2019 IL App (5th) 180290-U

NO. 5-18-0290

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JAMIE LEMONS, as Administrator for the Estate of Gary Paul Chaney, Deceased, and CATHY CHANEY,	)	Appeal from the Circuit Court of Jackson County.
Plaintiffs-Appellees,	)	
v.	)	No. 17-L-81
MARSHALL BROWNING HOSPITAL ASSOCIATION, d/b/a Marshall Browning Hospital, and DR. SAI PALEPU	)	Honorable Christy W. Solverson,
Defendants-Appellants.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order denying the defendant's motion to transfer venue from Jackson County to Perry County based on *forum non conveniens* was not an abuse of discretion where the balance of the factors did not weigh strongly in favor of transfer.

¶ 2 The plaintiffs, Jamie Lemons, as administrator of the estate of Gary Paul Chaney, deceased (Chaney), and Cathy Chaney, the decedent's wife (collectively, plaintiffs), filed a three-count complaint in Jackson County, Illinois, against the defendants, Marshall Browning Hospital Association, a corporation doing business as Marshall Browning

Hospital (Marshall Browning or hospital), and Dr. Sai Palepu, M.D. (collectively, defendants). The complaint alleged claims under the Illinois Wrongful Death Act, Survival Act, and Family Expense Act relating to Chaney's death. Marshall Browning moved to transfer venue from Jackson County to Perry County based on the doctrine of *forum non conveniens*. The circuit court denied the motion but stated no grounds for its conclusion. The defendants filed a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a) (eff. Nov. 1, 2017), which was denied by this court. However, the defendants then filed a petition for leave to appeal pursuant to Rule 315(a) (Ill. S. Ct. R. 315(a) (eff. Apr. 1, 2018)) with the Illinois Supreme Court. This petition was also denied, but our supreme court entered a supervisory order directing this court to consider the *forum non conveniens* issue. Pursuant to that directive, we allowed the defendants' petition for leave to appeal and now affirm the circuit court's decision on the merits.

¶ 3 This case arises out of alleged medical malpractice that occurred at Marshall Browning in Perry County, Du Quoin, Illinois. The following information was adduced from the plaintiffs' September 15, 2017, complaint.

¶ 4 On April 10, 2017, Chaney was taken by ambulance to Marshall Browning hospital. Chaney told the emergency medical technicians that he was experiencing chest pain, anxiety, shortness of breath, and mild nausea. He also told them that the pain radiated to both arms and that he had indigestion. Chaney was admitted to the emergency department under the care of Dr. Sai Palepu, who was provided with this medical history.

¶ 5 Dr. Palepu discharged Chaney from the hospital to his home for "self-care." He was instructed to rest and to follow up with his primary physician within three days for repeat laboratory tests unless his symptoms worsened, in which case he was to return to the emergency room.

¶ 6 Chaney returned home but called emergency medical technicians again; this time, he was taken to Memorial Hospital in Jackson County, Carbondale, Illinois (Memorial Hospital). There, it was determined that he was suffering from ST elevation myocardial infarction (STEMI) (colloquially, a heart attack). The complaint stated that, due to the heart attack, his blood circulation had stopped, and "he was caused to suffer prior to his death." He was declared dead at 1:13 p.m. on April 10, 2017, despite "the best efforts of the emergency department at Memorial Hospital." The complaint alleged negligence on the part of Marshall Browning and Dr. Palepu in failing to diagnose and treat the ultimately fatal heart attack.

¶ 7 On January 31, 2018, Marshall Browning moved to dismiss based on improper venue and further moved to transfer venue from Jackson County to Perry County based on the doctrine of *forum non conveniens*. The motion stated that the plaintiffs are residents of Perry County, Chaney was a resident of Perry County, and the allegations of negligence and medical malpractice arose from conduct that occurred "in or near Perry County in April of 2017." Although Dr. Palepu was a resident of Missouri, the hospital was located in and had its principal place of business in Perry County. It was not engaged in customary business in Jackson County and had no facilities there. It noted that the plaintiffs' complaint contained no allegations that any defendant saw or treated

Chaney in Jackson County. It also stated that the Perry County courts are less congested than the Jackson County courts. Dr. Palepu moved to join the motions.

