Circuit Court for Baltimore City
Case No. 24C20000672

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0620

September Term, 2020

DEBRA WALKER

v.

SETON MEDICAL GROUP, INC., *et al.*

Fader, C.J.
Nazarian,
Gould,

JJ.

Opinion by Gould, J.

Filed: July 7, 2021

In this appeal of an order granting a motion to transfer a medical malpractice case from Baltimore City to Baltimore County, the appellant argues that the court misunderstood and misapplied the principles governing such motions, and that the court made critical findings unsupported by the record before it. Although we disagree that the court misunderstood and misapplied the law, we agree that the court made significant findings without adequate evidentiary support. Accordingly, we shall vacate the judgment and remand this case to the Circuit Court for Baltimore City for further proceedings.

BACKGROUND

THE COMPLAINT

Debra Walker filed suit in the Circuit Court of Baltimore City against Seton Medical Group, Inc. d/b/a Saint Agnes Medical Group ("Seton Medical"), St. Agnes Healthcare, Inc., and Saundra Goralski, CRNP (collectively, the "St. Agnes Appellees"), and ExpressCare, LLC, ExpressCare of Northwest, LLC ("ExpressCare NW"), and Bryan S. Nolan, M.D. (collectively, the "ExpressCare Appellees") (the St. Agnes Appellees and the ExpressCare Appellees are collectively, "Appellees").

The complaint alleged that on February 22, 2018, Ms. Walker went to Seton Medical complaining of pain, swelling, redness, and itching in her left foot. She was seen by Nurse Practitioner Goralski, who diagnosed her with gout. Two days later, she presented to ExpressCare NW, complaining of severe pain, swelling, numbness, and bleeding in her left foot. She was seen by Dr. Nolan, who diagnosed her with cellulitis and a wound infection.

On February 27, Ms. Walker's symptoms had not improved, and her foot had begun to emit a foul order. She went to the Emergency Department of Northwest Hospital in Baltimore County, where she was diagnosed with gas gangrene and admitted for treatment. Her foot was amputated due to the infection. Ms. Walker was later transferred to Sinai Hospital in Baltimore City for acute inpatient rehabilitation.

Ms. Walker brought this medical malpractice action to seek redress for her injuries.

MOTION TO TRANSFER FOR *FORUM NON CONVENIENS*

The St. Agnes Appellees filed their answer to Ms. Walker's complaint without moving to dismiss for improper venue. As a result, they waived their right to assert the defense of improper venue. *See* Maryland Rule 2-322(a). The ExpressCare Appellees pleaded improper venue in their answer but did not move to dismiss.[1]

Instead, Appellees moved to transfer the case from Baltimore City to Baltimore County under Maryland Rule 2-327(c),[2] which permits a case to be transferred from one proper venue to another under the doctrine of *forum non conveniens*. Appellees argued that Baltimore County was the more convenient forum because all parties to the action, including Ms. Walker, resided or conducted business in Baltimore County, and all events

[1] Although the ExpressCare Appellees' initial motion was to dismiss, or in the alternative, to transfer venue, in their reply in support of their motion, the ExpressCare Appellees clarified that "the ExpressCare Defendants are not moving to *dismiss* this case, but rather, to *transfer* this case to Baltimore County pursuant to Maryland Rule 2-327(c) and the doctrine of *forum non conveniens*. Any 'dismissal' language was inadvertently included from a previous draft of the motion."

[2] The ExpressCare Appellees and the St. Agnes Appellees filed separate motions to transfer venue. However, their motions generally make the same arguments, so we need not address them separately.

giving rise to this action occurred in Baltimore County. They also argued that the interests of justice weighed heavily in favor of transfer because (1) Baltimore County's circuit court was less congested than Baltimore City's; and (2) Baltimore County had a vested interest in deciding local controversies, whereas Baltimore City had no local interest in the controversy. Appellees further contended that because Ms. Walker did not reside in her chosen forum, her choice of venue was entitled to little deference. The ExpressCare Appellees attached two exhibits to their motion: 1) Mr. Walker's complaint and 2) a statistical abstract comparing the number of cases in Baltimore City and Baltimore County in 2018. The St. Agnes Appellees attached the same 2018 statistical abstract as the only exhibit to their motion.

