2013 IL App (1st) 123639-U

FIFTH DIVISION
December 6, 2013

No. 1-12-3639

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JENNIFER CHADD, as Personal Representative of the Estate of Dennis Stutler, deceased, Plaintiff-Appellant, v. NEPHROLOGY ASSOCIATES OF NORTHERN ILLINOIS, LTD., LEONARD POTEMPA, M.D., ADVENTIST HINSDALE HOSPITAL, AIMS HOSPITALIST GROUP, HEARTCARE CENTERS OF ILLINOIS, S.C., SUBURBAN PULMONARY AND SLEEP ASSOCIATES, LTD., ALI BAWAMIA, M.D., YANGESH DAVE, M.D., and CHARLES KINDER, M.D., Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Illinois. No. 10 L 6086 Honorable Kathy M. Flanagan, Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice Gordon and Justice McBride concurred in the judgment.

ORDER

HELD: In medical malpractice case, trial court abused its discretion in granting forum non conveniens motion to transfer from Cook County to Du Page County where: (1) potential trial witnesses were scattered among Cook County, Will County, Du Page County, and Indiana; (2) plaintiff identified several nonparty witnesses who would find a Cook County trial more

convenient, as well as various others who resided or worked in Cook County; and (3) all four of the individual defendants practiced medicine in Cook County, thus giving residents of Cook County a legitimate interest in the case.

¶ 1 This appeal arises from the circuit court's grant of defendants' *forum non conveniens* motion to transfer this medical malpractice case from Cook County to Du Page County. Plaintiff, Indiana resident Jennifer Chadd, alleges that defendants' medical malpractice in the treatment of her father, Indiana resident Dennis Stutler, led to her father's death. Upon motion by defendants, the trial court transferred the case to Du Page County, the county where the medical care at issue was provided. Plaintiff appeals that decision and further contends that the trial court erred by not giving her an extension of time to conduct *forum non conveniens* discovery. For the reasons that follow, we reverse and remand.

¶ 2 I. BACKGROUND

¶ 3 Plaintiff brought suit in the circuit court of Cook County as the administrator of decedent's estate, seeking damages from four health care professionals and five health care providers for wrongful death and survival in connection with her father's death at Adventist Hinsdale Hospital. The four health care professionals named as defendants are Dr. Leonard Potempa, a resident of Du Page County; Dr. Yangesh Dave, a resident of Will County; Dr. Ali Bawamia, a resident of Cook County; and Dr. Charles Kinder, also a resident of Cook County. The five health care providers named as defendants are Adventist Hinsdale Hospital, where the relevant medical care was provided, located in Du Page County; Nephrology Associates of Northern Illinois, Ltd. (NANI), which employed Dr. Potempa; AIMS Hospitalist Group, which is the practice group to which Dr. Bawamia and Dr. Dave belonged, and which is a division of

defendant Suburban Pulmonary & Sleep Associates, Ltd. (Suburban Pulmonary); and Heartcare Centers of Illinois, S.C. (Heartcare Centers).

¶ 4 In her first amended complaint, plaintiff alleges that on May 21, 2008, decedent was admitted to Adventist Bolingbrook Hospital "for treatment of a condition of ill-being." (Adventist Bolingbrook Hospital, which is not a defendant in this action, is also located in Du Page County.) The following day, he was transferred to defendant Adventist Hinsdale Hospital, where he was treated by defendants Dr. Potempa, Dr. Bawamia, Dr. Dave, and Dr. Kinder. He died on May 30, 2008, as a result of complications from severe hypoglycemia. Plaintiff alleges that the decedent's death occurred because the defendants failed to properly diagnose and treat his condition, negligently overdosed him with insulin, and failed to properly manage his diabetic condition. She seeks damages for wrongful death and survival.

¶ 5 The procedural history of this case is relevant to this appeal, since it bears upon plaintiff's contention that the trial court erred by denying her an extension of time to conduct *forum non conveniens* discovery; therefore, we shall discuss it in some detail.

¶ 6 Plaintiff filed her original complaint on May 18, 2010. In that complaint, plaintiff named only two defendants: Dr. Potempa and NANI, the health care provider that employed him. Plaintiff also named 41 respondents in discovery, stating that these respondents might have information essential to the determination of who should properly be named as additional defendants. On September 1, 2010, plaintiff was given leave to issue notices for the depositions of these 41 respondents in discovery.

¶ 7 On August 10, 2010, Dr. Potempa and NANI filed a motion to transfer the case to Du

Page County under the doctrine of *forum non conveniens*. This motion states, in its entirety:

> "NOW COME defendants, NEPHROLOGY ASSOCIATES OF NORTHERN ILLINOIS, LTD. and LEONARD POTEMPA, M.D., by their attorneys, CASSIDAY SCHADE LLP, and move this Court pursuant to Illinois Supreme Court Rule 187 to dismiss or transfer this action to the Circuit Court of the Eighteenth Judicial Circuit, Du Page County, Illinois, under the doctrine of forum *non conveniens*."

