Circuit Court for Prince George's County
Case No. CAL17-36499

UNREPORTED*

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0170

September Term, 2018

SHELLEY WALKER

v.

WASHINGTON SUBURBAN
SANITARY COMMISSION

Fader, C.J.
Gould
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned)

Opinion by Gould, J.

Filed: July 22, 2019

*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.

Washington Suburban Sanitary Commission ("WSSC") moved to transfer this personal injury action from the Circuit Court for Prince George's County to its Montgomery County counterpart, claiming that Montgomery County was the more appropriate forum and that Prince George's County had minimal, if any, interest in the controversy.[1] In opposition, Ms. Walker contended, among other things, that WSSC had significant connections to Prince George's County, that her choice of venue was entitled to deference, and that WSSC supported its motion with only conclusory statements.

The circuit court agreed with WSSC and ordered the case transferred to Montgomery County, finding that it would be a more convenient venue for the parties and witnesses. Because the record lacked a factual basis for the circuit court's conclusions and because the record also does not reflect that the court considered the requisite factors for evaluating a transfer motion, we find that the circuit court abused its discretion. We therefore reverse.

BACKGROUND

I. The Complaint

In December 2014, Ms. Walker was walking on a sidewalk in Montgomery County when she stepped onto a WSSC water meter access cover. The cover flipped upward to

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[1] "The Washington Suburban Sanitary District ("Sanitary District") is comprised of portions of Prince George's and Montgomery Counties. The Washington Suburban Sanitary Commission ("WSSC") is a bi-county state agency established by State law to construct and operate water supply, sewerage, and storm water management systems in the Sanitary District." Select Portfolio Servicing, Inc. v. Saddlebrook W. Util. Co., LLC, 455 Md. 313, 316–17 (2017) (internal citations omitted).

expose the valve access cavity. Ms. Walker's foot and leg fell into the exposed hole, causing substantial injuries requiring multiple surgeries.

Ms. Walker sued WSSC in the Circuit Court for Prince George's County for negligence. Her allegations included that:

> Defendant WSSC was . . . negligent and careless and breached said duties owed to Plaintiff in that it (a) failed to properly secure the [water meter access cover] which created a hazardous condition that it knew or should have known about, (b) failed to reasonably inspect the [water meter access cover] for hazardous conditions, [c] failed to remedy the hazardous condition that it knew or should have known about, and (d) further failed to adequately warn Plaintiff of the hazard that it knew or should have known about. Such negligence and carelessness did thus cause the Plaintiff to trip and fall, resulting in injury.

II. The Parties' Contentions

WSSC moved to transfer the case to Montgomery County under Md. Rule 2-327(c), arguing that: (1) Ms. Walker's choice of forum was not entitled to significant deference because she was not a resident of Prince George's County; (2) the case had no meaningful ties to Prince George's County, the only tie being that WSSC was headquartered there; (3) the case had meaningful ties to Montgomery County because that was where the accident occurred and the plaintiff lived; (4) the convenience factor favored the transfer because Ms. Walker, her counsel, and "most, if not all, of the anticipated witnesses" are believed to be (or can be reasonably inferred to be) located in Montgomery County; (5) the public interest factor favored the transfer because the dispute was a localized controversy, both courts are similarly congested, and therefore a Prince George County jury should not be burdened with a case that would more rightfully concern a Montgomery County jury; and (6) by virtue of its size, WSSC was involved in a substantial number of cases and it

would be unfair to place the burden for "more suits than necessary" on Prince George's County.

