FOURTH DIVISION
November 26, 2014

No. 1-13-1737

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANDREW HAVRILLA and JANA HAVRILLA,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	Cook County.
	)	
v.	)	12 L 1349
	)	
JAVIER RAMIREZ, D.D.S., ASHTON DENTAL, P.C. d/b/a TROY DENTAL, P.C., KRISTINE VOGEL, P.A., ALEXANDER KEDZIERSKI, D.O., and DREYER MEDICAL GROUP, LTD.,	)	Honorable
	)	James N. O'Hara,
Defendants-Appellants.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Taylor concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order denying defendants' motion for a change of venue is reversed. Although plaintiff eventually received treatment in Cook County, this treatment was not a part of the transaction out of which the cause of action arose pursuant to 735 ILCS 5/2-101(2) (West 2010).

¶ 2 Plaintiffs filed a medical malpractice lawsuit against defendants Javier Ramirez, D.D.S. (Ramirez), Ashton Dental, P.C. d/b/a Troy Dental, P.C. (Troy Dental), Kristine Vogel, P.A. (Vogel), Alexander Kedzierski, D.O. (Kedzierski), and Dreyer Medical Group, Ltd. (Dreyer Medical) in the Circuit Court of Cook County. Plaintiffs' amended complaint alleges that defendants failed to timely diagnose or take the necessary steps to diagnose plaintiff Andrew Havrilla's tongue cancer. The amended complaint alleges that had defendants diagnosed the tongue cancer, plaintiff would not have suffered advanced metastasized tongue cancer. All defendants in the matter filed motions to change the venue from Cook County arguing that none of the defendants was a resident of Cook County, none of the alleged negligence occurred in Cook County, and plaintiffs did not live in Cook County. The trial court denied defendants' motion to transfer venue based on its finding that plaintiff's treatment in Cook County was a part of the transaction in which the malpractice arose. Defendants now appeal the trial court's order. For the reasons below, we reverse the trial court's order denying defendants' motion to transfer venue and remand this matter for further proceedings consistent with this order.

¶ 3 BACKGROUND

¶ 4 Plaintiffs Andrew Havrilla and Jana Havrilla filed their first amended complaint against defendants Ramirez, Troy Dental, Vogel, Kedzierski, and Dreyer Medical in the Circuit Court of Cook County on December 28, 2012.[1] Generally, the amended complaint alleged that defendants were negligent in failing to diagnose or take the necessary steps to diagnose plaintiff Andrew Havrilla's tongue cancer and as a result plaintiff's cancer metastasized.

¶ 5 Specifically, the allegations in the amended complaint state the following: plaintiff went to see defendant Ramirez at Troy Dental on January 11, 2011, at which time Ramirez observed a

[1] The initial complaint was filed on November 20, 2012.

sore on the left side of plaintiff 's tongue. Plaintiff then went to see defendant Vogel, who was working under the supervision of defendant Kedzierski, at Dreyer Medical on February 15, 2011, at which time Vogel identified a sore on the side of plaintiff's tongue that was swollen and red in color. Plaintiff went back to see Ramirez on February 19, 2011 and April 2, 2011, and Vogel on March 28, 2011. On June 9, 2011, plaintiff returned to Dreyer Medical where Dr. Richard Kersch performed a biopsy of plaintiff's tongue that showed a well differentiated squamous cell carcinoma. In support of this allegation in the amended complaint, there are medical records attached to defendants' Joint Reply Brief in Support of the Motion to Transfer Venue that show, as of June 9, 2011, plaintiff's tongue cancer had been diagnosed and a finding was made that the cancer had metastasized to three lymph nodes on the left side of plaintiff's neck. There are also records that show that these diagnoses were discussed at length with plaintiff on June 22, June 29 and July 6 of 2011 at Dreyer Medical. The amended complaint goes on to state that on August 3, 2011, plaintiff began receiving treatment at the University of Illinois Medical Center in Cook County, where he underwent a composite tongue and floor mouth resection and neck dissection, as well as a radial forearm free flap reconstruction of the neck.

¶ 6 The amended complaint alleges that between January 11, 2011 and April 2, 2011, defendants Ramirez, Troy Dental, Vogel, Kedzierski and Dreyer Medical were negligent in failing to diagnose or take the necessary steps to diagnose plaintiff's tongue cancer. The amended complaint further alleges in paragraphs 19 and 20 that but for defendants' negligence "[plaintiff] would have received prompt care and a treatment appropriate to his condition and would not be suffering from advanced tongue cancer." With respect to the damage caused by defendants' alleged negligence, paragraph 18 of plaintiffs' amended complaint states: "As a consequence of the extent to which squamous cell carcinoma afflicting ANDREW HAVRILLA

metastasized, plaintiff suffered injuries of a personal and pecuniary nature." The amended complaint also includes a loss of consortium claim on behalf of plaintiff Andrew Havrilla's spouse, plaintiff Jana Havrilla, which stems from the above allegations.

