Circuit Court for Prince George's County
Case No. CAL15-25704

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2671

September Term, 2015

EVAN LEE BLESSING

v.

SUNBELT RENTALS INC.

Kehoe,
*Krauser,
Battaglia, Lynne Ann,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, J.

Filed: April 12, 2018

*Krauser, Peter B., J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

Evan Lee Blessing, appellant, was injured when a "Bobcat Mini-Excavator," which he was operating at a construction site, in Montgomery County, "flipped over." The excavator had been rented from appellee Sunbelt Rentals, Inc. ("Sunbelt"), a nationwide equipment rental company, at one of its Howard County stores. Notwithstanding the fact that Blessing resided in Talbot County; that the excavator had been rented at one of Sunbelt's two Howard County stores; that the alleged negligent maintenance of that vehicle, which had purportedly caused the excavator to malfunction, had occurred in Howard County; and that he was operating that vehicle in Montgomery County, when the accident occurred, Blessing chose to bring an action for negligence in Prince George's County, where Sunbelt, whose principal place of business was in South Carolina, had two equipment "rental locations."

Predictably, Sunbelt filed a motion for change of venue on the grounds of forum non conveniens. Specifically, it requested that the instant case be transferred to Montgomery County, where the excavator accident had happened, or, in the alternative, to Howard County, where the rental of the purportedly defective excavator and the alleged negligence in maintaining it had occurred. When Blessing then filed an opposition to that motion, Sunbelt filed a reply to that opposition, which prompted Blessing to file a motion requesting that Sunbelt's reply be stricken on the grounds that the Maryland rules do not permit, he maintained, the filing of a "reply" to a motion's opposition.

After denying Blessing's motion to strike, the Prince George's County circuit court granted Sunbelt's motion to transfer the instant case on forum non conveniens grounds and

then seemingly left the choice of venue—that is, of either Montgomery or Howard County—to Blessing. Blessing chose Howard County. Then, upon approving that choice, the court ordered that the instant case be transferred to Howard County, whereupon Blessing noted this appeal, challenging that transfer, as well as the circuit court's refusal to strike Sunbelt's reply.[1]

Motions Hearing

We shall now briefly summarize the arguments, both written and oral, presented by counsel at the hearing below, touching only upon the major points made by counsel, and then, even more briefly, we shall address the circuit court's verbal exchanges with counsel in the context of those arguments and the court's ultimate ruling.

Sunbelt, as previously noted, moved for a change of venue, requesting that the instant case be transferred to Montgomery County, or, in the alternative, Howard County. In support of its Montgomery County transfer request, Sunbelt pointed out that, in contrast to Prince George's County, which, it maintained, had "[n]o direct or indirect connection" to any aspect of the case, nor to any potential witnesses, nor to the parties themselves, other than it was the site of two other Sunbelt stores that had no involvement in this matter, Montgomery County, as the site of the accident and the events that ensued, was the work place and likely residence of many of the witnesses that were to be called. And, it noted

[1]A "grant of a motion to transfer is an immediately appealable final judgment, whereas the denial of such a motion is not." *Stidham v. Morris*, 161 Md. App. 562, 566 n.2 (2005) (quoting *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 437 (2003)).

that the owner of the property where the accident occurred, "emergency personnel who responded to the accident scene," and medical care providers at Montgomery County's Suburban Hospital, where Blessing was transported after the accident, clearly fell within that category. Moreover, if the jury requested to see the site of the accident, it would unquestionably be more convenient for the jury, as well as the court and counsel, to be transported to the Montgomery County accident site from the Montgomery County courthouse.

Then, turning to its alternative choice, Howard County, Sunbelt pointed out that, as the negligence alleged by Blessing purportedly occurred at a Sunbelt store in Howard County, those who witnessed that negligence or were involved in its commission, presumably, worked and lived in Howard County. And, what is more, because the negligence took place in Howard County, the residents of that county had a significant interest in the case, whereas Prince George's residents had none. Consequently, a "Prince George's jury should not be burdened," propounded Sunbelt, "with deciding a controversy between a Talbot County resident and [a] foreign corporation," where the negligence at issue occurred in Howard County and the resultant accident took place in Montgomery County. Finally, Sunbelt observed that Semco, Inc.,[2] who rented the excavator, and JBW, LLC, who was Blessing's employer, were potential third-party defendants. Neither of

[2] Although the record does not appear to indicate Semco's precise role in this matter, it nonetheless seems to have been a contractor at the site.

whom had any apparent connection with Prince George's County. The former is located in Howard County and the later in Talbot County.

