

Circuit Court for Prince George's County
Case No. CAL20-11865

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1048

September Term, 2020

DANILLO PORTILLO

v.

STANLEY PEARLMAN ENTERPRISES,
INC., ET AL.

Kehoe,
Arthur,
Wells,

JJ.

Opinion by Wells, J.

Filed: September 23, 2021

*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 Danilo Portillo filed suit against Stanley Pearlman Enterprises, Inc., trading as Congressional Seafood Company (hereafter, “Congressional”), for injuries he allegedly sustained after a Congressional employee, Babalola Adeshina, accidentally struck him with a forklift at Congressional’s warehouse, located in Jessup. Portillo filed suit in the Circuit Court for Prince George’s County. Congressional moved for a change of venue. The circuit court granted the request and transferred the case to the Circuit Court for Howard County. Portillo appealed. Perceiving no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the morning of March 6, 2018, Portillo, an employee of NAFCO, was unloading boxes onto the loading dock at Congressional’s warehouse, located at 7801 Oceano Avenue, Jessup, Howard County Maryland.¹ At the same time, Adeshina was operating a forklift to transport trash from the loading dock. According to Portillo’s complaint, while operating the forklift, Adeshina negligently struck and rolled over Portillo, causing injuries to various parts of his body.

Portillo subsequently filed a negligence complaint against Adeshina and Congressional in the Circuit Court for Prince George’s County. Congressional moved to transfer venue to Howard County, arguing that its principal place of business is in Howard County, the accident occurred in Howard County, and at least some witnesses would be from Howard County.

¹ According to appellee’s brief, “Stanley Pearlman Enterprises, Inc. is the parent company of two different subsidiaries: NAFCO (North Atlantic Fish Company) and Congressional Seafood Company.”

Portillo opposed the requested change of venue. He emphasized that Congressional does business throughout the entire state. And he focused on the fact that Adeshina is a resident of Prince George’s County. In Portillo’s opinion, Prince George’s County has a meaningful tie to the controversy and an interest in the case because a member of its community is a named party.

Initially, the Circuit Court for Prince George’s County granted Congressional’s motion by issuing an order simply transferring venue. But Portillo moved to reconsider, or alternatively, for clarification, arguing that the court granted the motion “without a hearing,” and “no explanation was included.”

The circuit court granted Portillo’s motion and within sixty days the circuit court issued a written memorandum and order. While the court acknowledged that “[v]enue is proper in Prince George’s County,” because Portillo did not reside there, the court assigned less importance to Portillo’s choice of venue. Citing Maryland Code Courts and Judicial Proceedings Article § 6-201(a) (choice of venue) and Maryland Rule 2-327(c) (convenient forum), the motions court recognized that it had the discretion to determine whether changing venue would serve the interests of justice. The court concluded that changing venue was appropriate because, “[i]t is clear that Prince George’s County has no meaningful ties to the controversy, and no particular interest in the subject matter of this case.”

On November 18, 2020, after the case was transferred to the Circuit Court for Howard County, Portillo filed this appeal, raising the sole question of whether the change

of venue was appropriate. The Circuit Court for Howard County stayed the proceedings pending the outcome of this appeal.

STANDARD OF REVIEW

In reviewing decisions regarding transfers of venue under Maryland Rule 2-327(c), Maryland’s appellate courts have “resolutely applied an abuse of discretion standard.” *Univ. of Md. Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 401 (2017) (citing *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 40 (1990)). Although given the power to alter a trial court’s decision, appellate courts “‘should be reticent’ to substitute their own judgment for that of the trial court unless they can identify ‘clear abuse’ of the wide latitude given to trial courts” when deciding a transfer of venue motion. *Id.* We will not reverse a trial court’s decision simply because we would not have made the same ruling. *North v. North*, 102 Md. App. 1, 14 (1994). An abuse of discretion occurs “where no reasonable person would take the view adopted by the trial court.” *Floyd v. Balt. City Council*, 241 Md. App. 199, 208 (2019); *In Re Yve S.*, 373 Md. 551, 586 (2003) (quoting *In re Adoption/Guardianship no. 3598*, 346 Md. 295, 312-12 (1997) (noting abuse of discretion may also occur when “the court acts ‘without reference to any guiding rules or principles’”). The decision being challenged “has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009) (quoting *King v. State*, 407 Md. 682, 697 (2009)). An abuse of discretion results when the trial court’s decision “does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.” *Id.* “An abuse of discretion should only be found in the

extraordinary, exceptional, or most egregious case.” *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005).

DISCUSSION

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN TRANSFERRING VENUE

When requesting a transfer of venue, a party is subject to Maryland Rule 2-327(c), which states that “the court may transfer any action to another other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serve the interests of justice.” The party moving to transfer to an alternate forum “has the burden of proving that the interests of justice would be best served by transferring the action.” *Odenton*, 320 Md. at 40 (citing *Equitable Bank v. Finn*, 671 F. Supp. 374, 380 (D. Md. 1987)). A motion to transfer should only be granted when the court finds that “the balance weighs strongly in favor of the moving party.” *Id.* (citing *Akers v. Norfolk and Western Railway Company*, 378 F.2d 78, 80 (4th Cir. 1967)). The original forum choice must be given “proper regard,” and will not be “altered solely because it is more convenient for the moving party to be in another forum.” *Leung v. Nunes*, 354 Md. 217, 224 (1999). During deliberation, “a court must weigh in the balance the convenience of the witnesses and those public-interest factors of systemic integrity and fairness that, in addition to private concerns, come under the heading of the interest of justice.” *Odenton*, 320 Md. at 40 (citing *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22, 32 (1988)).

