UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1450

September Term, 2013

BRANDON ALSUP, A MINOR, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, SARAH RILEY AND REGINALD ALSUP

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORP. ET AL.

Krauser, C.J.,
Eyler, Deborah S.,
Leahy,

JJ.

Opinion by Krauser, C.J.

Filed: June 15, 2015

Appellant Brandon Alsup, by and through his parents and next friends Sarah Riley and Reginald Alsup, brought a medical malpractice action, in the Circuit Court for Baltimore City, against appellees: the University of Maryland Medical System Corporation ("UMMS"); Clinical Associates, P.A.; Harvey Kasner, M.D.; and Patricia Lee, M.D. The suit alleged that appellees breached their duty of care with respect to the treatment of Alsup's mother, Sarah Riley, during her pregnancy; that their negligent treatment of Ms. Riley left Alsup with cerebral palsy; and that appellees failed to obtain Ms. Riley's "informed consent" to that treatment. When, before trial, appellees moved to transfer this suit from the Circuit Court for Baltimore City to the Circuit Court for Baltimore County, the Baltimore City circuit court granted that motion and the case was transferred. Challenging that ruling, Alsup noted this appeal. For the reasons that follow, we affirm.

I.

According to the complaint at issue, on September 12, 1998, Sarah Riley, a resident of Baltimore County and, at that time, 36 weeks pregnant, arrived at Baltimore County's Greater Baltimore Medical Center,[1] ("GBMC") complaining of "decreased fetal movement and pelvic pressure." There, Ms. Riley was examined by Harvey Kasner, M.D., who at that time was working in Baltimore County at the GBMC and was an employee of Clinical Associates, P.A., whose principal place of business was in that county. After she was examined and her condition evaluated, Ms. Riley was discharged by Dr. Kasner four hours later.

[1] The Greater Baltimore Medical Center is not, nor has it ever been, a party to this case.

The next day, Ms. Riley "experienced rupture of membranes while at home" and returned to the GBMC, where she was examined by Patricia Lee, M.D. Although Dr. Lee currently resides and practices medicine in New York, she was, at the time of this incident, a "resident physician" employed by UMMS and on rotation at the GBMC in Baltimore County, where she practiced medicine under the direction of Dr. Kasner. After Dr. Lee consulted with Dr. Kasner, via phone, regarding Ms. Riley's condition, Dr. Kasner returned to the GBMC, where he examined Ms. Riley and performed several tests on her. Based on his observations and the results of those tests, Dr. Kasner decided to perform a cesarean section, and Ms. Riley's son, Brandon Alsup, was born that afternoon.

At the time of his birth, Alsup was described as "limp" and "flaccid" with "poor respiratory effort." Four days later, Alsup was transferred from the GBMC to the Johns Hopkins Hospital in Baltimore City, where he remained for the next month. While at the Johns Hopkins Hospital, he was "ultimately diagnosed with severe brain and multi-organ injuries." As a consequence, Alsup presently suffers from "spastic quadriplegic cerebral palsy,"[2] and, for the last decade and a half, he has received medical care for that condition from a number of medical providers located in Baltimore City.

In 2013, a fifteen-year-old Alsup, by and through his parents and next friends, filed a complaint, in the Circuit Court for Baltimore City, against Drs. Kasner and Lee, Clinical Associates P.A., and UMMS, alleging medical malpractice and failure to obtain "informed

[2] Cerebral palsy is "a generic term for various types of nonprogressive motor dysfunction present at birth or beginning in early childhood." *Stedman's Medical Dictionary* (28th ed. 2006) 1408. "Spastic" means "relating to spasm," *id.* at 1796, while "quadriplegia" is the "paralysis of all four limbs," *id.* at 1616.

consent." Appellees responded by filing a joint motion to transfer the case to Baltimore County, "pursuant to the doctrine of *forum non conveniens*." Following a hearing on that motion, the Baltimore City circuit court granted appellees' motion, finding that the convenience of the parties and certain "public interest" factors, including Baltimore County's interest in hearing a case that involved allegedly negligent treatment—rendered by one of its resident physicians in one of its hospitals—supported the transfer of the case to that county.

II.

