2017 IL App (1st) 153165-U

SIXTH DIVISION
January 13, 2017

No. 1-15-3165

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BRIDGETTE HUMBERT, *et al.*,	)	Appeal from the Circuit Court
	)	of Cook County.
Respondents-Appellees,	)	
	)	
v.	)	Nos. 14 L 10677, 14 L 11466,
	)	15 L 00111, 15 L 01689,
	)	15 L 01690, 15 L 01691,
MEGABUS USA, LLC, MEGABUS SOUTHEAST,	)	15 L 01693, 15 L 01694,
LLC, COACH LEASING, INCORPORATED,	)	15 L 01695, 15 L 03070,
COACH USA, INCORPORATED, and RANDALL	)	15 L 03072, 15 L 03073
FLOWERS,	)	
	)	Honorable Larry Axelrood,
Petitioners-Appellants.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court did not err in denying petitioners' motion to dismiss on grounds of *forum non conveniens* as it properly balanced the private and public interest factors. We affirm the judgment of the circuit court.

¶ 2 Petitioners, Megabus USA, LLC, Megabus Southeast, LLC, Coach Leasing, Inc., Coach USA, Inc., and Randall Flowers, petitioned this court for leave to appeal pursuant to Supreme Court Rule 306(a)(2) (Ill. S. Ct. R. 306(a)(2) (eff. Feb. 16, 2011)) following the trial court's

denial of their motion to dismiss on the grounds of *forum non conveniens*. Petitioners contend that the trial court erred in denying their motion by (1) failing to consider that litigating in Illinois would prevent defendants from obtaining a fault allocation between them and an Indiana resident; and (2) improperly weighing the various private and public factors. Although we initially denied petitioners' petition, our supreme court issued a supervisory order directing us to vacate our denial and to consider the petition on the merits. *Humbert, et al. v. Megasbus USA, LLC, et al.*, No. 120585 (May 25, 2016) (mem.). We have done so, and for the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

As this is an interlocutory appeal under Rule 306(a)(2), defendants provided a supporting record with their petition for leave to appeal (Ill. S. Ct. R. 306(c) (eff. Sept.1, 2006)). This appeal proceeds based solely on those supporting records, which reveal the following pertinent facts and procedural history.

¶ 4 This case arises out of a multi-vehicle collision that took place in Johnson County, Indiana involving a Megabus double-decker passenger bus that was traveling along interstate 65 (I-65) from Atlanta, Georgia, to Chicago. This accident resulted in the filing of 12 separate personal injury actions that the trial court eventually consolidated. Of the 12 cases, 9 were filed by Illinois residents: respondent Bridgette Humbert (trial court number 14 L 10677), Anthony Oliver (14 L 11466), Manu Misra (15 L 00111), Jonathan Kizer (15 L 01689), Nathan Marshall (15 L 01690), Creighton Mims (15 L 01691), Dhileepkumar Sathiakumar (15 L 01693), Lennell Sorrels (15 L 01694), and Valerie Battle-Dugger (15 L 01695). In the remaining cases, plaintiff

Devin Novgorodoff (15 L 03072) was a Kentucky resident, Erica Spates (15 L03073) was a Georgia resident, and Cherijuana Rhodes[1] (15 L 03070) was an Indiana resident.

¶ 5 Three defendants were Illinois residents: (1) petitioner Megabus USA, LLC (Megabus), a Delaware limited liability company with its principal place of business in Cook County; petitioner Coach Leasing, Incorporated (Coach), an Illinois corporation with its principal place of business in Cook County; and petitioner Randall Flowers (the bus driver), an Illinois resident. Petitioner Megabus Southeast, LLC (Megabus Southeast), is a Delaware limited liability company with its principal places of business in Delaware and Georgia, and petitioner Coach USA, Incorporated (Coach USA), is a Delaware corporation with its principal place of business in New Jersey.