On November 10, 2010, the trial court continued defendants' motion to transfer generally while plaintiff's discovery proceeded on the numerous respondents in discovery. That discovery was conducted over roughly a two-year period, during which time the trial court granted plaintiff five extensions of time to convert the respondents in discovery. Plaintiff deposed over 20 witnesses who were involved in the decedent's care at either Adventist Bolingbrook Hospital or at Adventist Hinsdale Hospital.

¶ 8 On August 3, 2012, by leave of court, plaintiff filed her first amended complaint *instanter*. In that complaint, she converted eight of the previously-named respondents in discovery into defendants: Adventist Hinsdale Hospital, AIMS Hospitalist Group, Heartcare Centers, Dr. Ali Bawamia, Dr. Yangesh Dave, Dr. Charles Kinder, Nurse Ailyn Padilla, and Nurse Sue Tutaan.[1] (As shall be discussed below, plaintiff subsequently dismissed Nurse Padilla and Nurse Tutaan from the action pursuant to an agreed order. However, plaintiff retained the

[1] From the limited record we have on appeal, it is not clear when Suburban Pulmonary was added as a defendant. However, the parties raise no dispute as to whether Suburban Pulmonary is properly a defendant in this action.

right to call them at trial as adverse witnesses.)

¶ 9 On August 17, 2012, defendants Adventist Hinsdale Hospital, Nurse Padilla, and Nurse Tutaan filed a *forum non conveniens* motion to transfer the case to Du Page County. In that motion, they argued that Du Page County was a substantially more appropriate and convenient forum for the litigation, since the events which gave rise to the action all occurred in Du Page County, and multiple defendants testified that a Du Page County trial would be more convenient. The movants further argued that, since plaintiff and her decedent were both residents of Indiana, plaintiff's choice of a Cook County forum was entitled to substantially less deference.

¶ 10 In support of their motion to transfer, the movants attached the affidavit of Christine Rendl, the regional director of risk management for Adventist Midwest Health. Rendl averred that it would be more convenient, time efficient, and cost effective for Adventist Hinsdale Hospital employees to attend trial in Du Page County than in Cook County. She stated that a Du Page County trial would allow any employees who might be called to testify to spend more time attending to patients. She further stated that, if trial were held in in Du Page County, Adventist Hinsdale Hospital could far more easily handle potential scheduling problems and conflicts that might arise due to staffing and patient matters.

¶ 11 The movants also attached the depositions of Nurse Padilla and Nurse Tutaan. In her deposition, Nurse Padilla stated that she resided in Will County and was employed at Adventist Hinsdale Hospital in Du Page County. She also stated that it would be more convenient for her to travel to Wheaton, where the Du Page County courthouse is located, than to travel to downtown Chicago, where the Cook County courthouse is located. Similarly, Nurse Tutaan

stated that she resided in Will County, worked in Du Page County, and would find either a Will County or a Du Page County trial to be more convenient than a Cook County trial.

¶ 12 Lastly, the movants attached a copy of the 2009 Annual Report of the Illinois Courts. That report showed that in 2009, there were over 900,000 cases pending in Cook County, as opposed to 800,000 cases in Du Page County. With regard to cases with an anticipated jury trial in the law division seeking more than $50,000 in damages, there were over 10,000 newly filed or reinstated cases in Cook County, and over 17,500 such cases still pending at the end of the year; by contrast, there were 413 such cases filed in Du Page County and 1259 such cases pending at the end of the year.

¶ 13 On August 20, 2012, defendants Dr. Potempa and NANI filed a brief in support of their motion to transfer. In support, they attached the affidavit of Dr. Potempa, in which Dr. Potempa averred that he resided in Du Page County and would find a Du Page County trial to be much more convenient than a Cook County trial. He further stated that a Cook County trial would be "extremely difficult" for him both personally and professionally.

¶ 14 In addition, on that same date, defendants Dr. Bawamia, Dr. Dave, and AIMS Hospitalist Group filed a motion to join in their codefendants' motions to transfer venue to Du Page County. In support, these defendants attached the affidavits of Dr. Bawamia and Dr. Dave. In those affidavits, both doctors stated that they worked as hospitalists in Will County, Du Page County, and in Cook County. They stated that if the case were to be tried in Du Page County, they would be able to care for patients either before or after court, whereas they would not be able to do so if the case were to be tried in Cook County. They concluded that Du Page County would be a more

convenient venue for their medical responsibilities.

¶ 15 On September 13, 2012, the trial court ordered discovery to be stayed pending the court's ruling on defendants' motion to transfer and barred plaintiff from conducting additional depositions of individuals previously deposed. The court additionally set a briefing schedule ordering plaintiff to file a response to defendants' motions by October 4, 2012.

¶ 16 Subsequently, on October 9, 2012, plaintiff filed a "Motion under Rule 187 to Extend Briefing Schedule to Allow for Forum Non Conveniens Discovery." In that motion, plaintiff argued that she had not previously responded to Dr. Potempa and NANI's 2010 motion to transfer venue because she had been focused upon taking the depositions she needed to convert the respondents in discovery to defendants. She also stated that the trial court never specifically ordered her to respond to the 2010 motion to transfer. She therefore requested that the court grant her additional time in which to conduct *forum non conveniens* discovery before filing her response.

