

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2502

September Term, 2014

MRUTHYUNJAYA GONCHIGAR

v.

ABBAS A. OMAIS

Krauser, C.J.,
Arthur,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: January 22, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This action, sounding in oral defamation, was filed by the appellant, Mruthyunjaya Gonchigar, M.D., in the Circuit Court for St. Mary's County. He is aggrieved by an order of that court transferring the action, pursuant to Maryland Rules of Procedure, Rule 2-327(c) to the Circuit Court for Charles County. Rule 2-327(c) provides:

"On 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 serves the interests of justice."

The sole defendant in this action is the movant below and appellee here, Abbas A. Omais, M.D., a Virginia resident.

As we explain below, we shall affirm.

BACKGROUND AND PROCEDURAL FACTS

When this action was filed by Dr. Gonchigar against Dr. Omais on September 11, 2014, an action brought by Dr. Omais and affiliated interests against Dr. Gonchigar and others was pending in the Circuit Court for Charles County, having been filed on June 23, 2014. A copy of the complaint in the Charles County case was made, without objection, a part of Dr. Omais's affidavit in support of his motion to transfer. That pleading reveals that Dr. Omais will undertake to prove the following in the Charles County case.

Basically, a number of physicians whose offices and practices were in Charles County joined together to form, on November 6, 2009, a Maryland limited liability company, 3575 Old Washington Road, LLC (3575). The purpose of 3575 was to acquire land at that site in Waldorf, Charles County, to build a medical office building there, and to create a

condominium regime in which the participants would have offices for their various practices. In financing the project, individual participants, including Dr. Gonchigar, Dr. Omais, his professional colleague, Dr. Song C. Chon, Dr. Mohammed S. Khalid, and Dr. Suresh A. Patel, personally signed the note evidencing the bank loan. In addition, 3575 guaranteed the debt and executed an indemnity deed of trust. Originally Dr. Gonchigar was the managing member of 3575 and later it was Dr. Patel.

Disagreements arose. On September 12, 2013, a meeting was held in Waldorf at which Dr. Gonchigar alleges that he was orally defamed by Dr. Omais. Present at the meeting were Dr. Gonchigar's corporate attorney, who has an office for the practice of law in La Plata, Dr. Gonchigar, who resides in Montgomery County and has his office for the practice of medicine in Charles County, Dr. Omais's attorney, whose principal office is in La Plata, Drs. Omais and Chon, whose principal office is in Charles County, and Drs. Khalid and Patel, whose respective offices are in Charles County.

At some point Dr. Gonchigar, through his limited liability company, acquired and refinanced the loan note prior to its maturity. On October 25, 2013, a little over one month after the meeting that was the occasion of the alleged slander, 3575 executed, by Dr. Patel, a deed in lieu of foreclosure to Dr. Gonchigar's limited liability company. Drs. Omais and Chon, through their limited liability company, never received the condominium unit which allegedly had been promised to them. They brought the Charles County action in June 2014,

asserting multiple legal theories. Dr. Gonchigar brought the St. Mary's County action on the eve of the running of limitations.

Dr. Omais met the slander action with a motion to dismiss for improper venue and, alternatively, a motion to transfer under Rule 2-327(c).¹ Appellee submitted that venue lay exclusively in Charles County because that is where he carried on a regular business. He said that transfer was appropriate because the

"cause of action arose in Charles County. All of the witnesses are in Charles County. The LLC of which these persons were a member involved property in Charles County. And there is an existing lawsuit in Charles County that involves the exact complaint that Dr. Gonchigar is making."

He asked that the transferred case be consolidated with the case pending in Charles County.

Appellant asserted that venue was proper in St. Mary's County because Dr. Omais is a nonresident of Maryland. He opposed transfer on the grounds that St. Mary's County was not an inconvenient forum, that there were "multiple plaintiffs" in the Charles County suit, and that, while some of the multiple defendants in that litigation were associated with Dr. Gonchigar, some were not. He said that "whether or not defamation occurred at that meeting is really an isolated issue." Dr. Gonchigar emphasized that the plaintiff's choice of venue is a "critical factor" and that the burden is on the proponent of transfer to show that the interests of justice are not served by the plaintiff's choice.