Ms. Walker opposed the motions. She argued that her choice of venue was entitled to deference and that venue was proper in Baltimore City. She also asserted that Appellees' motions lacked sufficient evidentiary support. Ms. Walker supported her opposition with a total of 21 exhibits, including various webpages purportedly demonstrating that Appellees regularly conducted business in Baltimore City, maps showing the proximity of Appellees to the Baltimore City circuit courthouse, and a map of Maryland counties and county seats.

THE DECISION OF THE CIRCUIT COURT

The Circuit Court for Baltimore City held a hearing on the matter and granted Appellees' motions to transfer for *forum non conveniens.* At the outset, the court acknowledged that Appellees had the burden to show that the relevant factors weighed heavily in favor of transfer, but nevertheless concluded that "the burden is not heavy

because [Ms. Walker] took most of the weight off" of their burden by filing suit in a forum where she did not reside.

Turning to the relevant factors, the court first found that Appellees demonstrated that the public interests of justice weighed in favor of transfer. Relying on the statistical abstract introduced by Appellees, the court concluded that the circuit court in Baltimore County was less congested than the court in Baltimore City. Noting that Ms. Walker was a resident of Baltimore County and that all of the alleged injuries occurred in Baltimore County, the court found that considerations of local interest and the burden of jury duty favored a transfer. The court reasoned that Baltimore County residents have a vested interest in the quality of care provided within their borders and to their fellow residents.

The court then found that the private interests of justice favored neither Baltimore County nor Baltimore City because the sources of proof could be found in both jurisdictions. This was because although the cause of action occurred in Baltimore County, much of Ms. Walker's post-injury care occurred in Baltimore City.

Finally, the court made the following findings on the convenience of the parties and witnesses:

> Convenience of the parties and witnesses weigh together. The Plaintiff correctly points out that it is very early in this case, and the parties haven't even had the opportunity to research and prepare what or which if any witnesses will be called. And thus, Defendant cannot say which jurisdiction would be most convenient for those witnesses. This, however, does not lead to Plaintiff's conclusion that without such information Defendants cannot meet their burden. Defendants may file the motion at any time with the information that they have at that time. Judge Moylan, in [*Smith v. Johns Hopkins Cmty. Physicians, Inc.*, 209 Md. App. 406, 418 (2013)], makes it very clear the motion court is to rely upon what it has at the time of the motion to make its analysis and findings.

> At this juncture in the case, it is clear that all the parties are either residents of Baltimore County or conduct business in Baltimore County. There need not be an affidavit, as Plaintiff stated in her argument earlier, to prove so when one, the Plaintiff has conceded such by suing them at their Baltimore County addresses and/or in the complaint noting that they conducted business in Baltimore County.
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> And at this juncture, the Court can obviously conclude that there will be some expert testimony and that again, at this early stage of the case, that's all this Court can assume. The appellate courts have said that the convenience of experts is of little concern. Plaintiff produces a lengthy list of healthcare providers from a hospital in Baltimore City while conceding that at this early stage in the litigation she cannot be sure of which or how many she would call. The pleading states "including some of the following individuals." This contention does in fact counter the Defendants' position but not enough to outweigh what is undisputed regarding the location of the parties and the current parties and witnesses.
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> The Court also notes that Baltimore City is presumed more convenient for the Plaintiff, as she filed here, but to no avail particularly given the greatly diminished deference to Plaintiff's choice in this case. So these factors both weigh in favor of transfer.

The court concluded that Appellees "satisfied their burden to demonstrate that the balance strongly points towards transfer," and granted their motions. Ms. Walker moved for reconsideration, which the court denied without a hearing.[3] Ms. Walker filed a timely appeal and presents us with the following question:

> Did the Circuit Court err in transferring [Ms. Walker's] case from Baltimore City?