¶ 17 The trial court conducted a hearing on plaintiff's motion on October 17, 2012. During that hearing, the trial court noted that Dr. Potempa and NANI's original motion for transfer to Du Page County had been filed over two years ago. The court stated, "[T]hat clearly, clearly was the time when somebody should have gotten on board and said, okay, everybody issue written regarding the forum, the forum issues." Accordingly, the court denied plaintiff's motion for an extension of time to conduct discovery and ordered plaintiff to submit her response to defendants' motion by October 22, 2012.

¶ 18 Plaintiff filed her response to defendants' motions to transfer on October 22, 2012. In

support, plaintiff attached her own certified statement, in which she stated that her residence was closer to the Cook County courthouse than the Du Page County courthouse and that a Cook County trial would therefore be more convenient than a Du Page County trial. Plaintiff also attached the certified statements of several potential witnesses who knew the decedent before his death. Larry Nelson, William Becker, and Marsha Kubik all stated that they anticipated being called by the plaintiff to testify regarding the decedent's "active life before his death." They stated that they were residents of Indiana but would find a Cook County trial to be more convenient than a Du Page County trial. Similarly, Scott Stutler, the decedent's son, said in his certified statement that he anticipated being called to testify regarding his father's activity and his management of his diabetes. Stutler said that he was an Indiana resident, and although he admitted that the Du Page County courthouse was closer to his residence than the Cook County courthouse, he averred that a Cook County trial would be more convenient for him.

¶ 19 In addition, plaintiff attached various documents to show that some of the defendants had connections with Cook County. A copy of a page from NANI's website stated that Dr. Potempa had a hospital affiliation in Cook County and affiliations with three dialysis centers located in Cook County, including two where he served as medical director. Another page from NANI's website listed NANI's offices, including eight Cook County locations. The Illinois Secretary of State's website listed both NANI and Suburban Pulmonary as having registered agents in Cook County. Finally, Dr. Kinder stated in his deposition that he performed surgeries at four facilities in Cook County, among other facilities.

¶ 20 Plaintiff additionally attached deposition excerpts and curricula vitae of various non-

defendant medical personnel who had contact with the decedent. Dr. Richard Bertenshaw, the treating endocrinololgist, and Dr. Armita Bijari, the treating neurologist, both stated in their depositions that they had privileges at LaGrange Hospital in Cook County, although Dr. Bijari stated that he resided in Du Page County. Dr. Michael Kaufman, a pathologist responsible for decedent's autopsy, listed a Cook County office address in his curriculum vitae. Dr. Terence Harper, another pathologist who performed an autopsy on the decedent, stated in his deposition that he lives in Cook County and, in his curriculum vitae, listed multiple staff appointments at Cook County hospitals. Dr. George Tsoutsias, the emergency department physician who treated the decedent before his transfer to Adventist Hinsdale Hospital, stated in his deposition that he resided in Cook County.

¶ 21 On October 29, 2012, defendants NANI and Dr. Potempa filed a reply to plaintiff's response. In that reply, defendants argued that the cost of obtaining attendance of willing witnesses would be cheaper in Du Page County than in Cook County because of higher parking costs in Chicago, where the Cook County courthouse is located. In support, they attached a Chicago Sun-Times article reporting that Chicago has an average parking rate of $25 per day, as well as a copy of the official website of the city of Wheaton, where the Du Page County courthouse is located, stating that commuter parking can be obtained for $1.50 per day.

¶ 22 Defendants AIMS Hospitalist Group, Dr. Bawamia, and Dr. Dave also filed a reply to plaintiff's response in which they argued that plaintiff's response was misleading in that it cherry-picked information that was favorable to her while omitting other relevant information. For instance, they noted that plaintiff stated that Dr. Bertenshaw, the treating endocrinologist,

treated patients in Cook County, but she neglected to state that he lived in Du Page County, saw patients in Du Page County on a daily basis, and treated the decedent in Du Page County.

¶ 23 On November 14, 2012, pursuant to an agreed order, plaintiff dismissed Nurse Padilla and Nurse Tutaan as defendants while retaining the right to call them as trial witnesses. As part of that order, Nurse Padilla and Nurse Tutaan stipulated that they would prefer to provide one to two hours of trial testimony as non-defendants in Cook County rather than attending trial daily as defendants in Du Page County for two weeks.

¶ 24 On that same date, the trial court granted defendants' motion to transfer to Du Page County. The court found that trial would be easier, more expeditious, and less expensive if it were tried in Du Page County rather than Cook County, because "all of the witnesses that will be called relative to claims here" worked at Adventist Hinsdale Hospital in Du Page County, and most of them lived in or near Du Page County. The court further noted that all of the defendant physicians provided all of their care to the decedent in Du Page County and worked in Du Page County. With regard to public interest factors, the court found that Du Page County had a "much more significant interest in the case," and it additionally noted that the Cook County docket was more congested than the Du Page County docket. Thus, the trial court ordered that the case be transferred to Du Page County. Plaintiff timely filed the instant interlocutory appeal.

