

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

SECOND DIVISION  
May 20, 2008

No. 1-07-2619

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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OLD SECOND BANK, as Special Administrator of the  
Estate of ANNA WENSTRUP, Deceased,

Plaintiff-Appellant,

v.

ELMHURST MEMORIAL HOSPITAL, an Illinois Not-  
For-Profit Corporation; ELMHURST CLINIC, an  
Illinois Limited Liability Corporation; MICHELLE  
TANSEY, M.D., Individually and as an agent of  
ELMHURST MEMORIAL HOSPITAL, an Illinois Not-  
For-Profit Corporation, and as an agent of  
ELMHURST CLINIC, an Illinois Limited Liability  
Corporation; HATEM GALAL, M.D., Individually and  
as an agent of ELMHURST MEMORIAL HOSPITAL,  
an Illinois Not-For-Profit Corporation,

Defendants-Appellees.

) Appeal from the  
) Circuit Court of  
) Cook County

) No. 07 L 2370

) Honorable  
) Elizabeth Budzinski,  
) Judge Presiding.

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ORDER

Plaintiff, Old Second Bank, as special administrator of the estate of Anna  
Wenstrup, deceased, filed a medical malpractice action alleging wrongful death and

1-07-2619

survival claims in the circuit court of Cook County against defendants, Elmhurst Memorial Hospital (Elmhurst Hospital), Elmhurst Clinic, Dr. Michelle Tansey and Dr. Hatem Galal. Plaintiff sought damages for the death of Anna Wenstrup, resulting from her medical treatment at Elmhurst Hospital. Defendant Elmhurst Hospital moved to transfer venue to DuPage County under the doctrine of *forum non conveniens*. Dr. Galal joined in the motion. The circuit court granted the motion and transferred the action to DuPage County. Plaintiff filed a petition for leave to appeal to this court pursuant to Illinois Supreme Court Rule 306(a)(2) (166 Ill. 2d R. 306(a)(2)), requesting review of the circuit court's order. We granted plaintiff's petition and this appeal follows. We affirm the circuit court's order transferring venue to DuPage County.

#### BACKGROUND

The following facts are taken from Elmhurst Hospital's motion to transfer venue. Old Second National Bank is headquartered in Aurora, Illinois, in Kane County. Old Second National Bank is a wholly owned subsidiary of Old Second Bancorp, Inc., which is also headquartered in Aurora, Illinois, in Kane County. Decedent had been residing in Elmhurst, Illinois, in DuPage County prior to her death. Decedent's children reside out of state in Arizona. Elmhurst Hospital is in Elmhurst, Illinois, in DuPage County. Dr. Michelle Tansy resides in Elmhurst, Illinois, in DuPage County. Dr. Hatem Galal resides in Elmhurst, Illinois, in DuPage County. Plaintiff received treatment from Elmhurst Clinic, which is in Elmhurst, Illinois, in DuPage County. The motion additionally named numerous nurses and hospital employees who might testify at trial

1-07-2619

and noted that they live in DuPage, Lake, Will, Kendall or Kane County, but none reside in Cook County. Further, the motion alleged that court congestion in Cook County was "much greater" than in DuPage County and noted that according to the Administrative Offices of the Illinois Courts, the time lapse for a case from filing to verdict averaged 37.1 months in Cook County and 33.4 months in DuPage County.

Plaintiff's response to defendant's motion alleged the additional following facts. Elmhurst Hospital is located in a "health service area," as specified by the Illinois Department of Public Health, that includes Cook County. Elmhurst Hospital has filed collection actions against patients in the circuit court of Cook County and has been a defendant in numerous lawsuits in the circuit court of Cook County. Dr. Galal also has an office in Riverside, Illinois, in Cook County, as listed on Elmhurst Hospital's website. Radiologist Dr. Regina Liebman performed an ultrasound guided biopsy of plaintiff's decedent in January 2005, at the direction of defendant Dr. Tansey. Dr. Liebman is listed on the whitepages.com website as residing in River Forest, Illinois, in Cook County, and Dr. Liebman is listed on the ucomparehealthcare.com website as having an office in Oak Park, Illinois, in Cook County. Dr. James Allen, who examined decedent on the day of her death, has an office in Hinsdale, Illinois, in Cook County. Dr. Jerold Weinberg, who reviewed decedent's x-rays within hours of her death, resides in Northbrook, Illinois, in Cook County. Each defendants' legal counsel is located in Chicago, in Cook County. Decedent's children would return to Illinois to testify for depositions and trial and travel through O'Hare or Midway airports, which are located in

