

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Mary Ellen Meier, individually, and as )  
independent executor of the estate of )  
Edmund Meier, deceased, )

Plaintiff, )

v. )

No. 20 L 5020

Paul D. Ryan, M.D., Barry J. Sidorow, M.D., )  
Paul A. Freier, M.D., Adventist Health Partners, )  
Inc., d/b/a Suburban Cardiologists d/b/a Adventist )  
Heart and Vascular Institute a/k/a Amita Health )  
Medical Group Heart & Vascular, John C. )  
Conroy, D.O., Alexian Brothers AHS Midwest )  
Region Health Co. d/b/a Amita Health Medical )  
Group, Michael Milani, M.D., Risha M. Foster, )  
M.D., Uropartners, LLC d/b/a Uro-Partners )  
Lagrange Urology, Melissa M. Kelly, D.O., )  
Stephen M. Sloan, M.D., Ali H. Bawamia, M.D., )  
Advance Inpatient Medicine, LLC, Jaime )  
Belmares Avalos, M.D., Metro Infectious Disease )  
Consultants, P.L.L.C., and Adventist Midwest )  
Health d/b/a Adventist Hinsdale Hospital d/b/a )  
Amita Health Adventist Medical Center Hinsdale, )

Defendants. )

**MEMORANDUM OPINION AND ORDER**

The *forum non conveniens* doctrine permits the transfer of a case to another venue if the weighing of various private and public factors strongly favors a transfer. Here, the balance of factors demonstrates that DuPage County would be a substantially more convenient forum for the parties. The defendants' motion is,

therefore, granted and this case is transferred to the Eighteenth Judicial Circuit in DuPage County.

### Facts

In 2008, Edmund Meier began treatment with various defendants for his cardiac care. Between 2016 and 2018, Edmund's cardiac conditions included coronary artery disease, cardiomegaly, hyperlipidemia, calcific arteries, and an enlarged aortic artery. On January 7, 2018, Hinsdale Hospital admitted Edmund for various treatments, and he was later released. On May 5, 2018, Hinsdale Hospital admitted Edmund for a urinary tract infection with sepsis and pre-syncope. On May 7, 2018, the hospital discharged Edmund and he returned home where he collapsed. An ambulance transported Edmund back to Hinsdale Hospital where doctors pronounced him deceased.

On May 6, 2020, Meier filed an 80-count complaint against the defendants. On October 6, 2020, Adventist Health Partners, Inc., Alexian Brothers AHS Midwest Region Health Co., d/b/a Amita Health Medical Group, Adventist Midwest Health d/b/a Amita Health Adventist Medical Center Hinsdale, and Drs. Paul D. Ryan, Barry J. Sidorow, Paul A. Freier, and John C. Conroy filed a motion to transfer this case to DuPage County pursuant to the *forum non conveniens* doctrine. The defendants Drs. Melissa Kelly, Stephen Sloan, Ali Bawamia, and Advance Inpatient Medicine, LLC, subsequently filed a motion to join the Adventist motion. The parties conducted written and oral discovery before subsequent briefing.

The record shows the following pertinent facts:

- Mary Ellen and Edmund lived in Darien, DuPage County, while Edmund was being treated by the defendants;
- Mary Ellen continues to live in DuPage County;
- Mary Ellen did not supply an affidavit that a trial in Cook County would be more convenient than one in DuPage County;

- Hinsdale Hospital is located in Hinsdale, DuPage County;
- The alleged malpractice occurred at Hinsdale Hospital;
- Hinsdale Hospital, Adventist Health Partners, and AMITA Health Medical Group each has its registered agent in Cook County;
- AMITA owns and operates other hospitals in Cook County;
- Certain defendant-physicians treat patients at various hospitals in Cook County;
- Drs. Sidorow, Freier, Ryan, and Conroy supplied uncontroverted affidavits that a trial in DuPage County would be substantially more convenient for them than a trial in Cook County;
- Drs. Sidorow, Freier, Ryan, and Conroy each aver that they practice in DuPage County and maintain offices there;
- Hinsdale Hospital's trial representative, Crescent Turner, supplied an uncontroverted affidavit that a trial in DuPage County would be more convenient than one in Cook County;
- Drs. Bawamia, Kelly, and Sloan maintain their primary office in Oak Brook, DuPage County, but rendered all relevant care at Hinsdale Hospital.