A. Convenience of Parties and Witnesses

The Court of Appeals recently discussed certain factors courts should consider when evaluating a motion to transfer. The factors were not exhaustive or exclusive but serve as a guide for judges engaging in a convenience analysis. *See Kerrigan*, 456 Md. at 415. The factors include: deference accorded to the plaintiff when he lives in the forum he chose; deference given to the defendant’s proposed choice of forum when he resides there; the location where the cause of action arose; the convenience of hailing defendants or plaintiffs into the others’ choice of venue based on residence or where they carry on business; the convenience of the witnesses; and the ease of access to sources of proof. *See Id.* While the plaintiff’s choice of venue is given deference in the consideration, the amount “shrinks ... when the plaintiff does not reside in the forum where [he] has chosen to file suit. *Id.* at 406. The Court of Appeals in *Kerrigan* also noted that “a plaintiff’s choice of venue is ‘further diminished’ if that forum ‘has no meaningful ties to the controversy and no particular interest in the parties or subject matter.’” *Id.*

Although Portillo contends that he has the absolute right to choose Prince George’s County as the venue, the Court of Appeals in *Kerrigan* seems to say otherwise, emphasizing that the deference given to the plaintiff’s choice of venue “shrinks” when he files suit in a county in which he does not reside. Here, the record states that Portillo resides in Baltimore City, not Prince George’s County. Because the deference given to Portillo’s choice of venue does not evaporate but only “shrinks,” the trial court must still consider his choice of venue in its deliberations, but the court is not required to assign the choice any particular significance.

Additionally, Portillo argues that although Congressional’s principal place of business is in Howard County and the accident occurred there too, Congressional conducts business across the entire state. But, significantly, he did not allege whether or why any of these other business locations would be specifically relevant to resolving the case. The location where a business operates, as we have noted, is relevant for determining venue, and has some bearing when analyzing a motion to transfer under Maryland Rule 2-327(c). *See Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431 (2003). We also note that Portillo does not cite any authority to support his argument that Congressional was required to show why the location of the accident was relevant. But the factors set forth in *Kerrigan* include “where the cause of action arose.” So regardless what Congressional alleged, the trial court, citing *Kerrigan* in its memorandum, considered the location of the accident.

Lastly, Portillo argues in opposing the transfer that Congressional alleged “some witnesses” would be located in Howard County, but that it did not provide affidavits supporting this contention. Once again, Portillo does not cite any authority that would require Congressional to provide documentation of the location of potential witnesses, nor does Portillo allege that the motions court neglected to weigh this consideration in reaching its decision. The Court of Appeals has stated that the trial court “is entitled to make reasonable assumptions about the locations of some witnesses under the appropriate circumstances.” *Odenton*, 320 Md. at 41. Because the accident occurred in Howard County, the trial court reasonably concluded that any witnesses to the accident would not be inconvenienced by appearing in a Howard County courtroom. For the purpose of

determining a convenient venue for potential witnesses, the trial court did not abuse its discretion.

B. Interests of Justice

A variety of factors may be weighed in determining which venue best serves “the interests of justice,” as described in Maryland Rule 2-327(c). In *Murray v. Transcare Maryland, Inc.*, 203 Md. App. 172 (2012), we expounded on the factors that should be considered when determining whether a particular venue served the parties’ private interests. Those factors include:

(1) the relative ease of access to sources of proof; (2) availability of compulsory process for attendance of unwilling witnesses; (3) the cost of obtaining attendance of willing witnesses; (4) possibility of view of premises (the subject of the action or where the incident occurred), if view would be appropriate to the action; and (5) all other practical problems that make trial of a case easy, expeditious and inexpensive.

Id. at 192 (2012) (citing *Stidham v. Morris*, 161 Md. App. 562, 568-69 (2005)). At the same time, the public interest considerations are “(1) considerations of court congestion; (2) the burden of jury duty; and (3) local interest in the matter at hand.” *Id.*

The crux of Portillo’s argument here is that the motions court, while considering the interests of Howard County, neglected to consider those of Prince George’s County. Specifically, Portillo emphasizes that although co-defendant Adeshina is from Prince George’s County, the motions court “unfairly dismissed the weight” of Adeshina’s residence. To further his point, Portillo relies on *Leung v. Nunes*, 354 Md. 217, 229 (1997) to claim that “[w]here the competing factors are in equipoise, the moving party has failed to carry that burden, and the tie goes to the plaintiff, and his right to choose his forum.”

But as we see it, the motions court considered all of the relevant factors when it concluded that it was “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 significant relationship to their community.” Indeed, the motions court did not find that Prince George’s County had no relevance in its analysis, but rather that the location of Adeshina’s residence alone was not substantial enough to outweigh the factors that favored transfer.

Portillo provides no explanation for how consideration of Adeshina’s county of residence should trump other considerations in determining which venue would serve the interests of justice. Aside from Prince George’s County being Adeshina’s place of residence, the case has no other connection to that county. And significantly, Adeshina has not complained that the transfer to Howard County would be inconvenient. When comparing the location of Adeshina’s residence with the other factors under consideration—the location of the accident, the location of Congressional’s principal place of business, and the likely location of witnesses—the competing factors are not “in equipoise,” as Portillio contends, but instead tip decidedly in favor of transfer to Howard County. The circuit court’s decision is therefore appropriate and not so “well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *North*, 102 Md. App. at 14. We affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. APPELLANT TO PAY THE
COSTS.**