1-07-2619

Chicago, in Cook County. Plaintiff's response further noted that the backlog of cases in Cook County and DuPage County are "substantially the same" at approximately three years.

Elmhurst Hospital's reply noted that Dr. Liebman also has an office at Elmhurst Hospital. The reply disputed that Dr. Allen's office was located in Cook County, noting that his office zip code was 60521, which was in DuPage County. The reply further noted that Dr. Weinberg also has an office at Elmhurst Hospital. Additionally, all the pertinent medical records are stored in DuPage County. The reply did not acknowledge plaintiff's allegation that Dr. Galal also has an office in Riverside, Illinois, in Cook County.

Following a hearing, the circuit court granted the motion to transfer venue. The court's written order did not specify its reasons for granting the motion. We note that the record does not contain a transcript of the hearing or a bystander's report. It is appellant's burden to present this court with a "sufficiently complete record of the proceedings" to support a claim of error. Foutch v. O'Bryant, 99 Ill. 2d 389, 391 (1984). We will resolve any doubts arising from the incompleteness of the record against plaintiff. Foutch, 99 Ill. 2d at 392.

On appeal, plaintiff contends that the circuit court abused its discretion in granting the motion to transfer venue. Plaintiff relies on First American Bank v. Guerine, 198 Ill. 2d 511 (2002) and Langenhorst v. Norfolk Southern Railway Co., 219 Ill. 2d 430 (2006).

## ANALYSIS

The decision to grant or deny a motion to transfer venue based on the doctrine of forum *non conveniens* lies within the sound discretion of the trial court. Langenhorst, 219 Ill. 2d at 441-42. Accordingly, we will uphold the circuit court's determination absent an abuse of discretion. Langenhorst, 219 Ill. 2d at 442. An abuse of discretion exists where no reasonable person would adopt the view taken by the trial court. Langenhorst, 219 Ill. 2d at 442.

Section 2-101 of the Illinois Code of Civil Procedure (Code) provides that a plaintiff must commence an action: (1) in the county of residence of any defendant who is joined in good faith, or (2) in the county in which the cause of action arose. 735 ILCS 5/2-101 (West 2004). The purpose of the Illinois venue statute is to "insure that the action will be brought either in a location convenient to the defendant, by providing for venue in the county of residence, or convenient to potential witnesses by allowing for venue where the cause of action arose." Langenhorst, 219 Ill. 2d at 441, quoting Baltimore & Ohio R.R. Co. v. Mosele, 67 Ill. 2d 321, 328 (1977). If there exists more than one potential forum, the equitable doctrine of forum *non conveniens* may be invoked to determine the most appropriate forum. Dawdy v. Union Pacific Railroad Co., 207 Ill. 2d 167, 171 (2003). This doctrine allows a trial court to decline jurisdiction when trial in another forum "would better serve the ends of justice." Langenhorst, 219 Ill. 2d at 441.

Illinois courts employ the analytical framework set forth in Gulf Oil Corp. v.

1-07-2619

Gilbert, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947) in forum *non conveniens* cases. See Guerine, 198 Ill. 2d at 515. In Gulf Oil, the court sought to balance the private interest factors affecting the litigants and the public interest factors affecting court administration in determining the appropriate forum in which the case should be tried. See Guerine, 198 Ill. 2d at 515. The burden is on the defendant to show that the relevant factors strongly favor the defendant's choice of forum to warrant disturbing the plaintiff's chosen forum. Langenhorst, 219 Ill. 2d at 444. The trial court must evaluate the total circumstances of the case in determining whether the defendant has proven that the balance of factors strongly favors transfer. Langenhorst, 219 Ill. 2d at 444.

