

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

Plaintiff,

v.

Defendants.

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Case No.

Clerk of the
Circuit Court
2017 JUL 17 PM 3:33
PR GEO CO 40 #70

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER

Now comes _____, Plaintiff herein, by her attorneys, Rodney M. Gaston, and Miller & Zois, LLC, and hereby files this opposition to the Defendants' Motion to Transfer and in support thereof states as follows:

INTRODUCTION

The case at bar is a wrongful death action. The Decedent _____ died on _____, at _____ Hospital located in Montgomery County. The gravamen of the Plaintiff's complaint is the failure of the Defendants (by and through Dr. _____) to properly insert a pacing wire into Ms. _____'s heart following heart surgery on _____. When a nurse pulled the pacing wire from Ms. _____ chest in preparation for her discharge from the hospital the heart graft was lacerated and she bled to death. These facts are not in dispute and are contained in the medical chart and on the death certificate. See Exhibits 1 and 2.

_____, the Plaintiff herein, and sole surviving daughter of the late _____, resides in Prince George's County. _____ "resides" in Prince George's County because this Defendant maintains its corporate headquarters and medical office in Prince George's County -- a mere 20 minutes from the Prince George's County

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Courthouse. Defendant

is the founder and president of the

. See Exhibit 3. Doctor has failed to reveal the address of his personal residence to this court and has not claimed that he himself will suffer any hardship by traveling to the Prince George's County courthouse to testify in this case.

Under Courts and Judicial Proceedings Article, Section 6-201, Prince George's County is a proper venue for this action. The Defendants claim they are entitled to a transfer of this case to Montgomery County because: 1) it would be more convenient for the witnesses, 2) that a Montgomery County venue will make it less expensive for the parties involved to litigate the matter, and 3) transfer will properly distribute the public burden of the trial.

The Defendants' Motion to Transfer should fail because they have not overcome the Plaintiff's preference of Prince George's County as her choice of venue.

FACTS AND LEGAL ARGUMENT

1. It is not true that Montgomery County will be more convenient for the witnesses.

The Defendants claim that the decedent's treating physicians and medical providers that will be called to testify at trial are all located in Montgomery County and it will be inconvenient for them to travel to Prince George's County. This allegation is not based in fact but upon pure speculation. In this case, there is no need to call numerous medical providers to explain what occurred. Simply put, a nurse pulled the pacing wire from Ms. 's chest on

causing a laceration of her heart graft and she immediately began to bleed to death. This fact is not in dispute and there is no need to call the nurse who pulled the pacing wire to testify that she pulled the pacing wire from Ms. 's chest. The nurse is not a named defendant in this action.

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To be sure, Dr. _____ placed the pacing wire in Ms. _____'s chest and a nurse at his direction pulled the wire out. Not one single witness is needed to present these two facts to the jury. Dr. _____ actually signed the death certificate which states: "bleeding from graft injury...while removal of pacing wires" and determined that the cause of death was "accidental." See Exhibit 2. From a factual standpoint, the event that caused Ms. _____'s death has already been admitted to by the Defendant. His claim now that numerous witnesses from _____ Hospital will be called to testify to these facts in an effort to move this case from Prince George's County to Montgomery County is disingenuous.

According to the internet web site for the _____, the Center has had 13 locations throughout the State of Maryland. Its corporate office is located at _____, in Prince George's County. Dr. _____ is the founder and president of this company. Dr. _____ listed this address on Ms. _____'s death certificate. See Exhibit 2. According to Map Quest Driving Directions it would take Dr. _____

20 minutes to drive from his corporate office to the Prince George's County Courthouse. See Exhibit 4. The Defendants have not explained to this court why is it more difficult for Dr. _____ to travel to the Prince George's County Courthouse vs. the Montgomery County Courthouse when his medical office and corporate headquarters are located 20 minutes from the Prince George's County Courthouse. The Defendants failed to disclose this fact to the court and did not reveal this obvious convenience to the court.

The Defendants have also failed to disclose the name of any of Ms. _____'s treating physicians and medical providers who they intend to call as witness and failed to explain how their live testimony is crucial to any defense they may raise and how these unknown and unidentified witnesses would be inconvenienced by traveling to Prince George's County to

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testify. The Defendants have simply failed to state a good faith basis for their claim that the numerous witnesses to be called at the trial of this case are actually located in Montgomery County.

The Defendants have also overlooked the fact that _____ the Plaintiff herein, and sole surviving daughter of the late _____, resides in Prince George's County.

2. The interests of justice do not mandate a transfer of his case to Montgomery County.

Dr. _____ again makes a bold unsupported allegation that many witnesses from Montgomery County will have to travel to Montgomery County to testify in this case. This claim is unsupported for the reasons advanced in item 1 and provides no additional legal support for the transfer of this case to Montgomery County.

