

Circuit Court for Baltimore County
Case No. 03-C-16-003227

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1335

September Term, 2016

WILLARD R. LEE, JR., *et al.*

v.

HUGO BENALCAZAR., *et al.*

Graeff,
Reed,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: February 23, 2018

*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 is an appeal from the grant of a motion to transfer venue pursuant to Rule 2-327(c) from the Circuit Court for Baltimore County to the Circuit Court for Harford County. Appellant's principal argument is that the standard articulated by this Court in *Stidham v. Morris*, 161 Md. App. 562 (2005) is insufficiently deferential to a plaintiff's forum selection and ought to be overruled. In the time since the current appeal was submitted for our decision, however, a closely-divided Court of Appeals has specifically and emphatically adopted the *Stidham* standard in a case called *University of Maryland Medical System Corp. v. Kerrigan*, 456 Md. 393 (2017). Because the Court of Appeals' decision in *Kerrigan* effectively forecloses Lee's arguments for us to overrule *Stidham*, we will resolve this matter in summary fashion so that the parties may begin to prepare the case for trial in the Circuit Court for Harford County.

FACTS

Appellant, Willard R. Lee, Jr., a resident of Cecil County, brought suit alleging medical malpractice in a cervical fusion surgery performed by Appellee, Hugo Benalcazar, MD, a resident of Baltimore County, at Upper Chesapeake Medical Center, located in Harford County. Lee filed suit in Baltimore County; Benalcazar moved to transfer the matter to Harford County. In support of his motion, Benalcazar noted that the surgery was performed in Harford County; that Benalcazar's co-defendant, Brain & Spine Specialists, P.A., has only one office and it is located in Harford County; that Harford County is closer to Lee's home in Cecil County than is Baltimore County; and that most non-party fact witnesses are likely to be employees of Upper Chesapeake Medical Center, and thus Harford County will be most convenient to them. Lee, by contrast, noted that Benalcazar's

home is located in Baltimore County; that Brain & Spine Specialists’ place of incorporation is in Baltimore County; and most importantly, that Lee had selected Baltimore County and that his decision was entitled to substantial deference. The motions judge granted the motion to transfer. This appeal followed.

ANALYSIS

Rule 2-327(c) governs transfer of venue for the convenience of the parties and witnesses: “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 witnesses and serves the interests of justice.” The Court of Appeals, in its recent opinion in *Kerrigan*, spelled out the method of analysis:

The plaintiff chooses where to bring suit within the parameters set out by the Courts and Judicial Proceedings Article, and the trial court must regard that choice with deference. That deference shrinks, however, when the plaintiff does not reside in the forum where the plaintiff has chosen to file suit. That deference diminishes further if a plaintiff’s choice of forum has no meaningful ties to the controversy and no particular interest in the parties or subject matter. A trial court, however, has wide discretion to weigh the convenience of the parties and witnesses and interests of justice on the facts of the case before it when assessing whether to transfer the case. Only if the trial court fails to exercise, or abuses, its discretion will a reviewing court reverse the trial court’s order to transfer venue.

Kerrigan, 456 Md. at 359 (citations, footnotes, and internal quotation marks omitted).

Here, the motions judge recognized Lee’s choice to bring the lawsuit in Baltimore County and gave that decision some degree of deference. That deference was diminished by the fact that Lee brought suit in a county other than his county of residence. Moreover,

the motions judge determined that Baltimore County had no meaningful ties to the controversy, parties, or subject matter, finding that “the majority of the issues here or at least the, the treatment of both before and after the alleged injury took place in Harford County.” Finally, the motions judge looked at the “convenience of the parties” and the “interests of justice” and determined that those factors pointed toward a transfer to the Circuit Court for Harford County, the site of the alleged malpractice, and the place of employment of many of the fact and expert witnesses. We cannot say that the motions judge was wrong, let alone that he failed to exercise or abused his discretion.

CONCLUSION

Without a heavy thumb on the scales in favor of Lee’s forum selection, there can be little doubt that all, or nearly all, factors point toward resolution of this dispute in Harford County. Lee argued instead that we should overrule *Stidham* and put a heavy thumb on the scale. After *Kerrigan*, we cannot.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**