

2021 IL App (1st) 192102
No. 1-19-2102
Opinion filed September 30, 2021

THIRD DIVISION

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WILLIAM MALLOY, Individually, and)	Appeal from the Circuit Court
as Independent Executor of the Estate of)	of Cook County.
Leila Malloy,)	
)	
Plaintiff-Appellee,)	
)	No. 2018 L 012573
v.)	
)	The Honorable
DU PAGE GYNECOLOGY, S.C., an)	James N. O’Hara,
Illinois Medical Corporation; JOHN J.)	Judge, presiding.
MESSITT, M.D., and KEVIN I.)	
HUSSEY, M.D.,)	
)	
Defendants-Appellants.)	

PRESIDING JUSTICE GORDON delivered the judgment of the court, with opinion.
Justices Ellis and Burke concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff William Malloy brought this medical malpractice action claiming that defendants negligently treated his wife, Leila Malloy,¹ who has since died. The complaint alleges multiple instances of negligent treatment, including the negligent prescription of Estrace cream. Defendants Du Page Gynecology, S.C., Dr. John J. Messitt and Dr. Kevin I. Hussey appeal the trial court court’s denial of their motion to transfer venue based on improper venue and *forum non conveniens*. For the following reasons, we find no error by the trial court and affirm.

¶ 2 BACKGROUND

¶ 3 In 2018, when this complaint was filed,² Leila was a 66-year-old woman who had been a patient of Dr. Messitt and Dr. Hussey at Du Page Gynecology. She was a patient of Dr. Messitt for approximately 40 years. Dr. Hussey started treating her in 2014, following Dr. Messitt’s retirement.

¶ 4 In 1998, she was diagnosed with breast cancer and underwent a bilateral mastectomy. In 2001, she was diagnosed with multiple basal cell carcinomas. The complaint alleges that defendants were “aware of this history at all times relative to this [c]omplaint.”

¹ Since husband and wife share the same last name, we will refer to them by their first names.

² The original complaint was filed on August 23, 2017, and voluntarily dismissed on November 21, 2017. The complaint at issue was subsequently refiled on November 18, 2018.

¶ 5 In October 2013, Dr. Messitt prescribed Estrace cream to be applied to certain areas once a week. The complaint alleges that Estrace cream is “a prescription medicine used to treat moderate to severe menopausal changes in and around the vagina.” The complaint alleges that, at the time that Dr. Messitt prescribed Estrace, he informed her “that she was not at risk for any cancer” and he did not inform her of any known risks from her use of Estrace.

¶ 6 The complaint alleges that from October 2014 through March 2015, while under the gynecological care of Dr. Hussey, Leila complained of “pelvic and abdominal pain, bloating, abdominal swelling, pressure in her bladder, fatigue and weight loss.” During this time, Dr. Hussey continued and increased her use of Estrace. The complaint alleges that, during this time, neither Dr. Messitt nor Dr. Hussey ordered any advanced screening or imaging.

¶ 7 The complaint alleges that, in March 2015, she visited Dr. Hussey with complaints of a uterine prolapse, and he advised her that “no further management was required.” In June 2015, she visited Northwestern Medical Urgent Care in Glen Ellyn, Illinois, with a claim of another uterine prolapse, and sought follow-up care with her primary care physician, who advised her to visit Dr. Hussey. On July 15, 2015, she visited Dr. Hussey with complaints of the same full uterine prolapse, and he advised her that a hysterectomy and cystocele surgery would be required. The complaint alleges that, “[a]t this time,

the use of Estrace was discontinued,” but it does not specify who discontinued it.

¶ 8 The complaint alleges that, on August 24, 2015, Dr. Hussey performed surgery and discovered “for the first time” that Leila had “nodular tumors throughout her abdominal cavity.” A subsequent pathology report “diagnosed her with stage 3C ovarian cancer.”

¶ 9 The complaint alleges multiple counts of negligence by defendants, including negligently failing to order advanced screening tests and imaging and negligently prescribing Estrace given her symptoms and history.

¶ 10 The complaint also alleged multiple counts against former defendant Allergan USA, Inc. (Allergan), the manufacturer of Estrace, including failure to adequately warn. The complaint alleged that Allergan “manufactured, marketed and sold in the State of Illinois, itself or through *** its wholly owned Warner Chilcott brand, the drug known as Estrace Cream.” On February 21, 2019, defendant Allergan moved to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2018)), on the ground that plaintiff’s claims against it were barred by the learned intermediary doctrine and that its warnings were adequate. On May 17, 2019, the trial court granted Allergan’s motion and dismissed Allergan with prejudice.

