2011 IL App (1st) 110426-U

Third Division
September 28, 2011

No. 1-11-0426

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SUSAN ISOM as SPECIAL ADMINISTRATOR and SPECIAL REPRESENTATIVE of the ESTATE OF TYRONE TERRELL BROOKS, III, Deceased,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	
RIVERSIDE MEDICAL CENTER, an Illinois Not-For-Profit Corporation, RIVERSIDE HEALTHCARE FOUNDATION, an Illinois Not-For-Profit Corporation RODNEY S. ALFORD, M.D., EXCEPTIONAL HEALTH PARTNERS, S.C., an Illinois Corporation, PROVENA SERVICE CORPORATION, an Illinois Not-For-Profit Corporation, PROVENA MEDICAL GROUP and RASHONDA COLLINS PA-C,	)	09 L 004466
Defendants-Appellants.	)	Honorable Jeffery Lawrence, Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

ORDER

Held: A trial court's order that denies a motion to transfer will be affirmed when the

private and public interest factors, considered in their totality, do not strongly favor transfer to another forum.

¶ 1 Susan Isom, the plaintiff and special administrator of the estate of her son, Tyrone Terrell Brooks, filed a complaint, containing wrongful death and survival counts, that alleged that the defendants' failure to diagnose and treat Tyrone's sickle cell disease caused his death. After the complaint was file, defendants filed motions to transfer the case from Cook County to Kankakee County, but the trial court denied the motions. The defendants filed a petition for leave to appeal pursuant to Supreme Court Rule 306(a)(2), and we granted the petition. Ill. S. Ct. R. 306(a)(2).

BACKGROUND

¶ 2 On April 15, 2009, Isom filed this action in Cook County against the defendants, Dr. Rodney S. Alford, Dr. Michael H. Simpson, Roshanda Collins, PA-C, Riverside Medical Center, Riverside Healthcare Foundation, Exceptional Health Partners, S.C., and Provena Service Corporation d/b/a Provena Medical Group.[1] In her complaint, plaintiff alleged that Tyrone was born at Riverside Medical Center in Kankakee County on May 9, 2006, and that Tyrone continued to receive care and treatment from the defendants at Riverside Medical Center from May 9 through January 23, 2008, when he died.

¶ 3 On October 7, 2009, three defendants, Dr. Rodney S. Alford, Roshanda Collins, Physician Assistant Certified (PA-C), and Exceptional Health Partners, filed a motion to

[1]On March 19, 2010, Provena Service Corporation d/b/a Provena Medical Group was dismissed from the case without prejudice pursuant to section 2-1009 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1009 (West 2009)).

transfer the case from Cook County to Kankakee County. On January 29, 2010, two additional defendants, Riverside Medical Center and Riverside Healthcare Foundation, filed a separate motion to transfer the case to Kankakee County.

¶ 4 Residences of the Parties

¶ 5 The record reveals that there are three individual defendants, Rashonda Collins, Dr. Simpson and Dr. Alford. Collins, resides in Cook County, Dr. Simpson resides in Wisconsin and Dr. Alford resides in Kankakee. The three corporate defendants, Riverside Medical Center, Riverside Healthcare Foundation and Exceptional Health Partners, S.C., reside in Kankakee County. Plaintiff, Isom, currently resides in McLean County.

¶ 6 Residences of the Witnesses

¶ 7 In her answers to interrogatories, plaintiff provided the names of 21 potential trial witnesses: 12 of the witnesses either reside or work in Kankakee County; 3 witnesses reside in Cook County (two witnesses are physicians and the third witness is a physician assistant); 2 witnesses reside in Will County (one of these witnesses is a physician who practices in Cook County); 1 witness resides in Grundy County; 1 witness resides in Ohio; and the residences of 2 witnesses were not provided.

¶ 8 In its answers to plaintiff's interrogatories, Riverside Medical Center identified 2 additional witnesses: 1 witness resides in Kankakee County and the other witness resides in Iroquois County.