### Analysis

A motion filed pursuant to *forum non conveniens* seeks to transfer the action from one forum with proper venue to another, more convenient forum with proper venue. *Tabirta v. Cummings*, 2020 IL 124798, ¶ 1. Thus, “this doctrine assumes the existence of at least two forums in which the defendant is amenable to jurisdiction.” *Foster v. Chi. & N. W. Transp. Co.*, 102 Ill. 2d 378, 381 (1984). Here, both Cook County and DuPage Counties are proper venues for this action.

The equitable doctrine of *forum non conveniens* is well established in Illinois courts and is “founded in considerations of fundamental fairness and sensible and effective judicial administration.” *First Nat'l Bank v. Guerine*, 198 Ill. 2d 511, 515 (2002) (quoting *Adkins v. Chicago, Rock Island & Pac. R.R. Co.*, 54 Ill. 2d 511, 514 (1973)). Illinois courts adopted the modern line of

precedent from the United States Supreme Court case *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). See *Fennell v. Illinois Cent. R.R. Co.*, 2012 IL 113812, ¶ 14 (2012) (listing cases). A *forum non conveniens* motion requires the movant to show the overall weight of several convenience factors strongly favors transfer to a more convenient forum. *Guerine*, 198 Ill. 2d at 517 (citing *Griffith v. Mitsubishi Aircraft Int'l, Inc.*, 136 Ill. 2d 101, 106 (1990)).

The convenience factors adopted from *Gulf* are divided into “private interest factors affecting the litigants and public interest factors affecting court administration.” *Fennell*, 2012 IL 113812, ¶ 14. Illinois courts have defined the private factors to include:

(1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make a trial of a case easy, expeditious, and inexpensive – for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises (if appropriate).

*Guerine*, 198 Ill. 2d at 516 (citing cases). Courts have generally broken down the third element to address each aspect separately. The public interest factors are:

(1) interest in deciding localized controversies locally; (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in already congested fora.

*Id.* at 516-17. The public and private factors are not weighed against each other but are weighed together to test whether they strongly favor transfer away from the plaintiff’s chosen forum. *Fennell*, 2012 IL 113812, ¶ 18. “The plaintiff’s right to select the forum is substantial” and “should rarely be disturbed.” *Id.*

The consideration given to a *forum non conveniens* motion rests on several relevant presumptions. First, as to a plaintiff's choice of forum, "[w]hen the home forum is chosen, it is reasonable to assume that the choice is convenient. [Second,] [w]hen the plaintiff is foreign to the forum chosen . . . this assumption is much less reasonable and the plaintiff's choice deserves less deference." *Guerine*, 198 Ill. 2d 511, 517-18 (2002), citing cases. Third, "[w]hen the plaintiff is foreign to the chosen forum and the action that gives rise to the litigation did not occur in the chosen forum, 'it is reasonable to conclude that the plaintiff engaged in forum shopping to suit his individual interests, a strategy contrary to the purposes behind the venue rules.'" *Bruce v. Atadero*, 405 Ill. App. 3d 318, 328 (1st Dist. 2010) (citing *Dawdy*, 207 Ill. 2d at 174, quoting, in turn, *Certain Underwriters at Lloyd's London v. Illinois Cent. R.R.*, 329 Ill. App. 3d 189, 196 (1st Dist. 2002)). The Supreme Court has plainly stated its position against forum shopping: "Decent judicial administration cannot tolerate forum shopping as a persuasive or even legitimate reason for burdening communities with litigation that arose elsewhere and should, in all justice, be tried there." *Fennell*, 2012 IL 113812, ¶ 19.

Before applying the private and public factors to the case at hand, this court believes some commentary on the *forum non conveniens* analysis is highly warranted. First, the analysis by Illinois courts of motions to transfer litigation based on the *forum non conveniens* doctrine has always been weighted to trials and not discovery. The reality is, however, that very, very few cases go to trial. Further, the amount of time parties and their attorneys spend in discovery far exceeds the amount of time they spend at trial. Analysis focused on the trial is, quite frankly, out of sync with modern litigation practice. A more current analysis would give equal or greater weight to the applicability of enumerated factors to pre-trial proceedings particularly the discovery process.

Second, the *forum non conveniens* analysis, as stated in *Langenhorst* and its progeny, has not been updated over the past fifteen years to reflect the changing face of litigation. Several of

the factors enumerated in the analysis do not reflect the reality of modern litigation, such as viewing the premises, which rarely, if ever, occurs during a modern jury trial. Other factors have been rendered trivial because of improved technology and its entrenchment in court proceedings. In application, this reality renders the public factors far weightier than the private factors.

