

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

James Rudesill, as administrator of the)
estate of Kianna Rudesill, deceased,)

Plaintiff,)

v.)

The Baby Fold, an Illinois not-for-profit)
corporation, Joshua Lamie and)
Heather Lamie, individually and as agents)
of the Baby Fold, William Puga, M.D.,)
individually and as agent of)
BHC Streamwood Hospital, Inc.,)

No. 15 L 3146

Defendants.)

BYSTANDER'S REPORT

Pursuant to Illinois Supreme Court Rule 323, this court presents the following bystander's report.

1. On August 5, 2015, The Baby Fold filed a motion to transfer venue based on the common-law *forum non conveniens* doctrine. Dr. Puga joined that motion. At the December 14, 2015 ruling, this court informed counsel that it had several questions that the then-existing record did not answer, such as: (1) Puga's address; (2) the names of Streamwood Hospital employees who may testify; (3) the names of Kianna Rudesill's other medical treaters; and (4) a summary of the procedural posture of the case before the plaintiff voluntarily dismissed it in Kankakee County.

2. The parties provided supplemental pleadings pursuant to this court's request, and they were made part of the record.

3. On March 8, 2016, this court ruled on the motion to transfer. Present for the ruling were counsel for Rudesill, Puga, and Streamwood. Pursuant to this court's standing order, this court did not hear oral argument, and none of the parties requested to be heard. None of the parties had ordered a court reporter.

4. This court began by reviewing the law governing motions to transfer based on *forum non conveniens*. The court indicated that a *forum non conveniens* motion goes beyond venue to consider the convenience of a forum. This court recognized that trial courts are given considerable discretion in ruling on such motions, but are cautioned to exercise their discretion only in exceptional circumstances.

This court indicated that a trial court must balance private and public interests in determining the appropriate forum, and that the test is whether all relevant facts, considered together, strongly favor transfer. This court recognized that the law assumes a plaintiff's choice of forum is convenient for the plaintiff. This court cautioned, however, that if the plaintiff is foreign to the forum chosen, the basic assumption is much less reasonable and the plaintiff's choice deserves less deference. This court further cautioned that, if the plaintiff is foreign to the chosen forum and the action giving rise to the litigation did not occur there, a court may reasonably conclude that the plaintiff is forum shopping in violation to the purposes behind the venue rules.

This court noted that if the dispute is between adjoining counties, the battle tends to be over the minutiae. A trial court may be found to have abused its discretion by granting a *forum non conveniens* motion if the potential trial witnesses are scattered among several counties and no single county enjoys a predominant connection to the litigation. This court recognized that the balance of factors must strongly favor transfer of the case before the plaintiff should be deprived of its chosen forum.

This court recognized that the defendant has the burden to show that various private and public interest factors strongly favor the defendant's choice of forum to warrant disturbing the plaintiff's choice. For its part, a court is not weigh those public and private factors against each other, but is to evaluate all circumstances of the case. To that end, the defendant must show that the plaintiff's

chosen forum is inconvenient to the defendants and that another forum is more convenient to all parties. The defendant may not, however, assert that the plaintiff's forum is inconvenient to the plaintiff.

In support of these legal propositions, the court cited and quoted, among other cases, *Lagenhorst v. Norfolk S. R.R.*, 219 Ill. 2d 430 (2006); *Dawdy v. Union Pacific R.R.*, 207 Ill. 2d 167 (2003); and *First Am. Bk. v. Guerine*, 198 Ill. 2d 511 (2002).

