

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS**

LINDA GEIB, Individually and as Administratrix of the Estate of RANDY GEIB	:	
	:	CIVIL TRIAL DIVISION
Appellant/Plaintiff	:	
	:	MARCH TERM, 2006
	:	No. 2718
	:	
v.	:	Superior Court Docket No.
	:	3161 EDA 2006
	:	
HARLEY-DAVIDSON MOTOR CO., INC.	:	
and	:	
FAT WILLIES CYCLE, INC.	:	
	:	
Appellees/Defendants	:	
	:	
	:	

OPINION

PROCEDURAL HISTORY

Plaintiff appeals from the order dated October 11, 2006, wherein the lower Court granted Defendant's joint Motion to Transfer Venue to Lancaster County.

FACTUAL BACKGROUND

On December 29, 2003, decedent Randy Geib (hereinafter decedent) purchased a 2003 Harley-Davidson motorcycle, Model Number FLHTCUI. (Amended Complaint, ¶ 14). The decedent purchased the motorcycle at the defendant Fat Willie's Cycle, Inc., (hereinafter Fat Willie's) located at 6300 Allentown Boulevard in Harrisburg, Pennsylvania. (Joint Motion to Transfer, ¶ 16). Fat Willie's is a dealer and retail seller of motorcycles, with a registered place of business in Hummelstown, Pennsylvania. (Amended Complaint, ¶ 5). The motorcycle the decedent purchased was manufactured by the Harley-Davidson Motor Company, Inc. (hereinafter Harley-Davidson), which is a

manufacturer, builder, and designer of motorcycles headquartered in Wisconsin and regularly conducts business in Pennsylvania. (Amended Complaint, ¶¶ 4, 15).

The decedent was operating the motorcycle on the evening of March 26, 2004. (Amended Complaint, ¶ 17). While rounding a curve near 4600 Bossler Road in Elizabethtown, Lancaster County, Pennsylvania, the decedent drove off the side of the road and crashed into a fence. (Joint Motion to Transfer, Exhibit C). As a result of this collision, the decedent sustained fatal injuries. (Amended Complaint, ¶ 20). The Plaintiff alleges that at or around the time of the collision, the motorcycle unexpectedly lost electrical power because of an improperly designed electrical system, thus contributing to the accident. (Amended Complaint, ¶ 18).

In March 2006, Linda Geib (hereinafter Plaintiff), the widow of decedent, instituted this action against the defendants in the Philadelphia Court of Common Pleas, alleging that the design of the motorcycle was defective. (Complaint, ¶¶ 15-18). The plaintiff also brought claims for negligence, (Complaint, ¶¶ 19-43), breach of warranty (Complaint, ¶¶ 44-50), and wrongful death (Complaint, ¶¶ 51-57). The original complaint also included a separate claim for punitive damages. (Complaint, ¶¶ 58-62).

On September 11, 2006, Defendants Harley-Davidson and Fat Willie's filed a Joint Motion to Transfer Venue to Lancaster County. (See Docket, pg. 10). The plaintiff replied to the Joint Motion on October 2, 2006. (See Docket, pg. 10). By Order dated October 11, 2006, this Court granted Defendant's Joint Motion and removed the case to Lancaster County. (See Docket, pgs. 10-11).

The sole issue to be addressed by this Court is whether the lower Court committed an abuse of discretion or error of law in granting defendants Motion to

Transfer Venue to Lancaster County.

LEGAL ANALYSIS

The standard of review in cases of *forum non conveniens* is abuse of discretion. *Johnson v. Henkels & McCoy, Inc.*, 707 A.2d 237, 239 (Pa. Super. 1997) (citing *Keuther v. Snyder*, 444 Pa. Super 468, 471, 996 A.2d 168, 169 (1995)). Our Superior Court has declared that a “trial court’s ruling on venue will not be disturbed if the decision is reasonable in light of the facts.” *Borger v. Murphy*, 2002 PA Super 91 ¶ 8, 797 A.2d 309, 312 (citing *Matheus v. Tim-Bar Corp.*, 438 Pa. Super. 231, 652 A.2d 349, 351 (1994)).