¶ 8 Attached to the motion was an affidavit sworn by Laurie Kellerman, chief clinical officer for Marshall Browning. She stated that the hospital records concerning Chaney's visit are maintained on site in Perry County. She reviewed the plaintiffs' complaint and Chaney's hospital records and identified Dr. Palepu and registered nurse (R.N.) Launa Dinkins as individuals who had contact with Chaney during his visit. She noted that Dr. Palepu resided in Ballwin, Missouri, and Dinkins was an employee of the hospital. She stated that, "for the employees of Marshall Browning Hospital who may or will be called as a witness in this matter, it will be easier for them to appear at a deposition or trial in Perry County, Illinois so as to lessen the disruption of their work schedule and any personal commitments and to lessen the staffing demands on [the] hospital."

¶ 9 Also attached to the motion were excerpts from the 2016 annual report of the Administrative Office of the Illinois Courts (AOIC), which purported to show that the docket for Jackson County is more congested than that of Perry County.

¶ 10 On February 15, 2018, the plaintiffs filed their response to the defendants' motion to transfer venue. They asserted that their choice of forum was entitled to deference and that their choice should not be disturbed absent the relevant factors strongly favoring transfer. They pointed out that there was not overwhelming evidence that Jackson County was more congested than Perry County, as, in 2016, the clearance rate for the twentieth circuit (which includes Perry County) and the clearance rate for the first circuit (which includes Jackson County) were similar; furthermore, in 2016, Jackson County had

550 cases filed in excess of $50,000 and disposed of 545 of them.[1] The plaintiffs also noted that one of the potential witnesses mentioned in Kellerman's affidavit, Launa Dinkins, was actually a resident of Jackson County.

¶ 11 The plaintiffs included records from Memorial Hospital which indicated that Chaney was provided emergency care by Dr. Benjamin Wagner, D.O.; Noel Rix, R.N.; and Sarah Brayfield, R.N. They also included records from the Illinois Department of Financial and Professional Regulation, which indicated that Dr. Wagner resided in Carbondale, Jackson County, Illinois;[2] Rix resided in Marion, Williamson County, Illinois; and Brayfield resided in Campbell Hill, Jackson County, Illinois.

¶ 12 The hospital filed a response and attached an affidavit from Launa Dinkins stating that, though she lived in Jackson County, she actually lived closer to the Perry County courthouse and that it would be more convenient for her to travel to the courthouse in Perry County if she were called to testify.

¶ 13 On April 24, 2018, the circuit court entered an order denying the defendants' motion to transfer venue based on *forum non conveniens*. The order specified no grounds for its conclusion. The defendants appeal pursuant to Rule 306(a) (Ill. S. Ct. R. 306(a) (eff. Nov. 1, 2017) (governing interlocutory appeals by permission)). They assert that the

[1]The figure that the plaintiffs refer to actually states the number of nonjury cases filed that were less than or equal to $50,000.

[2]The record indicates that Memorial Hospital employee Dr. Wagner resided in Carbondale, Jackson County, Illinois. However, in their brief before this court, the plaintiffs state that he resided in Marion, Williamson County, Illinois. We will address the effect, if any, of this discrepancy in our analysis.

court abused its discretion in denying its motion to transfer based on *forum non conveniens*.

¶ 14 Before reaching the merits of the defendants' argument, we note that the plaintiffs challenge our jurisdiction over the appeal, asserting that the defendants' leave for appeal was filed past the deadline and is therefore time-barred.[3]

¶ 15 Rule 306(a)(2) allows a party to petition for leave to appeal from an order of the circuit court denying a motion to dismiss on the grounds of *forum non conveniens*. Ill. S. Ct. R. 306(a)(2) (eff. Nov. 1, 2017). Rule 306(c) states that the petition "shall be filed in the Appellate Court in accordance with the requirements for briefs within 30 days after the entry of the order." Ill. S. Ct. R. 306(c)(1) (eff. Nov. 1, 2017).