¶ 6 At around 4:30 a.m. on the date of the accident, Logan Thompson (an Indiana resident) was driving northbound on I-65 in the left lane. There was a light rain, and the road surface was wet. Thompson looked down at his cell phone, and his car left the roadway, going into the median strip and striking a "cable strand barrier." Local police officers on the scene reported that Thompson "over-correct[ed] and over-steer[ed]" the car, which caused it to spin out of control and come to a rest facing southeast between the right lane and the right shoulder of the roadway. Thompson then got out of his car and went to another car that had pulled over to render assistance.

¶ 7 A few minutes later, the passenger bus approached the scene driving northbound in the right lane of I-65. Flowers (the bus driver) swerved into the left lane, but the bus struck Thompson's car, propelling the car into the ditch on the east side of I-65. As the bus went into

[1] Cherijuana Rhodes filed as parent, guardian, and next friend of passengers Kalen Rhodes and Janaee Rhodes.

the left lane, the driver over-corrected, resulting in the bus overturning onto the driver's side in the median and damaging the cable strand barrier. Local and Indiana state police investigated the accident scene, finding that the primary cause of the accident was due to an "object" (*i.e.*, Thompson's car) being in the road. The injured passengers were treated at local Indiana hospitals.

¶ 8 On October 15, 2014, the first of what would be 12 complaints was filed against petitioners.[2] The complaints alleged negligence by petitioner Flowers, and raised negligence and *respondeat superior* claims against the remaining petitioners (Megabus, Coach, Megabus Southeast, and Coach USA) (the Corporate Defendants). The complaints alleged in pertinent part that: (1) Flowers failed to operate the bus safely, travel at a safe speed, avoid roadway obstructions, and remove the bus from service when repairs were needed; (2) the Corporate Defendants were vicariously liable for their employee's (Flowers's) acts; and (3) the Corporate Defendants failed to select or train a driver to safely operate the bus, failed to implement a program or policy to ensure the safe operation of buses, and failed to "create and adopt policies and procedures to avoid rollover accidents."

¶ 9 Petitioners filed motions to dismiss the individual complaints on grounds of *forum non conveniens*, arguing in each case that Indiana was a more convenient forum because the Illinois trial court could not compel nonresident witnesses (such as Thompson) to testify and petitioners could not file a third-party claim against Thompson. Petitioners also argued that an Illinois court could not compel nonresident witnesses to testify if a trial were held in Illinois rather than Indiana and that it would be more expensive to produce the witnesses in Illinois. Petitioners, however, provided no affidavit from any potential witness stating that trial in Illinois would be

[2] The trial court subsequently consolidated the individual cases.

inconvenient compared to Indiana. Petitioners further asserted that Indiana was the more convenient forum because "[6] of the 12 plaintiffs" resided outside of either Illinois or Cook County, the accident occurred in Indiana, and Johnson County courts are less congested than Cook County courts.

¶ 10 In response, respondents noted that Illinois residents comprised nine (not six) of the 12 plaintiffs and three of the defendants (including Flowers, the bus driver[3]). Respondents added that 78 of the 116 potential witnesses were Illinois residents. In addition, respondent noted that the possibility of a jury viewing the site of the accident was not significant because the conditions surrounding the site had changed and the parties' experts had already examined the bus. Finally, respondents argued that the primary issue related to damages rather than petitioners' liability, and evidence as to respondents' continuing medical treatment was located in Illinois. In reply, petitioners argued that the consolidated cases were not "simply damages cases," and that their inability to procure Thompson's live testimony or file a third-party claim against him would substantially prejudice their defense.

¶ 11 On October 16, 2015, the trial court issued a written order denying petitioners' motions. On January 15, 2016, petitioners sought review of the trial court's denial by filing their petition for leave to appeal to this court under Supreme Court Rule 306(a)(2) (Ill. S. Ct. R. 306(a)(2) (eff. Jan. 1, 2016)). This court denied the petition on February 24, 2016, but the supreme court issued a supervisory order on May 25, 2016, directing this court to vacate its denial and to decide the petition on the merits. *Humbert*, No. 120585 (May 25, 2016) (mem.). On July 13, 2016, we vacated our earlier denial and allowed the petition.

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[3] Although the parties state that Flowers resides in Cook County, the Indiana police report lists Flowers's city of residence as Willowbrook, which is in DuPage County.

¶ 12 ANALYSIS

¶ 13 On appeal, petitioners contend that the trial court erred in denying their motions to dismiss on grounds of *forum non conveniens*. Petitioners argue that the trial court erred in refusing to consider their arguments that, if this action were prosecuted in Illinois, petitioners would be unable to bring a third-party contribution claim against Thompson, and the trial court would be unable to compel Thompson to testify at trial. Petitioners further claim that the trial court erred in evaluating the various factors in a *forum non conveniens* analysis. We first address the trial court's evaluation of the *forum non conveniens* factors.

¶ 14 In Illinois, an action must be commenced in either: (1) the county of residence of any defendant who is joined in good faith; or (2) the county in which the cause of action arose. 735 ILCS 5/2-101 (West 2016); *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 172 (2003). Where, as here, more than one appropriate forum exists, a defendant may invoke the doctrine of *forum non conveniens* to determine the most appropriate forum. *Id.* This doctrine permits the court in which the action was filed to decline jurisdiction and direct the lawsuit to an alternative forum that the court determines can better serve the convenience of the parties and the ends of justice. *Id.* Where the focus is on an interstate *forum non conveniens*, the issue is whether the case is being litigated in the most appropriate state. *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 13. If the trial court grants an interstate *forum non conveniens* motion, the action must be dismissed because an Illinois circuit court lacks the power to transfer the action to the court of another state, but the dismissal is conditioned on the plaintiff timely filing the action in the other forum, the defendant accepting service of process from that court, the defendant waiving any available statute of limitations defense and the court in the other forum accepting jurisdiction. *Id.* (citing Ill. S. Ct. R. 187(c)(2) (eff. Aug. 1, 1986)).

¶ 15 In making its determination as to the appropriate forum in which the case should be tried, the court must balance certain private and public interest factors. *Dawdy*, 207 Ill. 2d at 172. Private interest factors include: (1) the convenience of the parties; (2) the relative ease of access to sources of evidence; (3) the availability of compulsory process to secure attendance of unwilling witnesses; (4) the cost to obtain attendance of willing witnesses; (5) the possibility of viewing the premises, if appropriate; and (6) any other practical considerations that make a trial easy, expeditious, and inexpensive. *Id.* Public interest factors include: (1) the administrative difficulties caused by litigating cases in congested forums; (2) the unfairness of imposing jury duty on residents of a county with no connection to the litigation; and (3) the interest in having local controversies decided locally. *Id.* at 173. The trial court, however, must also consider the plaintiff's choice of forum, which is substantial and entitled to deference. *Id.* The plaintiff's choice of forum may not be disturbed unless the factors weigh "strongly" in favor of transfer. *Id.* In other words, "the battle over forum begins with the plaintiff's choice already in the lead." *First American Bank v. Guerine*, 198 Ill. 2d 511, 521 (2002).

¶ 16 However, the plaintiff's choice of forum is not entitled to such deference in all cases. *Dawdy*, 207 Ill. 2d at 173. When a plaintiff chooses to litigate his cause of action in her home forum or in the forum in which her accident or injury occurred, it is reasonable to assume that the forum was chosen for reasons of convenience. *Id.* However, when the plaintiff is foreign to her chosen forum or the events that gave rise to the litigation did not occur in that forum, that assumption is less reasonable and her choice is afforded less deference. *Id.* at 173-74. Under those circumstances, it is instead reasonable to conclude that the plaintiff engaged in forum shopping to suit her individual interests, which is disfavored. *Id.* at 174.