¶ 9 Motions for *Forum Non Conveniens*

¶ 10 The moving defendants present two issues for our review: (1)whether the private and

public interest factors strongly favor transfer from Cook County to Kankakee County; and (2) whether the trial court erred as a matter of law by requiring the defendants to demonstrate that another forum was "overwhelming[ly]" more convenient than the forum selected instead of demonstrating that the private and public interest factors strongly favor transfer.

¶ 11 On January 19, 2011, at the hearing on defendants' motions to transfer, the trial court stated, "this does appear to be a case where no county has predominant interest, especially in light of the fact that there are out-of-state witnesses. It strikes me that balance of convenience is more or less even, which would not satisfy the burden of showing strong reasons for a transfer." After the court made the aforementioned statements, an attorney asked the judge "[w]hy can a plaintiff cherry pick, your Honor," and the judge responded, "if you don't mind listening to the complaints of a frustrated trial judge, the state of the law in this area is impossible. How much deference is less deference and how strong is strong? To me, strong means overwhelming and I don't see this case as overwhelming." At the conclusion of the hearing, the circuit court denied the defendants' motions to transfer, and the moving defendants filed the instant appeal.

¶ 12 ANALYSIS

¶ 13 Standard of Review

¶ 14 We note that a trial court is afforded considerable discretion in ruling on a motion to transfer based on the doctrine of *forum non conveniens*. *Langenhorst v. Norfolk Southern Ry. Co.,* 219 Ill. 2d 430, 441 (2006); *Peile v. Skelgas, Inc.,* 163 Ill. 2d 323, 336 (1994). The trial court's decision is subject to reversal only if it abused its discretion in balancing the

relevant factors. *Langenhorst,* 219 Ill. 2d at 442 (citing *Dawdy v. Union Pacific R.R. Co.,* 207 Ill. 2d 167, 176-177 (2003)). "A circuit court abuses its discretion in balancing the relevant factors only where no reasonable person would take the view adopted by the circuit court." *Langenhorst,* 219 Ill. 2d at 442; *Dawdy*, 207 Ill. 2d at 177.

¶ 15 Defendants argue that the trial judge applied the wrong standard in deciding the motion to transfer by requiring the defendants to show that the private and public interest factors "overwhelming[ly]" favor transfer. Defendants also argue that we should review this case *de novo*. The judge found that Kankakee County had a legitimate interest in the case, but the judge also found that Cook County had a connection to the litigation. Additionally, the judge found that the "balance of convenience is more or less even, which would not satisfy the burden of showing *strong reasons* for a transfer."

¶ 16 *Forum non Conveniens*

¶ 17 Section 2-101 of the Code of Civil Procedure (Code), the venue statute, provides that an action must be commenced (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. *Langenhorst,* 219 Ill. 2d at 441, citing 735 ILCS 5/2-101 (West 2008). If more than one potential forum exists, the court may invoke the equitable doctrine of *forum non conveniens* to determine the most appropriate forum. *Dawdy,* 207 Ill. 2d at 171.

¶ 18 The Illinois Supreme Court has held that a court must consider both "the private and public interest factors" in deciding a motion to transfer based on the doctrine of *forum non*

conveniens. *Langenhorst,* 219 Ill. 2d at 443; *Dawdy,* 207 Ill. 2d at 172. 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; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive, for example, the availability of compulsory process to secure attendance of unwilling witnesses. *Langenhorst,* 219 Ill. 2d at 443 (quoting *First American Bank v. Guerine,* 198 Ill. 2d 511, 516 (2002)). The public interest factors include (1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets. *Langenhorst,* 219 Ill. 2d at 443-44 (citing *Guerine,* 198 Ill. 2d at 516-517). Another factor to consider is the plaintiff's choice of forum, which is normally a "substantial" factor in deciding a motion to transfer. *Dawdy,* 207 Ill. 2d at 173; *Guerine,* 198 Ill. 2d at 517. However, where the plaintiff chooses a forum that was neither the site of the injury nor the county in which he resides, the plaintiff's choice is entitled to somewhat less deference. *Dawdy,* 207 Ill. 2d at 173-76; *Guerine,* 198 Ill. 2d at 517.