Ms. Walker opposed WSSC's motion, arguing that: (1) her choice of venue was entitled to deference; (2) WSSC had to prove that the balance of convenience weighed strongly in favor of transfer—which it failed to do; (3) Prince George's County should be presumed convenient to Ms. Walker because she filed suit there; (4) Prince George's County was convenient to WSSC because it is headquartered there; (5) any diminishment in the deference accorded to Ms. Walker's choice of a forum in which she does not reside was negated by the fact that WSSC is headquartered in Ms. Walker's chosen forum, Prince George's County; (6) WSSC offered no evidence, by affidavit or otherwise, establishing that any of its witnesses would suffer any undue inconvenience if the case went to trial in Prince George's County; (7) the private interests did not weigh in favor of transfer as there would be no need for the jury to view the accident site and no out-of-state witnesses were anticipated; and (8) the public interests support bringing suit in Prince George's County because Montgomery County's court is more congested, and the citizens of both Prince George's County and Montgomery County would have the same interest in WSSC's need to properly maintain its water meter access covers.

III. The Decision of the Circuit Court

The circuit court granted WSSC's motion without a hearing,[2] finding that the "balance weighs strongly in favor of transfer to Montgomery County," and thus determining Montgomery County to be the more convenient venue. The court noted that WSSC has its headquarters in Prince George's County, but provides services in both counties. The court observed that Ms. Walker resided, and the accident occurred, in Montgomery County. The court credited WSSC's assertion that some of WSSC's witnesses were located in Montgomery County.

The court additionally held that Ms. Walker's choice of venue was entitled to less deference because she did not live in Prince George's County. Because the accident occurred in Montgomery County, the court held that Montgomery County had a stronger interest in deciding the outcome of the "localized controversy at home" and that Prince George's County had "minimal ties" to the matter. On that basis, the court found that "it would not serve the interests of justice to burden [Prince George's County] citizens in serving on a jury in a case more rightfully concerned with Montgomery County." As a result, the court ordered the transfer of the case to Montgomery County.

Ms. Walker's timely appeal followed.

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[2] Neither party requested a hearing, and we are not suggesting that one was required. We note this fact merely to observe that the record was limited to the parties' motion-related filings, Ms. Walker's complaint, and WSSC's general denial answer.

DISCUSSION

I. Standard of Review

A circuit court has considerable latitude in deciding motions under Rule 2-327(c), and those decisions are reviewed against an abuse of discretion standard. Univ. of Md. Med. Sys. Corp. v. Kerrigan, 456 Md. 393, 401-02 (2017). The court's discretion is abused when "no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles." Stidman v. Morris, 161 Md. App. 562, 566 (2005) (quotation omitted). Put another way, the court "must have acted unreasonably based on the facts before it" and appellate courts must resist the temptation to "foist onto themselves the task designed for, and better left to, the trial courts." Kerrigan, 456 Md. at 414.

II. Governing Legal Principles of a Motion to Transfer Venue

Md. Rule 2-327(c) provides, "[o]n motion of any party, 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." As the rule reflects, a transfer motion requires consideration of two main factors: the convenience of the parties and witnesses and the interests of justice. Id.

The Court of Appeals identified some of the factors the court should consider in evaluating the convenience factor, including: (1) the deference accorded to the plaintiff when she lives in the forum she chose; (2) the deference given to the defendant's proposed choice of forum when it resides there; (3) where the cause of action arose; (4) the relative convenience to the parties of "haling defendants or plaintiffs into the others' choice of

venue based on residence or where they carry on business"; (5) convenience of witnesses; and (6) ease of access to sources of proof. Kerrigan, 456 Md. at 415. The court is free to weigh these factors, as well as any other relevant factors, as it deems appropriate based on the specific circumstances of the case. Id. In addition, the deference accorded to plaintiff's choice of venue serves as "an additional factor to weigh, separate from the convenience of the parties, in the overall balancing." Id. at 417.

The degree to which the court must defer to the plaintiff's choice of forum was debated at length by the parties. As a general proposition, deference is given to the plaintiff's choice of venue. Leung v. Nunes, 354 Md. 217, 224 (1999) (citation omitted). In fact, the deference shown to the plaintiff's choice of venue is the reason why the moving party must show that the factors *strongly* weigh in favor of the transfer in order to prevail. Kerrigan, 456 Md. at 412 (citation omitted).