¶ 25 II. ANALYSIS

¶ 26 On appeal, plaintiff raises two issues. First, she contends that the trial court erred in denying her request for an extension of time to conduct *forum non conveniens* discovery. Second, she contends that the trial court abused its discretion in granting defendants' motion to

transfer to Du Page County. We consider these contentions in turn.

¶ 27 A. Plaintiff's Request for an Extension of Time to Conduct Discovery

¶ 28 Plaintiff's first contention is that, by denying plaintiff's request for an extension of time to conduct *forum non conveniens* discovery, the trial court violated Supreme Court Rule 187, which provides: "Hearings on motions to dismiss or transfer the action under the doctrine of *forum non conveniens* shall be scheduled so as to allow the parties sufficient time to conduct discovery on issues of fact raised by such motions." Ill. S. Ct. R. 187(b) (eff. Aug. 1, 1986). Defendants, on the other hand, contend that plaintiff had ample time to conduct *forum non conveniens* discovery, since the trial court did not halt discovery until more than two years after Dr. Potempa and NANI filed their initial motion to transfer the case to Du Page County. We agree with defendants.

¶ 29 At the outset, the parties disagree as to the standard of review to be applied here. Defendants argue that we review the trial court's ruling for an abuse of discretion, citing *Whirlpool Corp. v. Certain Underwriters at Lloyd's London*, 295 Ill. App. 3d 828, 835 (1998), for the proposition that whether to allow discovery on *forum non conveniens* issues is a matter left to the discretion of the trial court. Plaintiff argues that our review is *de novo*, since this issue involves an interpretation of Rule 187. See *Reyes v. Menard, Inc.*, 2012 IL App (1st) 112555, ¶14 (interpretation of Supreme Court rules is *de novo*). However, as plaintiff acknowledges, the committee comments to Rule 187 explicitly invoke an abuse of discretion standard: "Paragraph (b) requires that hearings on *forum non conveniens* motions be scheduled to allow the parties sufficient time to conduct discovery on factual issues raised by such motions. *The trial court*

should exercise its discretion in determining how much time is sufficient." (Emphasis added.) Ill. S. Ct. R. 187, Committee Comments (adopted Feb. 21, 1986). Consequently, we agree with defendants that an abuse of discretion standard is the proper standard of review for this issue, in accordance with *Whirlpool* and the comments to Rule 187.

¶ 30 Plaintiff nevertheless argues that *Whirlpool* is inapposite, asserting that in the present case, unlike in *Whirlpool*, the trial court completely denied her any opportunity for *forum* discovery. Her assertion is not borne out by the record. As discussed above, Dr. Potempa and NANI filed their initial *forum non conveniens* motion on August 10, 2010. The motion was continued, and plaintiff was given the opportunity to conduct discovery for approximately the next two years, during which time she deposed over 20 witnesses who were involved in the decedent's care. Plaintiff also received multiple extensions of time to convert the respondents in discovery. On August 17, 2012, the newly-named defendants Adventist Hinsdale Hospital, Nurse Padilla, and Nurse Tutaan filed their motion to transfer. It was not until after the filing of this second motion, which came after two full years of discovery, that plaintiff requested a further extension of time to conduct *forum* discovery.

¶ 31 Under these circumstances, particularly the extensive discovery conducted by plaintiff after the filing of the first *forum non conveniens* motion, we find that the trial court did not abuse its discretion in denying plaintiff's request. Moreover, even if we were to accept plaintiff's argument that the proper standard of review is *de novo*, we would still find the trial court's decision to be proper. In this regard, we agree with the statement that the trial court made to plaintiff at the hearing on her motion to extend:

> "You know who the parties are. You know where they reside. You know who the witnesses are. You know where all the sources of proof are. You know where the medical records are located. You know where your own plaintiff is. You know what degree of deference that has to be given. You know what the public interest factors are, the interest of which county in deciding disputes concerning its citizens or residents or whatever.
>
> There – I can't imagine after two years of doing the actual discovery of depositions and converting respondents, or whatever, that you don't have every single scrap of evidence that you need to respond."

Accordingly, regardless of the appropriate standard of review, we find no error in the trial court's decision to deny plaintiff's motion for an extension of time to conduct discovery.

¶ 32 B. *Forum Non Conveniens*

¶ 33 We therefore turn to the question of whether the trial court erred in granting defendants' motion to transfer the case from Cook County to Du Page County under the doctrine of forum non conveniens.

¶ 34 Although broad discretion is vested in the trial court in ruling on a *forum non conveniens* motion, the court's decision shall be reversed on appeal if it is an abuse of that discretion. *Hackl v. Advocate Health and Hospitals Corp.*, 382 Ill. App. 3d 442, 447 (2008); *First American Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002). Such an abuse occurs where no reasonable person would take the position adopted by the trial court. *Hackl*, 382 Ill. App. 3d at 447; *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 442 (2006).