[3] Ms. Walker argued again in her motion for reconsideration that Appellees failed to meet their evidentiary burden for transfer and asserted that the court incorrectly balanced the relevant factors in granting Appellees' motions. Appellees disputed these contentions, but nonetheless attached as further evidence an affidavit from Dr. Nolan stating that he lives and works exclusively in Baltimore County and treated Ms. Walker in Baltimore County, and an affidavit from Nurse Practitioner Goralski stating that she lives in Baltimore County and treated Ms. Walker in Baltimore County.

Our answer to that question is yes. We therefore vacate the judgment and remand this case to the Circuit Court for Baltimore City.

STANDARD FOR TRANSFER FOR *FORUM NON CONVENIENS*

Md. Rule 2-327(c) provides that, "[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." Factors that may be considered in evaluating the convenience of the parties and witnesses include: (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 the defendant 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." *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 415 (2017). The court is free to weigh these factors, as well as any other relevant factors it deems appropriate based on the specific circumstances of the case. *Id.* In addition, the deference accorded to a 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 defers to the plaintiff's choice of forum has garnered much attention in Maryland's venue jurisprudence and has been debated by the parties in this case both in the circuit court and on appeal. As a general proposition, deference is given to the plaintiff's choice of venue. *Leung v. Nunes*, 354 Md. 217, 224 (1999). In fact,

the deference shown to the plaintiff's choice of venue is 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.

The degree of deference accorded to the plaintiff's venue choice, however, depends on the circumstances. For example, the deference diminishes when the plaintiff does not live in the county of her chosen venue, but this loss could be negated or mitigated if the defendant does not reside in the venue of their own choosing. *Id*. at 406-09; *Leung*, 354 Md. at 229. The deference is also reduced if the plaintiff's chosen forum has "no meaningful ties to the controversy and no particular interest in the parties or subject matter." *Kerrigan*, 456 Md. at 406 (quoting *Stidham v. Morris*, 161 Md. App. 562, 569 (2005)).

The "interests of justice" component of Rule 2-327 is intended to promote "systemic integrity and fairness" by ensuring that both the private and public interests are considered. *Id*. at 418 (quoting *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 40 (1990)); *see also Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 438 n.5 (2003). 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)). 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)).

A circuit court has considerable latitude in deciding motions under Rule 2-327(c), and on appellate review, Maryland courts have "resolutely applied an abuse of discretion standard." *Kerrigan*, 456 Md. at 401. 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*, 161 Md. App. at 566. 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 (citations omitted). We must not independently analyze and weigh each of the various factors and substitute our judgment for that of the circuit court. *Id*. at 401-02. Instead, we focus on whether the circuit court applied the correct legal standard and whether the court's decision was based on a proper factual record. *Id.*

DISCUSSION

Ms. Walker contends that the circuit court misunderstood the principles governing the level of deference to be accorded to a plaintiff's venue choice. She also contends that the court allowed her analysis of the deference issue to be influenced by the court's conclusion—itself unsupported in the record—that the Circuit Court for Baltimore City was not a proper venue under Maryland's venue statute. Finally, she argues that the circuit court's balancing of the various factors rested on assumptions or conclusions unsupported by the record.

We disagree with Ms. Walker's first two contentions. From our review of the

record, it is apparent that the circuit court correctly understood and applied the requirements of Rule 2-327(c), and in connection with its analysis of the deference to be accorded to Ms. Walker's chosen venue, we perceive no error in the court's consideration of whether Ms. Walker's chosen venue was proper under Maryland's venue statute.

We agree, however, with Ms. Walker's contention that the circuit court's decision was to a significant extent unsupported by the record before it when it ruled on the motion.[4] In its analysis of the deference accorded to Ms. Walker's chosen forum, the court made two findings that lacked support in the record. *First*, although its consideration of the issue was appropriate, the evidence did not support the court's finding that Ms. Walker's chosen venue of Baltimore City was improper. *Second*, the evidence did not support the court's finding that Baltimore City lacked meaningful ties to the underlying controversy. In addition, the court did not predicate its evaluation of the convenience of the parties and witnesses on an adequate factual record.

We address each of these issues below.

I.