Maryland Rule 2-327(c) permits a court to transfer an 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." A circuit court, in deciding whether to transfer a case to another venue, is vested "with wide discretion." *Smith v. Johns Hopkins Cmty. Physicians, Inc.*, 209 Md. App. 406, 413 (2013).

Because the decision to transfer a case "is committed to the sound discretion of the [circuit] court," we are reluctant to substitute our judgment for that of the circuit court, even when "we may not have chosen to transfer" the case. *Urquhart v. Simmons*, 339 Md. 1, 17, 19 (1995). Given that the "exercise of a judge's discretion is presumed to be correct, he is presumed to know the law, and is presumed to have performed his duties properly," *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003), we will reverse the circuit court's decision "only when there has been a clear abuse of discretion," *Smith*, 209 Md. App. at 413–14 (quoting *Urquhart*, 339 Md. at 17).

The two "overarching factors" which the circuit court must consider in determining whether to transfer an action are "convenience" and "the interest of justice." *Stidham v. Morris*, 161 Md. App. 562, 568 (2005). "The 'convenience' factor requires a court to review the convenience of the parties and the witnesses," while the "'interest of justice' factor requires a court to weigh both the private and public interests; the public interests being composed of 'systemic integrity and fairness.'" *Id.* (quoting *Cobrand*, 149 Md. App. at 438 n.5). Those "public interests" include, "among other things, considerations of court congestion, the burdens of jury duty, and local interest in the matter." *Id.* at 569 (citing *Johnson v. G.D. Searle & Co.*, 314 Md. 521, 526 (1989)). And jury duty is, we have said, "a burden that ought not to be imposed upon the people of a community which has no relation to the litigation." *Id.* (quoting *Johnson*, 314 Md. at 526).

On the other hand, the "private interests" to be weighed include the "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 view of premises, if 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)).

Finally, as a general rule, "when multiple venues are jurisdictionally appropriate, a plaintiff has the option to choose the forum," *Cobrand*, 149 Md. App. at 439, and his choice of forum must be given "[d]ue consideration," *Smith*, 209 Md. App. at 414 (internal citation omitted). But, "when the plaintiff is not a resident of the forum he chooses," and when the chosen forum "has no meaningful ties to the controversy and no particular interest in the

parties or subject matter," the plaintiff's choice of forum "is entitled to little deference and thus little weight when the factors for and against transfer are weighed." *Stidham,* 161 Md. App. at 569 (internal quotation marks and citations omitted).

III.

Alsup contends that the circuit court, in rendering its decision to transfer this case, did not address all of the relevant factors pertaining to the convenience of the parties and the interests of justice. We are not persuaded that this is so. 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, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion." *Cobrand*, 149 Md. App. at 445. And here, it is clear that the circuit court was well aware of the applicable law and the relevant factors to be considered.

The court began by observing, correctly, that the overarching prongs for its analysis were the "convenience of the parties, the private interest, and the interest of justice, the public interest." It determined, first of all, that the "convenience" factor favored the transfer of this case. The court observed that all of the alleged malpractice occurred in Baltimore County and that both Alsup and his mother, two of the "fact witnesses" the court anticipated would testify at trial, were residents of the county. The court further noted that Clinical Associates, P.A., has its principal place of business in Baltimore County and regularly conducts business there and that, while UMMS has its principal place of business in Baltimore City, it "conducts business" in both the city and the county, as well as "through the entire state" of Maryland.

As for the two physicians who were named as defendants in this suit, Drs. Lee and Kasner, Dr. Lee, although formerly a Baltimore City resident, currently lived and practiced out-of-state, and Dr. Kasner resided and "exclusively" practiced medicine in Baltimore County. And, although Alsup asserted that he had received treatment from "numerous" healthcare providers in Baltimore City who, he said, "may or may not be witnesses" at trial, he did not provide any information to the circuit court about where these potential witnesses lived or ordinarily worked, nor did he indicate which of these witnesses were more likely to be called to testify. Moreover, three of the four witnesses whom the court could reasonably expect to testify at trial were residents of Baltimore County, and the fourth was not even Maryland resident. In fact, the only connections that the lawsuit had to Baltimore City appeared to be that Dr. Lee formerly resided there and that UMMS, Dr. Lee's former employer, had its principal place of business there.