¶ 19 The defendant has the burden of showing that the relevant private and public interest factors "strongly favor" the defendant's choice of forum. *Langenhorst*, 219 Ill. 2d at 444; *Guerine,* 198 Ill. 2d at 518. "The defendant must show that the plaintiff's chosen forum is inconvenient to the defendant and another forum is more convenient to all parties." *Guerine*, 198 Ill. 2d at 518. It is settled that "no single *forum non conveniens* factor should be

accorded central emphasis or conclusive effect." *Dawdy,* 207 Ill. 2d at 180. Each *forum non conveniens* case must be considered as unique on its facts. *Langenhorst,* 219 Ill. 2d at 443. The doctrine of *forum non conveniens* gives the trial court considerable discretion but this discretionary power should be exercised *"only in exceptional circumstances"* when the interests of justice require a trial in a more convenient forum. (Emphasis in original.) *Guerine*, 198 Ill. 2d at 520. The test when the plaintiff chooses a foreign forum is, "whether the relevant factors, viewed in their totality, strongly favor transfer to the forum suggested by defendant." *Dawdy,* 207 Ill. 2d at 176.

¶ 20 Several principles have evolved from *forum non conveniens* jurisprudence. One such principle is that when potential trial witnesses are scattered among various counties and the litigation in question has a connection to several forums, a trial court does not abuse its discretion when it denies a defendant's motion to transfer. *Langenhorst*, 219 Ill. 2d at 453.

¶ 21 The most recent supreme court case addressing this principle is *Langenhorst*, where the court affirmed the trial court's order denying the motion to transfer. In that case, a Clinton County resident filed a wrongful death action in adjacent St. Clair County after her husband was struck by a train and killed in Clinton County. The train was manufactured by a Virginia corporation that maintained a registered agent in St. Clair County. Plaintiff brought suit against the Virginia corporation as well as the conductor and engineer of the train, both of whom were Indiana residents. Following the accident, the plaintiff's husband received medical treatment in Clinton County, and the autopsy was performed in Missouri.

The Clinton County fire department responded to the accident and the Clinton County sheriff's department prepared the accident report. A St. Clair County resident investigated the accident as did the Illinois Commerce Commission's Transportation Division, located in Springfield, Illinois, in Sangamon County. The defendants filed a motion to transfer the case to Clinton County, where the accident occurred and where the plaintiff resided. The trial court denied the motion. In reviewing the case, the supreme court noted that although the plaintiff's forum was entitled to less deference, the defendants failed to show that the private and public interest factors strongly weighed in favor of transfer. *Langenhorst*, 219 Ill. 2d at 448, 452. The defendants failed to show that St. Clair County had no connection to the litigation, since the corporate defendant maintained a registered agent in that county and was thus a resident. The fact that the accident occurred in Clinton County, though relevant, was not of overriding importance because a jury's view of the accident site would not have been appropriate due to the fact that the site of the accident was "substantially changed" following the accident. *Langenhorst*, 219 Ill. 2d at 448-49. The court found that the case was not one of exceptional circumstances where the interest of justice required a trial in a more convenient forum, nor was the trial court's determination "irrational or lacking any support in the record." *Langenhorst*, 219 Ill. 2d at 452.

¶ 22 The supreme court also addressed the *forum non conveniens* doctrine in *Guerine*. In that case, the defendant was driving his Jeep Carryall in De Kalb County, pulling a speedboat on a trailer manufactured by J.Q. Tex, Inc., an Indiana corporation. The trailer broke away from Guerine's vehicle and struck another vehicle driven by Angel Malone of

