

Circuit Court for Queen Anne's County  
Case No.: C-17-CV-20-000149

Circuit Court for Frederick County  
Case No.: C-10-CV-22-000745

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1985 & 1919

September Term, 2022

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VAN POWERS

v.

CHERYL CAPPS

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Shaw,  
Tang,  
Sharer, J. Frederick,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Tang, J.

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Filed: April 25, 2024

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Van Powers, appellant, appeals from an order issued by the Circuit Court for Queen Anne’s County granting a motion filed by Cheryl Capps, appellee, to transfer his civil action to the Circuit Court for Frederick County under Maryland Rule 2-327(c). The sole issue on appeal is whether the Circuit Court for Queen Anne’s County abused its discretion in granting the motion to transfer venue. For the reasons below, we shall affirm.

### **BACKGROUND**

The parties have been engaged in various legal disputes. It is not necessary to recount their past litigation. It suffices to note that the parties divorced in 2007 in Montgomery County, where they used to live, and they agreed to maintain joint ownership of an investment property in Frederick County.

In 2016, Mr. Powers filed two lawsuits against Ms. Capps in the Circuit Court for Frederick County. The cases were later consolidated<sup>1</sup> and eventually settled by an agreement signed in 2017 in Frederick County. The agreement provided for the distribution of proceeds from the sale of the investment property and the turnover of a coin collection in Ms. Capps’s possession. The parties also agreed that if a dispute arose concerning the performance under the agreement, they could seek relief from the Circuit Court for Frederick County. That court retained jurisdiction over the case and could resolve such a dispute.<sup>2</sup> After the agreement was executed, the Circuit Court for Frederick County

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<sup>1</sup> Case No. 10-C-16-003099 was consolidated with Case No. 10-C-16-000819, with the latter serving as the lead case.

<sup>2</sup> Paragraph 13 of the settlement agreement states:

(continued)

incorporated but did not merge the settlement agreement into a final order, disposing of all claims in the consolidated action.

### **Civil Action in Queen Anne’s County**

In August 2020, Mr. Powers filed a civil action in the Circuit Court for Queen Anne’s County in Case No. C-17-CV-20-000149. He alleged that Ms. Capps breached the settlement agreement by not returning all the coins in the collection. He also claimed that she deceived him into believing she would provide the entire coin collection when the agreement was signed. In addition, he included claims for conversion and trespass to chattel for the missing coins. He requested a two-day jury trial to address his claims.

On November 9, 2022,<sup>3</sup> Ms. Capps moved to dismiss the complaint under Maryland Rule 2-322 for improper venue and lack of jurisdiction, relying on the agreement’s venue-selection clause. As alternative relief, she requested that the court transfer venue to the Circuit Court for Frederick County.

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In the event of any dispute arising out of or relating to the fact or enforceability of this Settlement Agreement, or out of any claim that certain of the Settling Parties have not performed their respective duties hereunder, any of the Settling Parties may make a motion to the Circuit Court of Maryland for Frederick County. The Circuit Court retains jurisdiction over this case and can resolve any dispute as determined by the Court.

<sup>3</sup> Mr. Powers was unable to serve Ms. Capps with the complaint for nearly a year, which resulted in the court dismissing the case for lack of prosecution. Mr. Powers appealed the dismissal while filing the same complaint separately in Case No. C-17-CV-21-000125. The Appellate Court of Maryland reversed the dismissal order, permitting Mr. Powers to serve Ms. Capps with the complaint. *See In the Matter of Van Powers*, No. 878 Sept. Term, 2021 (filed July 20, 2022). Later, the Circuit Court for Queen Anne’s County consolidated the two actions, and Case No. C-17-CV-20-000149 served as the lead case.

On November 23, 2022, the court denied the motion to dismiss and scheduled a hearing for December 13, 2022. The court did not rule on Ms. Capps’s alternative request to transfer venue.

### **Motion to Transfer Venue**

On December 7, 2022, Ms. Capps moved to transfer venue of the case to the Circuit Court for Frederick County. She based her motion on the grounds of *forum non conveniens* under Maryland Rule 2-327. Pursuant to Maryland Rule 2-311(d),<sup>4</sup> Ms. Capps submitted an affidavit stating that she lived in South Carolina, never resided in Queen Anne’s County, and had no personal, business, or other connections there. She also stated that the parties were divorced in Montgomery County, jointly owned investment property in Frederick County, and signed a separation agreement that resolved issues about their personal property. Regarding the coin collection, she stated that in 1997, she discovered two coins inside a garbage bag in their home (in Montgomery County). She kept the coins in their bedroom until she eventually gave them to Mr. Powers in 2017.

