UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2119

September Term, 2013

BYRON SMITH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF INDIA SMITH, A MINOR, ET AL.

v.

MUBADDA SALIM, ET AL.

Woodward,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: December 27, 2016

The instant appeal arises out of a wrongful death and survival action filed in the Circuit Court for Baltimore City. The decedent, India N. Smith, was a three-year and eleven-month-old child who died on May 27, 2009, when her pacemaker's battery expired. Appellants are India's parents, Byron Smith and Carrie Youngbar. They brought suit[1] against five defendants: (1) Dr. Mubadda Salim, India's cardiologist; (2) the University of Maryland Medical Systems, Inc. ("UMMS"), Dr. Salim's employer and the hospital where the pacemaker was implanted; (3) the Baltimore Washington Medical Center ("BWMC"), the hospital where India was treated on May 27, 2009; (4) St. Jude Medical, Inc. ("St. Jude"), the manufacturer of the pacemaker; and (5) LifeWatch Services, Inc. ("LifeWatch"), the service monitoring India's pacemaker. The five defendants are appellees in the instant appeal.

BWMC, UMMS, and Dr. Salim ("the medical providers") filed a motion to dismiss or in the alternative to transfer venue ("motion to transfer venue"), claiming that Anne Arundel County was the single common venue for all five defendants. Although the record reflects, and all parties agree, that appellants filed an opposition to the motion to transfer venue, the circuit court granted the motion as "unopposed," and the case was transferred to the Circuit Court for Anne Arundel County. Appellants filed a motion for reconsideration in the Circuit Court for Baltimore City, and, after hearing argument and reviewing all of the pleadings (including appellants' opposition), the court determined that

[1] Mr. Smith brought suit individually and as a personal representative of the estate of India N. Smith; Ms. Youngbar brought suit individually and as a parent and next friend of India N. Smith.

venue was proper in Anne Arundel County and denied appellants' motion for reconsideration.

Appellants present three issues on appeal, which we have rephrased and recast as questions:[2]

1. Did the circuit court err by denying appellants' motion for reconsideration?

2. Did the circuit court err in ruling that Anne Arundel County is a single common venue applicable to all defendants?

3. Did the circuit court's order adequately articulate the ground on which to justify venue in Anne Arundel County?

Because we answer the second question in the affirmative, we shall reverse the judgment of the circuit court. Accordingly, we need not address the first and third questions.

BACKGROUND

India Smith, born June 30, 2005, was diagnosed with a heart murmur at three months old. On November 4, 2005, a pacemaker, namely a St. Jude Model 5380 Cardiac Pulse

[2] Appellants' issues, as originally presented, are:

I. Whether the circuit court erred by denying the motion for reconsideration when the record is clear that appellants did, in fact, file an opposition to the motion.

II. Whether the circuit court erred by effectively shifting the burden of production and proof on the issue of "carried on a regular business" from the defendant UMDBWMC to the appellants.

III. Whether the circuit court's order adequately articulated other grounds to justify Anne Arundel County Venue.

Generator, was implanted in India at UMMS in Baltimore City. At all relevant times, appellants, India, and India's younger brother resided in Pasadena, Anne Arundel County, Maryland. Every few months, appellants took India for regular checkups with Dr. Salim at his office at UMMS in Baltimore City. Dr. Salim is "an Associate Professor of Pediatric Cardiology and Chief of the Department of Pediatric Cardiology" at the University of Maryland Medical School, and an employee of UMMS.

After a visit on July 11, 2006, Dr. Salim noted that the expected battery life of India's pacemaker had decreased from four years to two years because of the "increased ventricular threshold." Dr. Salim continued to see India every few months, which included checking on the pacemaker's remaining battery life. The pacemaker was also regularly monitored by LifeWatch through telephonic interrogations.