¶ 11 Four days later, on May 21, 2019, defendants moved to transfer venue due to Allergan’s dismissal or, in the alternative, to transfer due to *forum non conveniens*.

¶ 12 In its motion, defendants argued that all the remaining parties resided in Du Page County and, in support, they attached the affidavits of Drs. Messitt and Hussey. Dr. Messitt averred that he resided in Du Page County, that his care and treatment of Leila occurred in Du Page County and that “[i]t would be more convenient for [him] to attend trial in Du Page County” because the Du Page County courthouse was closer to his residence than “the Daley Center” in downtown Chicago. Other than averring that he treated Leila in Du Page County, his affidavit did not aver the places where he practiced medicine before retiring.³ The almost identical affidavit of Dr. Hussey averred that he also resided in Du Page County, that his care and treatment of Leila occurred in Du Page County and that “[i]t would be more convenient for [him] to attend trial in Du Page County” because the Du Page County courthouse was closer to his residence than “the Daley Center” in downtown Chicago. Other than averring that he treated Leila in Du Page County, his affidavit also did not aver the places where he practiced medicine.

³ Dr. Messitt’s affidavit did not state that he was retired. This fact was alleged in the complaint.

¶ 13 Defendants' motion argued that "it is more likely than not that most of the witnesses that will need to appear at trial live and/or work in Du Page County." However, defendants' motion did not specify the name of a single nonparty witness. Defendants also argued that the "ease of access to sources of evidence" favored Du Page County without naming a source. Defendants argued that "a viewing of the premises," namely, their offices, favored Du Page County, while acknowledging that "a jury viewing of the premises" was "unlikely in this case." Defendants observed that courts should consider the administrative difficulties posed by litigating in congested forums, but they did not argue that Cook County courts were more congested and did not provide any relevant statistics. Finally, defendants argued that Du Page County residents had a greater interest in the litigation than Cook County residents.

¶ 14 In response, plaintiff argued, among other things, that, although Allergan was no longer a defendant, Allergan possessed relevant evidence and was located in Cook County. With respect to the interest of Cook County in the litigation, plaintiff argued that Estrace, "produced by Allergan, is a product whose manufacturer is registered in Cook County," and, thus, "the negligence flowing from" its prescription is "a concern for Cook County."

¶ 15 Defendants' motion was set for "status" on July 18, 2019, and the trial court issued a written order on September 18, 2019. The record before us does

not contain transcripts, so we do not know if additional evidence was produced or admitted at a hearing.

¶ 16 In its September 18, 2019, order, the trial court made the following findings. The trial court found, as a preliminary matter, that, since plaintiff was a resident of Du Page County, his choice of Cook County as a forum was entitled to “somewhat less deference” than that of a resident of Cook County.

¶ 17 First, the trial court found that the convenience of the parties, as a factor, weighed only “slightly” in favor of transfer. The trial court found that, while plaintiff resides in Du Page County and the alleged injury occurred there, “none of the moving defendants attach any specific evidence attesting to the notion of a substantial inconvenience if this case continues to be litigated in Cook County.”

¶ 18 Second, the trial court found that “the ease of access to sources of evidence does not weigh in favor of transfer to Du Page County.” The court found that “[t]he moving defendants” offer “no specific evidence that the ease of access to sources of evidence would be substantially inconvenienced if this case was litigated in Cook County.” In addition, the court found that computer technology and Internet access render the location of documentary evidence a less significant consideration.

¶ 19 Third, the trial court found that the availability of compulsory process to secure the attendance of unwilling witnesses and the cost to obtain the attendance of willing witnesses did not favor transfer. The order states: “This Court finds that any difference in costs between Cook County and Du Page County respectively will be minimal.”

¶ 20 Fourth, the trial court found that the possibility of viewing the premises did favor transfer. However, overall, the court found that defendants had failed to show that Cook County would be substantially more inconvenient.

¶ 21 Fifth, the trial court found that the interest in deciding controversies locally did not weigh in favor of transfer. The court found that, although the alleged treatment occurred in Du Page County, “the alleged negligence in this case is centered on an Estrace cream produced by Allergan, which is a product whose manufacture is prevalent in Cook County.” For the same reason, the court found that consideration of the fairness of imposing jury duty upon the residents of Cook County did not weigh in favor of transfer. The trial court found that “the notion that the Estrace cream is manufactured and regularly distributed in Cook County is not evidence this Court can overlook.”