Kane County. Angel died at the hospital in De Kalb County. Police officers from De Kalb County investigated the accident scene. One of the witnesses resided in Cook County, while the other witnesses resided in De Kalb and Du Page Counties. The executor of Angel's estate and Patrick Malone, Angel's husband, filed a complaint in Cook County against Guerine for negligent operation of his vehicle and J. Q.Tex for defective design and manufacture of the boat trailer. J. Q. Tex filed a motion to transfer the case to De Kalb County. The trial court granted the motion. In evaluating the public interest factors, the supreme court noted that because the accident occurred in De Kalb County, the plaintiff's negligence claim against Guerine had a local flavor, but the plaintiff's product liability claim against J.Q. Tex was "less localized." Moreover, the court noted that Cook County had a legitimate interest in the litigation because Guerine lived in Cook County and presumably drove his trailer on Cook County's roads. The court also reasoned that any corporate representative traveling to Illinois would have to pass through Cook County in order to get to either De Kalb or Kane County. Thus, Cook County was the more convenient forum for all the parties. *Guerine*, 198 Ill. 2d at 524. Accordingly, the court held that the trial court abused its discretion when it granted the motion to transfer.

¶ 23 1. Private Interest Factors

¶ 24 We first address the defendants' argument that the private and public interest factors strongly support a transfer in this case. We first consider the convenience of the parties. The defendants must show that the plaintiff's choice of forum is inconvenient to the defendants

and another forum is more convenient to *all* parties. *Guerine,* 198 Ill. 2d at 518. The *Guerine* court noted that:

> "We live in a smaller world *** connected by interstate highways, bustling airways, telecommunications, and the world wide web. Today, convenience–the touchstone of the *forum non conveniens* doctrine–has a different meaning. *** [T]he convenience of the parties depends in large measure upon the context in which we evaluate their convenience." (Internal quotation marks omitted.) *Guerine*, 198 Ill. 2d at 525-26.

¶ 25 Additionally, the *Guerine* court warned that if sufficient factors favor the plaintiff's chosen forum "the defendant's inconvenience should not be considered, provided venue is proper." *Guerine,* 198 Ill. 2d at 522 (citing *Torres v. Walsh*, 98 Ill. 2d 338, 351 (1983)). Dr. Alford and Phillip Crouch, the Director of Patient Safety at Riverside, averred in their affidavits that it would be inconvenient to have the case tried in Cook County. Based on the two affidavits, the defendants argue that Kankakee County is more convenient for the defendants because one individual defendant, Dr. Alford, and the three corporate defendants reside in Kankakee County.

¶ 26 We note, however, that two individual defendants and two corporate defendants did not file affidavits averring that Cook County would be an inconvenient forum. Dr. Simpson, an individual defendant who resides in Wisconsin, did not object to Isom's choice of forum, and he did not file or join in a motion to transfer. Courts can take judicial notice of the distance between two or more

locations and the "customary routes *** required for travel between them," *Dawdy*, 207 Ill. 2d at 177 (an appellate court may take judicial notice of matters that are capable of "instant and unquestionable demonstration"). After taking judicial notice, we find that Dr. Simpson's office address in Wisconsin is 92.8 miles from the Cook County court house and 151 miles from the Kankakee County court house. Therefore, Cook County is more convenient for Dr. Simpson. Cook County is also more convenient for Collins, another individual defendant, because she resides in Cook County. While Isom lives in McLean County, our supreme court has held that the defendant cannot claim that the plaintiff's chosen forum is inconvenient for the plaintiff. *Guerine*, 198 Ill. 2d at 518. As the trial court noted, public transportation is readily accessible to the plaintiff from McLean County to Cook County. Accordingly, the convenience of the parties does not strongly favor transfer to Kankakee County because the defendants have failed to show that Kankakee County is more convenient for *all* parties.

¶ 27 We next consider the parties' ease of access to sources of testimonial and documentary evidence. Access to documentary evidence has become a less significant factor because today's technology allows documents to be copied and transported easily and inexpensively. *Ammerman v. The Raymond Corp.,* 379 Ill. App. 3d 878, 890 (2008). Here, the medical records concerning Tyrone's death were compiled in Kankakee County but defendants admitted that Tyrone's medical records have arrived at their attorneys' offices in Cook County. The sites of the alleged malpractice, Riverside Medical Center and Riverside Health Care Foundation, are in Kankakee County, but a viewing of the site is "rarely or never called for in a medical negligence case." *Hackl v. Advocate Health and Hospitals*

