

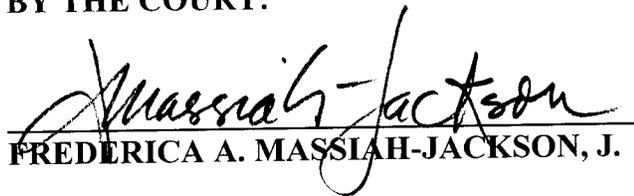
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

STANLEY PARKER	:	
Plaintiff	:	
	:	MAY TERM, 2014
vs.	:	
	:	NO. 0198
NORFOLK SOUTHERN RAILWAY COMPANY	:	
Defendant	:	

ORDER

And Now, this 21st day of November, 2014, after considering the Motion of Norfolk Southern Railway Company to Reconsider the Order dated October 23, 2014, and Plaintiff's Response thereto, and for the reasons set forth in the Memorandum filed this date, it is hereby **ORDERED** that the Motion is **DENIED**.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

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Parker Vs Norfolk South-ORDMM



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

STANLEY PARKER	:	
Plaintiff	:	
	:	MAY TERM, 2014
vs.	:	
	:	NO. 0198
NORFOLK SOUTHERN RAILWAY	:	
COMPANY	:	
Defendant	:	

**MEMORANDUM in SUPPORT OF ORDER DENYING
DEFENDANT'S MOTION FOR RECONSIDERATION**

MASSIAH-JACKSON, J.

November *21st*, 2014

I. FACTUAL BACKGROUND and PROCEDURAL HISTORY

Stanley Parker, age 44, was employed by Norfolk Southern Railway Company in the capacity of Track Laborer. In May, 2012, Mr. Parker sustained serious injuries when a heavy propane tool box dropped down from a hydraulic truck lift on the side of a welding truck. When it dropped suddenly, it hit Mr. Parker on the right shoulder and knocked him to the ground.

At the time of the accident Mr. Parker and his co-workers were on the rail lines in Georgetown, Kentucky. Mr. Parker filed suit against Norfolk Southern. He has asserted claims based on FELA, 45 U.S.C. §51 et seq. alleging negligence.

In September, 2014, Defendant-Norfolk Southern filed a Motion to Dismiss Plaintiff-Parker's Complaint pursuant to 42 Pa. C.S.A. §5322(e) on the basis of *forum non conveniens*. The Defendant Railroad presented three questions for the Motion Court's consideration:

- “1. Is an alternative forum available to Plaintiff?
2. Do the relevant private and public factors weigh heavily in favor of dismissal?
3. Should Plaintiff's Complaint be dismissed pursuant to Pa. R.C.P. [sic] §5322(e)?”

On October 23, 2014, this Court considered the issues raised by the Defendant and concluded that the Defendant-Railroad's Motion should be Denied. The Railroad has asked this Court to Reconsider its ruling.

After careful consideration and review of all of the Memoranda and Exhibits submitted by the parties, the Defendant's Motion for Reconsideration of the Order, dated October 23, 2014, is DENIED.

II. LEGAL DISCUSSION

Under the doctrine of *forum non conveniens*, the Court has discretion, as follows: “when a tribunal finds that in the interest of substantial justice the matter should be heard in another forum, the tribunal may stay or dismiss the matter in whole or in part on any conditions that may be just.” 42 Pa. C.S.A. §5322(e). A court will not dismiss unless, “justice **strongly** militates in favor of relegating the plaintiff to another forum.” (emphasis in original) Wright v. Aventis Pasteur, Inc., 905 A.2d 544, 548 (Pa. Superior Ct. 2006); D’Alterio v. New Jersey Transit, 845 A.2d 850, 853 (Pa. Superior Ct. 2004); Farley v. McDonnell Douglas Truck Services, Inc., 638 A.2d 1027, 1030 (Pa. Superior Ct. 1994). See also, Plum v. Tampax, Inc., 160 A.2d 549, 553 (Pa. 1960).

The Superior Court has reiterated the appropriate standard for trial court consideration of a motion to dismiss an action based on *forum non conveniens* in D’Alterio v. New Jersey Transit Rail Operations, Inc., *supra* at 845 A.2d at 852, quoting Humes v. Eckerd Corp., 807 A.2d 290 (Pa. Super. 2002): (1) a plaintiff’s choice of the place of suit will not be disturbed except for weighty reasons, and (2) no action will be dismissed unless an alternative forum is available to the plaintiff.

Norfolk Southern has attempted to shift the focus onto Plaintiff-Parker and recite why it believes the plaintiff will be inconvenienced. The statute and case law, however, mandate that it is the Defendant which must identify weighty reasons which strongly favor dismissal.

45 U.S.C. §56 provides that a plaintiff may bring a cause of action in the state court “in which the Defendant shall be doing business at the time of commencing such action.” Norfolk Southern has not challenged this Court’s jurisdiction because it actively conducts business in Philadelphia.

A. There Is An Alternative Forum Available to Mr. Parker.

The first question that must be answered is whether an alternative forum exists for the plaintiff to bring his suit. This action cannot be dismissed if there is no alternative forum. Poley v. Delmarva Power and Light Co., 779 A.2d 544, 547 (Pa. Superior Ct. 2001), citing Goodman v. Pizzutillo, 682 A.2d 363 (Pa. Superior Ct. 1996). According to the Railroad this case could be litigated in Kentucky. The inquiry does not end there, however, because once it has been established that an alternative forum exists, in order to determine whether dismissal is appropriate this Court must “then exercise its jurisdiction after considering all others factors.” Farley v. McDonnell Douglas Truck Services, Inc., *supra*, 638 A.2d at 1030.

