STATE OF MICHIGAN

COURT OF APPEALS

BRIAN STEBLETON, Plaintiff-Appellee,	UNPUBLISHED October 16, 2012
v	No. 307759 Wayne Circuit Court
FARM BUREAU INSURANCE COMPANY, Defendant-Appellant.	LC No. 11-010069-NF

Before: K. F. KELLY, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

In this action for first-party no-fault benefits, defendant appeals by leave granted a circuit court order denying defendant's motion to change venue from Wayne County to Ingham County. We affirm.

Defendant conducts business in all of Michigan and does not dispute that Wayne County is a proper venue for plaintiff to bring this action for first-party no-fault benefits. MCL 600.1621(a); *Omne Fin, Inc v Shacks, Inc*, 226 Mich App 397, 400; 573 NW2d 641 (1997). Defendant argues that the court should have granted its motion for change of venue "for the convenience of parties and witnesses . . . ." MCR 2.222(A).

"[P]laintiff's initial choice of venue is to be accorded deference." *Chilingirian v City of Fraser*, 182 Mich App 163, 165; 451 NW2d 541 (1989). "[T]he moving party has the burden of demonstrating inconvenience . . . and a persuasive showing must be made." *Id.* The trial court's decision on a change of venue motion based on inconvenience is discretionary, and this Court reviews the decision for an abuse of discretion. *Id.*

Defendant's motion asserts that the accident occurred in Ingham County and that the investigating police officer is "presumably located here," that plaintiff's treating physicians practice in Ingham and neighboring Eaton counties, and that the physician for the independent medical examination (IME) is located in Ingham County.[1]

[1] Plaintiff alleges in his complaint that he lived in Wayne County, but concedes that is not accurate.

The trial court denied the motion and explained:

> This is a first party action. As a result, the location of the accident is not a factor to consider in this type of motion. In terms of treaters, Plaintiff has waived any possible inconvenience. Defendant's IME doctor will probably be deposed and will not appear in Detroit for trial.

The trial court's denial of defendant's motion was not an abuse of discretion. Defendant's assertion that the investigating police officer for a February 2010 accident is "presumably located" in Ingham County more than a year later is speculation. Moreover, whether that officer would testify in an action for first-party no-fault benefits was unknown. Assuming the accuracy of defendant's assertions concerning the locations of plaintiff's treating physicians and the IME physician, defendant did not make a persuasive showing that trial of this action in Wayne County posed any inconvenience to them, particularly in light of the possibility of video depositions.

Defendant, responding to plaintiff's contention that it did not produce any facts to show inconvenience, cites *Kohn v Ford Motor Co*, 151 Mich App 300, 306-307; 390 NW2d 709 (1986), in which this Court approved the trial judge's use of common sense and pragmatic inferences to discern inconvenience to the witnesses and the parties. In that case, the trial judge's decision was based on its evaluation of the inconvenience of potential lay witnesses in a bus accident case where the circumstances surrounding the accident were relevant. That assessment is not instructive regarding the validity of the trial judge's assessment of inconvenience to the potential witnesses in this action for first-party no-fault benefits. This Court's finding of no abuse of discretion in *Kohn* does not suggest that the trial judge's assessment in the present case was an abuse of discretion.

We affirm. As prevailing party plaintiff may tax costs pursuant to MCR 7.219.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Deborah A. Servitto