Corp., 382 Ill. App. 3d 442, 452 (2008). In this case, there are approximately 23 witnesses who will testify. These witnesses are scattered among several counties, including, Cook County, Kankakee County, Will County, Iroquois County, Grundy County and the state of Ohio. Thirteen of the witnesses reside or work in Kankakee County. Two of these witnesses are Tyrone's father and his grandmother who were not involved in the alleged wrongful conduct. There are 7 physicians (excluding the two defendant doctors) who treated Tyrone and have been identified by the plaintiff as having knowledge of the case; three reside in and or work in Cook County, three reside or work in Kankakee County and the residence of the other physician is unknown (Riverside Medical Center in its answer to plaintiff's interrogatories named Michigan as the doctor's location). One witness resides in the state of Ohio. Cook County would be much more convenient for this witness since the two major airports are located in Cook County. The defendants provided affidavits from two Kankakee residents and from a witness in Iroquois County and they averred that Kankakee County would be a more convenient forum. This fact, though important, is not of overriding importance because several of the key witnesses also reside in Cook County. Here, because there are potential trial witnesses scattered among several counties, including Cook County, the plaintiff's chosen forum, and because no single county enjoys a predominant connection to the litigation, we find that this factor does not weigh in favor of transfer. *Guerine*, 198 Ill. 2d at 526.

¶ 28 We next weigh all other practical considerations that make a trial easy, expeditious, and inexpensive, including, the availability of compulsory process to secure attendance of

unwilling witnesses. *Guerine,* 198 Ill. 2d at 516. Compulsory process is equally available in Cook and Kankakee County because the residents of Kankakee County would be subject to subpoena if the trial takes place in Cook County. See *Guerine*, 198 Ill. 2d at 525. Finally, while we acknowledge that the location of the parties' attorneys is accorded little weight in reviewing a motion to transfer (*Langenhorst*, 219 Ill. 2d at 450), this factor favors litigating the case in Cook County because all of the parties' attorneys have offices in Cook County.

¶ 29 After reviewing the facts, we find that the private interest factors do not strongly favor transfer to Kankakee County (1) because one individual defendant resides in Cook County and several witnesses work and or reside in Cook County; (2) because the medical records have arrived in Cook County; and (3) because all witnesses are subject to compulsory process in Cook County.

¶ 30 2. Public Interest Factors

¶ 31 With respect to the public interest factors, we consider having local controversies decided locally, and the burden of imposing trial duty on the residents of the chosen forum. Defendants first assert that Cook County has no significant interest in resolving a controversy involving a medical malpractice that occurred in Kankakee County. Defendants maintain that it would be unfair to impose jury duty on Cook County's residents. Isom responds that Cook County's residents have an interest in resolving a dispute concerning one of its residents. In this case, because Collins resides in Cook County, we agree that Cook County's residents have an interest in this litigation and would not be burdened by a trial in

Cook County. *Langenhorst,* 219 Ill. 2d at 451.

¶ 32 The third public interest factor is consideration of judicial administration and congestion of the court's docket. The defendants forfeited consideration of this factor because they failed to address this factor in their brief. Forfeiture notwithstanding, we note that "[c]ourt 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. In addition, courts should be "extremely reluctant to dismiss a case from the *forum rei gestae* merely because that forum's docket has a backlog." *Guerine* 198 Ill. 2d at 517. Defendants stated in their "Supplemental Reply in Support of Motion to Transfer Based Upon Intrastate Forum Non Conveniens" that the difference between Cook County and Kankakee County in the time it takes to proceed to trial is insignificant. Therefore, based on the defendants' statement, this factor would not strongly favor transfer to Kankakee County.

¶ 33 3. Isom's Choice of Forum

¶ 34 A further consideration under the *forum non conveniens* doctrine is deference to the plaintiff's choice of forum. *Guerine,* 198 Ill. 2d at 517. "The plaintiff has a substantial interest in choosing the forum where his rights will be vindicated, and the plaintiff's forum choice should rarely be disturbed unless the other factors strongly favor transfer." *Langenhorst*, 219 Ill. 2d at 442. The battle over forum begins with the plaintiff's choice already in the lead and transfer is appropriate only when the litigation has no practical

connection, no nexus, with the plaintiff's chosen forum. *Guerine*, 198 Ill. 2d at 521 (citing *Peile*, 163 Ill. 2d at 336). The plaintiff's chosen forum receives *somewhat* less deference when neither the plaintiff's residence nor the site of the injury is located in the chosen forum. We note that the deference to be accorded is only less, as opposed to none. *Guerine,* 198 Ill. 2d at 518.