Mr. Powers responded to the motion with a series of filings in opposition. He did not dispute that Ms. Capps lived in South Carolina and had no connection to Queen Anne’s

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<sup>4</sup> Maryland Rule 2-311(d) states that “[a] motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.”

County, and he also did not dispute that the claims about the missing coins had no connection to Queen Anne’s County.<sup>5</sup>

### Hearing

The court held a hearing on December 13, 2022, with Mr. Powers appearing pro se in person and Ms. Capps and her counsel appearing remotely.<sup>6</sup> Neither party objected to proceeding with the hearing by way of argument. Counsel argued that traveling to Queen Anne’s County would be more inconvenient for Ms. Capps than traveling to Frederick County, about an hour from major airports. In addition, the events related to Mr. Powers’s claims likely took place in either Frederick County or Montgomery County, and thus, any witnesses would likely be in those counties, not Queen Anne’s County.

Counsel drew the court’s attention to the venue-selection clause in the settlement agreement, which the court noted was part of the record. Counsel explained that several filings related to the previous proceedings in the Circuit Court for Frederick County led to the execution of the settlement agreement. As that court was already familiar with those prior proceedings, it would be better suited to handle a dispute arising from the settlement agreement. Additionally, the Circuit Court for Frederick County, which has more than one

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<sup>5</sup> Indeed, in an affidavit he filed in “Support of the Plaintiff’s Opposition and Response to [Ms. Capps’s] Opposition to Plaintiff’s Motion for Summary Judgment,” Mr. Powers alleged that Ms. Capps “had removed [the coins] from [his] possession *in Montgomery County, Maryland.*” (Emphasis added).

<sup>6</sup> Ms. Capps and her counsel moved to appear remotely for the December hearing. Counsel indicated that Ms. Capps lived in South Carolina and that traveling to Queen Anne’s County for the hearing would cause an undue burden. Counsel also stated that her law office was in Frederick County, about two hours from the Circuit Court for Queen Anne’s County. The court granted the motion.

judge, would be better equipped to handle the anticipated two-day jury trial than the Circuit Court for Queen Anne’s County, which only has one active judge. Counsel further argued that Queen Anne’s County had no local interest in the case because no parties resided there, and the dispute over the missing coins had no connection to the county.

According to his complaint, Mr. Powers lived in Prince George’s County. During the hearing, the court asked about Mr. Powers’s connection to Queen Anne’s County. Mr. Powers admitted that he had no property interest in Queen Anne’s County. He explained that he had attempted to buy property there, so he filed a complaint in that county. Nevertheless, he argued that it was his prerogative to select the venue under Maryland Code, Courts and Judicial Proceedings (“CJP”) Article, § 6-202(11) (an “[a]ction for damages against a nonresident individual” may be brought in “[a]ny county in the State[.]”). He also argued that the court should not abide by the venue-selection clause in the settlement agreement. According to him, the clause did not confer jurisdiction; instead, it gave an “option” for the parties to bring an action there.

Mr. Powers acknowledged that Ms. Capps had lived in South Carolina for years but denied that she would be inconvenienced by litigating the action in Queen Anne’s County. He claimed there were no “integral witnesses”; the parties were the only witnesses. But the court noted that Ms. Capps may identify witnesses later based on “what [her] case is going to be, what [her] defense may be, so you can’t presume.” Mr. Powers responded that Ms. Capps had identified no witnesses in her responsive pleadings, which suggested that her motion to transfer was based merely on her “preference; that’s what this is all about.” He

added that the court should not consider any inconvenience to Ms. Capps’s attorney, whose office was in Frederick County, in deciding whether to transfer venue.

After the hearing, the court granted the motion to transfer venue to Frederick County. It explained:

I believe that [Ms. Capps’s counsel] is accurate in her recitation about what the convenience of the parties, proper jurisdiction of venue in this case and that the settlement agreement signed by the parties addresses that issue that it should head back to Frederick County. It is also convenient. [Counsel] made a case for convenience for her client in coming to Queen Anne’s County, as well as convenience for the Court, this is a solo judge court. We only have myself or another senior judge who may be sitting here. The volume of paperwork that has already been involved in this [consolidated] case . . . and asking for a two-day jury trial on a contract case just doesn’t fit with our ability to give this case the proper attention that you believe that you’re going to need, Mr. Powers.

