SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

PATRICK J. MALONEY,	:	
Plaintiff,	:	**Case No. 2022 CA 003879 M**
	:	
v.	:	
	:	
CHILDREN'S NATIONAL	:	
HOSPITAL, et al.,	:	**Judge Heidi M. Pasichow**
Defendants.	:	

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter is before the Court based upon Defendants' Motion to Dismiss, filed November 1, 2022. All parties are represented by counsel.

I. Procedural History

On August 26, 2022, Plaintiff filed a Complaint against Defendants for Medical Malpractice. On October 6, 2022, Defendants filed a Rule 55(a)(3)(B) Praecipe. On November 1, 2022, Defendants filed a Motion to Dismiss. On November 14, 2022, Plaintiff filed an Opposition to Defendants' Motion to Dismiss.

II. Legal Standard

The Court may dismiss a case under the doctrine of *forum non conveniens* "in the interest of substantial justice." D.C. Code § 13–425. "A prerequisite for application of the doctrine of *forum non conveniens* is the availability of an alternative forum in which plaintiff's action may more appropriately be entertained." *Kaiser Foundation Health Plan, Inc. v. Rose*, 583 A.2d 156, 160 (D.C. 1990). If an alternative forum is available, the Court "considers two categories of factors in deciding whether to dismiss for *forum non conveniens*: the 'private interests' of the litigants and the 'public interests' of the forum." *Blake v. Prof'l Travel Corp.*, 768 A.2d 568, 572 (D.C. 2001) (citing *Coulibaly v. Malaquias*, 728 A.2d 595, 601 (D.C. 1999)). After weighing the factors against one another, "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Coulibaly*, 728 A.2d at 601 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). Plaintiff's choice of

forum, however, is afforded less deference when Plaintiff is not a resident of the District of Columbia. *See Herskovitz v. Garmong*, 609 A.2d 1128, 1130 (D.C. 1992).

Although "decisions on questions of *forum non conveniens* are committed to the sound discretion of the trial court," *Carr v. Bio-Medical Applications of Washington, Inc.*, 366 A.2d 1089, 1091–92 (D.C. 1976), the Defendant bears the burden of demonstrating why dismissal is warranted. *See Medlantic Long Term Care Corp. v. Smith*, 791 A.2d 25, 28 (D.C. 2002).

III. Analysis

a. Private Interest Factors

"The private interest factors include '(1) plaintiff's choice of forum; (2) the convenience of parties and witnesses; (3) the ease of access to sources of proof; (4) the availability and cost of compulsory process; and (5) the enforceability of any judgment obtained." *Garcia v. AA Roofing Co.*, LLC, 125 A.3d 1111, 1114 (D.C. 2015) (quoting *Nixon Peabody LLP v. Beaupre*, 791 A.2d 34, 37 (D.C. 2002)). The Court may also consider "evidence of an attempt by the plaintiff to vex or harass the defendant by his choice of the forum . . . and other obstacles to a fair trial." *Carr v. Bio-Medical Applications of Washington, Inc.*, 366 A.2d 1089, 1092 (D.C. 1976).

The first factor acknowledges Plaintiff's choice to file the instant litigation in Superior Court. The Court, however, gives less deference to Plaintiff's choice in this case, because Plaintiff is from Pennsylvania, not the District of Columbia. *See* Compl. ¶4. "When the plaintiff resides in another jurisdiction, we afford less deference to [their] choice of forum, particularly when the defendant also does not live in the District of Columbia." *Coulibaly,* 728 A.2d at 601. The first factor does not favor Plaintiff.

The next two factors focus on the geographic location of the forum relative to parties, witnesses, and sources of proof. Defendants argue Maryland is the more convenient forum for parties and witnesses, because the "overwhelming majority of the witnesses to the injury . . . reside in Pennsylvania or Maryland, not the District of Columbia." *See* Mot. at 9. Similarly, "other individual and entities that may be witnesses"—including Plaintiff's other medical providers—are not located in the District, but in Pennsylvania. *See id.* at 9–10. Defendants continue Maryland is most appropriate because "Maryland is

adjacent to Pennsylvania and much closer to potential sources of proof than the District of Columbia." *Id.* at 10.

