



Alerts

"Forum Shopping" Argument Rejected in Forum Non Conveniens Analysis

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Health Care Alert

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Issue

Can part-time work by one defendant in plaintiff's chosen forum preclude transfer for *forum nonconveniens* when the alleged malpractice and death occurred in another county, and the plaintiff and the vast majority of witnesses also don't reside in the county?

Sharon Evans, Special Administrator of the Estate of Quavia Evans, Deceased v. Waukegan Illinois Hospital Company, LLC d/b/a Vista Medical Center East, et al. 2020 IL App (1st) 200528

Case Summary

Quavia Evans was transported via ambulance by the Waukegan Fire Department from her residence in Lake County to Vista Medical Center East (also in Lake County). The paramedics who transferred her were employed in Lake County. The nurse who treated Evans at Vista was a resident of Lake County. She was treated for diabetic ketoacidosis and discharged a few hours later. The physician who evaluated and discharged Evans was a Cook County resident. Two individuals who were Lake County residents saw the patient that day. At 2:00 am the following morning, Evans was found in full arrest and transported to Vista where she was pronounced dead. In discovery, defendants disclosed 90 potential trial witnesses, 80 of whom resided or worked in Lake County, but 6 of whom resided or worked in Cook County.

Plaintiff filed suit in Cook County. Defendants filed a Motion Transfer for *forum non conveniens* (FNC) on the grounds that 1) the complained of medical care occurred in Lake County, 2) plaintiff resided in Lake County, 3) the decedent resided and died in Lake County, 4) most of the witnesses resided in or near Lake County, and 5) that the litigation had no material connection to Cook County. Defendants also argued that the Lake County docket was relatively less congested and that plaintiff's choice of forum constituted "forum shopping." Defendants filed only two affidavits in support of their motion: one was from the ED physician, who acknowledged both residence and private practice in Cook County. Plaintiff obtained affidavits from four witnesses who stated that appearing for trial in Cook County would not be inconvenient. Plaintiff argued that most of the 90 witnesses identified in discovery would not likely be called at trial, but if called would only testify on one day and most by way of videotaped evidence depositions. The trial court denied the motion and an appeal followed.

On appeal, defendants argued that the trial court abused its discretion in denying the Motion to Transfer because it assigned undue weight to the ED physician's residence and part-time private practice location, and failed to properly consider than an inference of "forum shopping" arises when plaintiff has no connection to the venue. The appellate court began its analysis by rejecting defendant's reliance on the inference of "forum shopping," noting that "courts acknowledge plaintiffs may forum shop, [but] courts may not consider this practice in a *forum non conveniens* analysis." The appellate court further stated that "We also decline to address defendants' argument that, because the plaintiff is foreign to her chosen forum and because the alleged negligence did not occur in her chosen forum, she likely engaged in forum shopping, citing the Illinois Supreme Court, which has held that "courts may not consider [forum shopping] in a *forum non*



conveniens analysis." *Dawdy*, 207 Ill. 2d at 175.

In considering the various factors of the FNC analysis, the appellate court determined that the trial court's ruling did not evidence an abuse of discretion. In review of the private interest factors, the appellate court noted that the trial court correctly took into consideration that two out of three defendants had connections to Cook County because the ED physician worked and lived there and the hospital maintained a registered agent there. It found the cost of procuring unwilling and willing witnesses to be neutral factors. The appellate court also agreed that the witnesses who testified would do so via evidence deposition and that medical records could be produced electronically anywhere. The appellate court agreed that the probability of viewing the premises would be low, but that said factor did weigh in favor of transfer. As for the public interest factors, the appellate court determined that the relative lack of congestion in Lake County weighed in favor of transfer. The fact that the ED physician worked in Cook County, however, weighed in favor of plaintiff's chosen forum of the jury duty "burden" and "local controversies" factors.

Takeaway

The appellate court expressed hostility toward the notion that FNC is a protection against "forum shopping" and rejected that as an element that can be considered by the trial court.

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