Pa. R.C.P. 1006(d) “vests considerable discretion in the trial judge to determine whether to grant a petition for change of venue. On appeal from such an order, the only issue is whether the trial judge abused his discretion.” *Fox v. Pennsylvania Power & Light Co.*, 461 A.2d 805, 806 (Pa. Super. 1983) (citing *Plum v. Tampax, Inc.*, 399 Pa. 553, 560, 160 A.2d 549, 553 (1960)).

The Pennsylvania Supreme Court and Superior Court have described the heavy burden facing an appellant from a discretionary trial court determination: “[i]t is not sufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power.” *Brown v. Delaware Valley Transplant Program*, 371 Pa. Super. 583, 586, 538 A.2d 889, 891 (1988) (quoting *Mackarus’s Estate*, 431 Pa. 585, 596, 246 A.2d 661, 666-67 (1968)). Our Superior Court has observed that “if any proper basis exists for a trial court’s decision to transfer venue, the decision of the trial court must not be disturbed.” *Mateu v. Stout*, 2003 PA Super 97 ¶

7, 819 A.2d 563, 565-66 (citing *Deutschbauer v. Barakat*, 2002 PA Super 401, 814 A.2d 246, 2002 WL 21846190 at *1-2).

Our Superior Court has noted that “[a]n abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the partiality, prejudice, bias or ill will, as shown by the evidence or the record, discretion is abused.” *Brown*, 371 Pa. Super. at 586, 538 A.2d 891 (quoting *In re Women’s Homeopathic Hospital of Philadelphia*, 393 Pa. 313, 316, 141 A.2d 292, 294 (1958)).

In deciding whether to transfer venue for *forum non conveniens*, the court should look to the interests of the litigants. *Fox*, 461 A.2d at 806. Such important considerations include “the relative ease of access to the sources of proof; the availability of compulsory process for unwilling witnesses; the cost of obtaining attendance for willing witnesses; the possible need for a view of the premises, if such would be appropriate to the action . . .” *Id.* (quoting *Daugherty v. Inland Tugs, Co.*, 240 Pa. Super. 527, 530, 359 A.2d 465, 466 (1976)). However, the plaintiff’s choice of forum is given significant weight, and should not be disturbed lightly. *Fox*, 461 A.2d at 806 (citing *Walker v. The Ohio River Co.*, 416 Pa. 149, 152, 205 A.2d 43, 45 (1964)).

In *Fox*, our Superior Court granted the defendant’s motion to transfer venue to the Court of Common Pleas of Luzerne County on the ground that Philadelphia County was a *forum non conveniens*. 461 A.2d at 806. In so holding the Superior Court noted:

The accident happened in Luzerne County, where the decedent had resided with his parents. Letters of administration had been issued by the Orphan's Court Division of the Luzerne County Court of Common Pleas to the decedent's father, also a resident of Luzerne County. All fact witnesses were residents of Luzerne County, and it

was the Wilkes-Barre police who had conducted an investigation into the circumstances surrounding the accident. Similarly, it was in Luzerne County that emergency medical care had been administered before the decedent was rushed to the Wilkes-Barre Hospital. If the accident site is to be viewed by a trial jury, this can only be done in Luzerne County. The defendant, P.P. & L., does business in Luzerne County, but its principal offices are located in Allentown, Lehigh County. Of all the parties, only Consolidated Rail, which is the corporate successor to Lehigh Valley Railroad Company, has an office in Philadelphia.

Id.

Our Superior court has noted that ““petition to transfer venue should not be granted unless the defendant meets its burden of demonstrating, with detailed information on the record, that the plaintiff’s chosen forum is oppressive or vexatious to the defendant.”” *Wood v. E.I. du Pont de Nemours & Co.*, 2003 PA Super 268 ¶ 16, 829 A.2d 707, 711-712 (en banc) (quoting *Cheeseman v. Lethal Exterminator*, 549 Pa. 200, 213, 701 A.2d 156, 162 (1997)). A defendant may meet its burden of showing that the plaintiff’s choice of forum is vexatious to him by establishing facts on the record that the plaintiff’s choice of forum was designed to harass the defendant, even at some inconvenience to the plaintiff. *Cheeseman v. Lethal Exterminator*, 549 Pa. 200, 213, 701 A.2d 156, 162 (1997). Alternatively, the defendant may meet his burden by establishing on the record that trial in the plaintiff’s chosen forum is oppressive to him; for example, that trial in another county would provide easier access to witnesses or other sources of proof, or to the ability to conduct an examination of premises involved in the dispute. *Id.*, 701 A.2d at 162. *Wood* and *Cheeseman* create the standard by which the test for *forum non conveniens* is measured, while Pa.R.C.P. 1006 vests authority in the trial court to make such a determination.