¶ 35 Under the Illinois venue statute, an action must be brought either (1) in a county where a defendant joined in good faith resides or (2) in the county where the cause of action arose. 735 ILCS 5/2-101 (West 2006); *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 171 (2003). If venue is proper in multiple counties, then the equitable doctrine of *forum non conveniens* may be invoked to determine which forum is most appropriate. *Id.* at 171-72; *Moore v. Chicago & North Western Transp. Co.*, 99 Ill. 2d 73, 76 (1983) ("Implicit in the doctrine of forum non conveniens is the existence of at least two forums in which the controversy may be litigated").

¶ 36 In making this determination, the court must balance private interest factors affecting the litigants as well as public interest factors affecting court administration. *Dawdy*, 207 Ill. 2d at 172. Relevant private interest factors include: (1) convenience of the parties; (2) ease of access to evidence; (3) availability of compulsory process over unwilling witnesses; (4) cost of obtaining attendance of willing witnesses; and (5) possibility of viewing the premises, if appropriate. *Id.* (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947) (superseded by statute on other grounds)); *First American Bank v. Guerine*, 198 Ill. 2d 511, 517 (2002). Relevant public interest factors include: (1) interest in having local disputes decided locally; (2) unfairness of imposing the expense of a trial and jury duty upon residents of a county with little or no connection to the litigation; and (3) administrative difficulties caused by handling litigation in a forum with more crowded dockets instead of dealing with it in its county of origin. *Dawdy*, 207 Ill. 2d at 172 (citing *Gulf Oil*, 330 U.S. at 508); *Guerine*, 198 Ill. 2d at 517. In balancing these factors, the court must take into account the totality of the circumstances and adopt a flexible, case-by-case approach. *Id.* at 518 (citing *Bland v. Norfolk and Western Ry. Co.*, 116 Ill.

2d 217, 227 (1987) (" 'If central emphasis were placed on any one factor, the *forum non conveniens doctrine* would lose much of the very flexibility that makes it so valuable' ") (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 250 (1981))).

¶ 37 When applying these factors, courts do not weigh the defendants' desired forum equally with the plaintiff's choice of forum. Rather, a plaintiff has a substantial interest in choosing the forum in which to seek vindication of his rights, and "the plaintiff's forum choice should rarely be disturbed unless the other factors strongly favor transfer." *Guerine*, 198 Ill. 2d at 517; see *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 442 (2006) (transfer is appropriate "only in exceptional circumstances when the interests of justice require a trial in a more convenient forum."). Less deference is accorded to plaintiff's forum choice where, as in the present case, neither the plaintiff's residence nor the site of the injury is within the chosen forum. *Guerine*, 198 Ill. 2d at 517 (citing *Griffith v. Mitsubishi Aircraft Int'l, Inc.*, 136 Ill. 2d 101, 106 (1990)). This is due to the fact that when plaintiff's home forum is chosen, it is reasonable to assume that this choice is convenient; when an alternate forum is chosen, this assumption becomes less reasonable. *Wieser v. Missouri Pacific R. Co.*, 98 Ill. 2d 359, 368 (1983) (according less deference to plaintiff's choice of forum because it was neither her county of residence nor the site of the injury) (citing *Piper Aircraft*, 454 U.S. 235 at 255-56); *Bland v. Norfolk and Western Ry. Co.*, 116 Ill. 2d 217, 227-28 (1987). Nevertheless, even where plaintiff chooses a forum that is remote from her county of residence and the county where the injury occurred, "the deference to be accorded is only *less*, as opposed to *none*, and the test is still whether the relevant factors viewed in their totality, strongly favor transfer to another forum."

Elling v. State Farm Mut. Auto. Ins. Co., 291 Ill. App. 3d 311, 318 (1997) (emphases in original); see *Langenhorst*, 219 Ill. 2d at 443; *Guerine*, 198 Ill. 2d at 518.

¶ 38 In the case at hand, the parties do not dispute that venue is proper in Cook County, as it is agreed that defendants Dr. Bawamia and Dr. Kinder both reside in Cook County. The defendants' sole contention is that transfer to Du Page County is appropriate under the doctrine of *forum non conveniens*. Given the totality of circumstances in this case, particularly the fact that multiple defendants practice medicine on a regular basis in Cook County, and taking into account the deference to be granted to plaintiff's choice of forum, we find that the relevant factors do not "strongly favor transfer" (*Guerine*, 198 Ill. 2d at 517).

¶ 39 1. Private Interest Factors

¶ 40 We first consider the private interest factors, beginning with the first factor, the convenience of the parties. In this case, the individual defendants are dispersed among multiple counties: Cook County (Dr. Bawamia and Dr. Kinder), Du Page County (Dr. Potempa), and Will County (Dr. Dave). Three of these defendants – Dr. Bawamia, Dr. Dave, and Dr. Potempa – have filed affidavits stating that Du Page County is a more convenient trial location than Cook County. However, with regard to Dr. Bawamia, who is a Cook County resident, we note that "[i]t is all but incongruous for defendants to argue that their own home county is inconvenient." *Kwasniewski v. Schaid*, 153 Ill. 2d 550, 554 (1992). Moreover, we note that any inconvenience incurred by the defendants who do not reside in Cook County is minimized by the fact that Du Page County and Will County are both directly adjacent to Cook County. *Kwasniewski*, 153 Ill. 2d at 554 (finding that the burden imposed upon witnesses required to travel to an immediately