¹Dr. Omais also argued for transfer pursuant to Rule 2-327(d), dealing with transfer between circuit courts in separate judicial circuits. That rule has no applicability here where both circuit courts involved are part of the Seventh Judicial Circuit.

The circuit court ordered transfer to Charles County, without prejudice to any request for, or opposition to, consolidation in that court. With respect to venue, the motion court ruled that St. Mary's County was not a proper venue based on its interpretation of Maryland Code (1973, 2013 Repl. Vol.), § 6-201(a) of the Courts and Judicial Proceedings Article (CJ) which provides:

"Subject to the provisions of §§ 6-202 and 6-203 of this subtitle and unless otherwise provided by law, a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the State."

CJ § 6-202 in relevant part reads:

"In addition to the venue provided in § 6-201 or § 6-203, the following actions may be brought in the indicated county:

....

"(11) Action for damages against a nonresident individual – Any county in the State[.]"

The motion court concluded that CJ § 6-201(a) controlled over § 6-202(11), ruling:

"When we go to the section that talks about 'in addition,' because he doesn't live in any county in [Maryland], the plaintiff has the option to sue him in any county; I don't believe that that overrules the requirements, the 'shall' provisions, of the [§] 6-201(a), I believe, that requires that he has the right to be sued in those places where he does one or more of those things."

"[F]or that reason alone," the court believed that venue did not lie in St. Mary's County.

Turning to the transfer issues, the court noted that the business occupation factors of § 6-201 pointed to Charles County and added the fact that the cause of action arose in Charles County. The court next addressed the earlier filed litigation and, after saying that "it's not really the same issues," expressed the belief that "[t]here's no way for me to consider that. There's no way for me to even know what the actual facts are about that." Focusing on the consolidation question, the court recognized that that ruling should be made by a court before which both cases were pending.

Summarizing to that point, the court said:

"So[,] so far, St. Mary's County is pretty much striking out. So far the only thing I see here is that [appellant's counsel], your office is here; which of course is not relevant at all."

In conclusion, the court ruled:

"And so clearly, both parties have a business basically in Charles County. So I think that [appellee's counsel]'s arguments are all correct.

"That doesn't mean, [appellant's counsel], that your arguments are incorrect. I just don't think that they overcome the prevalence and the importance of [§] 6-202 and the convenience of everything being heard in Charles County.

"So I am going to transfer this case to the Circuit Court for Charles County. I think that's the appropriate place for it to be. I think that the statute requires that.

"And I think that the convenience of all the parties and those people who would be potentially witnesses, and including [appellant's corporate counsel], all of those people are based in some fashion in Charles County. So I think that the convenience of all that is a factor as well."

That court ruled that "the plaintiff's right to bring an action wherever he wants [did not] overcome[] those factors that the Court has to consider[.]"

This appeal followed.

Questions Presented

Dr. Gonchigar raises two issues. They are:

- "1. **DID THE CIRCUIT COURT ERR WHEN IT FOUND THAT ST. MARY'S COUNTY CIRCUIT COURT WAS NOT A PROPER VENUE FOR THIS CASE DESPITE THE FACT THAT APPELLEE ABBAS OMAIS IS A RESIDENT OF THE STATE OF VIRGINIA AND DESPITE THE FACT THAT § 6-202(11) EXPRESSLY PROVIDES THAT 'AN ACTION AGAINST A NONRESIDENT INDIVIDUAL' MAY BE BROUGHT IN 'ANY COUNTY IN THE STATE'?** [and]
- "2. **DID THE CIRCUIT COURT ERR WHEN IT FAILED TO APPLY THE PROPER ANALYSIS TO THE APPELLEE'S CLAIM OF FORUM NON-CONVENIENS UNDER MARYLAND'S WELL-SETTLED CASE LAW?"**

I

The circuit court seems to have viewed the language in CJ § 6-201(a), "a civil action shall be brought," to create a mandatory, minimum venue privilege under which all defendants are suable in their county of residence or of certain business connections. As appellant correctly notes, this reading overlooks the introduction to § 6-201(a), providing that that section is "[s]ubject to the provisions of §§ 6-202 and 6-203." Section 6-202(11) makes plain that a nonresident individual has no venue privilege in an action for damages.