According to appellants' complaint, on May 11, 2009, Dr. Salim examined India's pacemaker and told appellants that the pacemaker battery had a life of three months until it would reach the elective replacement indicator ("ERI"). The battery also had a reserve capacity after ERI to allow time to replace the pacemaker before the battery failed. Dr. Salim told appellants to follow up in two to three months. Upon arriving home after the appointment, however, appellants received a message from Dr. Salim's office that he had spoken with a St. Jude representative about the latest interrogation results for the pacemaker and that he now believed the battery life remaining on the pacemaker was shorter than he had initially realized. Dr. Salim asked appellants to return to his office in early June to meet with a St. Jude representative to schedule the battery replacement. Dr.

Salim assured appellants that the battery had sufficient reserve capacity until the replacement could be scheduled.

On May 27, 2009, India was playing with her brother when she became short of breath. Paramedics arrived, and India's mother told them that the pacemaker battery was due for a replacement. The paramedics subsequently found that India's pacemaker was not functioning correctly. India was taken by ambulance to the emergency room at BWMC in Anne Arundel County. Doctors there were unable to revive her, and she died. The pacemaker was subsequently returned to St. Jude for testing, where it was determined that the pacemaker worked correctly once the battery was replaced.

On February 19, 2013, appellants filed suit in the Circuit Court for Baltimore City against appellees, alleging medical malpractice, breach of warranty of the pacemaker battery, and failure to obtain informed consent. Appellants alleged that the paramedics or emergency room staff at BWMC should have attached an external pacemaker until a replacement could have been inserted. Appellants further alleged that Dr. Salim and St. Jude gave express and implied warranties that the pacemaker battery had a sufficient capacity to last until the battery was scheduled to be replaced sometime after June 2, 2009. Appellants also alleged that venue was proper in Baltimore City pursuant to section 6-201 of the Courts and Judicial Proceedings Article ("CJP"), because all five defendants "carried on a regular business in Baltimore City."

On May 28, 2013, the medical providers filed the motion to transfer venue, claiming that "Anne Arundel County is the single venue applicable to all five Defendants in this case." The medical providers asserted that, pursuant to CJP § 6-201(a), BWMC, UMMS,

and Dr. Salim all "conduct regular and continuous business in Anne Arundel County," and that Anne Arundel County is the proper venue for LifeWatch and St. Jude, the two out-of-state defendants, "neither of which has a principal place of business in Maryland, because it is the forum in which [appellants] reside," pursuant to CJP § 6-202(3). In support of their motion, the medical providers filed affidavits stating that BWMC, UMMS, and Dr. Salim carried on regular and continuous business in Anne Arundel County.

On June 17, 2013, appellants filed an opposition to the motion to transfer venue, arguing that (1) "most of the care provided by the defendants . . . occurred in Baltimore City[,]" (2) neither Dr. Salim nor UMMS disputed appellants' allegations that Dr. Salim and UMMS carried on a regular business in Baltimore City, and (3) BWMC carried on a regular business in Baltimore City. Appellants argued that, "[s]ince venue is the choice of Plaintiffs, and venue is appropriate in Baltimore City, the Motion to Dismiss should be denied." The medical providers filed a reply to the opposition.[3] LifeWatch filed a "submission" supporting the position of the medical providers in the motion to transfer venue, but did not file an affidavit on the venue issue. St. Jude did not join in the motion to transfer venue, nor did it file an affidavit on the venue issue.

On July 5, 2013, without holding a hearing, the trial court granted the motion to transfer venue and ordered the instant case transferred to the Circuit Court for Anne Arundel County. Although the record reflects (and the medical providers concede) that appellants filed an opposition to the motion to transfer venue, the trial court's order begins

[3] The medical providers' reply was erroneously docketed as "Plaintiffs' Reply to Defendants' Opposition to Motion to Dismiss or in the Alternative to Transfer Venue."

with, "Upon consideration of the [medical providers'] unopposed motion to [transfer venue] . . . ." On July 19, 2013, appellants filed a motion for reconsideration of the court's order granting the motion to transfer venue, because the motion was granted despite the filing of an opposition and a request for a hearing.