Plaintiff responds that the District of Columbia is just as convenient for parties, witnesses, and the collection of evidence as Maryland. *See* Opp. at 9. Plaintiff maintains that fact witnesses employed by Children's National Hospital are likely "located in the District of Columbia with the exception of Defendant Kolodgie." Opp. at 9. As for the convenience of potential witnesses that are healthcare providers located in Pennsylvania, Plaintiff argues that both the District of Columbia and Children's National's Annapolis Office are equidistant from Kennard Dale High School in Pennsylvania—the location of the injury. Opp. at 9. Additionally, Plaintiff continues the collection of evidence is not hindered by the litigation proceeding in the District, because the relevant medical records and other discovery materials will either be located in the District—at Children's National Hospital primary location in Washington—or at the Annapolis location which is less than an hour from the District. Opp. at 9.

The District of Columbia is no less, and no more, convenient a forum than the Maryland trial court in Annapolis. As Plaintiff demonstrates, for potential witnesses and evidence located in York County, Pennsylvania, the difference in distance is negligible. The District of Columbia is 85.1 miles from Kennard-Dale High School; Annapolis is 75.9. *See* Pl's Ex. C. As for potential witnesses employed by Children's National, and evidence in Defendant's possession, inconvenience, if any, is minimal. The Court cannot be certain whether these potential witnesses and troves of evidence are in Washington—at Children's National Hospital's main center—or the Annapolis location. In fact, it is most likely that the potential witnesses and evidence are in both locales. Even if, however, all the evidence and witnesses were located in Annapolis, there would be little inconvenience in traveling roughly thirty (30) miles to the District.

The final two factors—availability and costs of compulsory processes and enforceability of any judgment obtained—require the Court to consider its ability to shepherd litigation along from the present forum. Defendants summarily allege that "[c]ompulsory process will be easier to effectuate on unwilling

witnesses in Maryland than it will be in the District of Columbia." Mot. at 10. Plaintiff again responds that the Court will not experience any more difficulty effectuating compulsory process from Pennsylvania witnesses than a Maryland Court would, because Pennsylvania is relatively the same distance from Washington as it is from Annapolis. *See* Opp. at 10. The Court is not concerned about its ability to compel uncooperative parties to appear before the Court. Neither is the Court troubled by its power and authority to enforce any judgment obtained in either Maryland, Pennsylvania, or any other State.

Finally, the Court acknowledges—as Plaintiff notes in its Opposition—that Defendants provide no evidence that Plaintiff chose the District of Columbia to harass Defendants. Similarly, the Court is not aware of any additional disadvantages to a fair trial should the litigation proceed in the District of Columbia. On balance, Defendants struggle to demonstrate that the private interests weigh against Plaintiff's choice to litigate in the District of Columbia.

b. Public Interest Factors

"The public interest factors include: '(1) the clearance of foreign controversies from congested dockets; (2) the adjudication of disputes in the forum most likely linked thereto; and (3) the avoidance of saddling courts with the burden of construing a foreign jurisdiction's law." *Garcia*, 125 A.3d at 1114 (quoting *Nixon Peabody*, 791 A.2d at 37).

The first factor focuses on the pertinence of the Court adjudicating a "foreign controversy" when the Court's own docket is congested, while the second factor ensures that the litigation is adjudicated in the forum with the more significant contacts. Defendants argue that the present litigation is a foreign controversy because it is a "medical malpractice dispute between a Pennsylvania resident and a Maryland health care provider." Mot. at 11. Plaintiff responds that the litigation is not foreign, because Defendant Children's National "is an established medical provider in the community," and "[w]hether it and its employees have acted negligently in the provision of care to their patients is of utmost importance to the jurisdiction and its residents." Opp. at 12. Additionally, Defendants maintain that Maryland has the most significant connection to the litigation and that "the relationship between the community where the Court sits and the Plaintiff's claims" is stronger in Maryland than in the District. *See* Mot. at 11.