¶ 7 Defendants responded to plaintiffs' amended complaint by filing motions to transfer the venue of the lawsuit from Cook County. Defendants argued that none of defendants resided in Cook County, plaintiffs did not reside in Cook County, and none of the alleged negligent treatment took place in Cook County. Plaintiffs argued, and the trial court agreed, that because plaintiff's operation and postoperative treatment took place in Cook County, venue was proper in Cook County. In the trial court's written order denying defendants' motions to transfer venue, the trial court judge stated: "Plaintiff's operation and postoperative treatment that took place at University of Illinois Chicago Medical Center in Cook County was a part of the transaction in which the malpractice arose." Further, after incorporating his written order by reference, the trial court judge made the following comments on the record: "And in this case I find that plaintiff's operation and postoperative treatment that took place at the University of Illinois, Chicago and Cook County, was a part of the transaction from which a medical malpractice had previously arisen." Defendants appealed the trial court's order denying their motions to transfer venue, and this appeal followed. For the reasons below, we reverse the trial court's order denying defendants' motion to transfer venue and remand this matter for further proceedings consistent with this order.

¶ 8 ANALYSIS

¶ 9 In this matter, there is no dispute that none of defendants is a resident of Cook County. There is further no dispute that most defendants reside in Will County, plaintiffs reside in Will County, and all the allegedly negligent treatment performed by defendants occurred in Will

County. Defendants' appeal therefore argues that the trial court erred in denying their motions to transfer venue because: (1) none of defendants was a resident of Cook County, (2) plaintiffs do not reside in Cook County, (3) none of the alleged negligent treatment was rendered in Cook County, and (4) the diagnosis of plaintiff's cancer, the extent to which the cancer had metastasized, and the immediate follow-up treatment during which plaintiff learned of his medical options going forward did not occur in Cook County. In response, plaintiffs argue that plaintiff received treatment in Cook County, at the University of Illinois Medical Center; plaintiff discovered that defendants had allegedly committed malpractice in Cook County; and a material portion of the damage element that plaintiff is required to prove occurred in Cook County, including a surgical procedure and postoperative care at the University of Illinois Medical Center that cost approximately $200,000.00.

¶ 10 The parties do not dispute the facts upon which the trial court judge relied when reviewing defendants' motions to transfer venue; rather, they dispute the correctness of the trial court's legal ruling that venue for this lawsuit is proper in Cook County. Where there is no dispute regarding the facts underlying the court's decision, we review the entire ruling *de novo.* *Kaiser v. Doll-Pollard*, 398 Ill. App. 3d 652, 655 (2010).

¶ 11 Section 2-101 of the Code of Civil Procedure (the Code) prescribes that:

> "Except as otherwise provided in this Act, every action must be commenced (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in

> which the transaction or some part thereof occurred out of which the cause of action arose." 735 ILCS 5/2-101 (West 2010).

Here, the sole issue before us is whether venue is proper in Cook County under the second prong of section 2-101 of the Code, which is referred to as the transactional prong of the venue statute. Determining venue under this prong requires us to consider two key variables: the nature of the cause of action and the place where the cause of action sprang into existence. *Rensing v. Merck & Co.*, 367 Ill. App. 3d 1046, 1050 (2006). The phrase "transaction or some part thereof" in the venue statute has been interpreted broadly. *Tipton v. Estate of Cusick*, 273 Ill. App. 3d 226, 228 (1995). It includes all the facts that the plaintiff bears the burden of proving. *Servicemaster Co. v. Mary Thompson Hospital*, 177 Ill. App. 3d 885, 890-91 (1988) (relying on *People ex rel. Carpentier v. Lange*, 8 Ill. 2d 437, 441 (1956)). A plaintiff in a medical malpractice action has the burden of proving: "'(1) the standard of care that the defendant's conduct is to be measured against, (2) that the defendant failed to comply with that standard of care, and (3) that the defendant's negligent care proximately caused the plaintiff's injury.'" *Wiedenbeck v. Searle*, 385 Ill. App. 3d 289, 292 (2008) (quoting *Hussung v. Patel*, 369 Ill. App. 3d 924, 931 (2007)). If the defendant proves that venue is improper, the trial court must transfer the case to a proper venue. *Jackson ex rel. Jackson v. Reid*, 363 Ill. App. 3d 271, 276 (2006).

¶ 12 At the pleading stage, we take all well-pled facts in the plaintiff's complaint as true. *Kaiser*, 398 Ill. App. 3d at 656. Thus, in this case, we assume that plaintiff received negligent medical treatment at the hands of defendants in Will County, and that he received subsequent operative and postoperative treatment in Cook County. We further assume that defendants' negligent treatment included their failure to timely diagnose or take the necessary steps to

diagnose plaintiff's tongue cancer, and that following this negligent treatment, plaintiff's cancer metastasized.

¶ 13 Here, we find that the record is clear in that plaintiff learned of his cancer and the extent to which the cancer had metastasized prior to receiving any treatment in Cook County. Plaintiffs' amended complaint alleged that on June 9, 2011, Dr. Richard Kersch performed a biopsy of plaintiff's tongue, which showed a well differentiated squamous cell carcinoma. The biopsy was performed by Dr. Kersch in Kane County. The record also includes medical records that show, as of June 9, 2011, plaintiff's tongue cancer had been diagnosed, a finding was made that the cancer had metastasized to three lymph nodes on the left side of plaintiff's neck, and these diagnoses were discussed with plaintiff on June 22, June 29 and July 6, 2011. Accordingly, plaintiff was aware of his cancer diagnosis as well as the fact that his cancer had metastasized to three lymph nodes in the left side of his neck as of June 9, 2011. The extent to which the cancer had metastasized was known before plaintiff received any treatment in Cook County. As a result, taking all the allegations in plaintiffs' amended complaint as true, we find that all the elements of plaintiffs' claim were satisfied prior to plaintiff ever seeking any treatment in Cook County. *Wiedenbeck* ,385 Ill. App. 3d at 292 (quoting *Hussung*, 369 Ill. App. 3d at 931) (" 'In a medical malpractice action, plaintiff has the burden of proving: (1) the standard of care that the defendant's conduct is to be measured against, (2) that the defendant failed to comply with that standard of care, and (3) that the defendant's negligent care proximately caused the plaintiff's injury.' ").

¶ 14 Plaintiffs assert that the Cook County treatment is necessary for them to prove the extent of their damages, making venue proper under the transactional prong of section 2-101 of the Code. However, under our reading of that statute, a qualifying occurrence is one "out of which

the cause of action arose." 735 ILCS 5/2-101(2) (West 2010). The treatment plaintiff received in Cook County did not give rise to his cause of action in any way; rather, the Cook County treatment was merely an attempt to correct the previously rendered negligent treatment.

¶ 16 We note that while it will ultimately be helpful to have the medical records and bills from plaintiff's Cook County treatment to monetarily quantify plaintiff's damages and show the medical procedures that plaintiff ultimately underwent as a result of the metastasized cancer, we do not find that alone to be sufficient to show that the Cook County treatment was "some part" of the "transaction" "out of which the cause of action arose." 735 ILCS 5/2-101(2) (West 2010). In this way, we find *Jackson ex rel. Jackson v. Reid*, 363 Ill. App. 3d 271 (2006), to be instructive. In *Jackson*, the defendant urologist treated the plaintiff over the course of four years. *Jackson*, 363 Ill. App. 3d at 273. The defendant determined that a bilateral ureteral implantation surgery was necessary. *Id*. The medical malpractice complaint alleged that the defendant was negligent in performing the surgery, in providing postoperative care, and in determining that the surgery was necessary in the first place. *Id*. All the defendant's treatment of the plaintiff—including both the surgery and the postoperative care—took place in Peoria County. *Id.* at 273. However, prior to determining that the surgery was necessary, the defendant had ordered several tests, including X-rays and sonograms. *Id*. The plaintiff went to a laboratory in McLean County for these tests. *Id.* at 273-74. The plaintiff filed her lawsuit in McLean County, and the defendant filed a motion to transfer to Peoria County based on improper venue. *Id*. at 272-73.

¶ 17 The plaintiff in *Jackson* argued on appeal that venue in McLean County was proper under the transactional prong because the tests ordered by the defendant and performed in McLean County formed an “integral part” of her cause of action. *Id.* at 275. The *Jackson* court rejected this argument and found that the tests ordered by the defendant and performed by third parties in

McLean County did not constitute an integral part of the plaintiff's cause of action and, therefore, venue in McLean County was improper. *Id.* at 277. In coming to this conclusion, the court emphasized that: (1) all the dealings between the parties and all the acts alleged to have been negligent had taken place in Peoria County, and (2) the plaintiff made no allegation that there was anything wrong with the tests performed in McLean County. *Id.* at 276-77.