The parties and the trial court agreed that the Circuit Court for Baltimore City had jurisdiction to hear the motion for reconsideration, and the court held a hearing on November 12, 2013. The parties' arguments at the hearing were substantively the same as those made in their respective pleadings.[4] On November 12, 2013, the court denied appellants' motion for reconsideration in the following order:

ORDER

> Upon consideration of the Plaintiff's Motion for Reconsideration of the Grant of the Motion to Dismiss or in the Alternative Transfer Venue filed on July 19, 2013 (paper #9); reconsideration of Defendant's Motion to Dismiss or in the Alternative to Transfer Venue filed on May 28, 2013 (paper #2), Plaintiffs' Opposition to Motion to Dismiss or in the Alternative Transfer Venue filed on June 17, 2013 (paper #2/1), and Defendants' Reply to Plaintiffs' Opposition to the Motion to Dismiss or in the Alternative Transfer Venue filed on July 2, 2013 (paper #2/6); the arguments made on the record on November 12, 2013; and Maryland Rule 2-327(b), it is this 12th day of November, 2013, hereby
>
> **FOUND** that this court is not persuaded by the Plaintiff's [sic] argument that venue for Defendant Baltimore Washington Medical Center, located at 301 Hospital Drive, Glen Burnie, MD 21061, is proper in Baltimore City, and it is further

[4] On the same day, after the hearing ended, BWMC filed a "Second Supplemental Affidavit of [BWMC]" stating that it did not carry on regular business in Baltimore City and that it did not engage in any business outside of Anne Arundel County. On November 14, 2013, appellants filed a "Motion to Strike Improper Filing of an Affidavit After the Close of the Hearing Record." On appeal, appellants acknowledge that the November 12 order makes clear that the supplemental affidavit was not considered by the trial court. The trial court, however, never ruled on the motion to strike.

> **FOUND** that venue for the three Maryland Defendants is proper in Anne Arundel County and that the Plaintiffs reside in Anne Arundel County, and it is further
>
> **ORDERED** that, pursuant to § 6-201(b) of the Courts and Judicial Proceedings Article, Plaintiffs' Motion for Reconsideration of the Order dated July 5, 2013 transferring this action to Anne Arundel County is **DENIED**.

On December 11, 2013, appellants filed a timely notice of appeal.

DISCUSSION

Appellants contend that no appellee, other than BWMC, has contested the complaint's allegations that all appellees regularly do business in Baltimore City.[5] According to appellants, BWMC is subject to venue in Baltimore City under CJP § 6-201(a), because BWMC carries on a regular business in the City through its merger with UMMS, and because BWMC never provided any affidavit or other evidence to prove that BWMC did *not* carry on business in Baltimore City. Citing to *Pacific Mortgage and Investment Group, Ltd. v. Horn*, 100 Md. App. 311, 324 (1994), appellants argue that "[i]t is not necessary for a defendant to maintain an office or have his or her principal place of business in a certain county in order for the defendant to carry on a regular business in that county." Therefore, appellants contend, Baltimore City is the proper venue for all five appellees.

The medical providers respond that Anne Arundel County is the single common venue for all defendants pursuant to CJP § 6-201(b), and that "venue is only appropriate

[5] Appellants assert in their supplemental memorandum that LifeWatch and St. Jude, the out-of-state corporations, can be sued in any county. Appellants cite no authority for this proposition, nor have we found any. *See* CJP § 6-202.

elsewhere if there is no single common venue."[6] According to the medical providers, Dr. Salim, UMMS, and BWMC all carried on a regular business in Anne Arundel County, and the two out-of-state defendants, St. Jude and LifeWatch, are subject to venue in Anne Arundel County pursuant to CJP § 6-202(3).[7]

The medical providers disagree with appellants' contention that Baltimore City is the single common venue applicable to all defendants, because their affidavits show that BWMC, Dr. Salim, and UMMS carry on a regular business in Anne Arundel County, and because appellants have not produced evidence to disprove those affidavits. Furthermore, according to the medical providers, BWMC filed an affidavit in which it stated that "BWMC does not carry on a regular business in Baltimore City, Maryland."[8] The medical providers maintain that BWMC has not merged with UMMS, and that BWMC's affiliation with UMMS is not sufficient to establish the carrying on of a regular business, which is required for BWMC to be subject to venue in Baltimore City.