Third, the Covid-19 pandemic of 2020 and 2021 has altered the private convenience factors related to obtaining parties' and witnesses' deposition or trial testimony. It is now common for depositions and trial testimony to occur remotely, with attorneys, witnesses, and a court reporter in multiple, separate locations. The cost savings to all parties have been enormous. It is difficult to think that clients, counsel, and witnesses will return to far more expensive discovery and trial practices after the pandemic is over.

Notwithstanding the current test's shortcomings, this analysis will proceed with the required factor analysis described above.

## I. Private Factors

### A. Convenience of the Parties

As to the first private factor, “[t]he defendant must show that the plaintiff’s chosen forum is inconvenient to the defendant and that another forum is more convenient to all parties.” *Langenhorst*, 219 Ill. 2d at 444. Although a defendant is not required to claim a plaintiff’s chosen venue is inconvenient for the plaintiff, *Guerine*, 198 Ill. 2d at 518, courts have also recognized it is quite easy for a party to declare its forum preference as convenient and the opposing party’s as inconvenient. “If we follow this reasoning, the convenience of the parties means little. . . .” *Hale v. Odman*, 2018 IL App (1st) 180280, ¶ 34 (quoting *Fennell*, 2012 IL 113812, ¶ 20). “To avoid this inevitable conflict, we must look beyond the declarations of convenience and realistically

evaluate convenience and the actual burden each party bears when traveling to the plaintiff's chosen forum." *Id.* at ¶ 35.

Although it may be assumed that Cook County is a convenient forum for Mary Ellen, it is also presumed that she is forum shopping given that she is foreign to the chosen forum and the action that gives rise to the litigation did not occur in the chosen forum. Her selection of Cook County is, therefore, given less deference. And while Mary Ellen did not have to supply an affidavit as to convenience, it is notable that she did not supply one stating that Cook County is more convenient for her in light of the defendants' various affidavits indicating DuPage County is far more convenient for them.

The defendants' affidavits each aver that DuPage County is substantially more convenient given that they each live and work in DuPage County. These affidavits are uncontroverted and, therefore are assumed true. *Barrett v. FA Group, LLC*, 2017 IL App (1st) 170168, ¶ 32 (defendant's material facts in affidavit are considered true if plaintiff fails to challenge them via counteraffidavit or motion to strike). The same is true for Crescent's affidavit stating that DuPage County is more convenient given her work location.

Mary Ellen responds that Hinsdale Hospital treats Cook County residents and that the defendant hospitals own and operate various other hospitals in Cook County and have their registered agents here. Those arguments have been previously rejected in other cases. "Although these defendants have business ties to St. Clair County that are sufficient to establish venue there, any business transactions that are unrelated to the instant case are insignificant for purposes of *forum non conveniens*." *Kuhn v. Nicol*, 2020 IL App (5th) 190225, ¶17 (citing *Shaw v. Haas*, 2019 IL App (5th) 180588, ¶ 32); *Czarnecki v. Uno Vein Co.*, 339 Ill. App. 3d 504, 509 (1st Dist. 2003) (Cook County). As articulated in *Dawdy*, if the fact that the defendant conducts business in the plaintiff's chosen forum were dispositive, the *forum non conveniens* doctrine "would be entirely vitiated, and no

transfer would ever be obtained. Rather, plaintiff's choice would be elevated to the stature of a dispositive consideration, which is patently not to be allowed." *Dawdy*, 207 Ill. 2d 167, 182 (2003) (quoting *Franklin v. FMC Corp.*, 150 Ill. App. 3d 343, 347 (1986)).

The convenience of the parties favors transfer to DuPage County.

#### B. The Relative Ease of Access to Evidence

Mary Ellen argues that the defendants have failed to establish DuPage County as the more convenient forum for the significant number of Edmund's non-party treating physicians. This argument has limited persuasive effect. First, physicians, parties or non-parties, are deposed at their work locations out of professional courtesy. Further, their trial testimony is nearly always through a pre-recorded evidence deposition. Convenience is, therefore, not a factor. Second, the defendants are precluded from contacting Edmund's treating physicians pursuant to the *Petrillo* doctrine, *Petrillo v. Syntex Labs., Inc.*, 148 Ill. App. 3d 581 (1986), so the lack of their affidavits is understandable. Third, that Mary Ellen did not provide affidavits from these non-party treaters only means that this court cannot determine whether a trial in DuPage or Cook County would be more convenient to any of them.