THE TRIAL COURT CORRECTLY UNDERSTOOD THE LEGAL PRINCIPLES CONCERNING APPELLEES' BURDEN OF PERSUASION AND THE DEFERENCE ACCORDED TO PLAINTIFF'S CHOICE OF VENUE

Ms. Walker argues that the circuit court improperly reduced Appellees' burden of persuasion because she was not a resident of her chosen forum. She bases this argument

[4] We are reviewing the court's grant of Appellees' motion, not the court's denial of Ms. Walker's motion for reconsideration, and thus we cabin our analysis to the record before the court at the time it made its ruling.

on the court's statement that "Plaintiff took most of the weight off the burden by choosing a venue in which she does not reside, particularly in a case where the venue of her residence was available to her under the rule." Ms. Walker claims that this statement demonstrates that "[t]he court improperly diminished Defendants' burden, rather than diminish the deference owed [to] Plaintiff's choice of forum." (Emphasis removed).

Ms. Walker's argument is largely semantic. When the level of deference ordinarily afforded to a plaintiff is reduced, a defendant's burden of persuasion will necessarily become lighter. *See, e.g.*, *Kerrigan*, 456 Md. at 412 (emphasis removed) ("The deference owed to the plaintiff's choice of forum is calibrated in the burden of persuasion."); *Leung*, 354 Md. at 224 (cleaned up) ("Proper regard for the plaintiff's choice of forum is the reason why a motion to transfer from the forum chosen by the plaintiff should be granted only when the balance weighs strongly in favor of the moving party."). Ms. Walker does not deny that the circuit court properly diminished the deference to which she otherwise would have been entitled. With less deference to her chosen venue, Appellees had a smaller hill to climb to show the balance of factors weighed in favor of transfer. We therefore do not agree with Ms. Walker that the court misunderstood the interplay between the deference to be accorded a plaintiff's chosen forum and the burden of persuasion on the party seeking the transfer.

Ms. Walker also contends that the circuit court's deference analysis was tainted by its improper consideration of whether venue in Baltimore City was improper. Ms. Walker's argument is based on this statement by the court:

> It's also not the venue where the cause of action arose or for which there is a meaningful connection to the cause of action. And for what it's worth, the venue is otherwise improper. Plaintiff's reliance on Courts and Judicial Proceedings 6-201 is misplaced because Baltimore County, based upon the little bit of information we have at this point, is in fact applicable to all Defendants. I don't think -- I'm not sure why it wouldn't be, I should say. And so that would render venue in Baltimore City improper had it not been waived by the filing of the answer by the St. Agnes Defendants and of course the express withdrawal of the motion to dismiss by ExpressCare Defendants in their reply brief.
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> Nonetheless, I think it is reasonable for the Court to consider this in weighing all of the things that diminish the deference to the Plaintiff's choice. The Court also considers the fact that this would have been otherwise improper venue.

We disagree with Ms. Walker that, in determining the deference accorded to plaintiff's chosen forum, a court may not take into consideration whether the plaintiff's chosen forum was proper. Ms. Walker argues that the caselaw doesn't include that issue as a consideration in the deference analysis. As we see it, however, this is not surprising because if the plaintiff's chosen venue is improper, a defendant is virtually guaranteed either a dismissal under Rule 2-322(a)(1) or a transfer of the case under Rule 2-327(b). In other words, a defendant would have no need to resort to a motion to transfer on convenience grounds if a motion to dismiss or transfer based on an improper venue is available. Nevertheless, if a defendant, for whatever reason, waives a defense based on improper venue but later concludes that a change of venue for reasons of convenience is warranted, it seems only logical that a plaintiff should not expect the court to give the same level of deference to an improper forum as it would for a proper one.

II.

THE COURT MADE FINDINGS WITHOUT EVIDENTIARY SUPPORT IN THE RECORD

A.

THE COURT'S DEFERENCE ANALYSIS

We agree with Ms. Walker, however, that the court did not have an adequate factual basis to conclude that her chosen forum was improper. Under Maryland's venue statute, venue is proper in Baltimore City if each defendant either "resides, carries on a regular business, is employed, or habitually engages in a vocation" in Baltimore City. Md. Code Ann, Cts. & Jud. Proc. § 6-201(a) (1974, 2020 Repl. Vol.). If a defendant is a corporation, venue is also proper "where it maintains its principal offices" in Maryland. *Id*.