"In deciding a Motion to Dismiss for Improper Venue, in stark contrast to deciding whether to transfer a case on the ground of forum non conveniens, there is no balancing of

[6] LifeWatch also filed a brief in the instant appeal, essentially adopting the medical providers' arguments. St. Jude did not file a brief, nor did it join in any other party's brief.

[7] The medical providers also argue that venue is not proper in Baltimore City, because the cause of action arose in Anne Arundel County. The medical providers contend that India's injury (the pacemaker failing), deterioration, and death occurred in Anne Arundel County. As we shall explain in more detail *infra*, this argument is without merit under *Wilde v. Swanson*, 314 Md. 80 (1988).

[8] The affidavit referred to here is the one that the trial court did not rely on in its November 12 order and is the one that is the basis for appellants' motion to strike, which was never ruled on by the court. *See* footnote 4, *supra*.

competing interests and the trial judge has no discretion. The venue chosen by the plaintiff is either proper, as a matter of law, or it is not." *Payton-Henderson v. Evans*, 180 Md. App. 267, 276 (2008). "[T]here can be more than one appropriate venue in which an action may be filed. When this is the case, a plaintiff is entitled to select the forum in which to bring his or her action." *Nodeen v. Sigurdsson*, 408 Md. 167, 178 (2009).

When a plaintiff's chosen venue is challenged, the burden of proof falls squarely on the shoulders of the defendant. *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 39 (1990). To satisfy such burden of proof, a defendant must do more than merely raise "a bare allegation that the venue was improper, unsupported by affidavit or evidence." *Id.*

CJP § 6-201 governs venue, and provides:

> (a) *Civil Actions.* – **Subject to the provisions of §§ 6-202** and 6-203[9] of this subtitle and unless otherwise provided by law, **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. In addition, a corporation also may be sued where it maintains its principal offices in the State.
>
> (b) *Multiple Defendants.* – **If there is more than one defendant, and there is no single venue applicable to all defendants, under subsection (a) of this section, 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**.**

(Bold emphasis added).

CJP § 6-202 provides for additional venues:

> **In addition to the venue provided in § 6-201** or § 6-203, **the following actions *may* be brought in the indicated county**:
>
> (1) Divorce -- Where the plaintiff resides;

[9] The provisions in CJP § 6-203 are not at issue in the instant appeal.

(2) Annulment -- Where the plaintiff resides or where the marriage ceremony was performed;

(3) Action against a corporation which has no principal place of business in the State -- Where the plaintiff resides;

(4) Replevin or detinue -- Where the property sought to be recovered is located;

(5) Action relating to custody, guardianship, maintenance, or support of a child -- Where the father, alleged father, or mother of the child resides, or where the child resides;

(6) Suit on a bond against a corporate surety -- Where the bond is filed, or where the contract is to be performed;

(7) Action for possession of real property -- Where a portion of the land upon which the action is based is located;

(8) Tort action based on negligence -- Where the cause of action arose;

(9) Attachment on original process -- Where the property is located or where the garnishee resides;

(10) Nondelivery or injury of goods against master or captain of a vessel -- Where the goods are received on board the vessel or where delivery is to be made under the contract;

(11) Action for damages against a nonresident individual -- Any county in the State;

(12) Action against a person who absconds from a county or leaves the State before the statute of limitations has run -- Where the defendant is found;

(13) In a local action in which the defendant cannot be found in the county where the subject matter of the action is located -- In any county in which the venue is proper under § 6-201.

(Bold and italics emphasis added).

In our view, the opinion of the Court of Appeals in *Wilde v. Swanson*, 314 Md. 80 (1988), controls the outcome of the instant appeal. We shall explain.

