2012 IL App (5th) 100505-U

NO. 5-10-0505

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

TIMOTHY STORY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 08-L-605
	)	
ILLINOIS CENTRAL RAILROAD COMPANY,	)	Honorable
	)	Patrick M. Young,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Spomer and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in denying the defendant's motion to transfer the St. Clair County action to Williamson County because the defendant failed to show that the relevant *forum non conveniens* factors strongly favored transfer.

¶ 2 The plaintiff, Timothy Story, filed a complaint in the circuit court of St. Clair County against the defendant, Illinois Central Railroad Company, for negligence pursuant to the Federal Employers' Liability Act (FELA) (45 U.S.C. §51 *et seq.* (2000)). The defendant appeals the circuit court's order denying its motion to transfer the plaintiff's action to Williamson County, Illinois, on the grounds of *forum non conveniens*. The defendant argues that the circuit court abused its discretion in denying the motion because the relevant factors overwhelmingly favor a transfer. We affirm.

¶ 3 FACTS

¶ 4 On November 24, 2008, the plaintiff filed a complaint alleging that since 1970, he

had worked as the defendant's railway track repairman and machine operator. In count I of the complaint, the plaintiff alleged injury to his back and lumbar spine as a result of cumulative trauma. The plaintiff alleged that the defendant required him to perform heavy lifting, repetitive forceful movements, and repetitive motions and to maintain awkward positions for unreasonable extended periods of time on a daily and continuous basis, without personal protective equipment, adequate manpower assistance, mechanized devices, or sufficient rest periods.

¶ 5 In count II, the plaintiff alleged that he suffered cumulative injuries to his arms and hands. The plaintiff alleged that the defendant required him to lift, carry, pull, and push heavy tools and equipment, walk and work on uneven terrain, and use hand tools for unreasonable extended periods of time on a daily and continuous basis, without personal protective equipment, adequate manpower or mechanical assistance, or sufficient rest durations. The plaintiff alleged that the defendant failed to furnish him with reasonably safe equipment and supervision, failed to warn him of reasonably foreseeable hazardous conditions, allowed unsafe practices to become standard, and assigned him duties that it should have known would cause him injury, were beyond his physical capacity, and would aggravate prior injuries.

¶ 6 In its March 16, 2009, motion to transfer the cause to Williamson County, the defendant alleged, *inter alia*, that the plaintiff did not live in St. Clair County, that St. Clair County was not the site of a substantial portion of the plaintiff's alleged injuries, and that the plaintiff's known medical providers were not located in St. Clair County. The defendant alleged that because the plaintiff resided in Williamson County and because most of his medical providers were located in or closer to Williamson County than St. Clair County, the cause should be transferred.

¶ 7 The record reveals that the plaintiff, his wife, and his daughter are residents of

Williamson County and that the plaintiff resided in Williamson County and Franklin County, Illinois, during the majority of his employment with the defendant. Todd Blanford, David Kuntz, Jerry Blythe, and Chris Franklin, four of the plaintiff's known supervisors and coworkers, reside in Williamson County. Additional known supervisors and coworkers, however, include Curt Daniels from Union County, Illinois; Tom Pritchett from Perry County, Illinois; Bobby Harris from Franklin County; Terry Tripp from Jackson County, Illinois; and Ed Quathammer from Randolph County, Illinois. No identified witnesses are located in St. Clair County.

¶ 8 The plaintiff's medical providers include the Family Practice Center, Memorial Hospital of Carbondale, Dr. Wood, Dr. Coello, and Dr. L. Neil McCain in Jackson County; Dr. P.K. Tippy and Dr. Max Baier in Franklin County; the Orthopaedic Center, Dr. Norman J. Cohen, and Dr. James C. Chow in Jefferson County, Illinois; Kares Medical Management in Champaign County, Illinois; Herrin Hospital, Dr. H.T. Youssef, and Dr. William K. Harryman in Williamson County; Good Samaritan Regional in St. Louis, Missouri; and Dr. Matthew Gornet in Chesterfield, Missouri. The plaintiff did not receive medical treatment in St. Clair County.

¶ 9 The record reveals that the plaintiff was employed by the defendant, who owns more than 200 parcels of St. Clair County real estate, from 1970 until November 2008. Prior to 1999, the plaintiff worked in a region encompassing St. Clair County and was therefore periodically assigned to work in St. Clair County on a day-by-day basis. The plaintiff testified that he worked most summers in the 1970s in St. Clair County, running a PR-30 burro crane, laying rail from Freeburg to East St. Louis; he operated a backhoe in St. Clair County in the 1990s; and he worked on a derailment project behind a hospital in St. Clair County in 2002. The plaintiff testified that although he did not work in St. Clair County from 2002 to 2008, he worked periodically in St. Clair County for approximately 13 of his

total 38 years of employment. The plaintiff testified that the work was more physically demanding in the 1980s and 1990s.

¶ 10 The plaintiff began experiencing back problems in January 2008, while he was operating a backhoe in Johnson County, Illinois, and did not return to work after October 23, 2008. The plaintiff acknowledged that he had had no accident or injury involving the claims at issue in St. Clair County and did not remember having pain or problems with his back, elbows, or hands while working in St. Clair County.

¶ 11 Filing affidavits in the record, Allen Albers (from Clinton County, Illinois), Terry Story, Pritchett, Quathammer, and Tripp attested that they were the defendant's employees and had personal knowledge that the plaintiff had performed a significant portion of his railroading activities within St. Clair County and that he was assigned to territories which included St. Clair County for much of his career. Albers, Story, Pritchett, Quathammer, and Tripp further stated that they had worked with the plaintiff on many occasions throughout their railroading careers, that they had also spent a substantial portion of their professional time in St. Clair County, and that it would not be inconvenient for them to travel to a St. Clair County trial.

¶ 12 On September 22, 2010, after hearing arguments, the circuit court denied the defendant's motion to transfer on the grounds of *forum non conveniens*. See Ill. S. Ct. R. 187 (eff. Aug. 1, 1986). On October 25, 2010, the defendant filed his petition for leave to appeal, which we denied on February 2, 2011. However, on May 25, 2011, the Illinois Supreme Court directed this court to vacate our order denying leave to appeal. *Story v. Illinois Central R.R. Co.*, No. 112021 (Ill. May 25, 2011) (supervisory order). Pursuant to this mandate, on July 6, 2011, we allowed the defendant's petition. See Ill. S. Ct. R. 306(a)(2) (eff. Feb. 16, 2011).

¶ 13 ANALYSIS

¶ 14 The defendant argues that the circuit court improperly denied its motion to transfer based on *forum non conveniens*. We disagree.

¶ 15 The Illinois venue statute provides that an action must be commenced (1) in the county of residence of any defendant who is joined in good faith 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 2008). If more than one potential forum exists, the court may invoke the doctrine of *forum non conveniens* to determine the most appropriate forum. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 171 (2003).

¶ 16 *Forum non conveniens* is an equitable doctrine founded in considerations of fundamental fairness and sensible and effective judicial administration and allows a circuit court to decline jurisdiction in the exceptional case where a trial in another forum with proper jurisdiction and venue would better serve the ends of justice. *First American Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002). A defendant may invoke this doctrine to transfer a case from a county in Illinois to a county in a different state (interstate transfer) or to transfer a case from one county in Illinois to another Illinois county (intrastate transfer). *Dawdy*, 207 Ill. 2d at 176. The trial court is vested with considerable discretion in determining whether to grant a *forum non conveniens* motion. *Peile v. Skelgas, Inc.*, 163 Ill. 2d 323, 336 (1994). We will reverse the trial court's decision only if the court abused its discretion, *i.e.*, if it acted arbitrarily, failed to employ conscientious judgment, or ignored recognized principles of law. *Id.*; *Roberts v. Illinois Power Co.*, 311 Ill. App. 3d 458, 461 (2000).

¶ 17 In resolving *forum non conveniens* questions, the trial court must balance private-

interest factors affecting the convenience of the parties and public-interest factors affecting the administration of the court. *Bland v. Norfolk & Western Ry. Co.*, 116 Ill. 2d 217, 223-24 (1987). Private-interest factors include the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; and all other practical considerations that make the trial of a case easy, expeditious, and inexpensive–for example, the availability of compulsory process to secure the attendance of unwilling witnesses, the cost to obtain the attendance of willing witnesses, and the ability to view the premises, if appropriate. *Guerine*, 198 Ill. 2d at 516; *Peile*, 163 Ill. 2d at 337. Public-interest factors include having localized controversies decided in the local forum; administrative concerns, including the congestion of court dockets; and the imposition of jury duty upon residents of a county with little connection to the litigation. *Peile*, 163 Ill. 2d at 337.

¶ 18 "The doctrine of *forum non conveniens* is a flexible one[,] which requires evaluation of the total circumstances rather than concentration on any single factor." *Id.* at 336-37. To warrant disturbing the plaintiff's choice, the burden is on the defendant to show that relevant private- and public-interest factors strongly favor the defendant's choice of forum. *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 444 (2006). We recognize that convenience, the touchstone of the *forum non conveniens* doctrine, has a different meaning today because we are connected by interstate highways, bustling airways, telecommunications, and the World Wide Web. *Guerine*, 198 Ill. 2d at 525.

¶ 19 We give deference to the plaintiff's choice of forum because a plaintiff's right to select the forum is substantial. *Dawdy*, 207 Ill. 2d at 173. However, the plaintiff's choice of forum is not entitled to the same weight in all cases. *Id*. When the plaintiff chooses his home forum or the site of the accident or injury, it is reasonable to assume that this choice is convenient because the litigation has the aspect of being decided at home. *Id*. The plaintiff's interest in choosing the forum receives somewhat less deference when the forum

is neither the plaintiff's residence nor the site of the accident or injury. *Langenhorst*, 219 Ill. 2d at 442. Nevertheless, absent factors strongly favoring a transfer, the plaintiff's substantial interest in choosing the forum where his rights will be vindicated should rarely be disturbed. *Guerine*, 198 Ill. 2d at 517.

¶ 20 To support its argument for transfer, the defendant cites *McGinty v. Norfolk Southern Ry. Co.*, 362 Ill. App. 3d 934 (2005). In *McGinty*, the railway company appealed to this court from the denial of its motion to dismiss on the grounds of interstate *forum non conveniens*. The plaintiff had filed a FELA claim, alleging that he had incurred repetitive-trauma injuries to his body. 45 U.S.C. § 51 *et seq.* (2000). The plaintiff in *McGinty* at no time lived in Madison County or anywhere else in Illinois, and no witnesses were located in Illinois. In his 30-year employment history, the plaintiff had worked out of Moberly, Missouri; Wentzville, Missouri; St. Louis, Missouri; and Kansas City, Missouri, but alleged that he had worked in Madison County for a brief period of time, 15 years prior to suit, when he worked from St. Louis, Missouri. *McGinty*, 362 Ill. App. 3d at 935-36.

¶ 21 In *McGinty*, this court afforded only "slight deference" to the plaintiff's choice of forum on the basis of injury situs, finding that the injury's connection with Madison County was too tenuous to receive automatic deference. *Id.* at 939. This court stated that the case "turn[ed] on the repetitive nature of [the plaintiff's] injuries" and that it was "unwilling *** to equate a repetitive injury to that of a one-time incident, injury, or exposure that more directly ties an injury to a particular county." *Id.* at 938, 939. This court ultimately concluded that because neither party's witnesses or sources of proof were located in Illinois and because the plaintiff's brief work in Illinois did not vest the citizens of Madison County with more than a modest interest in the controversy's outcome, the circuit court abused its discretion in denying the *forum non conveniens* motion to dismiss and thereby reversed the decision in favor of dismissal and trial in Jackson County, Missouri. *Id*. at 939-40; see also