Here, Ms. Walker provided the court with evidence that each defendant worked, carried on a regular business, or had a principal office in Baltimore City. Appellees did not dispute these assertions nor support their motion with any evidence to the contrary. Although the court was not required to credit Ms. Walker's evidence that Baltimore City was a proper venue, the court did not have the discretion to conclude, in the absence of any supporting evidence, that Baltimore City was *improper*. A court abuses its discretion when it draws conclusions without a factual basis. *See Kerrigan*, 456 Md. at 414. That's what happened here.[5]

[5] Again, because we are evaluating the propriety of the court's decision to transfer the case, and not the court's denial of Ms. Walker's motion for reconsideration, our analysis is limited to the evidence before the court based on the motions to transfer and oppositions thereto, because that's what the court had before it when it ordered the transfer.

Appellees argue that this consideration was at most harmless error. Appellees contend that the court articulated other bases for diminishing the deference to Ms. Walker's choice of forum, namely, that "she does not reside in Baltimore City, the city has no meaningful connection to the controversy, and the cause of action did not arise" in Baltimore City. Thus, according to Appellees, with respect to the court's deference analysis, the incremental effect of the court's unsupported conclusion that Baltimore City was an improper venue was *de minimus*.

To be sure, a court's deference analysis may take into consideration the lack of a meaningful connection between the controversy and the chosen venue. *Stidham*, 161 Md. App. at 569 (citation omitted) ("[D]eference is further mitigated if a plaintiff's choice of forum has no meaningful ties to the controversy and no particular interest in the parties or subject matter."). Here, the circuit court found no meaningful connections between the controversy and Baltimore City. However, although the facts certainly established a meaningful connection between this case and Baltimore County, the facts in the record before the court do not *preclude* a meaningful connection with Baltimore City.

Given the proximity of Baltimore City to Baltimore County, it's not logical to preclude the possibility that patients from Baltimore City see providers in Baltimore County, and vice versa. Nor is it logical to preclude the possibility that medical care providers in Baltimore County also practice in Baltimore City, and vice versa. Put another way, whether Baltimore City has a meaningful connection to this controversy depends more on whether Baltimore City patients regularly receive treatment from Appellees, and less on where the treatment in this particular case took place. Thus, the fact that the parties

live and work in Baltimore County, standing alone, is not an adequate factual basis to preclude a meaningful connection to Baltimore City. That's particularly so where, as here, Ms. Walker provided evidence that each Appellee regularly provides medical care within Baltimore City, and the court had no evidence to the contrary when it granted Appellees' motions.

To sum up, weighing the deference afforded to a plaintiff's choice of venue is not an all-or-nothing exercise; rather, it is a sliding scale that oscillates on the specific facts and circumstances. *See, e.g.*, *Kerrigan*, 456 Md. at 406 (discussing deference as being able "shrink" to one level, and then being capable of "diminish[ing] further" under certain circumstances). Here, the court's deference analysis suffered from two infirmities. *First*, the court drew the unsupported conclusion that Baltimore City was an improper venue; and *second*, the court concluded without evidence that Baltimore City lacked a meaningful connection to the controversy. When considered in conjunction with the unsupported findings concerning the convenience of the parties and witnesses, as discussed above, we cannot say that such an error was harmless.

B.

THE CONVENIENCE FACTOR

A circuit court's analysis of the convenience factor must rest on an adequate factual foundation. *See DiNapoli v. Kent Island, LLC*, 203 Md. App. 452, 475 (2012), *rev'd on other grounds*, 430 Md. 348 (2013). Here, the court concluded that the convenience factor favored the transfer, largely basing its decision on the fact that all parties resided or conducted business in Baltimore County. Although the court credited Ms. Walker's

argument that it should consider the convenience of her post-injury care providers in Baltimore City, the court found that such consideration did not "outweigh what is undisputed regarding the location of the parties and the current parties and witnesses." This finding was an abuse of discretion for two reasons.