In *Wilde*, the plaintiffs were residents of Montgomery County who brought suit in Montgomery County to recover damages for injuries sustained by their son when he was attacked by three assailants outside of a motel in Worcester County. *Id.* at 82. The complaint named as defendants the three assailants, two of whom were residents of Montgomery County and one of whom was a resident of Frederick County, and the owner of the motel, who resided and did business exclusively in Worcester County. *Id.* The motel owner, Wilde, moved to dismiss the complaint for improper venue, arguing that there was a single venue applicable to all defendants in Worcester County under CJP § 6-202(8), because Worcester County was where the cause of action arose. *Id.* at 82-83. The circuit court dismissed Wilde from the case, and the plaintiffs appealed. *Id.* at 83. This Court reversed, holding that all of the defendants could be sued in Montgomery County. *Id.*

The Court of Appeals affirmed our decision, and explained:

> **In essence Wilde's argument is that § 6-202(8) controls. He reaches that conclusion by interpreting the introductory phrase of § 6-201(a), "[s]ubject to the provisions of §§ 6-202 and 6-203", to incorporate both of those sections into § 6-201(a) and to make the general provisions of § 6-201 inferior to §§ 6-202 and 6-203.**
>
> **There are three steps to the argument. First, because § 6-201(a) is "[s]ubject to §§ 6-202 and 6-203" one must first search the latter two sections for a provision which would confer venue. If one is found, that provision takes priority over any venue permitted under the more general provisions of § 6-201(a). Second, "[s]ubject to" incorporates into § 6-201(a) all of the provisions of §§ 6-202 and 6-203. Wilde applies this assumption to the multiple defendants general venue provision in § 6-201(b) which may only be used "[i]f there is more than one defendant,**

and there is no single venue applicable to all defendants, under subsection (a) . . . ." Because all of § 6-202 is incorporated into § 6-201(a), there is said to be a single venue applicable to all defendants under § 6-202(8), namely, Worcester County where the cause of action based on negligence arose. Consequently § 6-201(b) cannot be applied. Third, Wilde assumes that the negligence alleged against him provides a common venue as to all defendants sued under this complaint which alleges torts other than torts based on negligence. **Because we conclude that the first two assumptions are incorrect, we do not reach the third assumption.**

Citing *Black's Law Dictionary* 1278 (5th ed. 1979), Wilde says that "[t]he commonly understood meaning of the phrase 'subject to' is 'subordinate,' 'inferior to' or 'governed or affected by.' " As we see it the venue rules of § 6-201 are affected by the rules in the sections which follow. "Subject to" in § 6-201, the first section of the venue subtitle of CJ Title 6, alerts the reader to the presence of the two immediately succeeding sections bearing on venue problems. The subtitle is organized first to present to the reader the general rules applicable to single and multiple defendant civil actions, followed by rules dealing with particular types of civil actions. Had the intention underlying "[s]ubject to" been to make the operation of § 6-201 dependent on the inapplicability of any of the provisions of §§ 6-202 or 6-203, the meaning of "[s]ubject to" would be conditional. That intent would more directly be expressed by using "if," *e.g.*, "[i]f venue of the action is not provided in §§ 6-202 or 6-203. . . ." *See* Governor's Commission to Revise the Annotated Code of Maryland (the Commission), Revisor's Manual, 44 (1973) ("Conditions should be established by using 'if' instead of 'when' or 'where'.").

Further, § 6-203(a) demonstrates how the General Assembly expresses the intent that a particular venue provision will control over the general rules of § 6-201. Section 6-203(a) plainly states that "[t]he general rule of § 6-201 does not apply to actions enumerated in [§ 6-203]." Section 6-203(a) is unnecessary if "subject to" in § 6-201(a) had already achieved that effect. Under Wilde's argument, § 6-202 likewise governs over § 6-201 in the sense that, if any provision of § 6-202 applies, then § 6-201 cannot operate. The introduction to § 6-202, however, undercuts that interpretation. The introduction reads: "In addition to the venue provided by §§ 6-201 or 6-203, the following actions may be brought in the indicated county[.]" Under Wilde's interpretation § 6-202 could never be "[i]n addition to" § 6-201 because § 6-202 would be primary. It is § 6-