The degree of deference accorded to plaintiff's venue choice, however, depends on the circumstances. For example, the deference may diminish if the plaintiff does not live in the county of her/his or its chosen venue, but this diminishment could be negated or mitigated if the defendant does not reside in the venue of its choice. Kerrigan, 456 Md. at 406-09; Leung, 354 Md. at 229. The deference may also be reduced if the plaintiff's chosen forum has no meaningful ties to the controversy. Kerrigan, 456 Md. at 406 (quotations omitted).

The interests of justice factor is intended to promote "systemic integrity and fairness" by ensuring both the private and public interests are considered. Id. at 418; see also Cobrand v. Adventist Healthcare, Inc., 149 Md. App. 431, 438 n.5 (2003) (citations

omitted). The relevant private interests include "[t]he relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of [a] view of [the] premises, if [a] view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." Stidham, 161 Md. App. at 568 (quoting Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947), superseded by statute on other grounds). The public interest analysis focuses on issues such as "court congestion, the burdens of jury duty, and local interest in the matter." Id. at 569 (quoting Johnson v. G.D. Searle & Co., 314 Md. 521, 526 (1989) (in turn quoting Gulf Oil, 330 U.S. at 508–509)).

The foregoing principles guide our analysis here. Mindful of our limited role, we do not independently analyze and weigh each of the various factors and substitute our judgment for that of the circuit court. Instead, we focus on whether the circuit court applied the correct legal standard and whether the court drew a conclusion supported by sufficient facts. As explained below, we find that the court lacked an adequate factual basis to support its conclusions and failed to analyze necessary factors. We therefore reverse.

III. Analysis

A. The Convenience Factor

The circuit court's analysis of the convenience factor rested on a very narrow set of factual observations which, on their face, seem to offset each another. Specifically, the court noted that WSSC has its headquarters in Prince George's County, but that Ms. Walker lives in Montgomery County. The court acknowledged that WSSC provides services in

both counties. These facts do not necessarily favor either venue. As Ms. Walker argues, this state of equipoise warrants denial of the motion. See Leung, 354 Md. at 229.

The problem is that the court is not required to give equal weight to each of these facts, and on this record, we cannot discern the level of importance the court attached to any of these facts. For example, we do not know how, in the court's analysis, Ms. Walker's residence in Montgomery County measured up against the fact that WSSC's principal place of business was in Prince George's County. Were they equal? Did one fact outweigh the other, and if so, in which direction? Nor do we know whether, and if so how, the fact that WSSC provides services in both counties impacted the court's analysis.

The court also stated that "several witnesses that may be called on to testify at trial" are in Montgomery County, relying on WSSC's assertions that Ms. Walker was from Montgomery County and that Ms. Walker's doctors and WSSC's work crew members and supervisors would be from Montgomery County. Although we do not know the level of significance the circuit court attached to the location of potential witnesses, we know that it's a factor courts consider under Rule 2-327(c), Kerrigan, 456 Md. at 415, and we must assume by its inclusion in the order that its significance was more than *de minimis* to the circuit court.

The record, however, has no evidence to support WSSC's conclusory statements about the unspecified and unnamed witnesses. As to Ms. Walker, Prince George's County is presumed convenient to her simply because she filed suit there. See Kerrigan, 456 Md. at 407. As to her doctors, the record is silent: WSSC did not identify a single doctor that would be inconvenienced, let alone a single doctor who may testify. Maybe Ms. Walker's

doctors would have been inconvenienced if the case had remained in Prince George's County; maybe not. The circuit court could not have appropriately assessed that factor on the record before it.[3]

Turning to WSSC's work crews and supervisors, the record likewise lacks any facts from which the court could have drawn any reasoned conclusions. WSSC did not include an affidavit or any other information about potential witnesses from its work crew, including, for example, their names, home addresses, work addresses, subject matter of potential testimony, and relative importance to the parties' claims and defenses. Without this information, the court had no way to consider properly the convenience factor with respect to these witnesses. This distinguishes this case from Kerrigan, where the court considered the defendant's list of five hundred potential witnesses and identified what appeared to be the most important witnesses. 456 Md. at 417. Nothing similar could have happened here on this record.

