FIRST DISTRICT
SECOND DIVISION
September 3, 2019

No. 1-18-1837

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LAWRENCE S. DELL'AQUILA Plaintiff-Appellee, v. BYRON MORGAN, Individually and as Agent of BULLDOG EXPRESS INC., and PAUL EASTERLING, Defendant-Appellants.	)	Appeal from the Circuit Court of Cook County No. 17 L 4867 The Honorable Daniel T. Gillespie, Judge Presiding.

JUSTICE COGHLAN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Denial of defendants' motion to transfer from Cook County to Will County based on *forum non conveniens* is affirmed. One of the defendants lived and worked in Cook County and although certain factors favored transfer, the moving parties failed to establish that the balance of these factors favored transfer.

¶ 2 Plaintiff Lawrence Dell'Aquila, a resident of Will County, was injured in a car accident in Will County when defendant Byron Morgan, a resident of Cook County, struck the rear of his vehicle. Paul Easterling, a Will County resident,[1] was driving Dell'Aquila's vehicle at the time of

[1] Plaintiff argues that Easterling is a Cook County resident, because of the address listed in the Illinois Traffic Crash Report. However, Easterling's sworn answers to interrogatories reflect that he currently resides in Will County.

the accident. Officer G. Kazak of the Joliet Police Department and paramedics from the Joliet Fire Department responded to the scene of the accident. Dell'Aquila was transported to St. Joseph Hospital in Will County.

¶ 3 Dell'Aquila filed a complaint in Cook County against Easterling, Morgan, and Morgan's employer, Bulldog Express, Inc. Bulldog Express, Inc.'s registered agent and offices are located in Will County. Dell'Aquila alleged that Morgan was operating a vehicle owned by Bulldog Express and was acting as an agent for Bulldog Express at the time of the collision. The complaint asserted that defendants negligently caused the collision, which resulted in personal injury to Dell'Aquila.

¶ 4 Morgan and Bulldog Express moved to transfer the case to Will County, pursuant to the doctrine of *forum non conveniens*. Easterling subsequently joined the motion. Defendants argued that since Dell'Aquila did not live in and the accident did not occur in his chosen forum, his chosen forum was entitled to "significantly" less deference. Defendants also asserted that most of the documentary evidence, witnesses, and the accident site are located in Will County; and that Will County residents and prospective jurors have a greater interest in an accident occurring in Will County. Relying on the 2015 Annual Report of the Illinois Courts, defendants also argued that trying this case in Cook County would further burden an already congested docket.

¶ 5 The trial court denied defendants' motion. We allowed defendants' petition for leave to appeal under Illinois Supreme Court Rule 306(a)(2). After weighing the relevant private and public interest factors, we find that the trial court did not abuse its discretion in denying defendants' motion to transfer. We affirm.

¶ 6 II. ANALYSIS

¶ 7 The Illinois venue statute provides that an action must be commenced: (1) in the county

of residence of any defendant who is joined in good faith, or (2) in the county in which the cause of action arose. 735 ILCS 5/2-101(West 2014). If more than one potential forum exists, the equitable doctrine of *forum non conveniens* may be invoked to determine the most appropriate forum. *Dawdy v. Union Pacific Railroad Company*, 207 Ill. 2d 167, 171 (2003). The doctrine is based on considerations of fundamental fairness and sensible and effective judicial administration. *Id.*; *Langenhorst v. Norfolk Southern Railway Company*, 219 Ill. 2d 430, 441 (2006). The doctrine allows the court in which the action was filed to decline jurisdiction and direct the lawsuit to an alternative forum that the court determines would better serve the convenience of the parties and the ends of justice. *Id.*

¶ 8 A trial court is afforded considerable discretion in ruling on a *forum non conveniens* motion. *Dawdy*, 207 Ill. 2d at 176. We will reverse the trial court's decision only if defendants have shown that the circuit court abused its discretion in balancing the relevant factors. *Id.* at 176-177; *Langenhorst*, 219 Ill. 2d at 442. A circuit court abuses its discretion in balancing the relevant factors only where no reasonable person would take the view adopted by the circuit court. *Langenhorst*, 219 Ill. 2d at 442; *Dawdy*, 207 Ill. 2d at 177. A circuit court should only exercise its discretionary power *in exceptional circumstances* when the interests of justice require a trial in a more convenient forum. *Langenhorst*, 219 Ill. 2d at 442; *First American Bank v. Guerine*, 198 Ill. 2d 511, 520 (2002)(Emphasis in original).

¶ 9 In deciding a *forum non conveniens* motion, a court must consider all of the relevant factors, without emphasizing any one factor. *Dawdy*, 207 Ill. 2d at 175-76; *Langenhorst*, 219 Ill. 2d at 443. The relevant private interest factors include (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; (3) all other practical considerations that make trial of a case easy, expeditious, and inexpensive – for

example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises, if appropriate. *Guerine,* 198 Ill. 2d 511; *Dawdy,* 207 Ill. 2d at 172.

