Circuit Court for Prince George's County
Case No.: CAL2013025

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 971

September Term, 2021

THOMAS COTHREN

v.

JONATHAN D. SOLOMON, ET. AL.

Shaw,
Ripken,
Harrell, Jr., Glenn T.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: May 13, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Thomas Cothren, filed suit against Dr. Jonathan D. Solomon ("Dr. Solomon") and his brother, Joshua F. Solomon (collectively, "Appellees"), in the Circuit Court for Prince George's County. In this appeal, we are asked to decide whether the circuit court erred in granting Appellees' motion to transfer venue of the suit to the Circuit Court for Montgomery County. Finding no error or abuse of the court's discretion in reaching its decision, we shall affirm the judgment.

BACKGROUND

Thomas Cothren is a resident of the state of New York and former sales representative for Fresh Start Recovery Center, LLC ("Fresh Start"), an addiction treatment center located in Montgomery County, specifically in Gaithersburg, Maryland. In 2019, Dr. Solomon's wife, Jenny Solomon, began treatment at Fresh Start. Ms. Solomon received inpatient services for "several weeks" before being discharged to her home in Montgomery County, at which point she began receiving out-patient and aftercare services from Fresh Start. Ms. Solomon's outpatient and aftercare treatment, like her inpatient treatment, occurred in Montgomery County.

In December of 2019, during Ms. Solomon's aftercare treatment, Cothren (who was an employee of Fresh Start at that time), and Ms. Solomon began communicating via the internet. These communications, through text message and social media, eventually became sexual in nature. In April of 2020, someone using the email address ToddMcCartyLegalAction@protonmail.com reported Cothren's and Ms. Solomon's

relationship to Fresh Start.[1] One such email from that address stated: "I want to bring to your attention an acute violation of the NAATP[2] Code of Ethics by your employee, Tom Cothren. Tom Cothren is currently engaged in a sexual relationship with current patient, Jenny Solomon. If you require documentation to support his termination, abundant and graphic evidence will be provided for your review[.]"

Thereafter, appellee Joshua Solomon, sent an email to the Chief Executive Officer of Fresh Start, stating, in part: "We have evidence of [Jenny Solomon and Thomas Cothren's] affair for some time now. However, our concern has heightened since it appears Jenny is pregnant. Coupled with the fact that she is still abusing alcohol and pills, and that we suspect Tom Coth[re]n may be the father to her pregnancy, I am eager to talk to you about protecting her child from her substance abuse and herself from Tom Coth[re]n's misconduct." Cothren asserts, and Appellees do not dispute, that the statements regarding pregnancy were false, as Ms. Solomon and Cothren had not met in person. Cothren was terminated from his employment with Fresh Start shortly after Joshua Solomon's email was sent.

[1] Although the record does not indicate who sent the email, Cothren alleges in his complaint that, "[u]pon information and belief[,] ToddMcCartyLegalAction@protonmail.com is/was an email address created by [Appellees] or by someone at their direction."

[2] National Association of Addiction Treatment Providers.

In June of 2020, Cothren filed suit against Appellees in Prince George's County, where Dr. Solomon's medical practices are located.[3] Cothren alleged that Appellees (through their emails with his employer) committed tortious interference with a contract, tortious interference with an economic expectancy, unreasonable intrusion upon seclusion, defamation, and civil conspiracy.

In October of 2020, Appellees removed the case to the United States District Court for the District of Maryland. In April of 2021, after a hearing, the case was remanded to the Circuit Court for Prince George's County.[4] In August of 2021, Appellees filed a motion to transfer the case to the Circuit Court for Montgomery County, which was opposed by Cothren. The court granted that motion, explaining in an order:

> In this case, Prince George's County has no meaningful ties to this controversy and no particular interest in the subject matter of this case. The incident did not occur in Prince George's County and all relevant witnesses are located in Montgomery County. None of the parties reside in Prince George's County. Moreover, this action bears no relation to Defendant Jonathan Solomon's medical work in Prince George's County, which stands as the only connection to Prince George's County. Finally, the Court is mindful of the burden imposed upon the citizens of this county in performing their important civic duty as jurors. There is no reason to impose this task upon them in connection with a case that has no relationship to their community.

Cothren appealed timely. He raises a single question for our consideration: "Did the Circuit Court [for] Prince George's County err by transferring the pending litigation to

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[3] Cothren alleges that Dr. Solomon's principal place of business is Solomon Eye Physicians and Surgeons, which has two offices in Prince George's County – one in Bowie and another in Greenbelt.