> 201 which would be "in addition to" § 6-202 if no provision of the latter applied to the action under consideration.
> **In any event the legislative history of these sections makes it clear that § 6-202 presents certain options to a plaintiff for alternative venues to those available under § 6-201. Neither section enjoys a priority over the other.** Wilde, quoting from opinions of this Court rendered prior to *Kaczorowski v. City of Baltimore,* 309 Md. 505 (1987), asserts that resort to statutory history is improper in this case because the statutes are unambiguous. We do not agree that "subject to" has a single, well-defined meaning. *See Del Rio Land, Inc. v. Haumont,* 110 Ariz. 7, 9, 514 P.2d 1003, 1005 (1973); 83 C.J.S. Subject at 555 (1953). Even if the phrase, "subject to," carried a definite meaning, we would not be precluded from consulting legislative history as part of the process of determining the legislative purpose or goal of these statutes. *See Kaczorowski,* 309 Md. at 514-15.

Id. at 90-92 (alterations in original) (emphasis added). Therefore, the Court held that CJP § 6-202(8) could not be used by the defendant to create a single common venue and thus render inapplicable the provisions of CJP § 6-201(b). *Id.* at 92. Accordingly, "the plaintiffs properly exercised their option under CJP § 6-201(b) to sue in Montgomery county where two of the defendants resided." *Id.* at 94.

Returning to the instant case, appellants' complaint alleges that all five appellees carry on a regular business in Baltimore City, and thus venue lies in Baltimore City under CJP § 6-201(a). In challenging venue in Baltimore City, the medical providers do not dispute that Dr. Salim and UMMS carry on a regular business in Baltimore City, but assert that they also carry on a regular business in Anne Arundel County, and that BWMC carries

on a regular business only in Anne Arundel County.[10] As a result, there is a single venue in Anne Arundel County applicable to the medical providers under CJP § 6-201(a).

But the medical providers must show a single venue applicable to all of the appellees, which includes LifeWatch and St. Jude, the out-of-state defendants. Because LifeWatch and St. Jude do not have principal offices in Maryland, the medical providers point to CJP § 6-202(3), which provides for venue for LifeWatch and St. Jude where appellants reside, which is Anne Arundel County.

By invoking CJP § 6-202(3) to create a single common venue and thus render CJP § 6-201(b) inapplicable, the medical providers run afoul of the teachings of *Wilde*. In *Wilde*, the Court of Appeals stated that "§ 6-202 'is intended to permit the plaintiff to choose either a venue permitted by section 6-201 or one permitted by section 6-202.'" *Id.* at 94 (quoting Adkins *Code Revision in Maryland: The Courts and Judicial Proceedings Article*, 34 Md. L. Rev. 7, 36 (1974)). In other words, the venue provisions provided by section 6-202 are optional and are reserved exclusively to the plaintiff. *See* CJP § 6-202 ("In addition to the venue provided in § 6-201 or § 6-203, the following actions *may be brought* in the indicated county" (emphasis added)). Here, appellants did not choose to sue LifeWatch and St. Jude in Anne Arundel County under section 6-202(3).

The medical providers' invocation of section 6-202(3) is also contrary to relationship between sections 6-201 and 6-202 articulated in *Wilde*. As previously

[10] Appellants vigorously dispute the medical providers' claim that BWMC carries on a regular business only in Anne Arundel County. We need not resolve such issue, because, as explained *infra*, appellants will prevail even if we accept the medical providers' position on venue for BWMC.