¶ 22 Lastly, the court found that administrative concerns, such as court congestion, did not weigh in favor of or against transfer since “both counties resolve cases in a similar amount of time.” By consulting the “2016 Annual

Report of Illinois Courts, Statistical Summary,” the trial court found that the average time lapse between the date of filing and the date of verdict in Cook County was 35 months, while it was 41 months in Du Page County.

¶ 23 In conclusion, the trial court found that, where the various factors did not substantially favor transfer, the movants had failed to satisfy their burden of proof, and the court denied defendants’ motion.

¶ 24 On October 18, 2019, defendants filed a timely notice of appeal, and this appeal followed.

¶ 25 ANALYSIS

¶ 26 On this appeal, defendants claim (1) that the trial court erred in denying their motion to transfer venue due to improper venue; and (2) that the trial court abused its discretion by denying their *forum non conveniens* motion seeking to transfer this case from Cook County to Du Page County.

¶ 27 I. Proper Venue

¶ 28 A. Standard of Review

¶ 29 Defendant’s first claim is improper venue, a question which is governed by statute and, thus, requires statutory interpretation. The interpretation of a statute is a question of law which is reviewed *de novo*. *VC&M, Ltd. v. Andrews*, 2013 IL 114445, ¶ 30. *De novo* consideration means that we perform the same

analysis that a trial judge would perform. *A.M. Realty Western L.L.C. v. MSMC Realty*, 2016 IL App (1st) 151087, ¶ 72.

¶ 30 With statutory interpretation, our primary objective is to ascertain and give effect to the intent of the statute’s drafters. *VC&M, Ltd.*, 2013 IL 114445, ¶ 30. The most reliable indicator of the drafters’ intent is the language used in the statute itself, which should be given its plain and ordinary meaning. *VC&M, Ltd.*, 2013 IL 114445, ¶ 30.

¶ 31 B. Venue Statute

¶ 32 In the case at bar, it is undisputed that former defendant Allergan was the defendant that initially permitted venue in Cook County. Defendant Allergan moved to dismiss, and the trial court granted its motion. Shortly after the dismissal, defendants moved to transfer the case on the basis of that dismissal.

¶ 33 The governing statute is section 2-104 of the Code of Civil Procedure (735 ILCS 5/2-104(b) (West 2018)), and the relevant portion provides:

“All objections of improper venue are waived by a defendant unless a motion to transfer to a proper venue is made by the defendant on or before the date upon which he or she is required to appear or within any further time that may be granted him or her to answer or move with respect to the complaint, except that *if a defendant upon whose residence venue depends is dismissed upon motion of plaintiff, a remaining*

defendant may promptly move for transfer as though the dismissed defendant had not been a party.” (Emphasis added.)

¶ 34 It is also undisputed that defendant Allergan, not plaintiff, filed the motion to dismiss Allergan as a party. Thus, the words of the statute simply do not apply.

¶ 35 Nonetheless, defendants argue that, since plaintiff did not respond to defendant Allergan’s motion, we should regard defendant Allergan’s motion as being “*de facto*” plaintiff’s motion. Defendants cited no case law applying their novel proposition and, unfortunately for them, that is not the way the statute is written.⁴ The plain language of the statute could not be more clear when it states “upon motion of plaintiff,” which this was not. Thus, we do not find defendants’ argument persuasive.

¶ 36 II. *Forum Non Conveniens* Motion–Summary

¶ 37 In the alternative, defendants argue for transfer on the basis of *forum non conveniens*.

⁴Defendants argued in their reply brief to this court that the 30-year-old case of *McKenna v. Romeiser*, 205 Ill. App. 3d 830 (1990), was “instructive,” but the court in that case was ultimately unpersuaded by the argument of improper venue and a reply brief is not the place to first raise a new argument. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (“Points not argued *** shall not be raised in the reply brief”).

¶ 38 With a *forum non conveniens* motion, the issue for an appellate court is not what we would have done in the first instance—that is irrelevant. *Vivas v. Boeing Co.*, 392 Ill. App. 3d 644, 657 (2009). The sole issue for us is whether the trial court abused its discretion in its ruling. See *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 441 (2006). An abuse of discretion occurs when no reasonable person could take the view that the trial court took, and we cannot find that here. *Langenhorst*, 219 Ill. 2d at 442.