On December 14, 2022, the court entered an order granting Ms. Capps’s motion to transfer venue. The next day, the court transferred the consolidated action to the Circuit Court for Frederick County (Case No. C-10-CV-22-000745).

On December 22, 2022, in the Circuit Court for Frederick County, Mr. Powers filed a motion to alter or amend the transfer order to ensure that he met the 10-day filing deadline under Maryland Rule 2-534. On December 27, 2022, Mr. Powers filed another motion to alter or amend the transfer order in the Circuit Court for Queen Anne’s County. Both courts denied the respective motions on January 6, 2023.

Mr. Powers filed two notices of appeal from the transfer order entered on December 14, 2022.<sup>7</sup> On January 6, 2023, Mr. Powers filed a notice of appeal in the Circuit Court for Frederick County, docketed in our Court under ACM-REG-1919-2022. On January 17, 2023, Mr. Powers filed a notice of appeal in the Circuit Court for Queen Anne’s County, docketed in our Court under ACM-REG-1985-2022.<sup>8</sup> Our Court consolidated the two cases on appeal.

In his informal brief, Mr. Powers does not challenge the orders denying his motions to alter or amend; he states that “the core issue” before this Court “concerns the fact of transfer” from the Circuit Court for Queen Anne’s County to the Circuit Court for Frederick County. Thus, the only question before us is whether the Circuit Court for Queen Anne’s County abused its discretion in granting the motion to transfer venue.

### RELEVANT LAW

CJP § 6-202(11) provides that an “[a]ction for damages against a nonresident individual” may be brought in “[a]ny county in the State[.]” But while the statute grants a plaintiff the right to file an action in whatever county the plaintiff chooses, it does not

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<sup>7</sup> The grant of a motion to transfer is an immediately appealable final judgment. *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 437 (2003).

<sup>8</sup> Mr. Powers’s 10-day window for filing the motion to alter or amend the transfer order under Maryland Rule 2-534 fell on Saturday, December 24, 2022. Because the deadline fell on a weekend and because Monday, December 26, 2022, was a court holiday, the deadline was extended to the following business day, Tuesday, December 27, 2022. *See* Md. Rule 1-203(a)(1). When a party files timely motions under Rules 2-533 or 2-534, the time the party has to note an appeal is suspended until after the motion is decided. *See* Md. Rule 8-202; *Pickett v. Noba, Inc.*, 114 Md. App. 552, 556 (1997). Therefore, Mr. Powers’s notice of appeal filed in the Queen Anne’s County case was timely.

prohibit the transfer of that action if justice and the convenience of the parties and witnesses so require. *Stidham v. Morris*, 161 Md. App. 562, 567 (2005). Maryland Rule 2-327(c) permits an action to be transferred to another appropriate venue under the *forum non conveniens* doctrine, even though a plaintiff’s choice of venue is proper. *Payton-Henderson v. Evans*, 180 Md. App. 267, 279 (2008); *Simmons v. Urquhart*, 101 Md. App. 85, 99 (1994) (“*forum non conveniens* allows the court, when certain conditions exist, to override the plaintiff’s choice of forum”).

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 witnesses and serves the interests of justice.

A party who moves to transfer an action to an alternate forum under Rule 2-327 has the burden of demonstrating that the transfer to that forum better serves (1) the convenience of the parties and witnesses and (2) the interests of justice. *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 40 (1990).

The “convenience” factor requires a court to review the convenience of the parties and the witnesses. *Cobrand*, 149 Md. App. at 438 n.5. The “interests of justice” factor, on the other hand, requires a court to weigh both the private and public interests. *Stidham*, 161 Md. App. at 568 (citation omitted). “The private interest component concerns the efficacy of the trial process itself.” *Payton-Henderson*, 180 Md. App. at 292. “It is deemed a ‘private interest’ because it is concerned only with a particular case” such as “[t]he relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, 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.” *Id.* at 292–93 (citation omitted).

The “public interest” component relates to “systemic integrity and fairness” and includes, “among other things, considerations of court congestion, the burdens of jury duty, and local interest in the matter.” *Stidham*, 161 Md. App. at 568–69. “Local interest” refers to whether there is “a local interest in having localized controversies decided at home.” *Id.* at 569. “Numerous other factors may also be considered, such as court trial calendars and the location of documents, witnesses, and property involved.” *Payton-Henderson*, 180 Md. App. at 293 (citation omitted).