¶ 10 The public interest factors include (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets. *Guerine,* 198 Ill. 2d at 516-17; *Langenhorst,* 219 Ill. 2d at 443-444.

¶ 11 The private interest factors are not weighed against the public interest factors; rather, the trial court must evaluate the total circumstances of the case in determining whether the defendant has proven that the balance of factors strongly favors transfer. *Guerine,* 198 Ill. 2d at 518. A defendant seeking to transfer venue on *forum non conveniens* grounds has the burden of showing not only that the plaintiff's chosen forum is inconvenient to the defendant, but also that another forum is more convenient to all parties. *Id*. The defendant cannot assert that the plaintiff's chosen forum is inconvenient to the plaintiff. *Id.* The plaintiff has a substantial interest in choosing the forum where his rights will be vindicated, and the plaintiff's forum choice should rarely be disturbed unless the other factors strongly favor transfer. *Guerine*, 198 Ill. 2d at 517; *Langenhorst,* 219 Ill. 2d at 442.

¶ 12 A. Plaintiff's Choice of Forum

¶ 13 Before weighing the relevant factors, a court must first determine how much deference to give a plaintiff's choice of forum. *Vivias v. Boeing Co.*, 392 Ill. App. 3d 644, 657 (2009). Defendants contend that plaintiff's choice of forum must receive "significantly" less deference, because he does not reside in Cook County and Cook County is not the site of the accident.

Defendants also argue that the plaintiff was clearly engaged in forum shopping.

¶ 14 Although, a plaintiff's choice of forum is a substantial factor in deciding a *forum non conveniens* motion (*Dawdy*, 207 Ill. 2d at 172; *Vivas*, 392 Ill. App. 3d at 657), plaintiff's choice receives somewhat less deference where neither his residence nor the site of the accident or injury is located in the chosen forum." *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill. 2d 101, 106 (1990). "[N]onetheless the deference to be accorded is only *less*, as opposed to *none*." (Emphases in original.) *Guerine*, 198 Ill. 2d at 518. In addition, in this case, defendant Morgan lives in Cook County, defendant Easterling worked in Cook County on the date of the accident, and plaintiff received medical care in Cook County for his injuries.

¶ 15 B. Private Interest Factors

¶ 16 In Illinois, the relevant private interest factors include (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; (3) all other practical considerations that make trial of a case easy, expeditious, and inexpensive – for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises, if appropriate. *Guerine*, 198 Ill. 2d 511; *Dawdy*, 207 Ill. 2d at 172.

¶ 17 i. Convenience of Parties

¶ 18 Defendants argue that Will County is more convenient to the parties, because Morgan is the only party who resides in Cook County, and he lives closer to the Will County courthouse than to the Daley Center. Defendants rely primarily on print-outs, purportedly from Google Maps, showing that the Daley Center is 24.1 miles from Morgan's residence and it takes 52 minutes to drive there. Comparatively, Defendants contend that the Will County courthouse is

23.7 miles away, and it would only take Morgan 28 minutes to drive there.[2]

¶ 19 The record is devoid of any affidavits or other evidence supporting conclusory allegations that Will County will be more convenient for *all of the parties*. Furthermore, when adjoining counties are involved, "the battle over the forum results in a battle over the minutiae." *Langenhorst*, 219 Ill. 2d at 450 (quoting *Guerine*, 198 Ill. 2d at 519-20). "Today, we are connected by interstate highways, bustling airways, telecommunications, and the world wide web. Today, convenience – the touchstone of the *forum non conveniens* doctrine – has a different meaning." *Guerine*, 198 Ill. 2d at 525.

¶ 20 Accordingly, Defendants have not shown that the convenience of all parties weighs in favor of transfer.

¶ 21 ii. Access to Testimonial, Documentary, Real Evidence

Defendants also argue that transfer is warranted, because the primary witnesses are located in Will County, and the relevant medical records and reports are almost entirely located in Will County or Kankakee County. However, the record shows that plaintiff received medical treatment from approximately 14 different providers, 6 of whom are located in Cook County.

¶ 22 Defendants also contend that a trial in Cook County will be inconvenient for the officers and paramedics who responded to the scene of the accident, because they work in Will County. Notably, the record contains little or no information about the *actual* residential or work addresses of witnesses who will allegedly be inconvenienced, much less any specifics regarding the relevance of their testimony. See *Langenhorst*, 219 Ill. 2d at 448 (although defendants listed ambulance, hospital, firefighter, and auto repair personnel as potential witnesses, they did not

[2] The record contains maps showing purported driving times; however, there is nothing in the record about the time of day for which these estimates are given or traffic patterns throughout the day for either county.

identify what, if any, relevant testimony they might provide). Moreover, any inconvenience to potential witnesses would be minimized by taking their depositions in the county where they reside or work. See Ill. Sup. Ct. Rule 203 (eff. Jan. 1, 1996).

¶ 23 Similarly, nothing in the record indicates that documentary evidence is more easily accessible in Will County than in Cook County. The location of documents and records has become a less significant factor in a *forum non conveniens* analysis in the modern age of e-mail, internet, and world-wide delivery services, since they can now be easily copied and sent. *Vivas*, 392 Ill. App. 3d at 659. Thus, ease of access to documentary evidence does not strongly favor either forum.