Pa.R.C.P. 1006(d)(1), provides:

(d)(1) For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.

However, Pa.R.C.P. 2179(a)(3)-(4) states that an action against a corporation may be brought in the county where the cause of action arose, or the county where a transaction or occurrence took place out of which the cause of action arose. Because the collision that resulted in the decedent's death occurred on Bossler Road in Elizabethtown, Lancaster County, venue would be proper in Lancaster County.

The Defendants set out several reasons in their Joint Motion to Transfer to support the oppressive nature of using Philadelphia as a forum.

First, the location and addresses of the parties in this case are remote from Philadelphia County. Defendant Fat Willie's Inc. is registered as doing business at 1103 Limerick Court, Hummelstown, Pennsylvania, 17036. (Amended Complaint, ¶ 5). Defendant Harley-Davidson is a Wisconsin corporation, but doing business in Pennsylvania, (Amended Complaint, ¶ 4), including a vehicle assembly plant in York County. (Plaintiff's Supplemental Memorandum of Law in Support of Her Opposition, pt. III). The Plaintiff herself lives in Lancaster County, approximately sixty miles from Philadelphia, at 113 Colebrook Road in Elizabethtown, Pennsylvania 17022. (Amended Complaint, ¶ 1). The decedent lived at this address at the time of his death. (Joint Motion to Transfer, Exhibit D).

The defendants attempt to offer an alternative explanation for the cause of the crash, besides the Plaintiff's argument that the motorcycle was defective. Indeed, defendant Fat Willie's has pleaded the alternate explanation that the accident was caused

by the decedent's intoxicated at the time of the collision, and plaintiff's recovery is barred by the doctrine of Assumption of the Risk. (Answer of Defendant Fat Willie's Cycle, Inc. to Plaintiff's Amended Complaint with New Matter, ¶ 67). In furtherance of this alternate theory, Defendant Harley-Davidson has already sought evidence, specifically the decedent's autopsy results and any blood test results, to further support alternate explanations for the collision. (Subpoena of National Medical Services). The testimony of witnesses at the collision site may further support this alternate explanation, because the lead investigating police officer reported the smell of alcohol at the collision site. (Joint Motion to Transfer, Exhibit C). However, as detailed below, all the witnesses to the collision, as well as the personnel who performed the autopsy, all reside in Lancaster County. The scene of the collision would also be useful for the defendants in demonstrating for a jury how the events of the collision are best explained by the defendant's theory of the case, and not by a faulty motorcycle design, as alleged by the plaintiff.

The location of events underlying this litigation also indicates that Philadelphia is an oppressive forum. The site of the collision underlying this instant case occurred near the front of 4600 Bossler Road, south of the intersection with Persimmon Lane, in Elizabethtown, Pennsylvania. (Amended Complaint, ¶ 17). The motorcycle that is the subject of this action was sold to the decedent at the Fat Willie's dealership located at 6300 Allentown Boulevard, in Harrisburg, Pennsylvania. (Joint Motion to Transfer, Exhibit D). Thus, the occurrence which gave rise to this cause of action occurred in Lancaster County and not Philadelphia County.

Our Superior Court has observed that when there is a factual dispute over the condition of the site on the date of the incident, “the case is particularly appropriate for jury view,” thus indicating that it is not an abuse of discretion to transfer venue to the county in which the incident took place. *Wood*, 2003 PA Super 268 ¶ 20, 829 A.2d at 713. Here, because defendants are offering an alternate explanation of the collision, there is such a dispute that may require a jury view of the collision site in Lancaster County. The defendants can utilize a jury view of the collision site to demonstrate how the crash was consistent with the defendant’s intoxication, whereas the plaintiff can argue that the damage to the crash site is consistent with a malfunction in the motorcycle. However, if there is to be a jury view of the collision site, only a trial in Lancaster County can easily facilitate such a jury view.