To substantiate its motion, however, WSSC was not necessarily required to support its claims with an affidavit, as Ms. Walker argues. As a general proposition, although an affidavit from someone with personal knowledge is one way to support a motion, it is not the only possible way. Under Rule 2-311(d), an affidavit is required only when the motion

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[3] Clearly, Ms. Walker was willing to accept the risk that her doctors would be inconvenienced. But we have no idea whether inconvenience to Ms. Walker's doctors would have worked to WSSC's or Ms. Walker's benefit. That would depend on what those doctors have to say, and particularly if they support or disagree with Ms. Walker's expert witnesses. We therefore cannot downplay that factor, at least on this record, by the fact that Ms. Walker was willing to accept the risk of inconvenience to her treating doctors by filing in Prince George's County.

(or response) is based on facts that are not otherwise "contained in the record." Facts can be contained otherwise in the record through, for example, admissions made in pleadings, discovery responses, depositions, or stipulations. In some narrow circumstances, a party's counsel can establish a fact by making a representation based upon personal knowledge, in lieu of an affidavit. See, e.g., Scully v. Tauber, 138 Md. App. 423, 431 (2001) (citing Surratt v. Prince George's Cty., 320 Md. 439, 469 (1990)). And, under Rule 2-311(c), facts can be established through authenticated exhibits. We will not speculate whether any of these alternatives to an affidavit were available to WSSC, and therefore we cannot endorse Ms. Walker's contention that an affidavit was required. At bottom, however, the problem with WSSC's motion was not that it was not supported by an affidavit, but rather because it was not supported by *any* competent evidence.[4]

WSSC, relying on Odenton Dev. v. Lamy, 320 Md. 33 (1990), argues that in the absence of supporting evidence, the court was permitted to infer that most witnesses would be from Montgomery County. In Odenton, amid heavy snow and ice, the plaintiff slipped and fell in the parking lot of a supermarket located in Anne Arundel County. Id. at 36. The plaintiff sued in Baltimore City, and the defendant moved to transfer the case to Anne Arundel County. Id. at 36-38.

Analyzing the convenience factor, the Court in Odenton noted that the defendant failed to support its motion with an affidavit to substantiate its contention that all witnesses

[4] WSSC contends that Ms. Walker failed to raise her affidavit argument in the circuit court, and hence waived it. We find otherwise. Ms. Walker argued the lack of affidavit or any other evidentiary support throughout her memorandum in support of her opposition.

would come from Anne Arundel County, but nonetheless determined that the court could have reasonably inferred that to be the case. Id. at 40-41. WSSC argues that the court was permitted to do the same here. We disagree.

First, in Odenton, the Court observed that the plaintiff mounted what could fairly be described as an anemic opposition to the defendant's contention that the witnesses were located in Anne Arundel County: it merely argued that the defendant was relying on supposition to support its motion but did not deny that the witnesses would be in Anne Arundel County. Id. at 41. Thus, the reasonableness of the court's inference was based not only on the location of the accident, but also on the plaintiff's failure to contest the location of the likely witnesses as well as the plaintiff's "reluctant acknowledgement" that the known witnesses at that time were from Anne Arundel County. Id.

Here, Ms. Walker made no similar concessions, but rather responded with a robust opposition to WSSC's motion. Not only did Ms. Walker contend that WSSC failed to support its motion with an affidavit, but she also questioned whether any of WSSC's employee witnesses live and/or work in Montgomery County, whether Montgomery County would be more convenient for WSSC's witnesses than Prince George's County, and even whether the testimony of at least some of the witnesses (the work crew that repaired the access cover after the accident) would be necessary.[5]

[5] Ms. Walker was not required to come forward with evidence to dispute WSSC on those points. That's because it was WSSC's burden to prove that the factors weighed in favor of transferring the case to Montgomery County, not her burden to disprove it. See Kerrigan, 456 Md. at 412. Ms. Walker's questioning of WSSC's contentions sufficed to highlight WSSC's failure to meet its burden. Had WSSC supported

Second, in Odenton, the slip and fall occurred in a parking lot covered with snow and ice. Given the nature of that accident—which typically involves defenses of contributory negligence and assumption of the risk—eye witnesses to the accident as well as an understanding of the specific conditions at the spot where the accident happened, are important. And, as the Court in Odenton observed, it was reasonable to assume that people shop near their homes. 320 Md. at 41.