3. The transfer of this case will not properly distribute the public burden of trial.

Dr. _____'s company reaches out to citizens throughout the State of Maryland through his aggressive internet advertising. The fact that one of his patients ended up in _____ Hospital and not at a Hospital in Prince George's County is simply a fortuitous event. The citizens of Prince George's County have a keen interest in large medical practices whose corporate headquarters are located in their county more so than the citizens of Montgomery County. They have a vested interest in applicable standard of care for treatment of patients by the surgeons who are employed by the corporation located within their own county and a great interest in the standard of care advanced by the founder and president of that corporation. There are also no facts advanced by the Defendants that the court system in Prince George's County is any more or less congested with civil cases than the court system in Montgomery County, or that the interests of justice will be better served by transferring this case to Montgomery County.

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4. The "Heavy Burden" of Proving Forum Non Conveniens.

The Court of Appeals has repeatedly held that "[i]t is the moving party who has the burden of proving that the interests of justice would be best served by transferring the action...and a motion to transfer should be granted only when the balance weighs strongly in favor of the moving party." *Leung v. Nunes*, 354 Md. 217, 223-24, 729 A.2d 956 (1999)(internal citation omitted). It is further well established that "[t]he movant for transfer does not meet the burden of proof solely by requesting transfer to the place where the cause of action arose." *Leung*, 354 Md. at 228. In the instant case, the Plaintiff's cause of action for wrongful death arose in Montgomery County, however, Prince George's County is a proper venue because the Defendants' corporate office is located in Prince George's County and they regularly conduct business in Prince George's County.

The Court of Appeals made clear in *Leung* that the burden of proof on the party seeking transfer is a "heavy" one, which is not satisfied by conclusory arguments, nor by the moving party's adducing evidence which does not "weigh strongly" in his favor, as under such circumstances "the plaintiff's choice of forum controls." *Leung*, 354 Md. at 228-29. It is an abuse of discretion and reversible error -- which does not require a showing of prejudice by the plaintiff in order to obtain reversal on appeal -- if a trial court grants a motion to transfer under circumstances in which the party seeking transfer has "failed to meet the burden of proof" by adducing sufficient evidence in support of the motion. *Leung*, 354 Md. at 229-34.

"Proper regard for the plaintiff's choice of forum is the reason why 'a motion to transfer should be granted only when the balance weighs strongly in favor of the moving party.'" *Leung*, 354 Md. at 224, quoting *Urquhart v. Simmons*, 339 Md. 1, 660 A.2d 412 (1995, at 18, n. 7). It is also well settled that "due consideration must be given to the plaintiff's choice of forum,

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and this selection will not be altered solely because it is more convenient for the moving party to be in another forum.” *Leung*, 354 Md. at 224, quoting Niemeyer & Schuett, *Maryland Rules Commentary*, 215-16 (2nd Ed. 1992)(Emphasis added.) “This respect for the plaintiff’s choice of forum is derived largely from federal law developed under Title 28 Section 1402(a),” pursuant to which “[t]he plaintiff has the primary right to choose his forum and that selection is not to be easily overthrown.” *Leung*, 354 Md. at 224-25. (Internal citations omitted.)

Under Maryland law, “there are two basic factors to be considered by the court in ruling on a motion to transfer: convenience and the interests of justice, each with particularized subparts that have grown in the case law.” *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 438, 816 A.2d 117 (2003). “To simply call it a balancing test and the ‘more convenient forum’ is in some regards, however, misleading, because [Maryland case law] makes it clear that a motion to transfer should be granted only when the balance weighs strongly in favor of the moving party”, and it is clear that “[t]he party seeking transfer must present evidence weighing strongly in its favor, because when multiple venues are jurisdictionally appropriate, a plaintiff has the right to choose the forum.” *Cobrand*, 149 Md. App. at 439-40. (Internal citations omitted.)

When these principles are applied to the facts of the instant case, it is very clear that the Defendants have not satisfied their burden of proving that Montgomery County is a more convenient venue for this action, in fact, they have advanced no legally sufficient basis for the transfer of this case to Montgomery County.


WHEREFORE: Plaintiff respectfully request that the Defendants’ Motion to Transfer be denied.

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Respectfully submitted,


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Attorney for Plaintiffs

REQUEST FOR A HEARING

Plaintiffs respectfully request a hearing on the Defendants' Motion to Transfer.




RODNEY M. GASTON

Certificate of Service

I, Rodney M. Gaston do hereby certify that a copy of the foregoing pleading was mailed via first class, U.S. mail on this 17th day of July 2012 to:

Attorney for Defendants



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