¶ 39 As we explain in more detail below, in a case where the product that allegedly caused the injury is regularly distributed throughout Cook County, where plaintiff chose this forum, where the two counties at issue are located next to each other and the proposed transferee county is surrounded on two sides by the county chosen by plaintiff, where any difference in cost in securing witness attendance would be minimal, where defendants failed to identify any nonparty witnesses by name who would be inconvenienced, where the court statistics cited by the trial court establish that a resolution of the case would be speedier here than in Du Page County, where both law firms have offices in Cook County, and where the Internet and computers make the distribution of documents easy anywhere, we cannot find that the trial court abused its discretion not to transfer.

¶ 40 Thus, for the reasons explained in more detail below, we can find no abuse of discretion in the trial court’s denial of defendants’ motion.

¶ 41 III. Standard of Review

¶ 42 “*Forum non conveniens* is an equitable doctrine founded in considerations of fundamental fairness and the sensible and effective administration of justice.” *Langenhorst*, 219 Ill. 2d at 441 (citing *Vinson v. Allstate*, 144 Ill. 2d 306, 310 (1991)). “This doctrine allows a trial court to decline jurisdiction when trial in another forum ‘would better serve the ends of justice.’ “ *Langenhorst*, 219 Ill. 2d at 441 (quoting *Vinson*, 144 Ill. 2d at 310). “*Forum non conveniens* is applicable when the choice is between interstate forums as well as when the choice is between intrastate forums,” such as in the case at bar. *Glass v. DOT Transportation, Inc.*, 393 Ill. App. 3d 829, 832 (2009).

¶ 43 The discretion afforded a trial court in ruling on a *forum non conveniens* motion is “considerable.” *Langenhorst*, 219 Ill. 2d at 441. As a result, “[w]e will reverse the circuit court's decision only if defendants have shown that the circuit court 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, 176-77 (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 (citing *Dawdy*, 207 Ill. 2d at 177); *Glass*, 393 Ill. App. 3d at 832.

¶ 44 “The issue, then, is not what decision we would have reached if we were reviewing the facts on a clean slate, but whether the trial court acted in a way that no reasonable person would.” *Vivas*, 392 Ill. App. 3d at 657. See also *Hefner v. Owens-Corning Fiberglas Corp.*, 276 Ill. App. 3d 1099, 1103 (1995) (“the question on review is not whether the appellate court agrees with the circuit court's denial of a *forum non conveniens* motion but whether the circuit court 'acted arbitrarily, without employing conscientious judgment ***[and] exceeded the bounds of reason' “ (quoting *Mowen v. Illinois Valley Supply Co.*, 257 Ill. App. 3d 712, 714 (1994))). In addition, “we may affirm a trial court's *forum non conveniens* order on any basis found in the record.” *Ruch v. Padgett*, 2015 IL App (1st) 142972, ¶ 40.

¶ 45 When reviewing the trial court's decision, we must also keep in mind that the burden is always on the movant to show that the relevant factors strongly favor a transfer. *Koss Corp. v. Sachdeva*, 2012 IL App (1st) 120379, ¶ 106 (the burden is on the movant to show a transfer is strongly favored); *Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261, 275 (2011) (the burden is on the movant to show a transfer is strongly favored); *Woodward v. Bridgestone/Firestone, Inc.*,

368 Ill. App. 3d 827, 833 (2006) (“[t]he burden is on a defendant to show that the relevant factors strongly favor the defendant's choice of forum”).

¶ 46

IV. Plaintiff's Choice of Forum

¶ 47

“Before weighing the relevant factors, a court must first decide how much deference to give to a plaintiff's choice of forum.” *Vivas*, 392 Ill. App. 3d at 657 (citing *Langenhorst*, 219 Ill. 2d at 448 (the supreme court determined the appropriate amount of deference before weighing the relevant factors)).