¶ 35 Here, defendants argue that the trial court gave undue deference to the plaintiff's chosen forum. Defendants further contend that the deference accorded to Isom's chosen forum should be "twice reduced" because Cook County is, (1) not the site of the injury, and (2) not the plaintiff's residence. The defendants imply that Isom's chosen forum should not be accorded any deference. We do not find this argument convincing. In both *Langenhorst* and *Guerine,* the plaintiff's chosen forum was neither the site of the injury nor the plaintiff's residence and the court reiterated that in these situations plaintiff's chosen forum is given *somewhat* less deference, as opposed to no deference. *Langenhorst*, 219 Ill. 2d at 448; *Guerine,* 198 Ill. 2d at 518. Specifically, in *Langenhorst,* the court noted that "neither the plaintiff's residence nor the site of the accident is located in St. Clair County and, thus, plaintiff's choice of St. Clair County is entitled to *somewhat* less deference." *Langenhorst*, 219 Ill. 2d at 448 (citing *Guerine*, 198 Ill. 2d at 517; *Dawdy*, 207 Ill. 2d at 173-74). In this case, the trial judge in deciding the motion to transfer did acknowledge that the plaintiff's chosen forum is given less deference because Cook County is neither the plaintiff's residence nor the site of the alleged wrongful conduct. Isom does not reside in Cook County or Kankakee County, but her chosen forum has a connection or nexus to the litigation

because Collins, one of the defendants, resides in Cook County and several witnesses reside in or work in Cook County. Accordingly, this factor does not strongly weigh in favor of transfer.

¶ 36 The defendants further argue that Isom engaged in impermissible forum shopping when she chose Cook County as the venue for trial. While courts must discourage impermissible forum shopping by plaintiffs, we are aware of the potential strategies used by both plaintiffs and defendants in seeking to litigate in a particular forum. *Guerine* 198 Ill. 2d at 521. Here, Isom's choice of Cook County is given *somewhat* less deference because it is not the county of plaintiff's residence or the county where the alleged medical negligence took place. However, because the plaintiff's choice of forum is one factor to be considered and because no one factor is given predominant weight, we find that the trial court considered this factor along with the other factors and gave it the appropriate weight. *Dawdy*, 207 Ill. 2d at 180.

¶ 37 Defendants relied on two supreme court cases to support their argument that this case should be transferred to Kankakee County. However, we must note that *Peile* and *Dawdy* are clearly distinguishable from this case. In *Peile*, the plaintiff was severely injured in an explosion at his Pike County home as he attempted to light his propane furnace. Skelgas, Inc. delivered propane gas to the plaintiff from its Pike County facility, hours before the explosion. The plaintiff filed suit in Madison County against a number of defendants alleging design defects in the furnace. The defendants filed a motion to transfer the case to

Pike county and the court granted the motion. While the case was pending in Pike county, plaintiff amended his complaint adding additional negligence claims and joining five defendants, all propane gas suppliers or sellers. Two months before the scheduled trial date, the plaintiff voluntarily dismissed his complaint. Plaintiff refiled his complaint eight months later in St. Clair County. The defendants filed another *forum non conveniens* motion to transfer the case back to Pike County. The circuit court denied the motion and the appellate court affirmed. The supreme court reversed the appellate court after having found that none of the witnesses or other sources of proof were located in the plaintiff's chosen forum. *Peile*, 163 Ill. 2d at 340. The only connection between St. Clair County and the litigation was the fact that one of the defendants owned a wholesale facility in St. Clair county. All the witnesses and the sources of proof were located in Pike County. *Peile*, 163 Ill. 2d at 343-44. The *Peile* court also noted that the "circuit court's deference to a plaintiff's choice of forum should be of lesser magnitude in the context of a refiled action, where the refiling occurs after the original court has ruled in favor of transfer." *Peile*, 163 Ill. 2d at 344. Here, unlike *Peile*, there is an individual defendant who resides in Cook County, another individual defendant resides in Wisconsin which is closer to Cook County than Kankakee County, there are four witnesses who reside or work in Cook County, and this is not a refiled action where the circuit court previously granted a motion to transfer the case.