The addresses of all the possible eyewitnesses to the collision are relevant, because both are from Lancaster County. The first eyewitness is Samuel Allen Winters, who is the decedent’s motorcycle riding partner and who saw the decedent drive his motorcycle prior to the collision. (Joint Motion to Transfer, Exhibit C). Mr. Winters resides at 1208 Sagerville Road, Bainbridge, Pennsylvania 17502. (Joint Motion to Transfer, Exhibit C). The other eyewitness is Kris Ebersole, who lives at 4631 Bossler Road, Elizabethtown, Pennsylvania 17022, and who heard the collision. (Joint Motion to Transfer, Exhibit C).

More importantly, multiple police officer and police investigators from the Northwest Regional Police Department, Lancaster County coroner personnel, and Emergency Medical Technicians (hereinafter EMT) responded to and investigated the collision. Our Commonwealth Court has upheld a transfer of venue, from Philadelphia

County to Centre County, of a case involving a motorcycle accident on the basis of *forum non conveniens* where “[w]itnesses who have any knowledge of the actual accident, *such as police and rescue personnel*” resided in the same county. *McReynolds v. Benner Township*, 118 Pa. Commw. 215, 219, 544 A.2d 566, 568 (1988) (emphasis added).

McReynolds sued, in Philadelphia, the manufacturer of his motorcycle, under a theory of product liability, and the municipality, for negligent road maintenance, for injuries arising out of a motorcycle accident. *Id.* at 216, 544 A.2d at 567. The Commonwealth Court upheld the transfer of venue, on the basis of *forum non conveniens*, noting that the fact witnesses, including police, rescue personnel, and the hospital that initially treated McReynolds were all located in Centre County. *Id.* at 218-19, 544 A.2d at 586.

All police, coroner, and rescue personnel in this case are all located in Lancaster County. Three witnesses are police officers, from the Northwest Regional Police Department, which is located at 115 Merts Drive, Elizabethtown, PA 17022, who conducted a thorough investigation into the collision. (Joint Motion to Transfer, p. 6 & Exhibit C). Officer Gregory S. Wahl, served as the chief investigator into the investigation, and he prepared a thorough report on the collision. (Joint Motion to Transfer, p. 6 & Exhibit C). Among potentially probative facts Officer Wahl recorded in his report was the smell of alcohol at the collision site and his conclusion that the collision may have been caused by a “medical event.”¹ (Joint Motion to Transfer, Exhibit C). Officer Kenneth M. Henry served as assisting investigator into the crash, has been identified by the defendants as a potential witness. (Joint Motion to Transfer, p. 6 & Exhibit C). Officer Daniel George was the first police officer responding to the crash scene. (Joint Motion to Transfer, & Exhibit C).

¹ Officer Wahl did not give an explanation as to what he meant by the term “medical event.”

Three members of the Lancaster County Coroner's Office, which is located at 131 East Frederick Street, Lancaster, Pennsylvania, may also serve as witnesses in this case. (Joint Motion to Transfer, p. 6). Craig A. Hohman, the Lancaster County Deputy Coroner, pronounced the decedent dead at the scene of the collision, and thus observed both the collision scene and the decedent at the collision scene. (Joint Motion to Transfer, p. 6 & Exhibit C). Forensic pathologist Dr. Wayne K. Ross, M.D., performed the actual autopsy on the decedent, and can testify to the nature and extent of the decedent's injuries. (Joint Motion to Transfer, p. 6 & Exhibit C). Dr. G. Gary Kirchner, M.D., the Lancaster County Coroner, who has been identified by the defendants as a potentially useful fact witness, would testify to the operations and procedures of this office. (Joint Motion to Transfer, p. 6).

The two EMTs who responded to the collision may also be witnesses. Suzette Krieder, of Northwest EMS, located at 380 West Bainbrige Road, Elizabethtown, Pennsylvania, responded to the collision. (Joint Motion to Transfer, p. 6 & Exhibit C). Likewise, Marty Amodei, of Northwest EMS, located at 380 West Bainbrige Road, Elizabethtown, Pennsylvania, responded to the collision. (Joint Motion to Transfer, p. 6 & Exhibit C).