¶ 16 The circuit court entered an order denying the defendants' motion to transfer venue based on *forum non conveniens*. The file-stamp date on the written order is April 24, 2018. However, the order was signed and dated April 20, 2018. The defendants filed their Rule 306(a) petition for leave to appeal on May 24, 2018. The plaintiffs argue that the court's order was entered April 20, 2018, and Rule 306 required that the petition be filed no more than 30 days from the entry of the order; as such, the defendants' petition was time-barred.

¶ 17 The April 20, 2018, docket entry for the order in question states in a column entitled "text" that "defendants' motion to transfer venue is denied," "order entered," and

[3]We note that this issue was raised in a motion to dismiss when the defendants' Rule 306(a) petition for leave to appeal was initially pending before this court and was denied. Before the Illinois Supreme Court, the plaintiffs again moved to dismiss the defendants' Rule 315(a) petition for leave to appeal. This was also denied. Nevertheless, the plaintiffs raise the issue again in this appeal.

"clerk to forward copy of orders via email." Across from each of these entries, under a column entitled "changed," is the date "4/24/18." Additionally, the docket entry on April 24, 2018, states, "order *** filed." The clerk forwarded the orders to counsel via email on April 24.

¶ 18 Our Illinois Supreme Court has held that the date of the circuit court's file-stamped order controls. *Granite City Lodge No. 272, Loyal Order of the Moose v. City of Granite City*, 141 Ill. 2d 122, 126-27 (1990); *People v. Perez*, 2014 IL 115927, ¶ 29 ("Under Illinois law, a written judgment order is 'entered' when it is entered of record."). This is because a judgment "becomes public at the situs of the proceeding when it is filed with the clerk of the court." (Internal quotation marks omitted.) *Granite City Lodge*, 141 Ill. 2d at 126. Here, there is no question that the order was entered of record on April 24, 2018, the date reflected by the file stamp and the docket entry. Thus, we again reject the plaintiffs' contention that the defendants' petition was time-barred. Having concluded that we have jurisdiction over this case, we turn to the merits of the defendants' argument.

¶ 19 *Forum non conveniens* is an equitable doctrine founded in consideration of fundamental fairness and sensible and effective judicial administration. *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 441 (2006). Under the doctrine, a circuit court is permitted to decline jurisdiction when transfer to another jurisdiction would better serve the ends of justice. *Id.* The doctrine should be applied only in exceptional circumstances when the interests of justice require a trial in a more convenient forum. *Id.* at 442. *Forum non conveniens* jurisprudence was cultivated in an effort to curtail forum

shopping, which has the potential to burden communities with litigation over disputes that arose elsewhere. *First American Bank v. Guerine,* 198 Ill. 2d 511, 515 (2002).

¶ 20 Circuit courts are vested with considerable discretion in evaluating claims of *forum non conveniens*. *Id*. The decision of the circuit court will be reversed only if a defendant has shown that the court abused its discretion in balancing the relevant factors. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003). An abuse of discretion occurs only when no reasonable person would agree with the circuit court's ruling. *Langenhorst*, 219 Ill. 2d at 442.

¶ 21 A circuit court is to consider all of the relevant private-interest factors and public-interest factors and evaluate the total circumstances of the case, without emphasizing any single factor. *Id.* at 443. The private-interest factors are not weighed against the public-interest factors, and each case is considered on its own unique set of facts. *Id.*

¶ 22 The private-interest factors include the convenience of the parties; the relative ease of access to sources of proof; the accessibility of witnesses; and all other practical issues related to the easy, expeditious, and inexpensive trial of a case. *Id*. Public-interest factors include the interest in having local controversies decided locally; the unfairness of imposing expenses of trial and the burden of jury duty on a county with little to no connection to the litigation; and the administrative difficulties presented by adding additional litigation to a congested court docket. *Id*. The test is whether the relevant factors, viewed in their totality, strongly favor transfer to the forum suggested by the defendant. *Id*. at 442.