indicated, section 6-201(a) begins by stating: "*Subject to* the provisions of §§ 6-202 . . . a civil action shall be brought in a county where the defendant . . . carries on a regular business . . . ." Section 6-201(b) then provides that, "[i]f there is more than one defendant, and there is no single venue applicable to all defendants, *under subsection (a) of this section*, all may be sued in a county in which any one of them could be sued . . . ." (Emphasis added). The Court of Appeals rejected Wilde's argument that "subject to" in section 6-201(a) "incorporates into § 6-201(a) all of the provisions of §§ 6-202 and 6-203." *Id.* at 90. The Court determined, based on the language of the statute and its legislative history, that "§ 6-202 presents certain options to a plaintiff for alternative venues to those available under § 6-201. Neither section enjoys a priority over the other." *Id.* at 92. As a result, the language of section 6-201(b) regarding a "single venue applicable to all defendants, under subsection (a) of this section," refers to the venue requirements of subsection (a) only. In his treatise on Maryland civil litigation, Professor C. Christopher Brown articulated this principle: "The multiple defendant venue provision [section 6-201(b)] looks only to those venue choices listed under the general rule [section 6-201(a)] and not to those listed under the supplemental rule, as discussed at § 1.23 *infra* [section 6-202]." C. Christopher Brown, *Introduction to Maryland Civil Litigation*, § 1.22, 16 n. 65 (1982).

Therefore, in determining whether there is a "single venue applicable to all defendants" under section 6-201(b), we look at the "venue choices" under section 6-201(a) for each defendant in a multiple defendant case. In the instant case, the venue choices under section 6-201(a) for appellees focus exclusively on where they carry on a regular

business. For Dr. Salim and UMMS venue is available in both Baltimore City and Anne Arundel County. For BWMC, according to the medical providers, venue is available only in Anne Arundel County.[11] For LifeWatch and St. Jude, appellants' complaint alleges that venue lies in Baltimore City, because both of them carry on a regular business there. Such allegation of venue will stand unless appellees satisfy their burden of proving that LifeWatch and St. Jude also carry on a regular business in Anne Arundel County. *See Odenton Dev. Co.*, 320 Md. at 39. Appellees did not satisfy that burden of proof, because no affidavit or other evidence was submitted showing that both LifeWatch and St. Jude carried on a regular business in Anne Arundel County.[12] *See id.* Therefore, with venue for LifeWatch and St. Jude available only in Baltimore City, there is no "single venue applicable to all defendants" in Anne Arundel County. *See* CJP § 6-201(b). Accordingly, under section 6-201(b), appellants are entitled to sue all appellees where any one of them could be sued, which in this case includes Baltimore City. *See Payton-Henderson*, 180 Md. App. at 276 (stating that "[i]n a case involving multiple defendants under § 6-201(b), if so much as a single defendant, out of a hundred defendants, resides or works or does business in the county chosen by the plaintiff, venue in that county is , as a matter of law, proper, and the case may not be dismissed for improper venue.").

[11] See footnote 10, *supra*.

[12] Before the trial court, LifeWatch argued that it carried on a regular business in Anne Arundel County by virtue of monitoring India's pacemaker in Anne Arundel County. No evidence, however, was adduced of a regular business carried on in Anne Arundel County by LifeWatch. Even if such evidence had been submitted, the result would be the same, because there was no argument, much less any evidence, that St. Jude carried on a regular business in Anne Arundel County.

The medical providers attempt to distinguish *Wilde* by, arguing that "[t]here was no assertion in Wilde that there was a single county in which all of the Defendants either resided or worked. Rather, it was argued that there was a single common venue in the county where the cause of action arose pursuant to [CJP] § 6-202(8)." We are not persuaded. Nothing in *Wilde* suggests that, while section 6-202(8) cannot be used to create a single common venue, section 6-202(3) can. Moreover, the medical providers' argument that the instant case and *Wilde* are distinguishable because "[u]nlike in this case, there was no single venue applicable to all Defendants in Wilde" fails, because the medical providers are making the identical argument that Wilde did, and the Court of Appeals rejected, namely "that there is . . . a single venue applicable to all" appellees created by using appellants' additional venue options under CJP § 6-202. *Id.* at 91. Accordingly, the trial court erred by granting the motion to transfer venue from Baltimore City to Anne Arundel County.

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