Here, the nature of the accident and the allegations are different. Ms. Walker is alleging that WSSC failed to properly maintain the water meter access cover, which could call into question both WSSC's maintenance policies generally and its maintenance record with the access cover at issue. The record does not reflect where WSSC creates its maintenance policies or keeps its maintenance records, or where the witnesses most qualified to testify about these records work or live. As to the maintenance policies at least, it would be reasonable to infer that those policies are developed and adopted in Prince George's County, at WSSC's principal place of business. Thus, the very nature of the claim here does not naturally support the inference that was allowed in Odenton.[6]

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its motion with facts that established WSSC's contentions, Ms. Walker's burden would have likely been different.

[6] Of course, we are not opining on whether the facts will or will not support a contributory negligence and/or assumption of the risk defense, but the lack of any indication in this regard tilts in favor of Ms. Walker at this stage with respect to the motion to transfer. In other words, it is easy and logical for a court to assume that an ordinary slip and fall case will call into question plaintiff's specific conduct because people are expected to watch where they walk and avoid dangerous conditions. See Thomas v. Panco Mgmt. of Md., LLC, 423 Md. 387, 418 (2011) (quoting Menish v. Polinger Co., 277 Md. 553, 560–61 (1976) ("when one who knows and appreciates, or in the exercise of ordinary care

Third, WSSC should not get the benefit of an inference on a factual matter that, at the time the motion was filed, should have required no inference: WSSC presumably knows where its employees live and work but kept this information to itself. Thus, it would be inappropriate to allow WSSC to rest on an inference on a matter as to which no inference ought to be necessary.

In sum, there was an insufficient factual record to support the court's decision that the convenience factor favors a transfer to Montgomery County, and therefore its finding as to this factor was an abuse of discretion.

B. The Interests of Justice

Similarly, the circuit court's analysis of the interests of justice factor lacks a sufficient factual basis and is not supported by any analysis or explanation. The court's analysis should have reflected its consideration of the parties' access to proof and the convenience of witnesses, as well as such practical issues as court congestion, the burdens of jury duty, and the relative local interests in the underlying dispute. See Kerrigan, 456 Md. at 415-18. Yet, the circuit court's analysis of the interests of justice was limited to this statement:

> Following the holding in Stidham, Montgomery County has a stronger interest in deciding the outcome of a localized controversy at home. Given the minimal ties to Prince George's County, it would not serve the interests

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should know and appreciate, the existence of danger from which injury might reasonably be anticipated, he must exercise ordinary care to avoid such injury; when by his voluntary acts or omissions he exposes himself to danger of which he has actual or imputed knowledge, he may be guilty of contributory negligence")). Such an assumption cannot be made here because water meter access covers are presumably designed and installed in sidewalks so that pedestrians can safely step on the covers without concern that they would collapse or dislodge.

> of justice to burden our citizens in serving on a jury in a case more rightfully concerned with Montgomery County.

There was no mention of the court's analysis of the parties' access to proof and the costs to witnesses. Nor could there have been because, as discussed above, WSSC did not put into the record any evidence about the unnamed witnesses from which such an analysis could be made. And while both parties presented statistics pertaining to court congestion, the circuit court's ruling does not reflect any consideration or analysis of that data.

The circuit court's reference to and reliance upon Stidham appears to suggest that the outcome in Stidham and its supporting analysis led it to the conclusion that here, the interests of justice would be served by WSSC's requested transfer. Given the vastly different factual circumstances, we do not see the connection between this case and Stidham.