¶ 23 A plaintiff has a substantial interest in selecting the forum for her case, and her choice should not be disturbed unless other factors strongly favor transfer. *Id.* at 448; *Guerine*, 198 Ill. 2d at 517. However, her choice of forum is not entitled to the same weight in all cases; when she is foreign to the chosen forum and when the action giving rise to the litigation did not occur in the chosen forum, her choice is accorded less deference. *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 170 (2005). Less deference does not mean no deference, and a defendant has the burden to show that plaintiff's chosen forum is inconvenient to defendant and that another forum is more convenient to all the parties. *Langenhorst*, 219 Ill. 2d at 444. However, a defendant may not argue that the plaintiff's chosen forum is inconvenient to the plaintiff. *Id*.

¶ 24 With these principles in mind, we first consider what deference is due the plaintiffs' choice of forum. See *Decker v. Union Pacific R.R. Co*., 2016 IL App (5th) 150116, ¶ 22. The plaintiffs are residents of Perry County, as was Chaney; therefore, they have not chosen their home forum. We also conclude that the actions giving rise to the litigation did not occur in the chosen forum for the purposes of a *forum non conveniens* analysis. While the plaintiffs correctly assert that their claims "sprang into action" in Jackson County and that Chaney's death occurred in Jackson County, we note that this only establishes that Jackson County is a proper venue for the claims, not that it is a more convenient forum. See *Kaiser v. Doll-Pollard*, 398 Ill. App. 3d 652 (2010) (concluding that venue was proper in St. Clair County where plaintiff was injured as a result of surgical malpractice in Clinton County; part of the transaction out of

which the cause of action arose occurred in St. Clair County, where doctors attempted to intervene as a result of surgical complications occurring in Clinton County). Chaney suffered a heart attack in Perry County, and the allegations of negligence arose from conduct that occurred at Marshall Browning in Perry County. While Chaney continued to suffer his injury while in Jackson County, stemming from the defendants' alleged failure to properly diagnose him, the plaintiffs do not allege negligence by Memorial Hospital or its staff, nor do they allege that injuries occurred there as a result of intervening acts. The plaintiffs allege only that Chaney continued to suffer injury (and ultimately, death) in Jackson County, due to the defendants' negligence in Perry County. Therefore, we give the plaintiffs' choice of forum less deference, but the burden remains with the defendants to demonstrate that the chosen forum is inconvenient to them and that another forum is more convenient to all the parties. See *Langenhorst*, 219 Ill. 2d at 444. Thus, "the battle over forum starts with the plaintiff's choice in the lead." *Decker*, 2016 IL App (5th) 150116, ¶ 31.

¶ 25 We turn to the private- and public-interest factors which determine the convenience to the litigants.

¶ 26 We begin with the private-interest factors. Initially, we consider the convenience of the parties. As previously noted, the plaintiffs reside, and Chaney resided, in Perry County. However, the defendants may not prevail on their argument by asserting that the plaintiffs' chosen forum is inconvenient to them. See *Langenhorst*, 219 Ill. 2d at 444. The plaintiffs, of course, maintain that Jackson County is the most convenient forum for them. As for the defendants, Dr. Palepu is a resident of Ballwin, Missouri. While the

Perry County courthouse is marginally closer to his residence than the Jackson County courthouse, neither forum is particularly convenient for him.[4] Marshall Browning is located in Perry County and maintains that it is the most convenient forum. Thus, this factor is neutral in that each county is more convenient to one party; therefore, it does not strongly favor transfer to Perry County.

¶ 27 We next consider the relative ease of access to sources of testimonial, documentary, and other evidence. In regards to testimonial evidence, Marshall Browning's chief clinical officer, Laurie Kellerman, submitted an affidavit stating that it would be easier for potential witnesses that are employees of Marshall Browning to appear at a deposition or trial in Perry County "so as to lessen the disruption of their work schedule and any personal commitments and to lessen the staffing demands on [the] hospital." However, Kellerman's affidavit provides no specific information regarding how the disruptions in employees' work schedules would differ if the trial occurred in Perry County rather than Jackson County. Dinkins also submitted an affidavit stating that it would be more convenient for her to testify in Perry County than in Jackson County because she lived closer to the Perry County courthouse. However, because Dinkins resides in Jackson County, and the courthouses are only 24 miles apart, this assertion is not particularly persuasive.