¶ 17 Thus, in ruling on a motion to transfer, the circuit court must take all of these factors into account and give each factor proper deference or weight under the circumstances. *Id.* at 176 (quoting *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill. 2d 101, 107-08 (1990)). The circuit court must evaluate the total circumstances of the case to determine whether the balance of factors strongly favors dismissal. *Fennell*, 2012 IL 113812, ¶ 17. In other words, " 'unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should *rarely* be disturbed.' " (Emphasis added.) *Jones v. Searle Laboratories*, 93 Ill. 2d 366, 372-73 (1982) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947)).

¶ 18 The determination of a *forum non conveniens* motion lies within the sound discretion of the circuit court, and its decision will only be reversed if it can be shown that it "abused its discretion in balancing the relevant factors." *Fennell*, 2012 IL 113812, ¶ 21; *Dawdy*, 207 Ill. 2d at 176-77. The question is not whether this court would have weighed the factors differently or would have resolved the issue as did the trial court. *Jones*, 93 Ill. 2d at 378. Nor may we substitute our judgment for that of the trial court or even to determine whether the trial court exercised its discretion wisely. *Bird v. Luhr Bros.*, 334 Ill. App. 3d 1088, 1091 (2002). Rather, we will find an abuse of discretion only where no reasonable person would take the view adopted by the court. *Fennell*, 2012 IL 113812, ¶ 21. Put another way, where reasonable persons differ, we will not find an abuse of discretion. *Peraica v. Riverside-Brookfield High School District No. 208*, 2013 IL App (1st) 122351, ¶ 34.

¶ 19 In this case, we cannot hold that the trial court abused its discretion in finding that petitioners failed to show that the private and public interest factors "strongly" favor dismissing this cause and refiling it in Indiana. We note preliminarily that respondent's choice of forum

begins "already in the lead" (*Guerine*, 198 Ill. 2d at 521) because although the accident took place in Indiana, 9 of the 12 respondents resided in Illinois, not Indiana (see *id.* at 518).

¶ 20 Turning to the first private interest factor, the convenience of the parties, we hold that Illinois is favored because eight respondents are residents of Cook County and another respondent resides in Livingston County. Respondent Rhodes is an Indiana resident, but the remaining two respondents are residents of Kentucky and Georgia, locations which do not appear to favor either forum. Petitioners Megabus, Coach, and Flowers are all residents of either Cook County or, in the case of Flowers (the bus driver), suburban DuPage County. Although Megabus Southeast and Coach USA are both Delaware corporations with principal places of business in Georgia and New Jersey, respectively, we do not find that Indiana would be more convenient for them than Illinois. Nonetheless, the vast majority of petitioners and respondents are Illinois residents; thus, the trial court did not abuse its discretion in finding that this factor favors Illinois. See *Pendergast v. Meade Elec. Co.*, IL App (1st) 121317, ¶ 34 ("Additionally, three of the defendants are residents of Cook County and, thus, Cook County has an interest in deciding controversies involving its residents"), *appeal denied*, No. 116715 (Nov. 27, 2013).

¶ 21 With respect to the second factor, the relative ease of access to sources of evidence, we agree with the trial court that this factor does not strongly favor transfer to Indiana. At the outset, we note that evidence as to respondents' initial medical treatment is in Indiana, certain witnesses (including the "first responders" and Thompson) are Indiana residents, and the accident location (to the extent it is relevant) is in Indiana. Nonetheless, evidence of respondents' continuing medical costs and lost wages—which would be a significant factor in any potential damages award—is in Illinois, the accident location has not been preserved, and the

parties' experts have already examined the bus (which is owned by petitioners). We therefore find no abuse of discretion in the trial court's decision on this factor.

¶ 22 Next, regarding the availability of compulsory process to secure attendance of unwilling witnesses, the trial court also found that this factor did not strongly favor transfer to Indiana because, although Indiana witnesses are not subject to compulsory process to testify in Illinois, petitioners failed to identify any witness that would be unwilling to testify in Illinois. It was petitioners' burden to establish that the factors strongly favor dismissal to a more convenient forum. *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 444 (2006). Petitioners, however, only offered speculation, which is generally insufficient. See *Erwin ex rel. Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261, 277 (2011) ("we are not at liberty to speculate about a witnesses' whereabouts or unwillingness to testify at trial").