An attempt to read a venue privilege for a nonresident individual defendant in a damage action into an earlier version of the venue statute was rejected in *Alcarese v. Stinger*, 197 Md. 236, 78 A.2d 651 (1951). That was a motor tort case, brought in the Circuit Court for Harford County. Service was obtained under the Non-Resident Motorist Statute. The defendant asserted that the action should have been brought in Cecil County where the accident occurred because then Article 75, § 157 provided that, in an action ex delicto, in which no defendant was a resident, "the plaintiff may, at his election, sue all said defendants in the county where the cause of action arose." After holding that the cited statute plainly had no application, the Court concluded that there was no statute conferring a venue privilege on such non-resident defendants. Turning to the common law, the Court held: "Of course, at common law a plaintiff could bring a transitory action in any county which he might select An action in tort being a transitory action at common law could be brought in any county which the plaintiff elects." *Id.* at 244-45, 78 A.2d at 655.

CJ §§ 6-201 and 6-202 were enacted as part of the Code Revision Project by Chapter 2 of the Acts of 1973, 1st Special Session. The Revisor's Note to CJ § 6-202(11), *see* Code (1974), advises that "[p]aragraph (11) codifies the rule of *Alcarese v. Stinger*, 197 Md. 236 (1951)."

Also relevant is *Swanson v. Wilde*, 74 Md. App. 57, 536 A.2d 694 (1988), a tort case involving multiple defendants. The plaintiffs, relying on CJ § 6-201(b),² filed a complaint in Montgomery County where two of the defendants resided. Another defendant, who resided and did business in Worcester County, asserted that because Worcester County, where the cause of action arose, was a single common venue under § 6-202(8)³ the plaintiffs had to bring the suit in that county. The circuit court agreed. This court reversed, saying:

"In our view, the language of the statute, read in the light of its legislative history, provides no basis for the conclusion reached by the Circuit Court; § 6-201(b) is *not* controlled by or subject to § 6-202. Where either is applicable, it is the plaintiff's choice."

74 Md. App. at 67-68, 536 A.2d at 698-99 (emphasis in original).

Therefore, venue in the instant matter is controlled by CJ § 6-202(11), and not CJ § 6-201.

II

Here, we address the transfer. "Rule 2-327(c) does not deal with a transfer for want of venue; it confers on a circuit court the discretionary power to transfer even if the

²"If there is more than one defendant, and there is no single venue applicable to all defendants, under subsection (a) of this section, all may be sued in a county in which any one of them could be sued, or in the county where the cause of action arose." CJ § 6-201(b).

³"In addition to the venue provided in § 6-201 or § 6-203, the following actions may be brought in the indicated county: ... (8) Tort action based on negligence – Where the cause of action arose." CJ § 6-202(8).

transferring court is a proper venue." *Leung v. Nunes*, 354 Md. 217, 222, 729 A.2d 956, 959 (1999).

"When determining whether a transfer of the action for the convenience of the parties and witnesses is in the interest of justice, a court is vested with wide discretion. ... It is the moving party who has the burden of proving that the interests of justice would be best served by transferring the action ... and a motion to transfer should be granted only when the balance weighs strongly in favor of the moving party. [A] court must weigh in the balance the convenience of the witnesses and those public-interest factors of systemic integrity and fairness that, in addition to private concerns, come under the heading of the interest of justice."

Id. at 223-24, 729 A.2d at 959 (quoting *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 40, 575 A.2d 1235, 1238 (1990) (citations and interior quotations omitted)).

From these rules, it follows that

"[w]e review a trial court's decision to transfer a case to another venue, pursuant to [Maryland] Rule 2-327(c), under an abuse of discretion standard.' *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 437, 816 A.2d 117[, 120] (2003). 'An abuse of discretion is said to occur where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles.' *Id.* (citations omitted). 'Accordingly, when reviewing a motion to transfer, a reviewing court should be reluctant to substitute its judgment for that of the trial court.' *Id.* (quotations omitted)."