5. This court then provided a timeline of dates that it considered important in the *forum non conveniens* analysis:

- Before August 20, 2010, Kianna lived with her parents in Livingston County.
- Before August 20, 2010, Baby Fold investigated Kianna's family situation, including her parents, in Livingston County.
- On August 20, 2010, Kianna was placed in foster care with the Lamies in Livingston County.
- Between August 20, 2010 and March 10, 2011, Kianna lived with the Lamies in Livingston County.
- In March 2011, the Institute for Human Resources, located in Livingston County, recommended that Kianna receive in-patient treatment at Streamwood Hospital, located in Cook County.
- On March 10, 2011, Kianna was admitted to Streamwood in Cook County.
- While at Streamwood, Kianna expressed fearful behavior before meeting with her foster father. Puga allegedly failed to investigate the source of this fear. This occurrence and alleged omission occurred in Cook County.
- On March 17, 2011, Kianna was discharged from Streamwood. Before Kianna's discharge, Puga allegedly failed to evaluate her or speak with the foster family. This occurrence and alleged omission occurred in Cook County.
- On March 17, 2011, Kianna is returned to the Lamies and lives with them until May 2, 2011 in Livingston County.
- On May 4, 2011, Kianna dies in Livingston County.

6. This court also indicated that the following facts were irrelevant to its evaluation:

- Rudesill voluntarily dismissed the Kankakee County lawsuit after the judge ordered the biological parents to produce their drug testing and mental-health treatment records to the court for an *in camera* inspection. This court did not find that Rudesill's previous filing of a lawsuit in Kankakee County created an inference of forum shopping.
- Puga and Streamwood were not named in the Kankakee County action.

7. This court noted that venue was proper in Cook County because, at a minimum, Streamwood is located here.

8. This court indicated that the *forum non conveniens* analysis in this case revolved around three groups of defendants:

- What Baby Fold allegedly did or failed to do, which would have been outside Cook County;
- What the Lamies allegedly did or failed to do, which would have been outside Cook County; and
- What Puga and Streamwood allegedly did or failed to do while Kianna was at Streamwood, which would have been within Cook County.

9. This court then analyzed the private-interest factors in a *forum non conveniens* analysis:

a. Convenience of the Parties

This court noted the parties' home counties:

Rudesill – Cullom, Illinois, Livingston County

Baby Fold – Normal, Illinois, McLean County

Heather Lamie – Logan Correctional Center, Lincoln, Illinois, Logan County

Joshua Lamie – unknown

Puga – Glen Ellyn, Illinois, Du Page County

Streamwood Hospital – Streamwood, Illinois, Cook County

This court concluded that, based on residence only, no county had a predominant interest. The court noted, however, that if it

considered residence and location of employment, Livingston County would be favored since Rudesill lived there and Puga worked there at the Institute for Human Resources in Pontiac, Illinois. This court also noted, however, that Puga also works at Streamwood, located in Cook County. This court explained that the location of employment can be important factor since depositions and trials occur during working hours.

This court then quoted from *Lagenhorst* and *Guerine*: “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.” “The defendant may not prevail by arguing that the plaintiff’s chosen forum is inconvenient to the plaintiff.”

This court recognized that since the parties’ home locations were scattered over five counties, some or all of the parties would be required to travel for depositions or trial, regardless of the forum. According to *Guerine*, 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.

This court concluded that this factor is neutral. The reason is that if this element were based solely on the fact that the parties are scattered over many counties, Cook County would be favored because Rudesill cannot be denied his choice of forum. At the same time, both *Lagenhorst* and *Guerine* indicate that a court is to determine which county has the predominant connection to the litigation, which would not be Cook County.

b. Ease of Access to Testimonial, Documentary and Real Evidence

This court noted that the location of documentary and real evidence is unimportant in this case because the former is easily transferable while the latter is not at issue. In short, the focus here is on testimonial evidence.

Rudesill indicated that Puga owns a condominium in Prospect Heights, is a clinical professor at the University of Illinois, Chicago, and owns a commercial condominium in Inverness, where he sees patients. Each of these locations is in Cook County. This court found

that information to be more useful than Rudesill indicating the number of times Puga had been in Cook County since the fall of 2015.

Rudesill identified 22 Streamwood employees as persons he planned to call at trial. This court indicated that no trial judge would allow such a number of witnesses from one institution to testify. Further, this court noted that Rudesill's list of Streamwood employees did indicate why they would be deposed, let alone called at trial. Additionally, the list only indicated where some of the employees work, not where they live.