¶ 38 In *Dawdy*, plaintiff was driving a tractor in Macoupin County when he collided with a truck driven by Riederer, who was employed by Union Pacific. Plaintiff filed suit in Madison County. Plaintiff was a resident of Greene County. Riederer resided in Macoupin

County. Union Pacific was a Delaware corporation with its principal place of business in Nebraska. Union Pacific conducted business in Macoupin County. There were 18 witnesses and none resided in Madison County. The litigation had no practical connection to Madison County. The Illinois Supreme Court held that the case should be transferred to Macoupin County. In its decision, the *Dawdy* court noted that none of the witnesses resided in Madison County and Macoupin County had a predominant connection to the case. The court concluded by stating that "[t]he sole fact that one defendant maintains a post office box in Madison County does not give Madison County a legitimate interest in or connection to this case." *Dawdy*, 207 Ill. 2d at 184. Unlike *Dawdy*, Cook County has a legitimate interest in deciding this controversy because one of its residents is a defendant *(Langenhorst*, 219 Ill. 2d at 451; *Guerine* 198 Ill. 2d at 525), and several of the named witnesses reside or work in Cook County.

¶ 39 The defendants' reliance on *Bruce v. Atadero,* 405 Ill. App. 3d 318 (2010), is also misplaced. The plaintiff initially filed suit in McHenry County alleging wrongful death and survival claims against the defendants. After approximately two years of discovery, plaintiff voluntarily dismissed her complaint and refiled in Cook County. The defendant hospital operated two facilities in Cook County which had no connection to the litigation because the decedent was never treated at any of those facilities. All the witnesses, except one, resided in Cook County and were damage witnesses who were not involved in the decedent's care or treatment. In *Bruce,* the appellate court reversed the circuit court's order denying the defendants motion to transfer the case from Cook County to McHenry County. The *Bruce*

court held that the circuit court abused its discretion in giving "scant consideration" to the fact that the plaintiff originally filed her complaint in McHenry County. *Bruce,* 405 Ill. App. 3d at 328. The *Bruce* court, relying on *Peile,* held that the plaintiff's forum is given less deference when the plaintiff voluntarily dismisses his complaint and refiles in a new forum. *Bruce*, 405 Ill. App. 3d at 329, 331-32. In this case, the Cook County resident, Collins, was responsible for Tyrone's care and treatment. In addition, two physicians and a physician assistant who treated Tyrone reside in Cook County. Therefore, these witnesses are not damage witnesses but occurrence witnesses who will testify about Tyrone's care and treatment. Finally, this is not a case involving a refiled complaint in Cook County.

¶ 40 When we consider all the public and private factors in their totality, we find that the factors do not strongly favor transfer to Kankakee County. The defendants failed to show that Kankakee County was a more convenient forum for all parties. There are material witnesses located in Cook County. Plaintiff's medical records have been copied and transported to Cook County. Compulsory process is available for all witnesses in Kankakee County, and all the parties' attorneys' offices are located in Cook County. In addition, Cook County has an interest in this controversy because Collins, one of its residents, is a defendant in the lawsuit. We find that the totality of the circumstances do not strongly weigh in favor of transfer to Kankakee County. Therefore, the trial court did not abuse its discretion when it denied the defendants' motion to transfer.

¶ 41 CONCLUSION

¶ 42 In this case, we find that the defendants have failed to sustain their burden of showing that the private and public interest factors, viewed in their totality, strongly favor transfer and therefore show that Kankakee County is a more convenient forum. We hold that the trial court did not abuse its discretion. Accordingly, we affirm the trial court's order that denied the defendants' motion to transfer the case to Kankakee County.

¶ 43 Affirmed.