¶ 28 The remaining identified witnesses work in Jackson County. Brayfield, a nurse that provided care for Chaney at Memorial Hospital, also resides in Jackson County. Rix,

[4]We take judicial notice that Perry County and Jackson County are contiguous and that the distance between the Perry County courthouse in Pinckneyville, Illinois, and the Jackson County courthouse in Murphysboro, Illinois, is approximately 24 miles.

another nurse that provided care for Chaney at Memorial Hospital, does not reside in either county. This court has acknowledged that physicians seldom testify in person, so the residence of Dr. Wagner, Chaney's treating physician at Memorial Hospital, is of little consequence to our analysis. See *Roberts v. Illinois Power Co*., 311 Ill. App. 3d 458, 463 (2000). The defendants have not shown that the ease of access to testimonial evidence strongly favors transfer to Perry County.

¶ 29 The medical records documenting the allegedly negligent care are kept on site at Marshall Browning in Perry County. However, relevant documentary evidence can also be found at Memorial Hospital in Jackson County, as this is where Chaney was diagnosed with a heart attack and, ultimately, died. Besides simply stating that the records are located in Perry County, the defendants have not otherwise demonstrated that the records cannot be easily copied and scanned for distribution among counsel for all parties and that the transportation of any original records to the chosen forum would pose a significant burden. See *Foster v. Hillsboro Area Hospital, Inc*., 2016 IL App (5th) 150055, ¶ 47. The defendants have not shown that the ease of access to documentary evidence strongly favors transfer to Perry County.

¶ 30 Another private-interest factor is the possibility of viewing the premises, if appropriate. *Langenhorst*, 219 Ill. 2d at 448-49. This case involves the failure to diagnose and treat a heart attack in Perry County. Thus, a view of the medical facilities would be more easily accomplished in Perry County. However, a view of the facilities would be neither necessary nor helpful in this case. See *Foster*, 2016 IL App (5th) 150055, ¶ 48 (citing *Hackl v. Advocate Health & Hospitals Corp*., 382 Ill. App. 3d 442,

452 (2008) (viewing the site is rarely called for in a medical negligence case)). This factor is accorded very little weight; as such, it does not strongly favor transfer. See *id.*

¶ 31 Next, we consider the remaining private-interest factors regarding the availability of compulsory service to secure the attendance of unwilling witnesses, the costs to secure the attendance of willing witnesses, and other practical considerations that make the trial of a case easy, expeditious, and inexpensive. Here, compulsory process is available in both Perry County and Jackson County. All in-state witnesses that have been identified are subject to subpoena in either county. The defendant and any relevant employees may be compelled to appear through notice under Illinois Supreme Court Rule 237(b) (eff. July 1, 2005), and the defendants may be compelled to produce originals of medical records or other relevant documents under that same rule. The cost of securing witness attendance from either hospital would likely balance out, as it is unlikely that an overnight stay would be required for any of the currently known witnesses. No out-of-state, nonparty witnesses have been identified and trial experts have not been disclosed. Neither the attorney for the plaintiffs nor the attorneys for the defendants maintain offices in either county. Thus, the remaining private-interest factors do not strongly favor transfer.

¶ 32 We turn to the public-interest factors, the first of which is the interest in deciding localized controversy locally. The defendants assert that the residents of Perry County have a significant interest in deciding a controversy concerning alleged medical negligence that occurred within its borders. The plaintiffs allege that Jackson County

also has a significant interest in the litigation because it is where Chaney died and where the administration of his estate is taking place.

¶ 33 Both counties have interest in this litigation. Perry County has an interest because the action involves alleged acts of medical negligence occurring within its borders; Jackson County has an interest because, due to the alleged inaction of the defendants, Chaney continued to suffer his injury there, was diagnosed there, and died there. See *Bradbury v. St. Mary's Hospital of Kankakee*, 273 Ill. App. 3d 555, 561-62 (1995). However, while evidence of the cause of Chaney's death, and the expenses incurred, will be relevant to the plaintiffs' action, the issue to be determined in this case is whether the defendants acted negligently in their diagnosis and treatment of Chaney. See *Kahn v. Enterprise Rent-A-Car Co*., 355 Ill. App. 3d 13, 25 (2004). This renders Perry County the more relevant forum. Therefore, this factor weighs somewhat in favor of transfer.