In response to this court's request for additional information about Kianna's treating physicians, the parties provided these additional names and work locations:

- Dr. Won Sung, DDS, Elgin, Kane County
- Melissa Pina, St. James Medical Center, Pontiac, Livingston County
- Dr. Rebecca Wenger, Healthworks, Pontiac, Livingston County
- Dr. Mitra Kalelkar, Forensic Pathologist, former Cook County deputy chief medical examiner
- Cullom Fire Protection District paramedics, Livingston County
- Amanda Chandler, no location provided
- Sherry Brendalen, no location provided
- Deborah Phares, Institute for Human Relations, Pontiac, Livingston County
- Dr. Julian Lin, no location provided
- Dr. Penelope Sandiford, no location provided
- Dr. Karanth Kota, St. Francis Medical Center, Peoria, Peoria County
- Various Streamwood employees, Cook County
- Michelle Kukich, Schaumburg, Cook County
- Natalia Vinokur, DeKalb, DeKalb County

This court further noted that Baby Fold's investigation of the Lamies occurred outside Cook County. Further, Kianna's inpatient stay at Streamwood constituted only 3% of her time in foster care. This court recognized that is a small percentage of her time in foster care, yet Rudesill claims that what occurred during the short period at Streamwood is central to his theory of the case.

This court stated that in searching for the predominant connection to the litigation, the actions of Baby Fold and the Lamies occurred outside of Cook County, while those of Puga and Streamwood occurred in Cook County. This court recognized that this element is not based solely on the amount of time Kianna was in any location. If that were true, this case could not stay in Cook County. This court determined, however, that if the focus is on the significance of the defendants' acts or omissions, the only conclusion is that each of the three groups of defendants played a unique and significant role in allegedly causing Kianna's death. Based on this confluence of facts, this court concluded that this factor is neutral.

c. Availability of Compulsory Process

This court concluded that this factor is neutral since all of the parties and potential witnesses are located in Illinois.

d. Cost of Obtaining Attendance of Willing Witnesses

This court determined that this factor is neutral yet counterintuitive, since witnesses willing to testify implicitly factor in the cost of testifying before deciding to make themselves available.

e. Viewing the Premises

This court concluded that this factor is neutral since the jury will not need to view any of the multiple premises identified.

f. Other Practical Considerations that Make a Trial Easy, Expeditious and Inexpensive

This court recognizes that nothing about this complex case will be easy, expeditious, or inexpensive. Regardless of the county in which the case is located, travel will be required for discovery and trial. The court indicated that, going forward, medical providers may be deposed at their health care facilities, regardless of location, for the ease of those providers. This court concluded that this factor is neutral.

10. This court then analyzed the public-interest factors in a *forum non conveniens* analysis:

a. Deciding Localized Controversies Locally

This court recognized that the defendants include a physician – Puga – who treats patients in Cook County and a hospital – Streamwood – located in Cook County. The alleged acts and omissions of those two defendants makes this a controversy localized,

at least in part, in Cook County. At the same time, the court recognized that other counties have an interest in this litigation. Yet to the extent that some alleged acts and omissions occurred in Cook County means that Cook County residents would have an interest in the type of care and treatment provided by a physician and a hospital located in their county. This court concluded that this factor favors Cook County.

b. Unfairness of Imposing the Expense of a Trial and the Burden of Jury Duty

This court concluded that since this controversy has a locus in Cook County, the residents of this county should fairly be expected to pay the expenses for a trial and bear the burden of jury service. This factor favors Cook County.

c. Administrative Difficulties by Adding a Case to an Already Congested Docket

The court noted that the 2013 statistics provided by the Illinois Supreme Court indicate that the average time for a case valued over \$50,000 on the Cook County docket is 36.4 months. In contrast, Livingston County had no cases valued more than \$50,000 on its docket. The only possible conclusion is that the Livingston County docket is far less congested than that in Cook County. This factor favors Livingston County.

11. This court concluded that the private and public factors favored this case remaining in Cook County; consequently, the court denied the defendants' motion to transfer based on *forum non conveniens*.

John H. Ehrlich, Circuit Court Judge