The location of real and documentary evidence is of no issue since the materials may be physically or electronically transferred between the two counties. See *Ruch v. Padget*, 2015 IL App (1st) 142972, ¶¶ 61, 65.

This factor weighs in favor of DuPage County.

#### C. Compulsory Process of Unwilling Witnesses

A judge in either Cook or DuPage County would have equal authority to subpoena unwilling witnesses; consequently, this factor is considered neutral.

#### D. Cost of Obtaining Attendance of Willing Witnesses

Parties bear the costs of paying for witness travel. Mary Ellen argues that this court should find that “the cost to obtain [the witnesses’] presence is less in Cook County than in DuPage County.” Mary Ellen provides no authority for such a finding. She has the burden to support her argument and failed to do so. Without any evidence in the record to support the argument, this factor is considered neutral.

#### E. Viewing the Premises

In a medical malpractice case, viewing the premises is rarely if ever necessary. *Hackl v. Advocate Health and Hosp. Corp.*, 382 Ill. App. 3d 442, 452 (1st Dist. 2008). This factor is neutral.

#### F. Other Practical Considerations That Make a Trial Easy, Expeditious, and Inexpensive

The location of the parties’ attorneys is given little weight in a *forum non conveniens* analysis. See *Langenhorst*, 219 Ill. 2d at 433, 450. And although in pre-Covid days, travel between counties was considered an important factor in a *forum non conveniens* analysis, this factor takes on far less significance given that depositions can be and are taken by electronic means as standard procedure. This factor is considered neutral.

### II. Public Factors

#### A. Settling Local Controversies Locally

This case arises out of alleged medical malpractice that occurred at a DuPage County hospital by physicians practicing in DuPage County. Cook County’s interest in this case is, therefore, quite tenuous. That various defendants and non-party treaters live in Cook County does not make their residence outweigh the locus of the controversy. DuPage County residents certainly have a far greater interest in a case involving the practice of medicine

on a DuPage County resident by physicians practicing in DuPage County. This factor weighs in favor of DuPage County.

B. Unfairness of Imposing Expense and Burden on a County with Little Connection to the Litigation

This public factor typically follows from the first, and it does in this instance. A court should avoid imposing administrative costs and the burden of jury duty on a forum with little interest in the dispute. *Dawdy*, 207 Ill. 2d at 183. Here, DuPage County residents have a substantial interest in this dispute because it involves its resident being treated at a DuPage County hospital. This court also does not subscribe to the notion that Cook County has a substantial interest in this litigation because some of the defendants and non-party treaters live in Cook County. In sum, it is no imposition on DuPage County to assume the costs associated with discovery in and trial of this case. This factor favors DuPage County.

C. Administrative Concerns

This factor considers court congestion by comparing the caseload and resolution times of the fora in question. *Fennell*, 2012 IL 113812 at ¶ 43. “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 517. And, under *Dawdy*, a review of the most recent Annual Report of the Illinois Courts is the appropriate reference. 207 Ill. 2d at 181.

The 2020 report for law division cases valued at more than \$50,000 and resolved by jury verdict shows that DuPage County disposed of two cases in an average of 45.5 months while Cook County disposed of 69 cases in 28.6 months. Administrative Office of the Illinois Courts, *Annual Report of the Illinois Courts, Statistical Summary*, at 81. It must be noted that these statistics cover a year in which DuPage and Cook counties closed their courts for substantial periods. Given the backlog of cases in both

counties, it is doubtful that insightful statistics will be available for several years. It is, however, plain that Cook County has the ability to dispose of cases faster. It is, therefore, reasonable to conclude that this case would be resolved quickly in Cook County. This factor favors Cook County.

### III. Balance of Factors

Mary Ellen's choice of forum is given little deference, but not no deference, because she is forum shopping. Further, a review of the relevant factors shows that four favor DuPage County, four are neutral, and only one favors Cook County. Moreover, the most significant factors—party and non-party convenience, locus of controversy, and burden shifting—each favors transfer to DuPage County. This one-sided tilt plainly meets the exceptional circumstances necessary to justify the transfer of a case pursuant to the *forum non conveniens* doctrine.

### Conclusion

Based on the foregoing, it is ordered that:

1. The defendants' motion to transfer venue based on the *forum non conveniens* doctrine contained in Illinois Supreme Court Rule 187 is granted;
2. This matter is transferred to the Eighteenth Judicial Circuit in DuPage County; and
3. The defendants shall pay all costs for the transfer.

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John H. Ehrlich, Circuit Court Judge