In response to Sunbelt's claims, Blessing asserted that, in contrast to Montgomery County, Prince George's County was "far easier" to travel to than Montgomery County, and that proceeding in Montgomery County would require a hotel room for Blessing, a Talbot resident, and another for his counsel, who also resided on the Eastern Shore of Maryland. However, Blessing did not suggest that the same was true of Howard County. Moreover, because Sunbelt was an "out-of-state corporation" with its principal place of business in South Carolina, the Prince George's County courthouse would be more convenient, suggested Blessing, for Sunbelt's South Carolina employees, given that it was closer in proximity to the Baltimore Washington International Airport than the Montgomery County courthouse, but, significantly, did not make such a claim as to the Howard County courthouse.

Blessing further asserted that, even though discovery was incomplete, and additional third-party claims had yet to be filed, "all of the potential witnesses that may be called at trial" were "already known." Those witnesses—that is, witnesses with "information regarding the occurrence of the injury"—were either Maryland residents of Baltimore County, Baltimore City, Hunt Valley, and Easton, or residents of Washington, D.C., or West Fargo, North Dakota. Blessing claimed that Prince George's County was nearly as convenient, or more convenient, for those witnesses than Montgomery County, though, once again, that claim was not made as to Howard County.

As for "witnesses with knowledge relevant to damages," Blessing conceded that responding medical personnel may be from Montgomery County but claimed that those individuals' "observations . . . have no bearing[.]" And, as for the other medical treatment providers, Blessing maintained that Prince George's County would be more convenient for some, but acknowledged that Montgomery County would be more convenient for others. In support of that claim, Blessing provided a list of nine places where he had received medical treatment and compared the travel distances from those locations to the courthouses in Montgomery and Prince George's County, but, again, did not provide any distance comparisons as to Howard County. Blessing also disagreed with Sunbelt's assertion that a jury's view of the accident location weighed in favor of transfer to Montgomery County, as, according to Blessing, "there is absolutely no need for the jury to see the accident scene" as it "has not been preserved and today looks nothing like it did on the day of the" accident.

Finally, Blessing claimed that, notwithstanding the fact that the negligence occurred in Howard County, and that the resultant accident occurred in Montgomery County, Prince George's County residents did have an interest in this matter. He noted, among other circumstances even less compelling, that the site of the negligence, Sunbelt's Howard County store, "is less than two . . . miles from the Prince George's County border." Therefore, according to Blessing, that store's "customer base" likely included Prince George's County residents.

Interestingly enough, although Blessing's counsel claimed that he had "many reasons" for filing suit in the Prince George's County circuit court, nonetheless, in response to Sunbelt's claim (as characterized by Blessing) that he had "carefully selected" Prince George's County as the venue for his suit "because he believe[d] it [gave] him the best opportunity to reach a successful result," Blessing's counsel declared: "I own that. That is right," and thereby confirmed that he had engaged in what Sunbelt described as "forum shopping."

During argument, the court expressly noted that it was "balancing many issues" in what appeared to be "a tight case," apparently referring to, among other things, the fact that, as the court put it, there were "some witnesses here and there" and that "it goes down to traffic as to which [county] wins." Expounding upon that point, the court added that, as for the convenience of possible witnesses, "it's going to depend on what time of day and the traffic and who has an accident . . . ." Blessing's counsel agreed, conceding that, notwithstanding his use of "Google Maps" to chart the travel distances of possible witnesses, those distances didn't "show necessarily that [Prince George's] County [was] more convenient . . . ."

Next, after observing that certain factors may be "in equipoise," the court turned to interests of justice, particularly the convenience of the court, which had "more weight" because, not only was Sunbelt's principal place of business elsewhere, but both the purported negligence and the accident itself "happened in [] different count[ies]." The court further stressed that it was not "going to make the citizens of Prince George's County bear

the burden of" a case where the events "didn't happen here and there is not a strong nexus here for these people."

Then, when Blessing's counsel remarked that the court should not "elevate the local interest factors above all the others," the court reminded counsel that it had the "discretion . . . to weigh which one is more important and which one is not," but it pointed out that local interest was "not the sole factor" it was considering and later reassured counsel that it was "going all the way through [the factors] here."

Ultimately, the court decided that transfer was appropriate. As Sunbelt's motion sought transfer to either Montgomery or, in the alternative, Howard County, the court asked Blessing to which of the two counties the case should be sent. Blessing chose Howard County, where the negligence that caused the accident occurred.

I.

Motions to transfer venue on the grounds of forum non conveniens are governed by Maryland Rule 2-327(c), which provides that, "[o]n motion of any party, the court may 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." In deciding whether to grant such a motion, a trial court "is vested with 'wide discretion.'" *Stidham v. Morris*, 161 Md. App. 562, 567 (2005) (quoting *Leung v. Nunes*, 354 Md. 217, 223-24 (1999)). But that discretion is "not without limits." *Id.* Indeed, such an abuse occurs when a trial court "disturb[s] a plaintiff's choice of venue" when "the

balance" of factors it must consider "does not weigh strongly in favor of the proponents of the transfer[,]" *Nodeen v. Sigurdsson*, 408 Md. 167, 180 (2009) (internal citations omitted), as the court must afford the plaintiff's choice of forum deference. *See Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 412 (2017).