adjacent county for trial was "slight indeed"); see *Griffith v. Mitsubishi Aircraft Int'l, Inc.*, 136 Ill. 2d 101, 113 (1990) (stating that "the relatively short distance between the forum chosen by plaintiffs and that suggested by defendants makes it unlikely that trial in Cook County would be more costly or inconvenient"). Although trial in an adjacent county is not automatically convenient as a matter of law (*Dawdy*, 207 Ill. 2d at 180), the distance factor is nevertheless relevant in weighing the significance of the inconvenience caused. See *Dowd v. Berndtson*, 2012 IL App (1st) 122376, ¶ 34 (finding it significant in *forum non conveniens* analysis that Du Page County and Cook County are adjacent); *Chung ex rel. Chung v. Advocate Health Care*, 336 Ill. App. 3d 789, 795 (2002) (same). Furthermore, as the *Guerine* court observed, modern transportation greatly reduces the inconvenience incurred by defendants who need to attend trial in a county other than their county of residence. *Guerine*, 198 Ill. 2d at 525-26.

¶ 41 As for plaintiff, she stated in her affidavit that a Cook County trial is more convenient than a Du Page County trial, and indeed, it is presumed that plaintiff's choice of forum is convenient for her. *Langenhorst*, 219 Ill. 2d at 448 (rejecting defendants' argument that a transfer of venue would make trial more convenient for plaintiff) (citing *Guerine*, 198 Ill. 2d at 518 ("defendants cannot assert that the plaintiff's chosen forum is inconvenient to the plaintiff")). Taking all of the above facts into account, we cannot say that the convenience of the parties strongly favors transfer.

¶ 42 Nor does the convenience of non-party witnesses strongly favor transfer. With regard to this factor, defendants point to the affidavit of Rendl, in which she averred that a Du Page County trial would be more convenient, time efficient, and cost effective for Adventist Hinsdale

Hospital employees. However, defendants do not identify any specific non-party Adventist Hinsdale Hospital employees who might be called to testify, nor does Rendl name them in her affidavit. Since the residences of such witnesses are not known, we cannot properly gauge the convenience of a Cook County trial for them. See *Cradle Soc'y v. Adopt America Network*, 389 Ill. App. 3d 73, 76 (2009) (court cannot speculate about whereabouts of unidentified witnesses). Therefore, it is unclear whether defendant's witnesses would be inconvenienced by coming to Cook County. The distance alone is not unreasonable or inconvenient.

¶ 43 Plaintiff, on the other hand, has identified four Indiana residents whom she intends to call to testify regarding the decedent's active lifestyle. All four have submitted certified statements in which they attest that a Cook County trial would be more convenient than a Du Page County trial. Plaintiff has also identified several medical personnel involved in the treatment of the decedent whom she intends to call at trial and who either reside or work in Cook County. Specifically, Dr. Tsoutsias, who treated the decedent before his transfer to Adventist Hinsdale Hospital, and Dr. Harper, who performed the decedent's autopsy, are both Cook County residents. Dr. Bertenshaw, Dr. Bijari, and Dr. Kaufman are not Cook County residents but either have privileges at a Cook County hospital or a Cook County office. Finally, plaintiff has stated that she intends to call Nurse Padilla and Nurse Tutaan, both of whom are Will County residents. While they were defendants in the case, they each stated that a Du Page County trial would be more convenient for them; however, when plaintiff dismissed them from the case, they stipulated that they would prefer to be witnesses at a Cook County trial than defendants at a Du Page County trial.

¶ 44 When viewed as a whole, the dispersal of parties and witnesses in this case resembles the dispersal found in *Guerine*, 198 Ill. 2d at 526, where our supreme court held that the trial court abused its discretion in granting a defendant's *forum non conveniens* motion. *Guerine* arose out of a fatal automobile collision in De Kalb County. *Id.* at 512. Relatives of the deceased woman brought suit in the Cook County circuit court against the driver of the other car and against the manufacturer of the trailer that the other car had been pulling. *Id.* at 513. The defendant manufacturer filed a *forum non conveniens* motion to transfer venue to De Kalb County. *Id.* The defendant driver's vehicle and trailer were stored in De Kalb County; multiple witnesses and the police officers who investigated the crash scene were from De Kalb as well. *Id.* However, the defendant driver (who did not join in the motion for transfer) lived in Cook County and presumably drove his car on Cook County roads. *Id.* at 525. Plaintiffs were residents of Kane County, but they filed affidavits that a trial in Cook County would not be inconvenient for them, as did two potential witnesses from De Kalb County. *Id.* at 524-25. In addition, there were other possible witnesses residing in Winnebago County and Du Page County, and the defendant manufacturer had its headquarters in Indiana. *Id.*

¶ 45 Based upon this evidence, the *Guerine* court held that the trial court abused its discretion in granting the defendant manufacturer's *forum non conveniens* motion to transfer the case to De Kalb County, despite the fact that neither the plaintiffs' residence nor the site of the accident giving rise to the action were in the plaintiff's chosen forum. *Id.* at 526. It explained that "a trial court abuses its discretion in granting an intrastate *forum non conveniens* motion to transfer venue where, as here, the potential trial witnesses are scattered among several counties, including

the plaintiff's chosen forum, and no single county enjoys a predominant connection to the litigation." *Id.*; see also *Langenhorst*, 219 Ill. 2d at 447 (transfer not appropriate where both the transferor and transferee counties had significant ties to the case and potential witnesses were scattered throughout several Illinois counties, as well as Indiana and Missouri).

