IN THE COURT OF APPEALS OF MARYLAND

No. 108

September Term, 1994

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JOANN URQUHART et al.

v.

ANGELA C. SIMMONS et al.

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Murphy, C.J.
Eldridge
Chasanow
Karwacki
Bell
Raker
McAuliffe, John F. (Retired, specially assigned),

JJ.

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Dissenting opinion by Raker, J., in which Bell, J., joins.

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Filed: June 26, 1995

Raker, J., dissenting:

I agree with the holding of the Court that a trial judge may not raise the issue of *forum non conveniens* on its own initiative. As the Court concludes today, Maryland Rule 2-327(c) requires a motion by a party prior to the transfer of a case on grounds of *forum non conveniens*. I disagree with the majority's resolution of this case, however, because I believe that there was no motion before the court for transfer of the cause on grounds of *forum non conveniens* and that there is no sound basis in the record for finding that the trial court treated the motion before it as a motion under Rule 2-327(c). To the extent that the Court attempts to supply such a reason, I part ways with the majority opinion.

Under the circumstances of this case, there are three conceivable grounds for the transfer of the action to Montgomery County. The first ground, which was raised by the defendant in the Circuit Court for Prince George's County, would be venue. It is undisputed at this point, however, that venue in Prince George's County was proper; consequently, any transfer on the basis of venue was error.

The second conceivable ground would be for the trial court to overrule the defendant's venue motion but raise the issue of *forum non conveniens* on its own initiative. As the Court has held today, however, the impetus for transfer for reasons of *forum non conveniens* must come from a party, not the court.

Finally, the trial court could interpret the defense's motion to dismiss or transfer for improper venue as a motion to transfer on the basis of *forum non conveniens*. In this case, when the trial court expressly asked defense counsel whether he intended to make a *forum non conveniens* argument, counsel did not say yes, but rather that one "could probably draw that analogy." It appears to me that counsel's answer represented a disavowal of any reliance on *forum non conveniens*.

Nonetheless, I am willing to assume, as the majority does, that defense counsel's response was a plausible basis for construing the defendant's motion as an effort to invoke the court's discretion to transfer on the basis of *forum non conveniens*. There are two problems with this resolution of the case, however. The first problem was noted by the plaintiff's attorney, who told the court during oral argument on the venue motion, "Your honor tries to get the -- to find out if the defendant is trying to argue something like *forum non conveniens*, but they have not raised that doctrine. I have not briefed it . . . ." The plaintiff argued, and I agree, that a motion based on improper venue and one based on *forum non conveniens* are procedurally distinct, and thus require different supporting arguments. Consequently, because the defendant's motion was expressly based on venue and the trial court never indicated that it was deciding the case based on *forum non conveniens*, the

plaintiff never had a fair opportunity to brief and argue this issue.

The second problem with construing the defendant's venue motion as a *forum non conveniens* motion is that the trial court did not follow this path. That the court decided this case on venue grounds is evident from the oral ruling at the conclusion of the argument:

> The Court has reviewed 6-201 and 6-202 [venue provisions in the Courts and Judicial Proceedings Article] as well as heard the arguments of counsel and read the memorandums and as well as the exhibits and the Court feels that the motion for -- obviously I'm not going to dismiss the case, but I do believe it should be transferred to Montgomery County and I will sign an order to that effect.

Consequently, at the trial level, there were no findings of fact or balancing by the court of the factors bearing on whether the court should transfer the case based on the doctrine of *forum non conveniens*. In *Odenton Development v. Lamy*, 320 Md. 33, 575 A.2d 1235 (1990), Judge Chasanow, writing for the Court, explained that the pertinent factors include "`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 interests of justice."'" *Id.* at 40, 575 A.2d at 1238 (quoting *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22, 30, 108 S. Ct. 2239, 101 L. Ed. 2d 22 (1988)). The court may

then order the case transferred only if these considerations weigh heavily in favor of the moving party. *Id*., 575 A.2d at 1238.

The decision to transfer should be reversed, because venue in Prince George's County was proper and a motion for transfer on the grounds of *forum non conveniens* was lacking. Since the choice of the forum belongs to the plaintiff, that choice should not be disturbed lightly. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 84 cmt. c (1971), *quoted in Johnson v. Searle*, 314 Md. 521, 530, 552 A.2d 29, 33 (1989); *see also* 20 AM. JUR. 2D *Courts* § 176 (1965) ("The doctrine of *forum non conveniens* should be applied with caution, exceptionally, and only for good reasons." (footnote omitted)).

Accordingly, I would affirm the mandate, though not the reasoning, of the Court of Special Appeals and order a new trial of this cause in the Circuit Court for Prince George's County.

Judge Bell has authorized me to state that he joins in the views expressed herein.