But, if "the plaintiff," as here, "does not reside in the forum where the plaintiff has chosen to file suit," the deference he might otherwise be afforded "shrinks," only to "diminish further 'if a plaintiff's choice of forum has no meaningful ties to the controversy and no particular interest in the parties or subject matter.'" *Id.* at 406 (quoting *Stidham*, 161 Md. App. at 569).

In addition to assessing the degree of deference to be given the plaintiff's choice of forum, in deciding whether to grant such a transfer of venue motion, a circuit court must consider both the "convenience of the parties and witnesses" as well as "the interests of justice." *See Stidham*, 161 Md. App. at 568. The "interests of justice" factor "requires a court to weigh both [ ] private and public interests." *Id.* (internal citations and quotation marks omitted). Private interests "include [t]he 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." *Id.* (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). On the other hand, public interests "include, among other things, considerations

of court congestion, the burdens of jury duty, and local interest in the matter." *Id.* (quotations omitted).

II.

Blessing contends that the circuit court abused its discretion in granting Sunbelt's motion to transfer venue because it did not consider all relevant factors, and the factors that it did consider it did not properly balance, given that such factors, according to Blessing, must weigh strongly in favor of transfer for the court to have granted such relief. Instead, according to Blessing, the court, after finding the factors in "equipoise," solely relied upon the interests of Prince George's County's jurors, which amounted to the imposition of an impermissible "bright line rule," namely, that it would grant a change of venue request in a tort action whenever no party was a resident of Prince George's County and the negligence at issue did not occur in that county.

A.

First of all, we note that, in support of the aforesaid argument, Blessing, citing *Leung v. Nunes*, 354 Md. 217, 224 (1999), asserts that the court had no right to transfer the instant case unless "the balance [of factors] weigh[ed] strongly in favor of" such a transfer. That is not so in Maryland, when, as here, the plaintiff "does not reside in the forum where [he] has chosen to file suit" and even less so, when, as here, the "'plaintiff's choice of forum has no meaningful ties to the controversy and no particular interest in the parties or subject

matter.'" *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 406 (2017) (quoting *Stidham*, 161 Md. App. at 569). Consequently, the circuit court was correct in according Blessing's choice of forum little deference, a deference which arguably should have been reduced further in light of his counsel's admission that he filed Blessing's action in Prince George's County principally because "he believe[d] it [gave] him the best opportunity to reach a successful result," a statement which only served to further confirm Sunbelt's claim that Blessing's selection of Prince George's County as the venue for his case had little to do with the convenience of the parties or their witnesses but much to do with "forum shopping."

Furthermore, contrary to Blessing's assertions, the court did consider all relevant factors. In fact, it repeatedly advised counsel that it had done so. And, as we said, in *Cobrand v. Adventist Healthcare, Inc.*, a court's assurance that it "had looked at everything else in the case" is sufficient to show that it had taken into account all of the factors raised in the motion filed. 149 Md. 431, 444 (2003). And that it had indeed considered all of the factors raised was further confirmed by the court's detailed discussion, on the record, of what it had considered and why.

As for Blessing's claim that the court found the factors to be in "equipoise," the court did use that term, but it was in reference to and part of its discussion of the convenience of the parties and their witnesses and not the interests of justice, to which it ultimately accorded substantial weight. In so finding, the court observed that there were "some witnesses here and there," but that "it's going to depend on what time of day and

the traffic and who has an accident . . . .” Moreover, Blessing’s counsel conceded, at the hearing below, that the chart he had provided the court, with travel distances for certain witnesses, did not “show necessarily that [Prince George’s] County [was] more convenient[,]” and, as noted earlier, he never provided any travel distances as to Howard County.

While Sunbelt does ask us to affirm the transfer ruling of the circuit court, it does dispute that court’s finding of equipoise as to the convenience issue and with good reason. In its brief, Sunbelt persuasively points out the following:

> In this case, either Montgomery County or Howard County is a far more appropriate venue that Prince George’s County. First, the accident occurred in Montgomery County, and it is reasonable to assume that any lay witnesses to the accident or its aftermath work or live there. . . . Consequently, fact witnesses to the accident or concerning conditions on the work site are likely to be found in Montgomery County. . . . Furthermore, Montgomery County Fire Department or other emergency personnel who responded to the accident scene, are presumably employed in or reside in Montgomery County. In addition, as the plaintiff was treated at Suburban Hospital in Montgomery County, it would stand to reason that many of his physicians or other health care providers live in Montgomery County or would find it more convenient to testify in Montgomery County. . . . Of course, Sunbelt employees working at the Sunbelt Howard County store in question naturally work or, perhaps, even live, in Howard County. Sunbelt’s alleged negligent acts or omissions occurred in Howard County. In addition, Howard County is where appellant signed the rental agreement with Sunbelt and entered into a contractual relationship with Sunbelt. By stark contrast, the appellant has not identified a single lay witness living or working in Prince George’s County and only a lone medical witness location in Prince George’s County. By moving this case to Howard County (at appellant’s choice), the trial court accommodated the appellant’s complaints of travel time and lodging expense for himself and his counsel at trial. It is also a closer venue than Prince George’s County for his medical providers from Talbot County as well as for potential third party defendant witnesses located in Talbot County and Howard County.

(Citations, footnotes and quotations omitted.)

In any event, even assuming that the court's finding of equipoise was not erroneous, the court, as noted earlier, found that the interests of justice, specifically what we previously referred to as the "public" interests of justice—that is, "among other things, considerations of court congestion, the burdens of jury duty, and local interest in the matter." *Stidham*, 161 Md. App. at 569 (citations omitted)—warranted transfer of the instant case to the county where the accident occurred, Montgomery County, or where the negligence purportedly happened, Howard County, leaving it to Blessing to choose. Given that little judicial deference need be given to Blessing's choice of Prince George's County, for the reasons previously outlined in this opinion; that both Montgomery and Howard Counties have the only significant ties to this case as well as a substantial local interest in what occurred; and that Prince George's County has almost no connection with any aspect of this case, the court below did not abuse its discretion in ordering the transfer of this case to Howard County.

B.

We reach the conclusion above, though Blessing further claims that Prince George's County jurors had a local interest in hearing the case because two of Sunbelt's thirteen Maryland locations were in Prince George's County, and because equipment rented or sold at its Howard County store, where Blessing rented the excavator and the alleged negligence in the maintenance and repair of the excavator took place, presumably entered Prince

George's County through the "geographic range" of that store's "customer base." In short, Blessing asks us to reassess the trial court's weighing of the jury duty burden.

As the Court of Appeals recently made clear, trial courts, in deciding whether to transfer a case, enjoy "wide discretion to weigh the . . . interests of justice," under which the jury duty burden is considered, "on the facts of the case before it . . . ." *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 406 (2017) (quotation omitted). Here, as previously discussed, there is no dispute that Blessing does not reside in Prince George's County, nor does Sunbelt have its principal place of business there. And, it is also undisputed that the alleged negligent maintenance and repair of the excavator purportedly occurred at Sunbelt's Howard County location, and the accident took place in Montgomery County. Moreover, though Sunbelt, a nationwide business, has two locations in Prince George's County, Blessing did not allege that they were in any way involved in that alleged negligence.

Furthermore, even if, as Blessing alleges, equipment from Sunbelt's Howard County location is carried into Prince George's County, that is equally true for any large retail establishment, and does not necessarily confer a significant connection between that location and Prince George's County. Indeed, while a party's "conduct of business is relevant for determining jurisdictional venue," the "amount of business, however, has little bearing on Md. Rule 2–327," that is, a motion to transfer. *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 443 n.8 (2003).

We therefore hold that the circuit court did not abuse its discretion when it determined that, because neither party resided or had its principal place of business in Prince George's County, and because the subject matter of the suit occurred in other counties, there was minimal local interest in hearing the case in Prince George's County. Consequently, the court did not err in granting the motion to transfer.

III.

Blessing contends that Sunbelt's reply to his opposition to Sunbelt's motion to transfer violated Maryland Rule 2-311 and, consequently, the circuit court abused its discretion in not granting his motion to strike that reply. Moreover, in permitting that reply the court, Blessing claims, gave Sunbelt the "last word" and thereby granted Sunbelt an "unfair advantage."

Curiously, at the motions hearing below, Blessing's counsel admitted that, notwithstanding his motion to strike, he "files reply briefs all the time."

In any event, we note that Maryland Rule 2-311 neither expressly permits nor expressly prohibits filing a reply to an opposition. And, any unfair advantage, if there was one, was offset by the motions hearing that followed. At that hearing, Blessing had the opportunity to respond to any points raised by Sunbelt in its motion and reply. Therefore, any error in permitting the reply was harmless and did not prejudice Blessing. *See Barksdale v. Wilkowsky*, 419 Md. 649, 658-61 (2011) (explaining that, in an appeal from a judgment in a civil case, even if the reviewing court determines the lower court erred, the

reviewing court "will not reverse a lower court judgment if the error was harmless" and did not prejudice the appealing party).

JUDGMENT OF THE CIRCUIT COURT OF PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.