The Court agrees that the present litigation is a foreign controversy. Each instance of alleged wrongdoing on behalf of Defendants occurred outside the District of Columbia. Defendant Kolodgie's medical evaluation of Plaintiff occurred at Defendant Children's National in Annapolis. *See* Compl. ¶ 27. Likewise, the ultimate incident that resulted in Plaintiff's injuries occurred in Pennsylvania. *See* Compl. ¶ 36–38. At no point did Defendant Kolodgie see Plaintiff in the District of Columbia. *See* Defs. Ex. 4. Nor does it appear Plaintiff ever received care from Defendant Children's National at the Washington medical center. Moreover, Defendant Kolodgie has not seen patients in the District since April 2020, and is no longer licensed to provide care in the District. *See id.* From the facts presented, it appears that the only connection between the litigation and the District is that Defendant Children's National is incorporated in Washington. While the District—and its residents that receive care at Children's National—may share an interest in the "policies and procedures for the entire hospital system and its supervision of healthcare providers," Opp. at 12, the resolution of Plaintiff's claims against Defendant Kolodgie regarding care provided in Annapolis is less impactful than a lawsuit brought against a Children's National provider whose alleged negligent actions occurred in the District.

The Court also pauses to briefly address the uncontested third factor. In the instant litigation, the Court would be compelled to interpret and apply Maryland law to this case, because the allegedly negligent medical care provided by Defendants occurred in Maryland. This is certainly an additional burden on the Court. Ultimately, Defendants demonstrate that public interest factors counsel against Plaintiff's choice of forum.

c. Balancing of the Factors

This case—and the application of *forum non conveniens*—appears to hinge on two major factors. On the private interest side of the calculus, Defendants fail to demonstrate how the case proceeding in the District is inconvenient to an extent that it would cause substantial injustice. On the other hand, Defendants have carried the burden of demonstrating that Maryland, not the District, has the most relevant contacts with the litigation and the greatest interest in the litigation's outcome.

Two of the factors which tend to benefit Plaintiff, deserve less weight in the current litigation. As discussed earlier, Plaintiff's choice receives less deference because Plaintiff is not a resident of the District. *See Coulibaly*, 728 A.2d at 601. Additionally, the relevance of the convenience factor is often muted in the District when the alterative forum is a trial court in a sister jurisdiction within the DMV Metro Area. *See Frost v. Peoples Drug Store, Inc.*, 327 A.2d 810, 814 (D.C. 1974) ("[The] inconvenience to the parties and witnesses of long-distance travel—the factor regarded as of major importance by federal circuits in other jurisdictions, is not the only ground for dismissing an action in the Superior Court. As the county seats in such adjacent areas as Arlington and Fairfax, Virginia, or Montgomery and Prince George's, Maryland, are all within a 20-mile radius of the District, travel problems pale into insignificance as compared to such factors as the public interest in reducing the volume of difficult cases on court calendars already overcrowded."). Although these two private interest factors are not negligible, they do not carry as much weight as the otherwise might.

Moreover, the Court of Appeals has counseled that when two jurisdictions are equally convenient, the jurisdiction with more substantial contacts shall preside over the litigation. *See Dorati v. Dorati*, 342 A.2d 18, 24 (D.C. 1975) ([When] "a suit has contacts with another jurisdiction far more substantial than those with the forum, and that jurisdiction is equally convenient to both parties, the suit should be heard there. When a plaintiff ignores a jurisdiction having substantial contacts with his case and which is not inconvenient for him, his choice of a forum elsewhere is outweighed by the forum court's interest in clearing its calendar of foreign actions."). As described above, this case follows a similar pattern. Both Maryland and the District are equally convenient for parties, witnesses, the collection of evidence, and the enforcement of judgments. Maryland, however, has the more substantial contacts with the facts of this case, and the greater interest in enforcing its medical malpractice laws.

On balance, the Court finds that the public interest factors outweigh the private interest factors and counsel in favor of dismissing the Complaint under the doctrine of *forum non conveniens.* The Court, therefore, grants Defendants' Motion to Dismiss, and dismisses Plaintiff's Complaint.

IV. Conclusion

Beginning January 1, 2023, Judge Neal Kravitz will preside over Civil 2 – Calendar 12. Please check the Superior Court website for updated courtroom information.

For updates on DC Superior Court's available resources and protocol in handling the ongoing coronavirus please continue to check: https://www.dccourts.gov/coronavirus.

For the foregoing reasons, it is this 2nd day of December 2022, hereby,

ORDERED that Defendants' Motion to Dismiss is **GRANTED**; it is,

FURTHER ORDERED that Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE**; it is,

FURTHER ORDERED that the Initial Scheduling Conference, scheduled for December 9, 2022 is **VACATED**; and it is,

FURTHER ORDERED that the Case is **CLOSED**.

Heidi M. Pasichow
Associate Judge
(Signed in Chambers)

Copies e-served to:

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