First, that the parties resided or conducted business in Baltimore County was, standing alone, not enough for the court to conclude that the convenience of the parties favored Baltimore County. The parties' place of residence or business is, of course, an important consideration, but it's not the only one. For example, someone can live in Baltimore County and yet be closer to the Baltimore City courthouse, and vice versa.[6] The place of residence or business is relevant only insofar as it indicates proximity and convenience to the parties' preferred venues.[7] *See Kerrigan*, 456 Md. at 414-15. For instance, in *Kerrigan*, the circuit court observed that the plaintiff had to drive past the

[6] For a map depicting Baltimore County and Baltimore City and the location of their respective circuit courthouses, see *Local Government: Counties*, MARYLAND.GOV, https://msa.maryland.gov/msa/mdmanual/36loc/html/02maps/seatb.html (last visited May 19, 2021).

[7] It should be noted, however, that the amount of evidence required when weighing the convenience factor may vary based on the relative locations of the respective venues. For example, if the two venues at issue are on opposite sides of the state, it would be reasonable for a court to conclude in the absence of contrary evidence that the venue where the parties reside is also the most convenient for them or, likewise, that the venue where the cause of action occurred—depending on the nature of the cause of action—would be most convenient for fact witnesses. *See, e.g.*, *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 41 (1990) (finding, in a case based on a slip-and-fall in a grocery store parking lot, that it was "reasonable to assume that any witnesses to the fall were employed at the [grocery store], or were grocery shoppers[,]" who would likely have residences nearby). It is less reasonable to make such an assumption when the venues are as close in proximity as Baltimore City and Baltimore County, and a person can reside in one jurisdiction yet be closer to the courthouse of another jurisdiction. *See supra*, note 4.

defendant's proposed venue on her way to her chosen venue. *Id*. at 416. Here, no comparable observation could have been made on the record before the court.[8]

Second, Appellees provided no evidence regarding the convenience of their non-party fact witnesses. The court did not see that failure as an obstacle, however, noting that a defendant may file its motion under Rule 2-327(c) at any time and that the "court is to rely upon what it has at the time of the motion to make its analysis and findings." This is, of course, true, but it doesn't mean that a defendant gets a pass if its evidence is insufficient to meet its burden of persuasion. If a defendant lacks the evidence to meet its burden, it should defer filing the motion until it has that evidence; otherwise the motion should be denied. We note that here, although the litigation was at the beginning stages, Appellees presumably could have identified their employees and agents who were involved in Ms. Walker's care and would likely serve as fact witnesses. Appellees, therefore, didn't even provide the court with the evidence it undoubtedly had. In contrast, Ms. Walker produced a list of many potential fact witnesses, all of whom worked in Baltimore City.

In conclusion, Appellees had the burden to show that the convenience of the parties and witnesses weigh *heavily* in favor of transfer. *See, e.g.*, *Nodeen v. Sigurdsson*, 408 Md. 167, 180-81 (2009) (finding that the defendants did not meet their burden where the transferee court was only three miles closer to defendants' residence than the original venue). Further, as noted above, the court's determination that the defendants have met

[8] As noted above, Ms. Walker also supported her position with evidence that the defendants had offices and/or regularly worked in Baltimore City, which Appellees did not dispute prior to or at the hearing.

their burden under Rule 2-327(c) must be based on evidence in the record. *See Bittner v. Huth*, 162 Md. App. 745, 758 (2005) ("[T]he trial court's decision must be based upon (1) correct findings of fact, and (2) a proper analysis of the applicable burden of persuasion[.]"). The record before the court when it made its ruling did not contain enough evidence to show that Baltimore County was more convenient than Baltimore City for the parties or the likely fact witnesses. As such, the court erred in determining that Appellees met their burden here.[9]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.

[9] We need not reach the merits of the court's assessment of the interests of justice factor, as the court's failure to properly consider the convenience of the parties and witnesses is sufficient to justify reversal. *See, e.g.*, *Nodeen*, 408 Md. at 180-81.