The private interest factors include: (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real 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 (5) all other practical considerations that make a trial easy, expeditious, and inexpensive. Dawdy, 207 Ill. 2d at 172.

The public interest factors include: (1) the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; (2) the unfairness of imposing jury duty upon residents of a county with no connection to the litigation; and (3) the interest in having local controversies decided locally. Dawdy, 207 Ill. 2d at 173.

An additional consideration is the forum that the plaintiff has chosen. Guerine,

1-07-2619

198 Ill. 2d at 517. A plaintiff's right to select the forum is substantial and unless the factors weigh strongly in favor of transfer, the plaintiff's choice of forum should rarely be disturbed. Guerine, 198 Ill. 2d at 517. However, the plaintiff's choice of forum receives less deference when neither the plaintiff's residence nor the site of the accident or injury is located in the chosen forum. Guerine, 198 Ill. 2d at 517.

Here, we first consider the private interest factors. We find that these factors favor a trial in DuPage County. Defendants Elmhurst Hospital and Elmhurst Clinic are located in DuPage County. Defendants Dr.'s Tansey and Galal reside in DuPage County and provided medical treatment to decedent at Elmhurst Hospital in DuPage County. Elmhurst Hospital nurses and employees who may be called to testify all reside outside of Cook County and in counties closer to DuPage County than Cook County. The relevant medical records are stored in DuPage County.

We do not find the ties that plaintiff alleges this action has to Cook County to be significant. Although Cook County may be a more convenient venue for decedent's children, who would likely travel through airports located in Cook County to participate in the litigation, their participation in this medical malpractice litigation would be minimal. Nowhere was it alleged that decedent's children had any knowledge regarding decedent's medical treatment. Further, Dr.'s Liebman, Allen and Weinberg, who plaintiff alleges either maintain offices in Cook County and/or reside in Cook County, also have a minimal connection to the litigation. Each of these doctors were not involved in decedent's day to day care at Elmhurst Hospital. The only doctor who

1-07-2619

examined decedent while at Elmhurst Hospital was Dr. Allen, and according to the pleadings, the examination occurred on the day of her death. Also, in Elmhurst Hospital's reply to plaintiff's response to the motion to transfer venue, it disputed plaintiff's allegation that Dr. Allen maintained an office in Cook County. Whether Dr. Allen maintained an office in Cook County or DuPage County does not affect our determination that DuPage County is the more appropriate forum. Further, the location of the parties legal counsel in Chicago in Cook County has little weight in our analysis. See Langenhorst, 219 Ill. 2d at 450 (The location of the parties' attorneys is accorded little weight in determining a forum *non conveniens* motion). Lastly, merely because Elmhurst Hospital has filed collection actions against patients in the circuit court of Cook County and has been a defendant in numerous lawsuits in the circuit court of Cook County, has no bearing on the ultimate issue of whether the facts in this case support the circuit court's determination that DuPage County was the most appropriate forum. See Langenhorst, 219 Ill. 2d at 443 (each forum *non conveniens* case must be considered unique on its facts).

Considering the public interest factors, we also find that they weigh in favor of a trial in DuPage County. Cook County courts are more congested than DuPage County courts. However, the difference in congestion, as noted by the parties pleadings, amounted to about a 4-month difference, which is not significant. As stated in Guerine, "court congestion is a relatively insignificant factor, especially where the record does not show the other forum would resolve the case more quickly." Guerine, 198 Ill. 2d at

1-07-2619

517. Also, we find that DuPage County has a greater interest in deciding a controversy involving a hospital in DuPage County. It would be more appropriate for a DuPage County jury to determine a medical malpractice claim by a DuPage County decedent at a DuPage County hospital where DuPage County doctors are employed. Although we acknowledge that Cook County might have some interest because the hospital might treat Cook County residents, the pleadings do not contain information regarding in which counties the hospital's patients reside.

Moreover, because neither plaintiff nor decedent is located or resided in Cook County and it was not the location of the injury, plaintiff's choice of Cook County is entitled to less deference.