Laverty v. CSX Transportation, Inc., 404 Ill. App. 3d 534 (2010) (following the interstate *forum non conveniens* analysis in *McGinty*, this court determined that Michigan was a more appropriate forum where the plaintiff was not an Illinois resident, Illinois was not site of exposure, and no witnesses were located in Illinois).

¶ 22 Subsequent to this court's decision in *McGinty*, the supreme court in *Langenhorst* engaged in an intrastate *forum non conveniens* analysis, which is applicable to the case *sub judice*. In *Langenhorst*, the defendant railroad sought to transfer a wrongful-death action from St. Clair County to neighboring Clinton County. *Langenhorst*, 219 Ill. 2d at 433. Clinton County was the lifelong residence of the decedent and the county where the accident occurred. *Id.* at 433-34. The responding ambulance service, fire departments, sheriff, and hospital were located in Clinton County. *Id.* at 434. In determining that the weight of the forum factors did not strongly favor a transfer, the court noted that the witnesses were scattered among several Illinois counties, as well as Missouri and Indiana. *Id.* at 448-49. The court found it significant that the defendant filed no affidavits stating that St. Clair County would be inconvenient for any of its witnesses and that the defendant did not demonstrate impediments to accessing sources of evidence or any other inconvenience that would result from a St. Clair County trial. *Id.* at 450. The court noted that the defendant's railroad tracks traversed all of St. Clair County and that St. Clair County residents had an interest in deciding a controversy involving one of its residents who operates trains in its county. *Id.* at 451. The court in *Langenhorst* further noted that a choice between adjoining Illinois counties often results in a battle over minutiae. *Id.* at 450.

¶ 23 In the present case, although located in Williamson County, the plaintiff resides in Illinois and spent a significant portion of his employment servicing a region encompassing St. Clair County, being assigned work within St. Clair County, and thereby experiencing repetitive-trauma exposure in the defendant's yards and other locations in St. Clair County.

Thus, his choice of forum is entitled to some deference. See *Hoskin v. Union Pacific R.R. Co.*, 365 Ill. App. 3d 1021, 1027 (2006) (in repetitive-injury cases, the plaintiff's choice is entitled to more deference than it would be were his chosen forum not the situs of any part of his injury).

¶ 24 "With respect to the convenience of the parties, the defendant must show that the plaintiff's chosen forum is inconvenient *to the defendant* and that the defendant's proposed forum is more convenient to all the parties." (Emphasis in original.) *Id.* at 1024 (citing *Langenhorst*, 219 Ill. 2d at 444). Although the plaintiff resided in Franklin and Williamson Counties during his employment, "the defendant may not prevail by arguing that the plaintiff's chosen forum is inconvenient to the plaintiff." *Id*. Five of the plaintiff's coworkers attested in the record that a St. Clair County trial would not be inconvenient for them. Moreover, the record reveals that the parties and witnesses are dispersed among Williamson, Clinton, Perry, Randolph, Jackson, Franklin, Union, Champaign, and Jefferson Counties in Illinois, in addition to locations in Missouri, and many will be required to travel regardless of the chosen forum. See *Langenhorst*, 219 Ill. 2d at 453; *Guerine*, 198 Ill. 2d at 526 (when 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, the plaintiff may not be deprived of his or her chosen forum).

