

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MICHAEL ALESSIO,

Appellant

v.

I-FLOW CORPORATION, A/K/A I-FLOW,
LLC, KIMBERLY-CLARK, A/K/A
KIMBERLY-CLARK CORPORATION, SETH
R. KRUM, D.O., PENNSYLVANIA
ORTHOPEDIC ASSOCIATES, INC.,
RICHARD STRULSON, M.D.,

Appellees

IN THE SUPERIOR COURT
OF
PENNSYLVANIA

No. 1469 EDA 2016

Appeal from the Order Entered April 5, 2016
in the Court of Common Pleas of Philadelphia County
Civil Division at No.: 04202 March Term, 2015

BEFORE: BOWES, J., SOLANO, J., and PLATT, J.*

DISSENTING STATEMENT BY PLATT, J.: **FILED NOVEMBER 28, 2017**

Because I believe that the trial court did not abuse its discretion with respect to its decision to transfer venue, I respectfully dissent. I would affirm the trial court's order.

Our standard of review provides that "[i]f there exists any proper basis for the trial court's decision to grant a petition to transfer venue, the decision must stand." ***Wentzel by Wentzel v. Cammarano***, 166 A.3d 1265, 1268 (Pa. Super. 2017) (citation omitted).

* Retired Senior Judge assigned to the Superior Court.

Here, the trial court found that the operation where the I-Flow infusion pump was installed in Appellant's right shoulder occurred in Montgomery County, as did all follow up care and use of the pain pump. (**See** Trial Court Opinion, 12/16/16, at 3). It observed that the MCARE Act states that "a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in the county in which the cause of action arose." (**Id.** at 2-3) (quoting 42 Pa.C.S.A. § 5101.1(b)) (case citation omitted). Finally, the trial court explained that it transferred venue because "[t]he evidence produced during venue discovery established that the core allegations of negligence and the injury to [Appellant] all occurred in Montgomery County." (**Id.** at 3).

Upon review, I would conclude that there existed a proper basis to transfer venue. Therefore, I would affirm the order of the trial court.

Accordingly, I respectfully dissent.