¶ 48

It is “ ‘assumed on a *forum non conveniens* motion that the plaintiff's chosen forum is a proper venue for the action.’ “ *Lagenhorst*, 219 Ill. 2d at 448 (quoting *Dawdy*, 207 Ill. 2d at 182). “Plaintiff's choice of forum is entitled to substantial deference.” *Lagenhorst*, 219 Ill. 2d at 448; *First American Bank v. Guerine*, 198 Ill. 2d 511, 521 (2002) (“the battle over forum begins with the plaintiff's choice already in the lead”). However, when neither the plaintiff's residence nor the site of the injury are located in the chosen forum, the plaintiff's choice is “entitled to *somewhat* less deference.” (Emphasis in original.) *Langenhorst*, 219 Ill. 2d at 448; *Guerine*, 198 Ill. 2d at 517. While “ ‘the deference to be accorded to a plaintiff regarding his choice of forum is less when the plaintiff chooses a forum other than where he resides *** nonetheless the deference to be accorded is only *less*, as opposed to *none*.’ “ (Emphases in original.) *Langenhorst*, 219 Ill. 2d at 448 (quoting *Guerine*, 198 Ill. 2d at 518).

Thus, the trial court did not abuse its discretion by finding that plaintiff's choice of Cook County was entitled to some deference.

¶ 49 V. Private Interest Factors

¶ 50 When a court considers a *forum non conveniens* motion, the Illinois Supreme Court found that it must consider both “the private and public interest factors.” *Langenhorst*, 219 Ill. 2d at 443; *Dawdy*, 207 Ill. 2d at 172-73; see also *Vivas*, 392 Ill. App. 3d at 658. “[N]o single factor is controlling.” *Erwin*, 408 Ill. App. 3d at 274 (citing *Langenhorst*, 219 Ill. 2d at 443).

¶ 51 First, we consider the private interest factors, which are: “ '(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.' “ *Langenhorst*, 219 Ill. 2d at 443 (quoting *Guerine*, 198 Ill. 2d at 516-17); *Dawdy*, 207 Ill. 2d at 172; see also *Vivas*, 392 Ill. App. 3d at 658.

¶ 52 A. Convenience to the Parties

¶ 53 The trial court was correct in finding that the convenience of the parties weighed “slightly” in favor of transfer, but that “the weight in favor of transfer was only slight.”

¶ 54 With respect to this factor, “the defendant must show that the plaintiff's chosen forum is inconvenient to the *defendant*.” (Emphasis added.)

Langenhorst, 219 Ill. 2d at 450; *Vivas*, 392 Ill. App. 3d at 658. In other words, “one party cannot argue another party's convenience.” *Ruch*, 2015 IL App (1st) 142972, ¶ 51; *Susman v. North Star Trust Co.*, 2015 IL App (1st) 142789, ¶ 27.

¶ 55 In the case at bar, defendants Drs. Messitt and Hussey reside in Du Page County. However, the trial court was correct in observing that, in their affidavits, “none of the moving defendants attach any specific evidence attesting to the notion of a substantial inconvenience if this case continues to be litigated” in adjacent Cook County. In addition, other than averring that they treated Leila in Du Page County, the doctors’ affidavits submitted by defendants did not aver the places where they practiced medicine. Thus, we cannot find that the trial court abused its discretion in finding that defendants’ evidence established “only [a] slight” weight in favor of transfer.

¶ 56 B. Ease of Access to Evidence

¶ 57 The next factor is the relative ease of access to sources of testimonial, documentary, and real evidence. *Langenhorst*, 219 Ill. 2d at 443 (quoting *Guerine*, 198 Ill. 2d at 516-17); *Dawdy*, 207 Ill. 2d at 172; see also *Vivas*, 392 Ill. App. 3d at 658.

¶ 58 First, we consider the testimonial evidence. Defendants failed to identify any nonparty witnesses by name. The trial court examined “the availability of compulsory process to secure attendance of unwilling witnesses and the cost to

obtain attendance of willing witnesses” and found that this factor did “not weigh in favor” of transfer. The trial court found that “any difference in costs between Cook County and Du Page County respectively will be minimal.”

¶ 59 We cannot find an abuse of discretion in the trial court’s finding that defendants failed to satisfy their burden of proof on this factor, where defendants failed to identify any nonparty witnesses by name.