Stidham v. Morris, 161 Md. App. 562, 566, 870 A.2d 1285, 1288 (2005) (footnote omitted).

Starting from the premise that Dr. Omais has no venue privilege and has the burden of proof and persuasion under Rule 2-327(c), appellant submits that Dr. Omais has failed to show that the "balance weighs strongly in [his] favor." *Leung*, 354 Md. at 224, 729 A.2d

at 959. "This respect for the plaintiff's choice of forum is derived largely from federal law developed under Title 28 U.S.C. § 1404(a)," *id.*, 729 A.2d at 960, which reads, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." *Id.* at n.2.

Here, Dr. Omais has demonstrated that the balance of convenience weighs heavily in favor of Charles County. First, as we pointed out in *Stidham*, 161 Md. App. at 569, 870 A.2d at 1289,

"'less deference' should be accorded that choice when the plaintiff is not a resident of the forum he chooses. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-56, 102 S. Ct. 252[, 266], 70 L. Ed. 2d 419[, 436] (1981) ('Because the central purpose of any forum non conveniens inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference')."

Here, Dr. Gonchigar resides in Montgomery County. The courthouse in Leonardtown is approximately thirty miles beyond the courthouse in La Plata.

Another important factor weighing in favor of transfer is that there is related litigation pending in Charles County. Obviously, the St. Mary's court could not order consolidation, but the record in St. Mary's County clearly reflected that the two cases should be before one court so that that determination could be made. In the pending suit, Dr. Omais, his practice colleague, and their LLC alleged, *inter alia*, that Dr. Gonchigar, as managing member of 3575, "engaged in self-dealing [and] acted for his benefit and the benefit of" certain LLCs in which he had an interest. In the slander suit, Dr. Gonchigar alleged:

"The statements made by [Dr. Omais] related to the financial circumstances of [3575] and certain actions that were proposed to be taken by [3575] at the September 12, 2013 meeting. The statements included ... statements that [Dr. Gonchigar] was receiving a 'kick-back' from another member or members, that certain undisclosed deals were made between [Dr. Gonchigar] and other members of [3575] and that it was a 'back door' deal."

As observed by the editors of the Annotation, *Questions as to Convenience and Justice of Transfer Under Forum Non Conveniens Provision of Judicial Code* (28 U.S.C. § 1404(a)), 1 A.L.R. Fed. 15, §14 (1969),

"[t]he pendency of another action involving substantially similar subject matter is significant on a transfer motion under § 1404(a) where it would be both feasible and beneficial to consolidate the actions."

Deference to the plaintiff's choice "is further mitigated if a plaintiff's choice of forum has no meaningful ties to the controversy and no particular interest in the parties or subject matter." *Stidham*, 161 Md. App. at 569, 870 A.2d at 1289-90 (quoting *Liban v. Churchey Group II, LLC*, 305 F. Supp. 2d 136, 142 (D. D.C. 2004) (citations omitted)). Here, the circuit court correctly found as a fact that the parties, witnesses, and subject matter of the defamation case were connected with Charles County and that the only connection with St. Mary's County was that trial counsel for the plaintiff maintained his office there. The latter contact is not a proper factor to consider under Rule 2-327(c). *See Smith v. Johns Hopkins Community Physicians, Inc.*, 209 Md. App. 406, 416, 59 A.3d 1070, 1076 (2013).

Appellant also argues that the circuit court erred, because its erroneous analysis of the venue statute tainted the *forum non conveniens* analysis. The error is not prejudicial.

If we were to remand for an analysis of this record, excluding any consideration of the venue statute, and were the circuit court to deny transfer to Charles County, we would reverse on appeal of that judgment for an abuse of discretion.

For these reasons, we enter the following mandate.

**JUDGMENT OF THE CIRCUIT
COURT FOR ST. MARY'S COUNTY
AFFIRMED.**

**COSTS TO BE PAID BY THE
APPELLANT.**