¶ 46 Similarly, in the present case, the parties and potential trial witnesses are scattered across Indiana, Will County, Du Page County, and Cook County. Although Cook County would be an inconvenient forum for some of the defendants, two of the defendants and two potential medical experts reside in Cook County, and four additional witnesses have stated that a Cook County trial would be more convenient than a Du Page County trial. In light of these facts, we find that defendants have not met their burden of showing that the convenience of parties and witnesses strongly favors a transfer from plaintiff's chosen forum. See *Guerine*, 198 Ill. 2d at 526; *Langenhorst*, 219 Ill. 2d at 447.

¶ 47 The next factor, ease of access to evidence, also does not strongly favor transfer. Defendants make no attempt to argue this issue in their brief, nor have they provided evidence that transporting medical records or other evidence to Cook County would be a significant burden. See *Hackl v. Advocate Health & Hospitals Co.*, 382 Ill. App. 3d 442, 451 (2008) (stating that there was no reason to believe that transporting records to the forum county would pose a significant burden on the defendant health care provider); *Broeker v. Turville*, 257 Ill. App. 3d 389, 393 (1993) (rejecting defendants' argument that ease of access to documents favors transfer where defendants "fail to explain how producing the aforementioned documentation in [plaintiff's chosen forum] will result in any undue expense or inconvenience."). In any event,

plaintiff indicated in her response to defendants' motion to transfer that the medical records at issue in this case had already been made available to counsel. As a result, the relative ease of access to sources of testimonial, documentary, and real evidence does not require transfer to Du Page County. Normally, documentary evidence exists electronically and, as such, is available in either forum. With respect to hard copy documents, the location of documents and records has become a less significant factor in *forum non conveniens* analysis in the modern age of email, internet, telefax, copying machines, and delivery services, since they can now be easily copied and sent. *Woodward v. Bridgestone*, 368 Ill. App. 3d 827, 834 (2006).

¶ 48 The remaining two factors, namely, the availability of compulsory process over unwilling witnesses and the possibility of viewing the premises, are of lesser importance given the facts of this particular case. As for availability of compulsory process, this factor does not weigh for or against transfer, since compulsory process under Supreme Court Rule 237 would be equally available in either Cook or Du Page County. See Ill. S. Ct. R. 237 (eff. July 1, 2005). As for the possibility of viewing the premises, since this is a medical malpractice action, there is nothing that would suggest that it would be helpful for the jury to view the facilities where the events at stake allegedly occurred. See *Hackl*, 382 Ill. App. 3d at 452 (stating that "as a practical matter, a viewing of the site is rarely or never called for in a medical negligence case"). We therefore accord little weight to this factor. See *Langenhorst*, 219 Ill. 2d at 448-49 (discounting the significance of a view of the accident site where changed circumstances would make such a view unhelpful); *Grachen v. Zarecki*, 200 Ill. App. 3d 336, 340 (1990) (finding that the possibility a jury view of an accident site was relatively unimportant to the *forum non conveniens* analysis

where "defendants do not suggest any specific facts that would make viewing the site of this accident helpful to a jury"). Lastly, the court must consider all other "practical problems that make trial of a case easy, expeditious, and inexpensive." *Langenhorst*, 219 Ill. 2d at 443. The attorneys for the parties maintain offices in Cook County. The Illinois Supreme Court has stated that, while little weight should be accorded this factor, a court may still consider it in the *forum non conveniens* analysis. *Dawdy*, 207 Ill. 2d at 179; *Woodward*, 368 Ill. App. 3d at 836. In sum, the private interest factors do not favor either party.

¶ 49 2. Public Interest Factors

¶ 50 The public interest factors in this case also do not strongly favor a transfer to Du Page County, because Cook County has a legitimate interest in this case due to defendants' provision of health care in Cook County, and because the issue of docket congestion raised by defendants is not dispositive.

¶ 51 Defendants contend that since the all of the medical care at issue in this case was provided in Du Page County, this is a localized controversy that should be decided locally. In the same vein, they argue that it is not appropriate to impose the expense of a trial and jury duty upon the people of Cook County for a matter that does not concern them. However, the record demonstrates that the controversy is not purely localized. Rather, Cook County has a legitimate interest in the outcome of this litigation.