¶ 34 Next, we consider the related issue of whether Jackson County has a sufficient connection to this case to warrant imposing the burden of a trial on its citizens and circuit court. We reiterate that both counties have a connection to this litigation, and, as such, we are reluctant to aver that it would be unfair to burden the citizens of either county with the obligation of jury service in this case. However, as in the factor above, the jurors would be deciding whether or not Marshall Browning and/or Dr. Palepu were negligent in their medical treatment of Chaney. This treatment occurred in Perry County. Thus, this factor weighs somewhat in favor of transfer.

¶ 35 The last public-interest factor is the relative congestion of the dockets. We note that court congestion is a relatively insignificant factor, especially where the record does

not show the other forum would resolve the case more quickly. *Guerine*, 198 Ill. 2d at 517. However, both parties cite to the 2016 annual report of the AOIC in support of their stances, so we will examine the available statistics.

¶ 36 The report shows that, in Jackson County in 2016, 20 new jury cases were filed in excess of $50,000, 45 were disposed of, and 100 remained pending. In nonjury cases in excess of $50,000, 99 new cases were filed, 83 were disposed of, and 149 remained pending. The first circuit's overall clearance rate for civil cases was 90.6%. In Perry County in 2016, 6 new jury cases were filed in excess of $50,000, 1 was disposed of, and 32 remained pending. In nonjury cases in excess of $50,000, 19 new cases were filed, 11 were disposed of, and 85 remained pending. The twentieth circuit's overall clearance rate for civil cases was 120.8%. Thus, while it appears that Jackson County has a higher caseload than Perry County, the AOIC's report does not present overwhelming evidence that Jackson County is more congested than Perry County or that Jackson County judges are failing to keep up with their caseloads. These statistics do not inform this court that the parties will be granted an earlier or more expeditious trial in Perry County. Moreover, the circuit court is in the best position to consider any administrative problem in relation to its own docket or its ability to try the case in an expeditious manner. *Langenhorst*, 219 Ill. 2d at 451. We do not find that this factor strongly favors a transfer to Perry County.

¶ 37 In sum, we have determined that the plaintiffs are entitled to some deference on their choice of forum. In terms of the private-interest factors, none of them strongly favor transfer to Perry County. Two of the public-interest factors somewhat favor

transferring to Perry County, while the other does not. The balance of factors must strongly favor transfer of the case before the plaintiffs can be deprived of their chosen forum. *Decker*, 2016 IL App (5th) 150116, ¶ 48 (citing *Guerine*, 198 Ill. 2d at 526). This is not such a case. The circuit court found in the plaintiffs' favor on this issue, and we are to reverse this decision only when no reasonable person would agree with the circuit court's ruling. *Langenhorst*, 219 Ill. 2d at 442. We conclude that the court's decision to deny the defendants' motion to transfer based on *forum non conveniens* was not an abuse of discretion.

¶ 38 We find it necessary, once again, to comment on the failure by the circuit court to provide any findings or set forth its analysis regarding the public- and private-interest factors. No hearing was held on the motion, and no written analysis of the factors was provided to this court. This is not the first time we have brought this issue to the circuit courts' attention. In *Decker*, we noted that the Illinois Supreme Court has also asked circuit courts to include all of the relevant private- and public-interest factors in their analyses and to leave a better record of their decision-making process. *Decker*, 2016 IL App (5th) 150116, ¶¶ 49-50 (citing *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 24, and *Guerine*, 198 Ill. 2d at 520-21). Thus, we again request that the Fifth District circuit courts issue specific rulings setting forth an analysis of all the relevant factors in a *forum non conveniens* ruling in order to better serve judicial economy in our state.

¶ 39 For the foregoing reasons, the order of the circuit court is affirmed.

¶ 40 Affirmed.