This case is similar to Dawdy. In Dawdy, the plaintiff brought an action in Madison County against the defendant Union Pacific Railroad and others for personal injuries arising from a collision with a truck driven by the railroad's employee. The accident occurred on a highway located in Macoupin County. The defendants filed a motion to transfer venue from Madison County to Macoupin County, which the circuit court denied. Our supreme court held on appeal that it was an abuse of discretion not to transfer the action to Macoupin County. After considering all of the relevant factors, the court determined that they weighed in favor of a trial in Macoupin County. Dawdy, 207 Ill. 2d at 184. The court noted that most of the witnesses either resided in Macoupin County or close to Macoupin County; the medical providers were located in Macoupin County; the location of the accident was in Macoupin County; and neither

1-07-2619

plaintiff nor the driver of the truck resided in Madison County. Dawdy, 207 Ill. 2d at 178-83.

Here, as in Dawdy, neither the plaintiff nor defendants are located or reside in Cook County; the site of the injury was DuPage County; the nurses and hospital employees who might testify at trial reside outside of Cook County; plaintiff's decedent's children reside outside of Cook County; and both defendant doctors reside and have offices in DuPage County.

We are not persuaded by plaintiff's reliance on Guerine and Langenhorst. In Guerine, the decedent was killed when the car she was driving was struck by a trailer carrying a speedboat that had become unhitched from a jeep traveling in the opposite direction. The driver of the jeep resided in Cook County, the accident occurred in DeKalb County and the decedent resided in Kane County. The jeep's other passenger resided in Cook County and an eyewitness to the accident resided in DeKalb County. The trailer was manufactured by an Indiana corporation. The defendants filed a motion to transfer the action to DeKalb County and the circuit court granted the motion. Our supreme court held on appeal that it was an abuse of discretion to transfer the action because Cook County was a more convenient forum for all the parties, especially the defendants. Guerine, 198 Ill. 2d at 524. The court also found that both DeKalb County as well as Cook County had significant ties to the action. Guerine, 198 Ill. 2d at 525. Most important to the court's determination was its finding that "the potential trial witnesses [were] scattered among several counties, including the plaintiff's chosen

1-07-2619

forum, and no single county [enjoyed] a predominant connection to the litigation."

Guerine, 198 Ill. 2d at 526.

In Langenhorst, the decedent was killed when the truck he was driving was struck by a train at a railroad crossing in Clinton County. Decedent's widow brought a wrongful death action against the defendant railway company in St. Clair County. The plaintiff and the decedent were residents of Clinton County and the defendant was a foreign corporation domiciled in Virginia whose Illinois registered agent for service was located in St. Clair County. The defendant sought to transfer venue to Clinton County, but the circuit court denied defendant's motion. Our supreme court held on appeal that the circuit court did not abuse its discretion in denying the motion to transfer. The court found that both St. Clair and Clinton County had significant ties to the action and the potential witnesses were scattered throughout several counties as well as in Indiana and Missouri. Langenhorst, 219 Ill. 2d at 447. After considering the relevant factors, the court concluded that the total circumstances did not strongly favor transfer because as in Guerine, "most of the trial witnesses [were] disbursed among several counties [and two neighboring states] and [would] be required to travel regardless of the place of trial." Langenhorst, 219 Ill. 2d at 449.

We find Guerine and Langenhorst distinguishable. Unlike in those cases where more than one county had a significant interest in the action, here, Cook County does not have a significant interest in the action. Also, we do not find that the potential witnesses are scattered throughout different counties and neighboring states. Most of

1-07-2619

the witnesses reside and/or work in or near DuPage County.

In conclusion, we find that both the private and public interest factors weigh in favor of a trial in DuPage County. Further, plaintiff's choice of Cook County as a forum is reduced because plaintiff is not located there and the cause of action did not arise there. The determination to grant the motion to transfer venue rested within the discretion of the circuit court. We find no abuse of discretion because we cannot conclude that no reasonable person would take the circuit court's position.

Accordingly, we affirm the judgment of the circuit court granting the motion to transfer venue.

Affirmed.

KARNEZIS, J., with SOUTH, J., and HALL, J., concurring.