With respect to the "interests of justice" factor, the court considered both the public and private interests involved in this case. As for the "public interests," which include "the burdens of jury duty, and local interest in the matter," *Stidham*, 161 Md. App. at 569, the court found that a "Baltimore County jury has a local interest" in a case involving "one of its hospitals," especially when all of the alleged negligent treatment occurred within its borders. With respect to the "private interests," which include the "relative ease of access to sources of proof" and "all other practical problems that make trial of a case easy, expeditious and inexpensive," *Stidham*, 161 Md. App. at 568, the court pointed out that the medical records and other documents that would have to be shared by the parties and

produced at trial could be transferred by computer or by e-mail, and thus, by implication, determined that the "private interest" factors did not favor one forum over the other.

The court concluded its analysis by finding that "the issues in this case involve the treatment and care provided in Baltimore County," to a resident of Baltimore County, by medical providers in Baltimore County. It therefore found that, with regard to the convenience of the witnesses and "the issues of both public and private interest," the appellees had met their burden and shown that the interests of justice "would be best served by transferring this action" to Baltimore County.

We conclude our discussion of this aspect of Alsup's claim by noting that simply because the court did not address each and every element of the public and private interest factors on the record does not mean it abused its discretion. Rather, we presume that the court, after correctly stating the law, chose to highlight the factors it found to be most relevant—namely, the convenience of the parties and the public interest in having this case heard in the forum with the most interest in its outcome, that is, Baltimore County. There is no indication that any of the factors were ignored by the court.

IV.

Alsup also contends that the circuit court failed to consider whether his case had, in his words, "meaningful ties" to Baltimore City. He points out that UMMS is located in Baltimore City; that Clinical Associates, P.A., has offices in Baltimore City, though its principal place of business is located in Baltimore County; and that Dr. Lee, at the time of the alleged negligence, was employed by UMMS and resided in Baltimore City. He further notes that, after his birth, he spent time in the Johns Hopkins Hospital, which is located in

Baltimore City, and that he has received care from "numerous" Baltimore City health care providers who "may or may not be witnesses" in this case. In Alsup's view, these connections to Baltimore City—connections which he maintains the court failed to consider—created "meaningful ties" to Baltimore City, which was also his chosen forum.

Notwithstanding Alsup's contention, it is clear that the circuit court considered all of the factors he now lists in support of his claim that meaningful ties existed and nonetheless concluded that Baltimore County, not Baltimore City, was the proper forum for this case. While the circuit court did not use the precise phrase "meaningful ties" in its analysis, it did find that Baltimore County had a local interest in the case, that three of the four witnesses whom the court could reasonably expect to testify at trial were residents of the county (and that the fourth was not a Maryland resident at all), and that all of the allegedly negligent medical treatment at issue occurred in Baltimore County. Merely because the circuit court did not expressly state that Baltimore City had no "meaningful ties" to this case does not mean that the court did not reach that conclusion. Indeed, the court's focus on the connection the case had to Baltimore County confirms, by implication, that the court found there were meaningful ties to the county, rather than the city.

V.

Alsup's final contention, that the Baltimore City circuit court relied "expressly" and "solely" on his "diminished interest" in choosing Baltimore City, a forum of which he was not a resident, has little merit. It is clear from the circuit court's analysis that it did not rely "solely" on Alsup's residence as the basis for its decision to transfer this case to Baltimore County. Rather, the court first considered the "convenience" and "interests of justice"

factors and determined that those factors supported the transfer of the case. Only then did it point out, correctly, that while Alsup, as the plaintiff, was entitled to choose his forum, his choice was entitled to less deference because he was not a resident of Baltimore City. In short, Alsup's choice of a forum where he did not reside was one of several factors the circuit court considered, not the exclusive basis for its decision to transfer this case to Baltimore County.

This is not a close call, given the very broad discretion the circuit court has in deciding whether to transfer a case and given that, once that decision is made, we will not disturb it simply because we might have decided otherwise. Clearly, the convenience of the parties weighed in favor of transfer and so did Baltimore County's interest in hearing and deciding a case that involved its hospitals and physicians. Thus, the circuit court's decision to transfer this case to Baltimore County was clearly not an abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.