B. The Private Interest Factors Do Not Strongly Favor Disturbing Mr. Parker's Choice of Forum.

This Court must consider private interest factors and public interest factors when deciding whether to dismiss this case under the doctrine of *forum non conveniens*. Dismissal of a case on *forum non conveniens* grounds requires that the private and public factors strongly favor the defendants. D'Alterio v. New Jersey Transit Rail Operations, Inc., *supra*; Farley v. McDonnell Douglas Truck Serv., Inc., *supra*; Shears v. Rigley, 424 Pa. Super. 539, 623 A.2d 821 (1993). Here, the private factors do not meet that standard.

Pennsylvania has adopted guidelines from the United States Supreme Court that the private interests involve “the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling witnesses, 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.” Plum v. Tampax, Inc., *supra*, 160 A.2d at 561.

In this instance, consideration of access to sources of proof does not favor Defendant-Railroad's motion. Lawyers are routinely required to travel to examine documents and records and make arrangements to obtain copies of such evidence. The Defendant has failed to establish that its ability to obtain and examine documentary evidence will be unduly hampered by having this case proceed in Pennsylvania. Defendant has not

demonstrated that seeking and examining evidence will be significantly more expensive if the case remains in the Plaintiff's forum of choice, than it would be if the litigation took place in Kentucky. Mere inconvenience is insufficient.

With respect to witnesses, the Pennsylvania Supreme Court has found it is impractical to allow the decision regarding the appropriate forum to rest on the residence of witnesses. Walker v. Ohio River Co., 205 A.2d 43, 45 (Pa. 1964). This is not a complex negligence case. All parties will have the opportunity to make video testimony of fact witnesses or expert medical witnesses for pre-trial and/or trial purposes. Medical and healthcare witnesses are routinely presented to juries by way of videos which are prepared prior to trial by experienced counsel. Modern technology of video monitors, Skype and video testimony are available. When the parties are given the date certain for trial, the Railroad's witnesses will have more than six months to coordinate schedules to appear in Philadelphia. Similarly, if a view of the site or the work truck is needed at trial, camera technology -- still photos or video -- will bring the view to the courtroom. The issue is not whether another forum is more convenient. Beatrice Foods Co. v. Proctor & Schwartz, 455 A.2d 646 (Pa. Superior Ct. 1982). The plaintiff has a right to choose the forum in which to bring suit.

C. The Public Interest Factors Do Not Strongly Favor Dismissal.

The Appellate Courts have recognized that public factors must be considered, such as administrative difficulties of court congestion, jury duty for citizens who have no relation or interest to the litigation, and, choice of law issues for our judiciary. e.g. Wright v. Aventis Pasteur, Inc., *supra*, and cases cited at 905 A.2d 548.

Not a single one of the public interest factors presents a weighty reason supporting dismissal of this case. With respect to burdening the court dockets, this case has been proceeding in an orderly manner in this forum. There has been no suggestion that it will not continue to proceed efficiently here. The case will be given a date certain for trial.

The Philadelphia civil courts have received national acclaim for prompt and efficient disposition of cases -- manageable case inventory, differentiated case management systems with dispositions well within American Bar Association time recommendations. Our judges routinely handle complex matters similar to the instant litigation. The availability of state-of-the-art "high tech" courtrooms will permit jurors to understand the issues of the case.

Budget concerns and "congestion" are not factors which affect the disposition of civil cases. Most significantly, with e-filing in our Civil Division, the pre-trial and trial process is more efficient and cost effective than ever before -- for counsel and for the parties.

The National Center for State Courts ("NCSC") engaged in a comprehensive review and evaluation of the Civil Division. NCSC lauded our dramatic civil caseflow management successes in Philadelphia. In its 2004 Report (written before the implementation of e-filing) the NCSC concluded:

"As we note in the Introduction of this report, the Philadelphia Court of Common Pleas has all the elements of what is necessary for ongoing success in civil caseflow management - including strong and responsible judicial and administrative leadership over time, time standards and other relevant goals, use of information for regular measurement of actual performance against those standards and goals, and strong commitment of judges and court staff to continuing effectiveness in caseflow management. These elements of

strength have contributed to the Court's fine performance in all of its civil programs as discussed in this report. **The NCSC project team is pleased to offer the recommendations in the preceding sections of this report as a way for the Court to maintain itself as arguably the best-managed large urban civil trial court operation in the nation.**" (emphasis added)

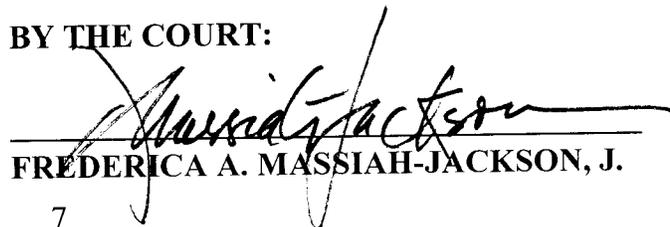
As for familiarity with the applicable law, Philadelphia judges are capable of applying foreign law, as well as determining choice of law issues. There is no apparent reason to believe that the relevant law in this case is so complex as to be "beyond the ken of a Philadelphia trial judge." Wright v. Aventis Pasteur, Inc., supra.

Finally, Philadelphia citizens and jurors certainly have an interest in this case. Plaintiff-Parker is a resident of Kentucky. Norfolk Southern maintains an active business presence in Philadelphia. Our juries do have an interest in matters involving our corporate citizens. All parties are considered to be equal when they come before our courts.

III. CONCLUSION

In October, 2014, this Court weighed the relative advantages and obstacles to a fair trial for both parties herein. This record does not support a finding that the interests of substantial justice require that the litigation be heard in another state or another forum. For all of the reasons set forth above this Court filed its Order dated October 23, 2014, and concludes that the Motion from Norfolk Southern Railway Company for Reconsideration of the Order is **DENIED**.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.