¶ 24 iii. All Other Practical Considerations

¶ 25 Consideration of "all other practical considerations that make trial of a case easy, expeditious, and inexpensive – for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises, if appropriate" also does not establish an abuse of discretion by the trial court. *Langenhorst*, 219 Ill. 2d at 443.

¶ 26 Plaintiff correctly observes that Illinois law provides a compulsory process of obtaining testimony from witnesses in Will County and Cook County alike. See Ill. Sup. Ct. Rule 237(b) (eff. July 1, 2005). There is no evidence in the record to indicate that obtaining the attendance of witnesses in Cook County will be more costly than Will County. Since the accident here occurred in Will County, the ease of access to the premises slightly favors a transfer to Will County. However, on balance, consideration of the private interest factors does not *strongly* favor transfer to Will County.

¶ 27 C. Public Interest Factors

¶ 28 Defendants contend that the public interest factors strongly weigh in favor of transfer to Will County. The public interest factors include (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets. *Guerine*, 198 Ill. 2d at 516-17; *Langenhorst*, 219 Ill. 2d at 443-444.

¶ 29 i. Interest in Deciding Controversies Locally

¶ 30 The accident here occurred in Will County and involves a plaintiff who resides in Will County. However, Cook County has a legitimate interest in the litigation, because Morgan resides in Cook County, plaintiff and Easterling work in Cook County, and plaintiff received medical treatment in Cook County. Even though Will County may have a stronger interest in deciding a controversy involving an accident that occurred in Will County and resulted in injuries to a Will County resident, we do not find that it was an abuse of discretion to conclude that Cook County has an interest in deciding a controversy involving one of its residents.

¶ 31 ii. Unfairness of Imposing Trial on Residents of Forum

¶ 32 Likewise, Cook County residents have an interest in deciding a controversy involving a defendant who resides in Cook County and parties who use the roads in Cook County. See *Langenhorst*, 219 Ill. 2d at 451 ("Even though St. Clair County residents will bear the burden of jury duty and trial expense, St. Clair County has as much interest in deciding a controversy involving one of its residents who operates trains in its county as does Clinton County). Accordingly, defendants have failed to show that Cook County has no connection to the litigation or that it would be unfair to impose the burden of a trial on its residents under these circumstances.

¶ 33 iii. Administrative Difficulties

¶ 34 Transfer to Will County is also not required by the court docket of Cook County. When deciding *forum non conveniens* issues, the trial court is in the better position to assess the burdens on its own docket. *Langenhorst*, 219 Ill. 2d at 451. Court congestion is a relatively insignificant factor, especially where the record does not show the other forum would resolve the case more quickly (*Id.*) and is not sufficient to justify transfer of venue when none of the other relevant factors weigh strongly in favor of transfer. *Dawdy*, 207 Ill. 2d at 181.

¶ 35 Our supreme court has directed us to look to the annual report of the Administrative Office of the Illinois Courts when assessing court congestion for a *forum non conveniens* motion. *Id.* According to the 2015 case statistics from the annual report of the Illinois Courts, 9,680 jury cases were filed in the law division of Cook County seeking damages over $50,000, while just 222 were filed in Will County. The average time between date of filing and date of jury verdict in Cook County was 40.2 months, versus 33.9 months in Will County. At the end of 2015, the number of pending jury cases seeking over $50,000 in Cook County was 16,725, while only 1,194 remained pending in Will County.

¶ 36 However, as plaintiff correctly points out, more recent statistics paint a different picture. According to the Illinois Courts Statistical Summary for 2017,[3] the average time between date of filing and date of jury verdict in Cook County dropped to 32.2 months, while Will County rose to 39.1 months.

¶ 37 While there is a large discrepancy between the size of the dockets in Cook County and

[3] Our Supreme Court has found the annual report of the Administrative Office of the Illinois Courts to be a proper reference in assessing court congestion, of which the court may take judicial notice. *Dawdy*, 207 Ill. 2d at 181 ("This Court has found the [Annual Report] to be a proper reference in assessing court congestion [for a *forum non conveniens* motion]."); *Washington v. Illinois Power Co.*, 144 Ill. 2d 395, 403 (1991) ("This court has found the [Annual Report] to be a proper source of reference in assessing court congestion [for a *forum non conveniens* motion]."); Ill. R. Evid. 201(d) (eff. Jan. 1, 2011) ("A court shall take judicial notice if requested by a party and supplied with the necessary information.").

Will County, more recent statistics fail to establish that Will County handles cases more efficiently. Accordingly, we do not find that court congestion is weighs strongly in favor of transfer to Will County.

¶ 38 III. CONCLUSION

¶ 39 After weighing the private and public interest factors of *forum non conveniens*, we find that the court did not abuse its discretion in denying defendants' motion to transfer this matter from Cook County to Will County. For the foregoing reasons, we affirm the denial of defendants' motion to transfer venue.

¶ 40 Affirmed.