Thus, every potential witness to the collision, including eyewitnesses, police investigators, coroners, and EMTs, are located outside of Philadelphia County, and instead are located in Lancaster County. (Joint Motion to Transfer, p. 6 & Exhibit C). The investigating police officers, the investigating coroners, and responding EMT and medical personnel are all located in Lancaster County. (Joint Motion to Transfer, p. 6 & Exhibit C). The Superior Court has upheld the transfer of venue when the defendant

“presented detailed evidence that it would be oppressive for [defendants] and their witnesses to travel to Philadelphia County for trial.” *Borger*, 2002 PA Super 91 ¶ 10, 797 A.2d at 313. Specifically, in *Borger*, the plaintiff’s choice of Philadelphia County as forum would have required a physician to severely curtail, if not temporarily close, his medical practice. ¶ 9, 797 A.2d at 312-13. Likewise, these police, medical, and EMT personnel have public service obligations in Lancaster County, and will be unable to perform those obligations to the people of Lancaster County while they must travel to Philadelphia County to testify in this matter.

The Appellant does not cite any personal inconvenience because of transfer to Lancaster County, possibly because she herself resides in Lancaster County. The only inconvenience that the Appellant cites for a transfer to Lancaster County is because it would be easier for the expert witnesses—who reside in neither Lancaster County nor Philadelphia County—to reach Philadelphia County than Lancaster County. (Plaintiff’s Memorandum of Law in Opposition, pg. 7). However, the Appellant admits that the expert witness would have to travel to Philadelphia anyway, and it would be a minor burden to ask the expert witnesses to travel to Lancaster County. (Plaintiff’s Memorandum of Law in Opposition, pg. 7). Further, it would be improper to deny a motion to transfer venue solely because of inconvenience to expert witnesses, because our Superior Court “has found that refusal to transfer a case on the doctrine of *forum non conveniens* based upon the location of a plaintiff’s expert witnesses is improper and an abuse of discretion.” *Aerospace Financial Leasing, Inc. v. New Hampshire Insurance Co.*, 696 A.2d 801, 815 (Pa. Super. 1997) (citing *Wills v. Kaschack*, 420 Pa. Super. .540, 544 n.1, 617 A.2 37, 39 n.1 (1992)). The Superior Court has noted that “expert witnesses

are selected by the parties and are available virtually anywhere in the country.”

Daugherty v. Inland Tugs, Co., 240 Pa. Super. 527, 531, 359 A.2d 465, 467 (1976). The court further reasoned that to allow the convenience of expert witnesses to be dispositive of *forum non convenies* considerations would “allow any plaintiff to circumvent the doctrine of *forum non conveniens* by selecting an expert witness who resides in” the plaintiff’s preferred forum. *Id.*, 359 A.2d at 467.

The plaintiff has also protested that the defendants failed to provide any specific evidence or affidavits, from any defendant or defense witnesses, detailing the oppression or inconvenience caused by a trial in Philadelphia County. (Plaintiff’s Supplemental Memorandum of Law in Support of Her Opposition, pts. I.A & I.B). However, Pennsylvania law does not require that the proof supporting a transfer of venue on the basis of *forum non conveniens* come in any particular form, but the “trial court retains the discretion to determine whether the particular form of proof presented in support of the petition is sufficient.” *Wood*, 2003 PA Super 268 ¶ 21, 829 A.2d at 714. Our Superior Court has rejected the contention that a petition for transfer of venue must include affidavits from affected witnesses. *Id.* n.6, 829 A.2d at 714 n.6.

For the aforementioned reasons, this Court believes that the forum of Philadelphia County is overly burdensome and oppressive and the public interest and the parties are best served by transferring the case pursuant to the caselaw of *Cheeseman* and *Wood*. Therefore, the Court was acting within its discretion in removing the case to Lancaster County.

CONCLUSION

In light of the foregoing analysis, this Court believes that the Motion for Transfer of Venue to Lancaster County was properly granted, and respectfully requests that it be affirmed by the Court above.

BY THE COURT:

1-27-07

Date

ALLAN L. TERESHKO, J.

cc:
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