¶ 52 Under our supreme court's decisions in *Dawdy* and *Langenhorst*, in order to assess whether a county has a sufficient interest in litigation, it is important to examine the nature of the defendant's activities in that county. The mere fact that a company does business in the forum

county does not, by itself, create a public interest in litigation involving that company. *Dawdy*, 207 Ill. 2d at 182; see also *Evans v. MD Con, Inc.*, 275 Ill. App. 3d 292, 296-97 (1995) (finding the mere presence of a registered agent to be an insubstantial link to a forum for the purposes of *forum non conveniens* analysis). Rather, the citizens of a county gain a legitimate interest in litigation when a company carries on activities in the county that are qualitatively similar to those which give rise to the lawsuit at hand. This is illustrated by the differing results in *Dawdy* and *Langenhorst*. In *Dawdy*, the court gave no weight in the public interest analysis to the fact that the defendant train company operated a facility in the forum county, where the cause of the litigation was a highway collision between a tractor driven by plaintiff and a truck driven by the defendant's employee. *Dawdy*, 207 Ill. 2d at 169, 182. By contrast, in *Langenhorst*, where the cause of the litigation was plaintiff's decedent being struck by a train at a rural railroad crossing, the court found it highly significant that the defendant train company not only operated train lines in the forum county, but maintained similar rural crossings. *Langenhorst*, 219 Ill. 2d at 451.

¶ 53 Therefore, in order to determine the public interest in this matter, we must consider the extent to which defendants may provide health care services in Cook County or to residents of Cook County. This is crucial because, if it does these things, the disposition of this case could have an impact on Cook County residents by affecting the quality of health care they receive. See *Gundlach v. Lind*, 353 Ill. App. 3d 677, 683 (2004) (finding that a medical malpractice action would be of interest to a county where its citizens "rely on defendants for their medical treatment"). If there is no impact, then Cook County has little, if any, interest in the matter; conversely, if an impact is apparent from the facts of the case, then the residents have a

legitimate stake in the outcome, so it would not be unfair to impose the burden of jury duty upon them.

¶ 54 This understanding of the public interest was applied in *Prouty v. Advocate Health & Hospitals Co.*, 348 Ill. App. 3d 490 (2004), a medical malpractice suit. Although all of the allegedly negligent medical care was rendered at a Lake County hospital, the defendant health care provider also maintained hospitals throughout Cook County. The court therefore found that the public interest did not support a move away from Cook County, reasoning in part that "[a]ny county to which [the defendant] provides service has an interest in the outcome of the case." *Prouty*, 348 Ill. App. 3d at 497 (citing *Washington v. Illinois Power Co.*, 114 Ill. 2d 395, 403 (1991)); see also *Hackl*, 382 Ill. App. 3d at 452 (in medical malpractice case, Cook County had "a real and genuine interest" in the litigation where certain defendants resided and provided healthcare in Cook County, even though the allegedly negligent medical care was rendered in Lake County).

¶ 55 Applying these considerations to the case at hand, we find that the citizens of Cook County have a legitimate interest in this case. All four of the individual defendants practice medicine in Cook County and thus treat Cook County residents. More specifically, Dr. Potempa has a hospital affiliation in Cook County and affiliations with three dialysis centers in Cook County, including two where he serves as medical director; Dr. Bawamia and Dr. Dave practice in Cook County; and Dr. Kinder practices at four facilities in Cook County. In addition, NANI conducts business in Cook County, with offices in eight Cook County locations. Under these facts, where citizens of Cook County rely upon the defendants for medical treatment, it would

not be unfair to impose upon them the expense of trial and the burden of jury duty in the context of a medical malpractice case. *Hackl*, 382 Ill. App. 3d at 452; *Prouty*, 348 Ill. App. 3d at 497.

¶ 56 Defendants contend that docket overcrowding in Cook County weighs against a Cook County trial. See *Dawdy*, 207 Ill. 2d at 181 (finding docket overcrowding in the transferor forum to weigh in favor of transfer). However, defendants base their argument of docket overcrowding on a 2011 report from the Administrative Office of the Illinois Courts which illustrated that Cook County had over 900,000 cases pending at the end of the year, versus only approximately 68.000 in Du Page County. What defendants failed to show is which county has more judges to dispose of the case load, and which county disposes of their cases faster. Docket congestion is determined by the time it takes for a case to be completed, not who has the most cases. The defense has offered no evidence that Du Page County will dispose of their case faster than Cook County. Therefore, comparative congestion in the respective courts is not a factor in the issue before us. *Woodward*, 368 Ill. App. 3d at 386 (this factor received little weight where defendants "offered no evidence" of less court congestion in their proposed forum); *Berbig v. Sears Roebuck & Co.*, 378 Ill. App. 3d 185, 189 (2007) ("court congestion is a relatively insignificant factor, especially when the record does not show that the other forum would resolve the case more quickly"). Thus, we find that defendants have not met their burden of showing that the private and public interest factors strongly favor transferring this case from Cook County. See *Guerine*, 198 Ill. 2d at 517 (plaintiff's choice of forum should not be disturbed unless factors strongly favor transfer); *Langenhorst*, 219 Ill. 2d at 442 (transfer is appropriate "only in exceptional circumstances when the interests of justice require a trial in a more convenient forum.").

¶ 57 For the foregoing reasons, we find that the trial court abused its discretion in granting defendants' motions for transfer to Du Page County. We reverse the circuit court's order and remand for further proceedings.

¶ 58 Reversed and remanded.