¶ 60 With respect to documentary evidence, the trial court found that modern technology has rendered it a less significant factor. In fact, this court has previously found that “the location of documents, records and photographs has become a less significant factor in *forum non conveniens* analysis in the modern age of email, internet, telefax, copying machines and world-wide delivery services, since they can now be easily copied and sent.” *Vivas*, 392 Ill. App. 3d at 658. See also *Erwin*, 408 Ill. App. 3d at 281 (“it has become well-recognized by our courts that given our current state of technology *** documentary evidence can be copied and transported easily and inexpensively”); *Woodward*, 368 Ill. App. 3d at 834 (“the location of documents is not significant because documents can be transported with ease and at little expense”); *Glass*, 393 Ill. App. 3d at 836-37 (“there should be little difficulty encountered in securing documentary evidence, given that current technology allows documents to be copied and transported easily and inexpensively”); *Ammerman v. Raymond*

Corp., 379 Ill. App. 3d 878, 890 (2008) (“the location of documentary evidence has become less significant because today's technology allows documents to be copied and transported easily and inexpensively”).

¶ 61 Thus, we cannot find that the trial court abused its discretion in finding that the relative ease of access to proof did not favor transfer.

¶ 62 C. Practical Problems

¶ 63 The last private interest factor is a consideration of “ ‘all other practical problems that make trial of a case easy, expeditious, and inexpensive.’ ” *Langenhorst*, 219 Ill. 2d at 443 (quoting *Guerine*, 198 Ill. 2d at 516-17); *Dawdy*, 207 Ill. 2d at 172; see also *Vivas*, 392 Ill. App. 3d at 658.

¶ 64 While the trial court found that the possibility of viewing the premises did favor transfer, the chances of this happening are very low. As defendants conceded in their motion to the trial court, “a jury viewing of the premises” was “unlikely in this case.”

¶ 65 While little weight should be accorded to the location of attorneys on a *forum non conveniens* motion, “a court may still consider it in the *forum non conveniens* analysis.” *Vivas*, 392 Ill. App. 3d at 660. See also *Dawdy*, 207 Ill. 2d at 179 (“a court may consider this factor”); *Erwin*, 408 Ill. App. 3d at 281 (this court “note[d]” that both plaintiff and defendant's counsel “maintain offices in Cook County”); *Woodward*, 368 Ill. App. 3d at 835 (“We also note

that the defendants' counsel of record have offices in Illinois. Although not a significant factor, we may consider it in our analysis.”). Both firms have Chicago offices.

¶ 66 Again, while not a significant factor, Du Page County has no airport, while Cook County has two major airports. Thus, to the extent that this factor tips in any direction, it slightly favors plaintiff.

¶ 67 In sum, we cannot find that consideration of practical problems tilts in favor of transfer.

¶ 68 VI. Public Interest Factors

¶ 69 When deciding a *forum non conveniens* motion, a court must also consider the public interest factors. These 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 516-17); *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 170 (2005); *Dawdy*, 207 Ill. 2d at 173. See also *Vivas*, 392 Ill. App. 3d at 660.

¶ 70 First, we consider the respective forums' interests in deciding these controversies and the fairness of imposing jury duty on the forums' residents.

In *Langenhorst*, our supreme court affirmed a trial court's decision not to transfer a case from St. Clair County to Clinton County, which was the scene of the railway accident at issue. *Langenhorst*, 219 Ill. 2d at 451, 454. In considering the respective forums' interest, the court observed that St. Clair County had as much interest in the controversy as Clinton County, because “this same railway line” involved in the accident “bisects all of St. Clair County.” *Langenhorst*, 219 Ill. 2d at 451. The same is equally true here, where the product at issue is regularly prescribed and distributed throughout Cook County.

¶ 71 Lastly, we must consider “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 516-17). However, “[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 its motion to the trial court, defendants, who have the burden of proof, offered no court statistics. However, the trial court did examine the statistics and found that they established that cases actually resolved faster in Cook County than in Du Page County. Thus, we can find no abuse of discretion in the trial court’s consideration of this factor.

For all the foregoing reasons, we cannot find that the trial court abused its discretion in finding that the public and private factors did not require a transfer to Du Page County.

¶ 72

CONCLUSION

¶ 73

First, we are not persuaded by defendants' claim of improper venue, where the argument is not supported by the plain language of the statute. Second, after carefully considering and weighing every factor in the *forum non conveniens* doctrine, we cannot find that the trial court abused its discretion by denying defendants' *forum non conveniens* motion. Thus, we must affirm the trial court's order and remand for further proceedings consistent with this opinion.

¶ 74

Affirmed.

No. 1-19-2102

Cite as: *Malloy v. Du Page Gynecology, S.C.*, 2021 IL App (1st) 192102

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 2018 L 012573; the Honorable James N. O’Hara, Judge, presiding.

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