¶ 25 Because of the nature of the plaintiff's injury and numerosity of work sites, there are no witnesses to the exact time and place of the plaintiff's injury and no identifiable site of the trauma exposure for a jury viewing. Nevertheless, the plaintiff was allegedly exposed to the same type of working conditions and performed the same type of tasks in the defendant's yards and other locations in St. Clair County as he did in other forums. See *Peterson v. Monsanto Co.*, 181 Ill. App. 3d 677, 679 (1989) (court held that because none could say situs of injury was outside Madison County but all agreed that Madison County

was part of set of counties in which there was exposure, the case should remain in Madison County). Further, while we do not give undue weight to the location of the attorneys, the parties' attorneys have offices in or near the plaintiff's chosen forum of St. Clair County. See *Dawdy*, 207 Ill. 2d at 179; *Boner v. Peabody Coal Co.*, 142 Ill. 2d 523, 534 (1991). Accordingly, the weight of the private-interest factors do not strongly favor transfer to a Williamson County forum. See *Langenhorst*, 219 Ill. 2d at 444.

¶ 26 The public interest requires that causes which are without significant factual connections to particular forums be transferred to convenient forums to ensure that jurisdictions are not unfairly burdened with litigation in which they have no interest or connection. See *Botello v. Illinois Central R.R. Co.*, 348 Ill. App. 3d 445, 458 (2004). In considering together the interest in deciding local controversies locally and the unfairness of imposing the burden of jury duty and the expense of a trial on a county with little connection to the litigation, we find that St. Clair County is not without significant factual connections to this case. The plaintiff and at least five of his fellow workers spent substantial portions of their working careers in St. Clair County. See *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 289 (1987) (fact that the plaintiff, who alleged that he sustained injuries resulting from continuous exposure to benzine gas from the upper Mississippi river to and including passage through Madison County, was injured in Madison County provides a significant factual connection with Madison County and an interest in the outcome of the controversy sufficient to overcome public interest in less engaged court calendar).

¶ 27 Moreover, because the defendant owns 200 parcels of land in St. Clair County and has a substantial railroad business presence in St. Clair County, St. Clair County has a legitimate interest in ensuring that the defendant provides a safe working environment within its borders. *Langenhorst*, 219 Ill. 2d at 451 (forum county has much interest in

deciding a controversy involving one of its residents who operates trains in its county); *Hoskin*, 365 Ill. App. 3d at 1026 (Madison County, with residents presumably employed by the defendant and tracks maintained by employees using the same types of work tools and methods alleged to be unsafe, has a legitimate interest in ensuring that the defendant provides a safe work environment within its borders). For the same reasons, it would be fair to burden St. Clair County residents with jury duty in this case. See *Dawdy*, 207 Ill. 2d at 183.

¶ 28 In considering the comparative court congestion in the proposed fora, the Annual Report of the Administrative Office of the Illinois Courts demonstrates that for the calendar year 2007, St. Clair County saw 290 newly filed jury cases over $50,000, while Williamson County saw 106 such cases filed. For that same year, however, the average time lapse between filing to verdict in law jury cases over $50,000 was 29.1 months in St. Clair County and 33.9 months in Williamson County, thereby favoring a St. Clair County forum. Moreover, in denying the defendant's motion, the St. Clair County circuit court was in the best position to consider any administrative problems regarding its court docket or ability to try the case in an expeditious manner. See *Langenhorst*, 219 Ill. 2d at 452 (trial court is in better position to assess burdens on its own docket). Accordingly, the public-interest factors do not strongly favor transfer to a Williamson County forum.

¶ 29 Following the Illinois Supreme Court's reasoning in *Langenhorst*, we find that the balance of private- and public-interest factors does not strongly favor a transfer to Williamson County because the defendant cannot show that there is no connection to St. Clair County, that the defendant or witnesses would be inconvenienced by a trial in St. Clair County, that a trial would be impractical in St. Clair County, or that it would be unfair to burden the citizens of St. Clair County with the trial. See *id.* Accordingly, the circuit court did not abuse its discretion in denying the defendant's motion to transfer venue from St.

Clair County to Williamson County based on the doctrine of *forum non conveniens*.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the order of the circuit court denying the defendant's motion to transfer.

¶ 32 Affirmed.