¶ 23 On this point, petitioners' reliance upon *Koss Corp. v. Sachdeva*, 2012 IL App (1st) 120379, and *Kerry No. 5, LLC v. Barbella Group, LLC*, 2012 IL App (1st) 102641, is unavailing. In *Koss*, the court merely held that the trial court was within its discretion to infer the relative convenience of the other forum in the absence of affidavits; it did not hold that the trial court was required to do so. See *Koss*, 2012 IL App (1st) 120379, ¶ 106 ("we know of no rule that bars a trial court from inferring the relative convenience of alternative forums, based on its knowledge of their residence and workplace"). In *Kerry*, the court noted that, unlike in this case, "*all* of the potential evidence," including the premises at issue, was located in the alternate forum. (Emphasis added.) *Kerry*, 2012 IL App (1st) 102641, ¶ 37. Moreover, we note that, in the case before us, one of respondents' theories of liability concerned petitioners' corporate policies and procedures, and respondents could compel petitioners' out-of-state employees to testify. See Ill. S. Ct. R. 237(b) (eff. July 1, 2005). Thus, the trial court did not abuse its discretion on this point.

¶ 24 The fourth private interest factor considers the cost to obtain the attendance of willing witnesses. The trial court found this factor did not strongly favor transfer from Illinois, either, observing that although petitioners would incur costs to transport occurrence witnesses in Indiana to Illinois, those costs would be minimal. In any event, we cannot hold that the cost of procuring witnesses from a neighboring state are so exorbitant that this factor alone would warrant transfer to Indiana. But see *Kourdoglanian v. Yannoulis*, 227 Ill. App. 3d 898, 901 (1992) (holding that the cost and inconvenience of bringing the plaintiff and the defendant to Illinois was "paramount" where both were residents of Greece and Switzerland, respectively). Here, the trial court's decision as to this factor was not an abuse of discretion.

¶ 25 With respect to the next factor, the possibility of viewing the premises, if appropriate, the trial court found that this factor did favor transfer to Indiana because the accident site was in Johnson County, Indiana. Although we question whether viewing the accident site would be appropriate since it was not preserved, we may not substitute our judgment for that of the trial court. See *Bird*, 334 Ill. App. 3d at 1091. Rather, where, as here, reasonable persons may differ, there is no abuse of discretion. See *Peraica*, 2013 IL App (1st) 122351, ¶ 34.

¶ 26 The final private interest factor, "any other practical considerations that make a trial easy, expeditious, and inexpensive," only slightly favors Illinois, as the parties' attorneys are located in Cook County. This factor, however, is only to be accorded minimal weight (*Fennell*, 2012 IL 113812, ¶ 40). Nonetheless, this factor does not strongly favor transfer.

¶ 27 Turning to the first of the public interest factors, the administrative difficulties caused by litigating cases in congested forums, the trial court found that this factor weighed "slightly" in favor of Indiana. The trial court noted not only that there were fewer cases pending in Johnson County, Indiana, than in Cook County, but also that there were "significantly" fewer judges in

Johnson County. In 2014, Johnson County, Indiana, had five judges, 13,823 new case filings (about 2,765 per judge) and 9,784 cases pending (1,957 per judge). See "Volume 1: Judicial Year in Review," 2014 Indiana Judicial Service Report, 159 (number of judges); "Volume 2: Caseload Statistics," 2014 Indiana Judicial Service Report, 25, 57 (cases per county); *available at* http://www. in.gov/judiciary/admin/3289.htm (last visited December 22, 2016). By contrast, Cook County had 389 judges, slightly over 1.2 million new case filings (3,088 per judge) and 1.1 million cases pending (2,849 per judge) in 2014. See "Statistical Summary," 2014 Annual Report of the Illinois Courts, at 14-15, *available at* http://www.illinoiscourts.gov/ SupremeCourt/AnnReport.asp#2014 (last visited December 22, 2016). Here, there is no basis upon which we may hold that the trial court abused its discretion. New cases filed per judge were only 10% more in Cook County than in Johnson County, although there were more pending cases per judge in Cook County. In any event, the trial court correctly observed that this factor is relatively insignificant. See *Langenhorst*, 219 Ill. 2d at 451-52.