¶ 18 Here, like in *Jackson*, all of the alleged negligence of defendants and the interactions between defendants and plaintiff occurred in Will County. Further, there is no allegation that any of the treatment that plaintiff received in Cook County was negligently performed. Further, just as the records and details of the tests that were performed in McLean County in *Jackson* would be helpful, and even necessary, in proving the plaintiff's case there, the records and details of plaintiff's treatment in Cook County may be necessary in proving up plaintiff's damages. However, as the court found in *Jackson*, that is not sufficient to find that the Cook County treatment was an integral part of plaintiff's cause of action such that venue would be proper in Cook County.

¶ 19 Along these lines, we find *Kaiser v. Doll-Pollard*, 398 Ill. App. 3d 652 (2010), to be distinguishable from this case. In *Kaiser*, the plaintiff underwent surgery in Clinton County. *Kaiser*, 398 Ill. App. 3d at 653. Although the defendant doctor performing the surgery noted bleeding, she closed the plaintiff. *Id.* After closure, the plaintiff's blood pressure began dropping while her white cell count began rising to the point that she was transferred to another hospital in St. Clair County. *Id.* The doctors in St. Clair County performed an additional surgery to locate the source of bleeding and stop it. *Id.* Although the doctors were able to stop the bleeding, the plaintiff alleged that she suffered permanent injuries as a result of the complications. *Id.*

¶ 20 The plaintiff in *Kaiser* filed her lawsuit in St. Clair County, and the defendants filed a motion to transfer venue to Clinton County based on their arguments that: "(1) the plaintiff does not allege that the defendants committed any negligence in St. Clair County, and (2) all the elements of the plaintiffs['] cause of action arose in Clinton County." *Id*. at 653. The trial court found that venue was proper in St. Clair County, and the appellate court affirmed. *Id*. at 652. In affirming the trial court, the appellate court noted that "the plaintiffs alleged injuries occurring in *both* Clinton County and St. Clair County." (Emphasis in original.) *Id*. at 660. Specifically, the court in *Kaiser* noted that the plaintiff made allegations of cumulative damage occurring after the defendant's negligence, including a loss of oxygen to her brain and organs while she was still bleeding as well as injuries she sustained during the second surgery that occurred in St. Clair County. *Id*. at 659. The court emphasized that these alleged injuries sustained during the second surgery "may also be attributable to the defendant's negligence as a normal incident to the risk she created." *Id*. Accordingly, in *Kaiser*, the plaintiff alleged that she sustained injuries during the second surgery in St. Clair County that could be attributable to the defendant's initial negligence in Clinton County. As such, the court found that "the postoperative care the plaintiff received in St. Clair County simply cannot be considered anything other than an integral part of the surgery the defendant performed in Clinton County." *Id*. at 662. Here, there is simply no such allegation that any of the treatment plaintiff received in Cook County was negligently performed and, therefore, no additional negligence that could be attributed back to defendants. Rather, all the allegedly negligent treatment took place in Will County, and the treatment that occurred in Cook County was merely an attempt to correct the previously rendered negligent treatment.

¶ 21 Accordingly, because plaintiff's cause of action and the extent to which plaintiff's cancer had metastasized as a result of defendants' negligence was known and established prior to plaintiff seeking treatment in Cook County, and because plaintiff made no allegation that any of the treatment performed in Cook County was negligent, we find that plaintiff's treatment in Cook County was not a part of the transaction out of which the cause of action arose. See 735 ILCS 5/2-101(2) (West 2010). This distinction is made clear by looking to the comments the trial court judge made when ruling on the motions to transfer venue: "I find that plaintiff's operation and postoperative treatment that took place at the University of Illinois, Chicago and Cook County, was a part of the transaction *from which a medical malpractice had previously arisen*." (Emphasis added.). In his own ruling, the trial court judge acknowledged that the cause of action had already arisen when plaintiff began receiving treatment in Cook County. While the treatment in Cook County was an occurrence, it was not one that that was "an integral part of" the alleged negligence such that it gave rise to plaintiffs' medical malpractice action. See *Kaiser*, 398 Ill. App. 3d at 662; see also 735 ILCS 5/2-101(2) (West 2010). Accordingly, we find that the trial court erred when it denied the motions to transfer venue. We therefore must remand this matter for further proceedings consistent with this order. *Jackson*, 363 Ill. App. 3d at 276 (If the defendant proves that venue is improper, the trial court must transfer the case to a proper venue).

¶ 22 CONCLUSION

¶ 23 For the reasons stated above, we reverse the trial court's order denying defendants' motion to transfer venue from Cook County and remand this matter for further proceedings consistent with this order.

¶ 24 Reversed and remanded.