UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2357

September Term, 2015

MELISSA KIRBY, et al.

v.

JOHNS HOPKINS HOSPITAL, et al.

Wright,
Beachley,
Eyler, James, R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 28, 2016

This case arises from the granting of a motion to transfer for improper venue. On July 24, 2015, appellants, Melissa Kirby ("Mrs. Kirby") and her husband, Matthew Kirby, filed a two-count complaint in the Circuit Court for Baltimore City alleging medical malpractice and loss of consortium against appellees, Greater Baltimore Medical Center ("GBMC"), Charles Emergency Physicians, P.A. ("CEP"), Evan English, M.D. ("Dr. English"), David Vitberg, M.D. ("Dr. Vitberg"), Robert Stevens, M.D. ("Dr. Stevens"), and Johns Hopkins Hospital, Inc. ("Johns Hopkins"). All appellees moved to dismiss for improper venue or, in the alternative, to transfer venue to the Circuit Court for Baltimore County. By an Order dated December 1, 2015, the trial court granted the motion and ordered that the case be transferred to Baltimore County.

Appellants present a single question for our review, which we have rephrased: Did the circuit court err in determining that Baltimore City was not a proper venue pursuant to Md. Code (1974, 2013 Repl. Vol.) § 6-202(8) of the Courts and Judicial Proceedings Article ("CJP")?

We answer this question in the negative and affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On April 8, 2014, at approximately 7:30 p.m., Mrs. Kirby was running on a track when she suffered two apparent seizures. Emergency personnel transported her to GBMC in Baltimore County, where she was admitted at approximately 7:45 p.m. Mrs. Kirby was initially treated by Dr. English in the Emergency Department at GBMC. Dr. English's plan was to admit Mrs. Kirby to GBMC's intensive care unit, obtain a consultation from Dr.

Vitberg, intubate her, and then transfer her to Johns Hopkins for continuous EEG monitoring.

At approximately 10:00 p.m. that evening, Dr. Vitberg evaluated and treated Mrs. Kirby. As part of his evaluation, Dr. Vitberg consulted by telephone with Dr. Stevens at the Neuro Critical Care Unit at Johns Hopkins in Baltimore City. Dr. Vitberg gave Dr. Stevens a full verbal report, after which Dr. Stevens accepted Mrs. Kirby for transfer to Johns Hopkins.

On April 9, 2014, at approximately 12:33 a.m., Mrs. Kirby arrived at Johns Hopkins. She first saw a neurologist at Johns Hopkins at 4:38 a.m.; an MRI was not performed until 1:42 p.m. that same day. The MRI results established that Mrs. Kirby suffered from multiple strokes. Mrs. Kirby suffered permanent physical and cognitive damage as a result of these strokes. She is extremely limited in movement, unable to verbally communicate, incontinent, and requires tube feeding.

On July 24, 2015, appellants filed a complaint in the Circuit Court for Baltimore City against all appellees alleging medical malpractice and loss of consortium. Appellants alleged that, as a result of the appellees' failure to timely diagnose Mrs. Kirby's stroke and the concomitant delay in treatment, she was "outside the acceptable window for tPA treatment to recover from the stroke."

On September 25, 2015, appellees filed a Motion to Dismiss, or in the Alternative, Transfer for Improper Venue. Appellees argued that Baltimore County was the only venue common to all defendants and therefore was the only venue appropriate under CJP § 6-

201. They further argued that venue was not appropriate in Baltimore City under CJP § 6-202(8) because the cause of action did not arise in Baltimore City. A hearing on the motion was held on November 30, 2015. In an order dated December 1, 2015, the trial court granted appellees' motion, ruling that "[f]ailure to timely diagnose [Mrs. Kirby] with a stroke was the injury and that injury occurred in Baltimore County." The trial court therefore transferred the case to the Circuit Court for Baltimore County pursuant to Maryland Rule 2-327(b). Appellants timely noted this appeal.

STANDARD OF REVIEW

"In deciding a Motion to Dismiss for Improper Venue . . . there is no balancing of 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). Accordingly, we review the trial court's decision to transfer a case for improper venue *de novo*. *LeCronier v. United Parcel Serv.*, 196 Md. App. 131, 137 (2010).

DISCUSSION

Appellants maintain that, under CJP § 6-202(8), venue is proper in Baltimore City as to all appellees because their cause of action against Dr. Stevens and Johns Hopkins arose in Baltimore City. Because § 6-202(8) provides for *additional* venue, we briefly examine the general venue statute, CJP § 6-201, for analytical context. Section 6-201 provides:

> (a) *Civil actions*. – Subject to the provisions of §§ 6-202 and 6-203 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 were the cause of action arose.

The parties do not dispute that Baltimore County is a proper venue under § 6-201 because, when the complaint was filed, *all* appellees either resided in or "carried on" regular business in Baltimore County. Thus, under § 6-201, appellants had the option to sue all of the health care providers in the Circuit Court for Baltimore County.

With that background, we proceed to address whether the additional venue provision set forth in § 6-202(8) permits appellants to sue any or all of the appellees in Baltimore City. Section 6-202(8) provides:

> In addition to the venue provided in § 6-201 or § 6-203, the following actions may be brought in the indicated county: . . .
>
> (8) Tort action based on negligence – Where the cause of action arose.