¶ 28 The second public interest factor concerns the unfairness of imposing jury duty on residents of a county with no connection to the litigation. The trial court found this factor did not strongly favor Indiana, stating that Cook County residents had a connection to the litigation "because three of the [d]efendants are located in Cook [c]ounty." Two of these defendants are Illinois corporations. Illinois has an interest in the conduct of its corporate residents. *Pendergast*, IL App (1st) 121317, ¶ 34, *appeal denied*, No. 116715 (Nov. 27, 2013) (table). We also note that nine of the 12 respondents (plaintiffs in the consolidated cases) are Illinois residents. In addition, defendant Flowers resides in DuPage County, which is within Illinois and considerably closer to Cook County than Johnson County, Indiana. On these facts, the trial court's finding did not constitute an abuse of discretion.

¶ 29 As to the last public interest factor, the interest in having local controversies decided locally, the trial court found that this factor favored Illinois for a similar reason, namely, that eight plaintiffs and three defendants reside in Cook County. Petitioners claim that a transfer to Indiana is required because Indiana was the scene of the accident. We disagree. As noted above, Illinois has an interest in resolving matters between its residents. *Pendergast*, IL App (1st) 121317, ¶ 34; see also *Kwasniewski v. Schaid*, 153 Ill. 2d 550, 556 (1992). In addition, since the majority of the plaintiffs and defendants are Illinois residents, the accident location carries less weight than the plaintiffs' choice of forum that is the defendants' county of residence. See *id.* Accordingly, the trial court did not abuse its discretion.

¶ 30 In sum, we find that the trial court carefully examined and weighed the various private and public interest factors. To hold as petitioners wish, we would have to reweigh the factors, giving disproportionate weight to the situs of the accident, and substitute our judgment for that of the trial court, something we may not do. See *Jones*, 93 Ill. 2d at 378; *Bird*, 334 Ill. App. 3d at 1091. Examining the total circumstances of this case to determine whether the balance of factors strongly favors dismissal, we cannot hold that no reasonable person would have found that the factors "strongly" favored Indiana as a forum. *Fennell*, 2012 IL 113812, ¶¶ 17, 21. The trial court therefore did not abuse its discretion in denying petitioners' motion to dismiss on grounds of *forum non conveniens*. *Id.* ¶ 21.

¶ 31 Finally, we reject petitioners' arguments that, if this action were prosecuted in Illinois, the trial court would be unable to compel Thompson to testify at trial, and petitioners would be unable to bring a third-party contribution claim against Thompson. The testimony of Thompson could be obtained through the taking of an evidence deposition. See generally Indiana Trial Rs. 26-32 (West 2016). Moreover, it is well established that whether a nonparty (such as Thompson)

would be unavailable to petitioners as a contribution defendant in Illinois is both "wholly immaterial" to *respondents'* case and also "wholly speculative" at this point in the litigation. *Kwasniewski*, 153 Ill. 2d at 554. Petitioners argue that *Kwasniewski* is distinguishable because here, unlike in *Kwasniewski*, local police concluded that Thompson was the primary cause of the accident, and therefore that evidence is "established and undisputed." We disagree. Petitioners cite nothing to support their assertion that the conclusion of a local police officer as to the causation of a tort action is binding on a finder of fact. Our supreme court's holding in *Kwasniewski* controls the resolution of this argument, and we must therefore reject petitioners' argument on this point.

¶ 32 CONCLUSION

¶ 33 The trial court did not err in denying petitioners' motions to dismiss on grounds of *forum non conveniens*. The trial court properly balanced the private and public interest factors, and its decision was not an abuse of discretion. Accordingly, we affirm the judgment of the trial court.

¶ 34 Affirmed.