In Stidham, the plaintiff was from Baltimore County, the car accident occurred in Baltimore County, and the defendants lived in Pennsylvania. 161 Md. App. at 566. Because the defendants were not Maryland residents, the venue statute permitted the plaintiff to file suit in any venue in the State of Maryland. Id. at 567; see also Md. Code Ann. Cts. & Jud. Proc. § 6-202(11) (1974, Repl. Vol. 2013). The plaintiffs chose Prince George's County, even though it had "virtually no connection" to the case. Id. at 565. It was in that context that this Court in Stidham paraphrased language from the United States Supreme Court decision in Gulf Oil, which the circuit court in turn paraphrased in its ruling in this case.

In Gulf Oil, the dispute arose out of an explosion and fire that severely damaged the plaintiff's warehouse in Lynchburg, Virginia. 330 U.S. at 502-03. The plaintiff alleged that the defendant's failure to comply with Lynchburg, Virginia ordinances—an issue of local importance to Lynchburg residents—caused the accident. Id. at 503. The plaintiff was from Lynchburg, Virginia, and the defendant was incorporated in Pennsylvania and was qualified to do business in both Virginia and New York. Id. at 503. The plaintiff filed suit in the United States District Court for the Southern District of New York and the defendant moved to dismiss the case based on the doctrine of *forum non-conveniens*. Id. at 502-03.

The Supreme Court affirmed the District Court's dismissal of the case on that basis and explained the public interest component of the analysis that was the ultimate source of some of the phrasing used in the circuit court's order (shown in italics below). The Court stated:

> Factors of public interest also have [a] place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. *Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation.* In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. *There is a local interest in having localized controversies decided at home.* There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.

Id. at 508-09 (emphasis added).

When the facts of Stidham and Gulf Oil are compared to the available facts and reasonable inferences deducible from them in the present case, the circuit court's reliance on Stidham appears, at least on this record, misplaced. In Stidham, the plaintiff's chosen forum (Prince George's County) had no ties to the controversy, and in Gulf Oil the plaintiff's sole connection to the chosen forum (New York) was the fact that the defendant corporation had an agent appointed to accept service of process there. Thus, when the courts in Stidham and Gulf Oil expressed concern over the burdens imposed on juries in jurisdictions that had no ties to or local interest in the underlying controversies, they did so because the facts of the cases definitively warranted such concern. In both cases, the lack of any such meaningful connections between the plaintiff's chosen forum and the dispute was patently obvious and thus required no analysis. The same cannot be said here.

To the contrary, the ties to Prince George's County are obvious because WSSC is headquartered there and provides the same services in both Prince George's County and Montgomery County.[7] Further, as Ms. Walker points out, there does not appear to be any reason why the residents of Prince George's County would have less of a concern than Montgomery County residents in the quality of WSSC's maintenance policies and practices, without regard to where the underlying accident arose. So, when the circuit court dismissed these connections as "minimal," perhaps it had a very good reason for doing so, but if so, it is certainly not apparent on this record.

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[7] WSSC's argument that the meaningful ties analysis relates only to the facts of the case and not the parties is unsupported.

Without an explanation or analysis, we have no way to determine whether the circuit court appropriately assessed the requisite factors within the confines of its wide discretion. Thus, because the record here fails to support the court's conclusion as to the interests of justice factor, the circuit court abused its discretion in granting WSSC's motion to transfer. See Murray v. TransCare Md., Inc., 203 Md. App. 172, 190 (2012) (emphasis in original) (cleaned up) (although "*a trial judge's failure to state each and every consideration or factor* in a particular applicable standard does not, absent more, *constitute an abuse of discretion*," that notion is viable only "so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion.").

CONCLUSION

The circuit court's decision was not supported by an adequate evidentiary basis, and its analysis does not reflect consideration of the requisite factors. We therefore reverse.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLEES.