UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1710

September Term, 2015

BRANDON KERRIGAN, a minor by and through his parents and Next Friends, MICHAEL AND KIMBERLY KERRIGAN

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORPORATION, et al.

Eyler, Deborah S.,
Reed,
Beachley,
JJ.

Opinion by Eyler, Deborah S., J.

Filed: December 5, 2016

In the Circuit Court for Baltimore City, Brandon Kerrigan, a minor, and his parents, Michael and Kimberly Kerrigan,[1] individually and as Brandon's next friends, the appellants, brought an action for medical negligence against the appellees, the University of Maryland Medical System Corporation d/b/a University of Maryland Medical Center ("UMMC") in Baltimore City; the University of Maryland Shore Regional Health, Inc. ("Shore Regional") in Talbot County; Delmarva Radiology, P.A. ("Delmarva Radiology") in Talbot County; Dayanand Bagdure, M.D. and Nicole Mallory, M.D, pediatricians employed by UMMC; David White, M.D., an emergency medical physician employed by Shore Regional; and Steven Sauter, D.O., a radiologist employed by Delmarva Radiology. The appellees jointly moved to transfer venue to the Circuit Court for Talbot County on the ground of *forum non conveniens*. The circuit court heard argument and granted the motion to transfer.

The Kerrigans appeal from that order, asking one question, which we have rephrased: Did the circuit court abuse its discretion by granting the motion to transfer venue? We answer that question in the affirmative and shall reverse.

LEGAL BACKGROUND

With exceptions not relevant here, "a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation . . . . [and] a corporation . . . may be sued where it maintains its

[1] For ease of discussion, we shall refer to the Kerrigans by their first names when necessary to distinguish between them.

principal offices in the State." Md. Code (1974, 2013 Repl. Vol.), section 6-201(a) of the Courts and Judicial Proceedings Article ("CJP"). If a plaintiff sues multiple defendants and "there is no single venue applicable to all defendants, . . . all may be sued in a county in which any one of them could be sued, or in the county where the cause of action arose." CJP § 6-201(b). In the case at bar, there was no single venue applicable to all of the appellees and the Kerrigans chose to sue them in Baltimore City, where UMMC maintained its principal office and where Drs. Bagdore and Mallory were employed.

"[A]n action [may] be transferred to another appropriate venue even though a plaintiff's choice of venue is proper." *Urquhart v. Simmons*, 339 Md. 1, 10 (1995). Pursuant to Rule 2-327(c), "any party" may move to "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." "The party seeking transfer must present evidence weighing strongly in its favor, because when multiple venues are jurisdictionally appropriate, a plaintiff has the option to choose the forum." *Cobrand v. Adventist Healthcare, Inc*., 149 Md. App. 431, 439 (2003).

In assessing a motion to transfer,

> "a court is vested with wide discretion. . . . . It is the moving party who has the burden of proving that the interests of justice would be best served by transferring the action . . . and a motion to transfer should be granted only when the balance weighs strongly in favor of the moving party."

Leung v. Nunes, 354 Md. 217, 223–24 (1999) (quoting *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 40 (1990)) (other citations omitted). "[T]here are two basic factors to be considered by the court in ruling on a motion to transfer: convenience and the interests of

justice, each with particularized sub-parts that have grown in the case law." *Cobrand*, 149 Md. App. at 438. "[T]he 'convenience' factor requires a court to review the convenience of the parties and the witnesses." *Id.* at 438 n.5. This factor "center[s] around where the parties and witnesses live[] and work[] in relation to the court." *Murray v. TransCare Maryland, Inc.*, 203 Md. App. 172, 192 (2012). The "interests of justice" factor includes a public and private component. The "[p]ublic interests of justice include: (1) considerations of court congestion; (2) the burden of jury duty; and (3) local interest in the matter at hand[,]" whereas the private interests 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 192–93.

FACTS AND PROCEEDINGS[2]

The Kerrigans live in Bozman, Talbot County. On August 13, 2013, Brandon, then age 15, went to see his pediatrician, Mark Langfitt, M.D., at his office in Easton. Brandon had had a dry cough for a month and was experiencing some shortness of breath. Dr. Langfit referred Brandon to Delmarva Radiology, also in Easton, for a chest x-ray.

[2] We present the facts as alleged in the Kerrigans' complaint, as supplemented by exhibits attached to the motion to transfer venue and the opposition thereto.

At Delmarva, appellee Dr. Sauter reviewed Brandon's chest x-ray and diagnosed him with atypical pneumonia. He communicated this diagnosis to Dr. Langfitt, who prescribed a 5-day course of antibiotics to treat Brandon.

Four days later, on August 17, 2013, Brandon's symptoms had worsened. The Kerrigans took Brandon to the emergency department at Shore Regional just after 9 p.m. He was suffering from fatigue, shortness of breath, and chest and abdominal discomfort. Appellee Dr. White treated Brandon. Shortly after 10 p.m., Dr. White ordered that Brandon receive fluids by IV over two hours; a chest x-ray; and a "stat" blood test for the presence of brain natriuretic peptide ("BNP"), a hormone secreted when a patient is in heart failure. The fluid bolus was started at 10:48 p.m. and completed at 12:47 a.m. the following day. By 11:15 p.m., Dr. White had received the lab test results showing that Brandon's BNP was very elevated. Around 11:40 p.m., Brandon was given fluids by mouth.

In their complaint, the Kerrigans allege that the administration of fluids is contraindicated if heart failure is suspected. Rather, the standard of care calls for absolute fluid restriction and the administration of diuretics.

Just after midnight on August 18, 2013, Dr. White spoke to appellee Dr. Bagdure, the attending physician on duty at the UMMC Pediatric Intensive Care Unit ("PICU"). Dr. White advised that Brandon had been diagnosed with dilated cardiomyopathy and heart failure and made arrangements for Brandon to be transferred to UMMC. Brandon was administered a diuretic at Shore Regional just before 1:00 a.m.

Sometime after 1:35 a.m., Brandon was transported by helicopter to UMMC. During the flight, he went into cardiac arrest, but was successfully resuscitated. He was admitted to UMMC at 2:35 a.m. Dr. Bagdure and appellee Dr. Mallory, a resident physician, took over his care. Lab results at UMMC revealed an even more elevated level of BNP, which, according to the Kerrigans' allegations, confirmed that Brandon was in serious heart failure. Despite that test result, and as the Kerrigans allege in violation of the standard of care, Brandon received four liters of fluids over the first eight hours he was in the PICU.

Fourteen hours after Brandon was admitted to UMMC, he was administered diuretics and his fluids were restricted. He remained at UMMC for five months and ultimately required a heart transplant. He continues to receive follow-up treatment at UMMC on a monthly basis.

On May 8, 2015, the Kerrigans filed the instant medical negligence action in the Circuit Court for Baltimore City. In Count I, they allege, on behalf of Brandon, that Dr. Sauter breached the standard of care by failing to properly interpret Brandon's initial chest x-ray and that Delmarva Radiology was vicariously liable for that breach; that Dr. White breached the standard of care by failing to restrict Brandon's fluids until a diagnosis of heart failure was ruled out, by failing to stop fluids and administer diuretics and other appropriate medications once heart failure was confirmed, and by failing to appropriately communicate Brandon's diagnosis to UMMC, and that Shore Regional was vicariously liable for those breaches; and that Drs. Bagdure and Mallory breached the

standard of care by, *inter alia*, failing to timely diagnose Brandon, failing to timely restrict fluids and administer diuretics, and by administering excess fluids, and that UMMC was vicariously liable for those breaches. The Kerrigans allege that as a direct and proximate result of the joint and several negligent acts of all the appellees, Brandon suffered irreversible damage to his heart muscle, necessitating a heart transplant, and that he will likely require additional surgeries and possibly additional heart transplants in the future.

In Count II, the Kerrigans allege on behalf of themselves that the negligence of all the appellees directly and proximately caused them to incur medical expenses and loss of services. With respect to venue, the Kerrigans allege that there is no venue applicable to all of the defendants, but that Baltimore City is an appropriate venue because UMMC has its principal place of business there; Dr. Bagdure, and Dr. Mallory are employed there; and the "irreversible injuries proximately caused by the alleged negligence . . . occurred [there.]" In each count, the Kerrigans seek damages in excess of $30,000.

On June 16, 2015, the appellees jointly moved to transfer venue to the Circuit Court for Talbot County on the basis of *forum non conveniens*. Under the "convenience factor," they asserted that transfer was appropriate because "seventy percent" of the parties resided, were employed in, or maintained their principal place of business in Talbot County. Specifically, Drs. Sauter and White both practice in Easton, Talbot County; Shore Regional and Delmarva Radiology both have their principal place of business in Easton, Talbot County; and the Kerrigans reside in Bozman, Talbot County.

They argued that "[m]any of the potential fact witnesses [also were] likely to be in Talbot County[,]" including Dr. Langfitt and Brandon's friends, teachers, and coaches from St. Michael's High School. Under the "interests of justice" factor, the appellees maintained that the Circuit Court for Baltimore City has a much more congested civil docket than the Circuit Court for Talbot County; there is a strong local interest in adjudicating the case in Talbot County given Brandon's ties to the community; and it will be more practical and less expensive for the witnesses and parties if the trial were held in Talbot County. Finally, the appellees asserted that the Kerrigans' choice of forum is entitled to "little deference" because they are not residents of Baltimore City.

The appellees attached eleven exhibits to their motion. Printouts from mapquest.com showed that the Kerrigans' home in Bozman is more than 80 miles away from the Circuit Court for Baltimore City, but only 17 miles away from the Circuit Court for Talbot County.

In an affidavit, Dr. Langfitt attested that he lives and works in Easton and that it will be "substantially more convenient" for him to attend depositions and trial in Easton, as opposed to Baltimore City. Likewise, in affidavits Drs. Sauter and White attested that they live and work in Easton and that it will be "substantially more convenient" for them to attend a trial at the Circuit Court for Talbot County. Dr. Sauter further attested that the citizens of Talbot County have a "significant interest" in adjudicating the case in light of the local publicity surrounding the case. The 2014 Maryland Judiciary Annual Statistical Abstract showed that there were 486 civil cases filed in Talbot County in 2014, with only

13 of them being non-motor tort cases. In Baltimore City, there were 15,555 civil cases filed that year, including 2,157 non-motor tort cases. Five newspaper articles detailed the efforts by the local community in Talbot County to support the Kerrigans during Brandon's health crisis.

The Kerrigans filed an opposition to the motion to transfer. They maintained that the appellees had failed to meet their burden to show that the balance of convenience weighed strongly in favor of transfer. They argued that their choice of forum was entitled to significant deference given that Baltimore City was the situs of allegedly tortious conduct by three defendants and where Brandon's heart transplant occurred and that Baltimore City is where his continuing medical care is being rendered. According to the Kerrigans, the "list of potential witnesses as to liability and damages [would be] overwhelmingly comprised of persons that reside and/or work in Baltimore City." The Kerrigans asserted that the private interests in access to proof and the availability of compulsory service plainly are not implicated and the public interest factors, including court congestion,[3] the burden of jury duty, and local interest in the controversy, weighed against transfer. They emphasized that UMMC was the third largest employer in Baltimore City and that the Circuit Court for Baltimore City is better equipped to handle a complex medical negligence case than the Circuit Court for Talbot County. They appended exhibits, including their own affidavits, describing the course of Brandon's

[3] The Kerrigans mistakenly stated in their opposition memorandum that 15,555 civil cases were opened in Talbot County in 2014. This actually was the number of civil cases opened in Baltimore City in 2014.

treatment at UMMC; a list of 521 medical practitioners at UMMC who had treated Brandon since August 18, 2013; and the same judiciary statistics furnished by the appellees.

On July 29, 2015, the court heard argument and ruled from the bench. The court explained that the issue before it on a motion to transfer for *forum non conveniens* is whether the "factors balance heavily in favor of transfer[.]" On the "convenience" factor, the court found that "seven of the ten named parties" are in Talbot County and the Kerrigans "actually must pass the Circuit Court for Talbot County on th[eir] way to the Circuit Court for Baltimore City." The court was "unpersuaded by the exhibit" introduced by the Kerrigans listing the 521 healthcare providers in Baltimore City who have treated Brandon since August 18, 2013. The court found that the "fact that the transplant team is in Baltimore City [was not] of significance" because "[t]he primary and key witnesses that would be testifying. . . . would be . . . coming from Talbot County to Baltimore City."

On the "interests of justice" factor, the court found that the statistics presented by the parties with respect to the number of court filings in each jurisdiction "weigh . . . strongly in favor of transfer" to Talbot County. The court noted that the burden of jury duty falls much "heavier" on the citizens of Baltimore City and that it was persuaded by the appellees' argument that because Shore Regional is the "sole institution in Talbot County providing medical care," the citizens of that jurisdiction have a "significantly stronger interest" in adjudicating the matter than do the citizens of Baltimore City, who

have access to "several large medical institutions." In the court's view, private interests were not implicated.

Overall, the court ruled that the factors weighed strongly in favor of transfer to Talbot County. Determining that the "inconvenience of the parties and the witnesses would be tremendous if the matter were handled in Baltimore City" and it also would "serve[] the interest of justice to transfer the matter[,]" the court granted the motion.

The court entered an order transferring the case on August 20, 2015. Within ten days, the Kerrigans moved for reconsideration. By order entered on September 18, 2015, their motion was denied. This timely appeal followed.

DISCUSSION

We review a trial court's order granting a motion to transfer venue for abuse of discretion. *Stidham v. Morris*, 161 Md. App. 562, 566 (2005). "[A] trial court must exercise its discretion in accordance with correct legal standards[,]" *Alston v. Alston*, 331 Md. 496, 504 (1993), thus "an exercise of discretion based upon an error of law is an abuse of discretion." *Brockington v. Grimstead*, 176 Md. App. 327, 359 (2007), *aff'd* 417 Md. 332 (2010).

The Kerrigans contend the trial court abused its discretion because it failed to properly apply the law to the facts of this case in three ways. First, the court "failed to give appropriate deference to [their] choice of forum" and gave "undue weight" to the fact that they live in Talbot County. Second, the court failed to properly weigh the convenience to the witnesses because it disregarded the import of the fact that nearly all

of Brandon's post-injury treating healthcare providers work in Baltimore City. Finally, the court's assessment of the public interest sub-factors focused on irrelevant facts and misconstrued the judiciary statistics to find that the court congestion sub-factor weighed strongly in favor of transfer.

The appellees respond that the circuit court gave appropriate deference to the Kerrigans' choice of forum by allocating the burden of persuasion to the appellees and that it was not required to give additional deference to the Kerrigans in its convenience analysis. They maintain that the court did not abuse its broad discretion by finding that transfer to Talbot County will be substantially more convenient to the parties and the witnesses and that the public interests in reducing court congestion, spreading the burden of jury duty among the citizens of Maryland, and permitting local controversies to be adjudicated locally all weigh in favor of transfer.

In their brief, the Kerrigans rely primarily on *Scott v. Hawit*, 211 Md. App. 620 (2013). In that case, Tracy Scott and her minor son, Charlie Scott, filed suit in the Circuit Court for Baltimore City against two defendants: Dr. Hawit, a pediatrician practicing in Calvert County, and The Johns Hopkins Hospital ("JHH") in Baltimore City. The Scotts lived in Calvert County. Dr. Hawit had evaluated and treated Charlie for jaundice at his office in Calvert County on numerous occasions in the days and weeks following his (Charlie's) birth. Dr. Hawit referred Charlie to JHH for further evaluation. Charlie had one appointment at JHH that lasted several hours, during which time he was seen by two physicians and a physician's assistant. The Scotts alleged that Dr. Hawit and the three

JHH employees[4] breached the standard of care in their evaluation and treatment of Charlie's elevated bilirubin levels; that as a direct and proximate result, Charlie was suffering from a rare neurological condition that impaired his cognitive and physical development; and that JHH was liable for the negligence of its employees under the doctrine of *respondeat superior*. In the eleven years since Charlie's birth, he had been treated for his neurological condition by healthcare providers in Baltimore City and in Calvert County.

Dr. Hawit and JHH each separately moved to transfer the case to the Circuit Court for Calvert County for *forum non conveniens*. Dr. Hawit and JHH argued that because the Scotts lived in Calvert County; Dr. Hawit lived and worked in Calvert County; and the alleged negligence by Dr. Hawit occurred in Calvert County, the balance of convenience weighed in favor of transfer. They maintained that the vast majority of the treatment Charlie received was administered in Calvert County and that the citizens of Baltimore City had very little interest in adjudicating the case.

The circuit court agreed. It found that the convenience and interests of justice factors "'weigh[ed] strongly'" in favor of transfer because most of the allegedly negligent acts occurred in Calvert County. *Scott*, 211 Md. App. at 626. It concluded that the Scotts' interest in having their case tried in Baltimore City was "'diminished'" because they did not live there. *Id.* It noted that the only party that would be inconvenienced by

[4] Two of the JHH employees originally were named as individual defendants. The Scotts subsequently dismissed them.

the transfer, JHH, had requested the transfer by separate motion and represented to the court that it was waiving any inconvenience to its employees occasioned by the transfer.

On appeal, this Court reversed the grant of the motion to transfer. We explained that because venue was proper in either Baltimore City or Calvert County, the only issue was whether Dr. Hawit and JHH had met their burden "'"of demonstrating that the transfer to [Calvert County] better serv[ed] the interests of justice."'" *Id*. at 628 (quoting *Nodeen v. Sigurdsson*, 408 Md. 167, 180 (2009), in turn quoting *Odenton Dev. v. Lamy*, 320 Md. 33, 40 (1990)). Although the circuit court has broad discretion in deciding whether to grant a motion to transfer venue, it is an abuse of that discretion for "'the court to disturb a plaintiff's choice of venue when the balance does not weigh strongly in favor of the proponents of the transfer.'" *Id*. (quoting *Nodeen*, 408 Md. at 180).

We emphasized that in a typical Rule 2-327(c) case,

> there is a single tort, allegedly committed by a single defendant or organization against whom venue will lie in two or more counties, causing the plaintiff to select a forum that is perceived to be more advantageous, even though that forum might not be the situs of the tort, the residence of the plaintiff, or the principal place of business of the defendant.

Id. In contrast, the Scotts alleged "liability on the part of two defendants, who are independent of each other, based on their separate, allegedly negligent conduct, taking place at different times but causing a single harm." *Id.* at 630.

On the convenience factor, we explained that a plaintiff's choice of forum ordinarily is not accorded significant weight when he or she does not live there *and* the forum has no meaningful connection to the controversy. The Scotts' choice of Baltimore

City was entitled to only slightly diminished deference, however, because that forum was the situs of "one of the alleged torts" and was the "principal place of business of one of the tortfeasors" and, thus, plainly had a meaningful connection to the controversy. *Id*. at 634.

We rejected the argument by Dr. Hawit and JHH that because the complaint alleged many negligent acts by Dr. Hawit on many separate occasions, whereas the negligence of the JHH health care providers was alleged to have occurred during a single appointment, transfer to the situs of Dr. Hawit's alleged tortious conduct was appropriate. We reasoned that under "Maryland law of apportionment of liability and of compensation for harm," the relative contribution of two independent tortfeasors to the ultimate harm was "irrelevant." *Id*. Moreover, the allegations of the complaint did not reveal the trial strategy, which was just as likely to focus more heavily on JHH's alleged negligence since it was the "deeper pocket[.]" *Id*. at 635. Convenience to the witnesses also did not weigh in favor of transfer because, as the Scotts had argued before the circuit court, there were numerous witnesses likely to be called to testify on damages who lived and worked in Baltimore City *and* in Calvert County.

With respect to the public interest in lessening court congestion, we noted that while Baltimore City handles many more cases annually than does Calvert County, it also has many more sitting judges to handle that caseload and less cases assigned per judge

than in Calvert County.[5] As a result, "court congestion [did] not point toward Calvert County as the convenient forum."

We summarized:

> The situs of the alleged torts is Baltimore City as to [JHH] and is Calvert County as to Dr. Hawit. The principal place of business of the defendant, [JHH], is Baltimore City and the residence of the defendant, Dr. Hawit, is Calvert County. The treatment for the harm allegedly resulting from the two torts has been, and is being, rendered in Baltimore City and in Calvert County. Not only do the medical witnesses as to treatment work in Baltimore City and in Calvert County, but the plaintiffs have been traveling from Calvert County to Baltimore City for treatment for eleven years. The witnesses as to liability are, or were, employed in Baltimore City as to [JHH] and in Calvert County as to Dr. Hawit. Baltimore City, and its jurors, have an interest in the quality of medical care rendered there, just as Calvert County, and its jurors, have an interest in the quality of medical care rendered there. The factor of court congestion is a standoff. The only factor pointing solely toward Calvert County is the residence of the [Scotts], which results in attributing less weight to their choice of Baltimore City than if they had sued in Calvert County.

Id. at 636-37. On these facts, we held that the "reduced weight to be given to the [Scotts'] choice of a foreign forum [was] insufficient to support a finding that the balance weigh[ed] strongly in favor of Calvert County." *Id.* at 637 (citation omitted). Because "[t]he factors weigh[ed] in near equipoise[,]" the moving parties had failed to meet their burden and the circuit court had abused its discretion by granting the motion to transfer. *Id.*

[5] In fiscal year 2011, there were 52,477 filings in Baltimore City and 4,755 filings in Calvert County. Baltimore City had 33 sitting judges to handle those filings, whereas Calvert County had just 2. Thus, we calculated that the sitting judges in Calvert County handled 1.49 more filings, on average, than the sitting judges in Baltimore City.

We return to the case at bar. The Kerrigans allege tortious acts by four defendants occurring in Talbot County (Drs. Sauter and White, Delmarva Radiology, and Shore Regional) and separate tortious acts by three defendants occurring in Baltimore City (Drs. Bagdore and Mallory, and UMMC). They allege that the separate tortious conduct of the defendants, occurring at different times and in different places, all contributed to the ultimate harm to Brandon—injury to his heart necessitating a heart transplant. Both Baltimore City and Talbot County indisputably were appropriate venues for the Kerrigans to file suit. Thus, the only issue before the circuit court was whether the convenience to the parties and the witnesses and the interests of justice factors weighed strongly in favor of transfer. We conclude, as we did in *Scott*, that the circuit court abused its discretion in its assessment of those factors.

The circuit court found that the convenience factor weighed strongly in favor of Talbot County because 70 percent of the parties lived and/or worked there and because more of the key witnesses were likely to reside or work in Talbot County. First, it is clear from *Scott* that even though Baltimore City is a "foreign jurisdiction" because the Kerrigans do not live there, their choice of that forum still is entitled to deference. Baltimore City is the situs of alleged tortious acts by two defendants, the principal place of business of UMMC, and the location where Brandon received most of his post-injury medical treatment. It plainly has a meaningful connection to the controversy. Rather than giving that choice the appropriate deference, the circuit court improperly weighed the Kerrigans' residency in Talbot County against them, placing them on the scale, along

with the four Talbot County defendants, and concluding that the scale weighed strongly in favor of transfer. Given that three defendants were in Baltimore City and four were in Talbot County, the convenience to the parties weighed slightly, not strongly, in favor of transfer. *See Scott*, 211 Md. App. at 636 (weighing the inconvenience to the two defendant parties and concluding that convenience to the parties did not weigh in favor of transfer). The court also erroneously focused on the fact that the Kerrigans will have had to drive past the Talbot County courthouse on their way to the Baltimore City courthouse. This fact is irrelevant and the court abused its discretion by considering it.

In its assessment of the convenience of the witnesses sub-factor, the court stated that it was "unpersuaded" by the Kerrigans' exhibit listing the 521 medical practitioners who had treated Brandon in Baltimore City since August 18, 2013, and found that the "fact that the transplant team is in Baltimore City [is not] of significance." The "primary and key witnesses[,]" according to the court, would be traveling from Talbot County to Baltimore City. The record does not support this finding. In their affidavits, Michael and Kimberly attested that in 2014 alone they travelled to Baltimore City with Brandon for medical treatment at UMMC on at least fourteen occasions, including one inpatient admission over two days. The healthcare providers who have treated Brandon at UMMC since August 2013 will be "primary and key witnesses" on the issues of causation and damages. This is especially so because Brandon alleges that he may require future heart transplants as a direct and proximate result of the alleged negligence of the appellees. To

be sure, there will also be many witnesses, some of them key witnesses, who reside and/or work in Talbot County. As in *Scott*, however, at best, this factor was in equipoise.

On the public interest factor, the circuit court found that the judiciary statistics did "not support [the Kerrigans'] position[,]" and "in fact, . . . weigh[ed] . . . strongly in favor of the transfer." As discussed, the judiciary statistics relied upon by the Kerrigans and the appellees show that Baltimore City has many more case filings each year than does Talbot County, but that Baltimore City has many more sitting judges. The statistics show that, on average, the caseload of a Talbot County sitting judge is 1.43 times heavier than that of a Baltimore City sitting judge.[6] Thus, as in *Scott*, the interest in decreasing court congestion does not weigh in favor of transfer. 211 Md. App. at 635–36 (where filings per sitting judge were, on average, 1.49 times heavier in Calvert County then in Baltimore City, court congestion did not weigh in favor of transfer to the smaller jurisdiction). The court also erred by focusing on the relative interest in adjudicating a claim for medical negligence in Talbot County versus Baltimore City based upon the number of medical institutions in each jurisdiction. The citizens of each jurisdiction have a significant interest in adjudicating the controversy to the extent that it involves local doctors and hospitals. The only public interest factor weighing in favor of transfer was

[6] The appellees argue that Talbot County "employs a battery of retired judges to facilitate its caseload." While this may be true, there was no evidence in the record before the circuit court on this point and, in any event, retired judges also are specially assigned in Baltimore City to reduce the caseload handled by sitting judges.

the burden of jury duty, which the court properly concluded is heavier in Baltimore City given the much greater number of jury trials in that jurisdiction.

In sum, the Kerrigans' choice of forum was entitled to deference unless the appellees met their burden under Rule 2-327(c) to show that the balance of convenience to the parties and witnesses and the public interest in justice factors weighed strongly in favor of transfer. Here, the factors when properly assessed in accordance with the law weighed in near equipoise. Accordingly, the circuit court abused its discretion by granting the motion to transfer.

ORDER OF THE CIRCUIT COURT FOR BALTIMORE CITY TRANSFERRING CASE TO THE CIRCUIT COURT FOR TALBOT COUNTY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY THE APPELLEES.