



ILLINOIS SUPREME COURT REVERSES 5TH DISTRICT APPELLATE COURT ON INTERSTATE *FORUM NON CONVENIENS*

FENNELL V. ILLINOIS CENTRAL RAILROAD COMPANY, 2012 WL 6725822 (ILL., DECEMBER 28, 2012)

In a recent decision, the Illinois Supreme Court reaffirmed the relevant private and public interest factors to be considered by an Illinois circuit court in deciding a Motion to Dismiss on the basis of the *forum non conveniens* doctrine. Of particular note was the Court's reminder and directive that proper trial court consideration of such a motion requires balancing of *all* of the private and public interest factors.

Plaintiff Fennell, a Mississippi resident and long-time Illinois Central Railroad employee, originally filed suit with over 80 additional named plaintiffs in the circuit court of Jefferson County, Mississippi. Mr. Fennell and the other plaintiffs sought recovery for personal injuries allegedly sustained as a result of exposure to asbestos and asbestos-containing products while employed by Illinois Central. In that initial lawsuit, plaintiff answered a set of interrogatories addressing a number of forum-related facts. Plaintiff admitted he was a Mississippi resident and that as part of his duties with the Illinois Central Railroad, he worked with asbestos in Jefferson County, Mississippi, but stated that it was impossible to recount all the other specific locations at which he was exposed to asbestos. The Jefferson County circuit court later dismissed the consolidated action without prejudice.

Some three years later, plaintiff Fennell filed an action in the circuit court of St. Clair County, Illinois, and again alleged negligence against Illinois Central Railroad as a result of alleged asbestos exposure during his work for the railroad. Mr. Fennell responded to substantially the same set of interrogatories. He did not identify any work conducted in St. Clair County, Illinois, and he did not identify Illinois as one of the specific locations where he was allegedly exposed to asbestos.

Defendant filed a Motion to Dismiss based on the doctrine of interstate *forum non conveniens*, arguing St. Clair County was an inconvenient forum and that Jefferson County, Mississippi, was a substantially more convenient forum for all parties. The St. Clair County circuit court denied the motion and the 5th District appellate court affirmed. After granting Illinois Central leave to appeal, the Supreme Court reversed and remanded the action to the St. Clair County circuit court with directions to dismiss the case in favor of the substantially more convenient forum of Jefferson County, Mississippi.

In its opinion, the Supreme Court reaffirmed Illinois' long-standing *forum non conveniens* principles, including the relevant public and private interest factors to be balanced by the trial court in any *forum non conveniens* analysis. The Supreme Court noted, however, that in this particular case, the St. Clair County circuit court had failed to recognize and balance several of the private and public interest factors in its analysis.

Notably, the circuit court failed to recognize that plaintiff originally had filed his action in a Mississippi circuit court. Instead of refile in Mississippi, plaintiff chose to file in Illinois, but nothing in the record suggested that the parties' ability to conduct discovery and trial was unduly hampered by proceeding in the Mississippi circuit court. The Supreme Court noted this fact alone should have lead the St. Clair County circuit court to accord diminished deference to plaintiff's choice of forum, as Illinois was really his second choice. When this fact is considered with facts that plaintiff does not reside in Illinois and was not injured in Illinois, the Supreme Court felt the circuit court actually should have afforded plaintiff's choice *far* less deference.



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The Court also noted that the circuit court had all but ignored that there were many potential Mississippi witnesses. Plaintiff disclosed 13 or 14 Mississippi residents – treating physicians, coworkers and family members – as potential witnesses. Plaintiff contended the location of these 13 or 14 witnesses should be afforded little weight because the parties did not yet know which would actually testify and what their testimony would be. The Supreme Court disagreed, noting that requiring extensive investigation prior to deciding a *forum non conveniens* motion would defeat the purpose of the motion.

Rather than focus on these 13 or 14 Mississippi witnesses, the circuit court observed, without explanation, that “two of the most importance witnesses to the plaintiff’s case will testify live if the case stays in St. Clair County but won’t if the case is transferred to Mississippi.” The Supreme Court, however, found this finding unreasonable, noting that since both witnesses were defendant’s employees, it was unlikely that plaintiff would have difficulty in securing the attendance of either in Mississippi.

The Supreme Court similarly rejected plaintiff’s argument, and the circuit court’s finding, that since the same St. Clair County defense firm had been representing defendant in asbestos cases for more than 20 years, there was a tremendous amount of so-called “institutional documentary knowledge” stored just 5 miles from the St. Clair County Courthouse in the offices of defendant’s counsel, some of which was quite old and would not transport well. In the modern age, the location of documents, record, and photographs has become a less significant factor. According to the Court, the ease of access to these documents does not outweigh the substantial inconvenience of requiring distant witnesses to travel to Illinois.

As to the public interest factors, the St. Clair County circuit court found the “citizens of St. Clair County have an interest in traveling asbestos and other harmful substances.” The Supreme Court found this to be far too broad a consideration. According to the Court, Illinois would have an interest in providing a forum if it had any relevant or practical connection to this specific litigation, not just the broader considerations of asbestos and other harmful substances. In this case, plaintiff resided in Mississippi and was exposed to asbestos in Mississippi or Louisiana, and Illinois’ only connections with the lawsuit were the locations of the parties’ lawyers, transportable documents in the possession of defendant’s counsel, and a compensated plaintiff’s expert. The Supreme Court found this insufficient to provide a significant factual connection with the instant case to justify imposition of the significant burdens of litigation upon the citizens and court system of St. Clair County, Illinois.

Importantly, the Supreme Court reminded trial courts “to include *all* of the relevant private and public interest facts in their analyses.” Thus, although one or more the factors may ultimately hold little weight, they must all still be considered and balanced by the circuit court in coming to a decision on a *forum non conveniens* motion.

SUBMITTED BY

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