

STATE OF MICHIGAN
COURT OF APPEALS

DAVID ZIDAR, Personal Representative of the
Estate of DEBORAH ZIDAR, Deceased, DENISE
BATZOLD, COLLEEN ZIDAR, KENNETH
ZIDAR, DOROTHY ZIDAR and CHRISTINE
KOSUTH,

UNPUBLISHED
November 13, 2001

Plaintiffs-Appellants,

v

FLEET TRANSPORT COMPANY, INC.,
CHEMICAL LEAHMAN TANK LINES, INC.,
THOMAS BROWN and CRAIG BACCOLI,

No. 225270
Macomb Circuit Court
LC No. 99-003874-NI

Defendants-Appellees.

Before: Bandstra, C.J., and Doctoroff and White, JJ.

MEMORANDUM.

In this wrongful death action, plaintiffs appeal as of right from an order granting defendants' motion to dismiss based on forum non conveniens. We affirm.

This case arises from a three-vehicle automobile accident that occurred in the State of Kentucky on November 11, 1998. On that date, at approximately 7:30 a.m., Deborah Zidar (a Michigan resident) was a passenger in a vehicle being driven by defendant Craig Baccoli (also a Michigan resident). As a vehicle being operated by Godbey Whitehouse (a Kentucky resident) pulled onto the shoulder of the freeway, Baccoli slowed and possibly struck Whitehouse's vehicle. A Fleet Transport truck,¹ being driven by defendant Thomas Brown (an Ohio resident), then struck the rear of Baccoli's vehicle. Deborah Zidar died as a result of the accident. Subsequently, Craig Baccoli filed an action against Fleet Transport and Thomas Brown in the United States District Court for the Eastern District of Kentucky. Thereafter, plaintiffs, Deborah Zidar's mother and five siblings, filed their complaint alleging negligence on the part of defendants in the Macomb Circuit Court. Defendants immediately moved for dismissal on forum non conveniens grounds. The trial court granted defendants' motion.

¹ Fleet Transport is a Pennsylvania corporation.

Plaintiffs argue that the trial court abused its discretion in dismissing their complaint. We disagree. In *Cray v General Motors Corp*, 389 Mich 382, 395; 207 NW2d 393 (1973), our Supreme Court discussed the doctrine of forum non conveniens and identified the factors to be considered and weighed when a party raises the issue. Here, the trial court analyzed the *Cray* factors and determined that, in light of the respective residences of the different parties, the fact that the accident occurred in Kentucky, the availability of witnesses and the costs associated with obtaining their attendance, the fact that a prior action had already been commenced in Kentucky, and the fact that defendants promptly sought dismissal of this action, this matter should be litigated in Kentucky. We find no abuse of discretion. *Cray, supra*.

Affirmed.

/s/ Richard A. Bandstra

/s/ Martin M. Doctoroff