[4] The transcript from the hearing in the federal court is not part of the record before us. Appellees state that after a "lengthy hearing," the federal court remanded the case, noting that the removal question was a "close call."

Montgomery County despite the fact [that] venue was proper in the Circuit Court [for] Prince George's County and prejudice to the non-moving party would result from the transfer[?]"[5]

STANDARD OF REVIEW

We examine the grant of a motion to transfer venue for an abuse of discretion. *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 401 (2017). Merely "[b]ecause 'we may not have chosen to transfer th[e] case,' does not mean that a trial judge abused his or her discretion because 'we should [not] simply substitute our judgment for that of the trial court.'" *Murray v. TransCare Maryland, Inc.*, 203 Md. App. 172, 191 (2012), *aff'd*, 431 Md. 225 (2013) (quoting *Urquhart v. Simmons*, 339 Md. 1, 19 (1995)). Simply stated, "a trial court enjoys wide discretion in determining whether to transfer an action on the grounds of *forum non conveniens*[.]" *Urquhart*, 339 Md. at 19. We do not defer, however, to the trial judge's discretionary rulings "when the judge has resolved the issue on 'unreasonable or untenable' grounds." *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011).

[5] Cothren's reply brief asks this Court to strike Appellees' counterstatement of facts, asserting that Appellees violated Md. Rule 8-504(4) by citing to pleadings from a separate case involving the parties, *Jennifer King Solomon*, *et. al. v. Fresh Start Recovery Center LLC*, *et. al.*, Case No. 482460V. We decline to do so. Md. Rule 8-504(a)(4) plainly allows Appellees to state "additional facts necessary to correct or amplify the statement [of facts] in the appellant's brief." Further, this Court may take judicial notice of public documents, such as those contained in Appellees' appendix, pursuant to Md. Rule 5-201(c). *Chesek v. Jones*, 406 Md. 446, 457 n.8 (2008) (denying Appellant's motion to strike Appellee's appendix where documents were "either part of the record below or are official public documents to which this court may take judicial notice in its discretion according to Md. Rule 5-201(c)").

DISCUSSION

Cothren asserts that in transferring the case to Montgomery County, the Prince George's County court abused its discretion because it "did not give the proper weight" to his choice of venue, and because it "ignored the extreme prejudice the transfer of this case would cause" him. Appellees respond that the judgment should be affirmed because Cothren is a resident of New York and "all of the in-state connections to this litigation are with Montgomery County, which would make Montgomery County by far the most convenient venue for the parties and witnesses in this matter."

An action may be brought "in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation." Md. Code Ann., Cts. & Jud. Proc. § 6-201(a). It is well-settled that due consideration will be given to a plaintiff's selected forum. *Kerrigan*, 456 Md. at 407; *Smith v. Johns Hopkins Cmty. Physicians, Inc.*, 209 Md. App. 406, 414 (2013); *Leung v. Nunes*, 354 Md. 217, 224 (1999). Maryland Rule 2-327(c) provides, however, that, "the court may transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice." Any "party seeking transfer must present evidence weighing strongly in its favor, because when multiple venues are jurisdictionally appropriate, a plaintiff has the option to choose the forum." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 439 (2003).

This Court has made clear that the preference of a plaintiff's chosen forum is "significantly diminished" when the plaintiff lives outside of the forum. *Smith*, 209 Md. App. at 414. Specifically, we have said that "where the plaintiff does not live in the forum

he initially chooses, the plaintiff's choice of forum is entitled to 'little deference and thus little weight[.]'" *Id.* (citation omitted). This is particularly true "when the choice of forum has 'no meaningful ties to the controversy and no particular interest in the parties or subject matter.'" *Murray*, 203 Md. App. at 191 (quoting *Stidham v. Morris*, 161 Md. App. 562, 569 (2005)).

Here, Cothren is not a resident of Prince George's County (or anywhere in Maryland), but resides instead in Westchester County, New York. Accordingly, the preference of his choice of forum is "significantly diminished." *Smith*, 209 Md. App. at 414. Cothren contends that the court erred because his choice of forum deserved great deference, citing *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393 (2017). The Court in *Kerrigan* stated, however, that, "[t]hat deference shrinks, … when the plaintiff does not reside in the forum where the plaintiff has chosen to file suit." *Id.* at 406. Nor do any of the other parties to this action reside in Prince George's County: Joshua Solomon is a resident of Los Angeles County, California, and Dr. Solomon is a resident of Montgomery County, Maryland. The only tie alleged with specificity so far in this case is that Prince George's County is the location of Dr. Solomon's medical offices. As the court noted correctly, however, Dr. Solomon's medical practice has "no relation to" this case.