The elements of a cause of action for negligence are, (1) a duty on the part of the defendant to protect the plaintiff from injury, (2) a breach of that duty, (3) actual injury or loss suffered by the plaintiff, and (4) that such injury or loss resulted from the defendant's breach of duty. *Hamilton v. Kirson*, 439 Md. 523-24 (2014). "[A] cause of action in negligence arises when facts exist to support each element of the action." *Green v. North Arundel Hosp. Ass'n., Inc.*, 366 Md. 597, 607 (2001) (citing *Owens-Illinois v. Armstrong*, 326 Md. 107, 121 (1992)). The *Green* Court further noted that "the elements of duty,

breach, and causation tend naturally to precede the element of injury, which 'would seemingly be the last element to come into existence.'" *Id.*

The Court of Appeals' decision in *Burnside v. Wong*, 412 Md. 180 (2010) is instructive in our analysis. Mrs. Burnside suffered from retinopathy, a progressive and degenerative eye disease. She alleged that Dr. Wong, her doctor in Baltimore County, failed to properly diagnose and treat her disease, allowing it to progress to proliferative retinopathy, a more serious eye condition. Mrs. Burnside conceded that she visited Dr. Wong exclusively in Baltimore County for her eye appointments. Nevertheless, Mrs. Burnside argued that her eyes deteriorated to the point of proliferative retinopathy while living in Baltimore City. Because this deterioration took place in Baltimore City, Mrs. Burnside argued that her injury arose in Baltimore City. She therefore asserted that venue was proper in Baltimore City. The Court of Appeals disagreed, holding that "Mrs. Burnside's cause of action arose in Baltimore County, where Dr. Wong's alleged misdiagnosis, mistreatment, and failure to obtain informed consent occurred." *Id*. at 207.

The *Burnside* Court's holding is consistent with *Green*, which held that the minor plaintiff's cause of action against doctors located in Anne Arundel County arose in Anne Arundel County because he first experienced injury there as a result of their alleged medical negligence. 366 Md. at 612. Because all four elements of the minor plaintiff's claim against his Anne Arundel doctors coalesced while he was being treated in Anne Arundel County, his cause of action arose there pursuant to § 6-202(8). That the minor plaintiff later suffered a cardiac arrest and brain damage while being treated in Baltimore City did

not make the Anne Arundel doctors subject to suit in Baltimore City because, under § 6-202(8), the cause of action had already ripened in Anne Arundel County. *Id*.

Appellants' contention that venue is proper in Baltimore City is succinctly set forth in their brief:

> Here, facts giving rise to the cause of action against Dr. Stevens are occurring at the same time in both Baltimore City and Baltimore County. Dr. Stevens was physically located in Baltimore City, albeit on the telephone with a doctor at GBMC, when he failed to properly diagnose and treat Mrs. Kirby's stroke while working for his employer, Johns Hopkins Hospital, also located in the City of Baltimore. His negligence *simultaneously* caused a legally cognizable injury to Mrs. Kirby while she was located in Baltimore County. Dr. Stevens' negligence is a source from which her injury originates. Therefore, a proper choice of venue is where Dr. Stevens was located in Baltimore City, because a cause of action arose in Baltimore City from his negligence.

(emphasis in original)

Assuming *arguendo* that Dr. Stevens breached the standard of care in Baltimore City when he was on the telephone with Dr. Vitberg, the last element of the cause of action – injury to Mrs. Kirby – clearly occurred while she was still a patient at GBMC in Baltimore County. Indeed, as noted above, appellants admit that "[Dr. Stevens'] negligence *simultaneously* caused . . . injury to Mrs. Kirby while she was located in Baltimore County." Under *Burnside* and *Green*, Mrs. Kirby's cause of action against Dr. Stevens and his employer, Johns Hopkins, ripened in Baltimore County.

Acceptance of appellants' argument would lead to illogical and unsustainable results. Appellants concede that, under § 6-202(8), "a cause of action arose against [GBMC, CEP, Dr. English, and Dr. Vitberg] in Baltimore County." They contend,

however, that the "facts giving rise to the cause of action against Dr. Stevens (and presumably Johns Hopkins as his employer) [occurred] at the same time in both Baltimore City and Baltimore County."[1] The problem with appellants' argument is obvious. Analytically, Mrs. Kirby cannot, under essentially the same set of facts, first sustain an injury in two different jurisdictions, Baltimore County and Baltimore City. In short, as a result of the alleged misdiagnosis and mistreatment of Mrs. Kirby by the appellees, she first sustained injury while she was still a patient at GBMC in Baltimore County.[2] Under § 6-202(8), Mrs. Kirby's cause of action against all appellees arose in Baltimore County; accordingly, under that venue provision, Baltimore County is the only appropriate venue.

We conclude that the circuit court was correct in transferring this action to the Circuit Court for Baltimore County, and therefore affirm.

JUDGMENT OF CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANTS TO PAY COSTS.

[1] Appellants further assert that if Dr. Stevens and Johns Hopkins can be sued in Baltimore City under § 6-202(8), then all appellees can be sued in that forum. Given our holding in this case, we need not decide that issue.

[2] In their complaint, appellants also alleged that all appellees breached their duty to transport Mrs. Kirby to an appropriate medical facility in a timely manner. Appellants do not allege this breach as a separate cause of action; indeed their complaint contains a single count of medical malpractice against all appellees. Thus, any cause of action related to the delay in transporting Mrs. Kirby to an appropriate facility is governed by the same analysis discussed herein.