of this case, although they would be available to attend such a proceeding in Grundy or Will County. However, neither affidavit provided any detail regarding why travel to Cook County would be inconvenient for them. Conversely, maps submitted by plaintiff showed that the driving distance from Hupke's and Cochran's Will County addresses to the Cook County courthouse was not much greater than the driving distance from their Will County addresses to the Grundy County courthouse. Accordingly, the convenience to the parties does not favor transferring the action from Cook to Grundy County.

¶ 25 To support their contention that the relative ease of access to sources of testimonial, documentary and real evidence favors transfer to Grundy County, defendants submitted the affidavits of two responding officers to the incident at issue, Officer Joshua Slattery and Deputy Darren Roach. These affidavits stated that the officers resided in Grundy County but neither affidavit listed the officers' residential or work addresses. The officers averred that the distance, travel time and traffic congestion would make it inconvenient for them to travel to a hearing in Chicago, but travel to Grundy County would be convenient because it was closer in proximity to their home and work. Defendants also referred to the potential witnesses listed in plaintiff's interrogatories and asserted that all these occurrence witnesses and medical providers, with the exception of one, either resided or worked in counties other than Cook. Defendants, however, provided little or no information about the actual residential or work addresses of these witnesses, no specifics regarding the substance of their testimony, and no information regarding defendants' potential witnesses aside from Hupke, Cochran, Officer Slattery, and Deputy Roach.

¶ 26 Despite these deficiencies in defendants' evidence, the circuit court considered these claims of inconvenience for witnesses and found that public transit and commuter rail systems

mitigated the cost or inconvenience of traveling to Cook County. Furthermore, plaintiff stated that although some of his medical providers' offices were in Grundy County, some providers were also located in Cook, DuPage, Will, LaSalle, and Kane Counties. Moreover, nothing in the record indicates that documentary evidence could not be produced in Cook County just as easily as in Grundy County. *Fennell*, 2012 IL 113812, ¶ 36 ("the location of documents, records and photographs has become a less significant factor in *forum non conveniens* analysis in the modern age of Internet, email, telefax, copying machines, and world-wide delivery services, since those items can now be easily copied and sent"). Accordingly, even though the particular factor concerning the possibility of the jury viewing the scene favored Grundy (see *Dawdy*, 207 Ill. 2d at 178), the ease of access to sources of evidence does not favor transfer to Grundy County.

¶ 27 In addition, the practical considerations that make a trial easy, expeditious, and inexpensive do not favor transfer from Cook to Grundy County. Both plaintiff's counsel in Hillside and defendants' counsel in Chicago are located in Cook County, which could result in reduced costs and a similar ease of access for both parties if the suit remains in Cook County. We note that the circuit court's written order erroneously indicated that defendants' motion involved a request to transfer to a county adjacent to Cook County. Nevertheless, this error does not show an abuse of discretion by the circuit court; although Cook and Grundy are not adjacent, the drive from northeast Grundy County (the area where the incident occurred), across the northwest part of Will County, and to the southeast part of Cook County is not so far as to be inconvenient, as shown by the maps contained in the record.

¶ 28 Concerning the public interest factors, we reject defendants' assertion of a complete lack of connection between this litigation and Cook County. Hupke was employed by Barrister as a

process server and was engaged in attempting to serve process on someone at plaintiff's residence at the time of the incident. Barrister has its headquarters in Will County but it does business in numerous Illinois counties, including Cook County. See *Langenhorst*, 219 Ill. 2d at 451 (finding that a county had a legitimate interest in deciding a local controversy involving one of its residents, a foreign corporation, and citing section 2-102(a) of the Code, 735 ILCS 5/2-102(a) (West 2000), for the proposition that in the case of a foreign corporation, residence is defined as any county where the cooperation has an office or is doing business). Accordingly, we find no abuse of discretion in the circuit court's conclusion that Cook County has some interest in deciding a controversy involving Barrister even though Grundy County has a stronger interest in deciding a controversy involving an accident that occurred in Grundy County and resulted in injuries to a Grundy resident.

¶ 29 Finally, we reject defendants' assertion that the trial court erred because it failed "to equally balance" the public interest factors—a venue's court-docket load, the burden of jury duty, and the interest in deciding local controversies locally, which favored Grundy County—with the private interest factors that favored Cook County. The law is clear that the circuit court exercises its discretion when it determines how much weight to give certain factors, considers all the relevant factors without emphasizing any one particular factor alone, and must not balance the factors against each other. *Glass*, 393 Ill. App. 3d at 832; *Langenhorst*, 219 Ill. 2d at 443-44. Contrary to defendants' argument on appeal, the circuit court's consideration of the relevant private and public interest factors does not entail tallying up the points in favor and against transfer or balancing the factors against each other.

¶ 30 Here, the circuit court considered all the relevant factors and concluded that defendants failed to meet their burden to show that the relevant private and public interest factors strongly favored defendants' choice of Grundy County to warrant disturbing plaintiff's choice of Cook County. Based on our review of the record, we do not conclude that no reasonable person would take the view adopted by the circuit court. We find no abuse of discretion by the circuit court in denying defendants' *forum non conveniens* motion to transfer venue from Cook County to Grundy County.

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 33 Affirmed.