Nonetheless, Cothren argues that the presence of Dr. Solomon's medical practices in Prince George's County indicates that, "it is just as likely that the conspiracy that Jonathan Solomon is to have alleged to have engaged in was conduct[ed] from [Dr. Solomon's] office in Prince George's County as his home in Montgomery County." Speculating that Prince George's County may be "just as likely" an appropriate venue does

not establish any abuse of discretion by the trial court. *Leung*, 354 Md. at 222 ("Rule 2-327(c) does not deal with a transfer for want of venue; it confers on a circuit court the discretionary power to transfer even if the transferring court is a proper venue."); *Kerrigan*, 456 Md. at 405 n.4 ("That venue is appropriate in more than one Maryland trial court is a prerequisite to pleading for transfer under Rule 2-327(c).").

Cothren also maintains that transferring the case to Montgomery County "after over a year of pending litigation" would cause him "extreme prejudice" as it would "force the litigants to start from the very beginning[.]" As Appellees point out, however, relatively minimal litigation activity had taken place in Prince George's County in that time. The case was removed and pending in federal court for over six months. The first scheduling order was entered by the trial court after the case had been pending for nearly a year. No prior motions had been ruled upon by the court, and no documents had yet been produced in discovery. We are not persuaded that the court's grant of Appellees' motion to transfer the case constitutes "extreme prejudice" to Cothren.

Lastly, Cothren asserts that *Leung v. Nunes*, 354 Md. 217 (1999) "is the controlling case and is nearly directly on point in both the facts and the law[.]" The facts of that case emanated from a three-vehicle accident where none of the parties were residents of Maryland. *Id*. at 220. The collision occurred on Interstate 95 in Howard County, just south of the Baltimore Harbor Tunnel. The injured parties were treated in Baltimore City. *Id*. at 220-21. The plaintiffs brought suit in Baltimore City, which, on motion by defendants, was transferred to Howard County. *Id*. at 220.

This Court held that the transfer was reversible error, and the Court of Appeals affirmed. *Id.* at 234. Although the accident occurred in Howard County, the Court noted that "the circumstances of [the] case" strongly supported proceeding in the plaintiffs' chosen forum of Baltimore City:

> In the instant case the [defendants] essentially have one factor to argue in support of transfer, namely, that Howard County is the situs of the accident. Thus, the question presented resolves into whether that factor, under the circumstances of this case, weighs strongly in favor of transfer.

Id. at 224. There, the Court relied upon factors such as that none of the defendants resided in Howard County, and none of the fact witnesses were residents of Maryland. *Id*. at 224-29. The Court determined that the defendants failed to meet the required burden of proof to transfer the case from plaintiffs' preferred forum, noting that, "the only relevant contact that the [defendants] have with Howard County is that they happened to have been passing through that county on an interstate highway when the accident occurred." *Id*. at 225-26.

Here, Cothren is not a resident of Prince George's County, and has not identified any witnesses in Prince George's County. He has not alleged that he has any connection to Maryland other than his former employment in Montgomery County. Instead, each of the facts alleged in the record before us occurred in Montgomery County: Cothren was employed by an employer in Montgomery County; Ms. Solomon received addiction treatment in Montgomery County; and, along with Dr. Solomon, lived in Montgomery County. The court determined that it did not believe that the jurors of Prince George's County should be burdened "with a case that has no relationship to their community[,]" and we are unpersuaded that this was an abuse of discretion. *See also Odenton Dev. Co.*

v. Lamy, 320 Md. 33, 41 (1990) (holding that transfer was proper where "[t]he trial judge could properly conclude that all, or almost all, of the witnesses would be from" the county to which the case was transferred).

Similar to the facts before the Court in *Leung*, Cothren "essentially ha[s] one factor to argue in support of transfer," namely, that Dr. Solomon may have engaged in the alleged torts from his office in Prince George's County. 354 Md. at 224. The question therefore "resolves into whether that factor, under the circumstances of this case, weighs strongly in favor of transfer." *Id*. Here, the court weighed the circumstances of this case, including that Prince George's County had "no meaningful ties" to or "particular interest" in the case, that the "incident did not occur in Prince George's County[,]" that "all relevant witnesses are located in Montgomery County[,]" that "[n]one of the parties reside in Prince George's County[,]" and that the case "bears no relation to" Dr. Solomon's medical practice, and determined that transfer to Montgomery County was proper. We are unable to conclude that this decision falls outside of the "wide discretion" held by the court "in determining whether to transfer an action[.]" *Urquhart*, 339 Md. at 19.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.