“[A] motion to transfer should be granted only when the balance weighs strongly in favor of the moving party.” *Leung v. Nunes*, 354 Md. 217, 224 (1999) (citation omitted). “[W]here the competing factors are in equipoise, the defendant to whom was allocated the burden had, by definition, failed to carry that burden and the resulting tie would, therefore, go to the plaintiff and the plaintiff’s right to choose the forum.” *Payton-Henderson*, 180 Md. App. at 284. “Nonetheless, the plaintiff’s choice of forum is not dispositive and ‘less deference should be accorded’ to a plaintiff’s choice when the plaintiff is not a resident of the forum or when the choice of forum has ‘no meaningful ties to the controversy and no particular interest in the parties or subject matter.’” *Murray v. TransCare Maryland, Inc.*, 203 Md. App. 172, 191 (2012) (quoting *Stidham*, 161 Md. App. at 569).

### **STANDARD OF REVIEW**

Based on *forum non conveniens* under Maryland Rule 2-327(c), a circuit court’s decision to transfer a case to another venue is reviewed for abuse of discretion. *Stidham*,

161 Md. App. at 566 (citation omitted). A circuit court abuses its discretion when no reasonable person would take the view it adopted “or when the court acts without reference to any guiding rules or principles.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (cleaned up and citation omitted). “Accordingly, when reviewing a motion to transfer, a ‘reviewing court should be reluctant to substitute its judgment for that of the trial court.’” *Cobrand*, 149 Md. App. at 437 (citation omitted).

In “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.” *Odenton Dev. Co.*, 320 Md. at 40 (citations omitted). “The exercise of a judge’s discretion is presumed to be correct, he is presumed to know the law, and is presumed to have performed his duties properly.” *Cobrand*, 149 Md. App. at 445 (citation omitted). “Absent an indication from the record that the trial judge misapplied or misstated the applicable legal principles, the presumption is sufficient for us to find no abuse of discretion.” *Id.*

### DISCUSSION

Mr. Powers’s primary claim of error is that Ms. Capps did not offer any evidence through exhibits, affidavits, or witness testimony at the December 13 hearing to support her counsel’s arguments about the above factors. He argues that counsel’s “opinions” at the hearing were not “actual” evidence. Without evidence admitted at the hearing, Ms. Capps failed to meet her burden of demonstrating the factors under Rule 2-327. Because no evidence was admitted at the hearing, the court must have relied on the “opinions” of counsel when it granted the motion to transfer and thus, it abused its discretion.

Mr. Powers’s claim of error is not preserved because it was not raised at the December 13 hearing. The parties proceeded by way of argument to which neither party objected. Each side argued for and against the factors, and the court concluded by asking Mr. Powers if he had “[a]nything else” to add. Mr. Powers never argued that the motion to transfer venue should be denied because Ms. Capps failed to present any evidence through exhibits, an affidavit, or testimony at the hearing. Consequently, we need not decide this issue on appeal.<sup>9</sup> *See* Md. Rule 8-131(a) (noting that an appellate court will not ordinarily decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court”); *Haslup v. State*, 30 Md. App. 230, 239 (1976) (this Court may, *sua sponte*, conclude that an issue has not been properly preserved for appellate review).

Even if this contention were preserved, it lacks merit. The court was persuaded that the factors weighed in favor of transferring the case. It highlighted the inconvenience that would be caused to the parties, especially Ms. Capps, and the concern that the court’s limited staffing would not be adequate to handle this case.

The record supported these aspects of the court’s reasoning. Regarding the “convenience” factor, Ms. Capps was a party and a witness. *See Payton-Henderson*, 180

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<sup>9</sup> To the extent that Mr. Powers later made the argument in his motions to alter or amend, our appellate courts have explained that “[w]hat is, in effect, a post-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight.” *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). “[A] motion to alter or amend under Rule 2-534 is not an occasion for a party to make arguments that it neglected to make initially.” *Morton v. Schlotzhauer*, 449 Md. 217, 232 n.10 (2016) (citation omitted). Accordingly, “we will not allow the appellant’s reference to raising the issue in a post-trial motion to serve as a smokescreen obscuring the earlier and fatal non-preservation.” *Steinhoff*, 144 Md. App. at 484.

Md. App. at 289 (recognizing that “witnesses” are a “larger class” than “parties” and there can be overlap between the two). Because Ms. Capps lived in South Carolina, it was reasonable for the court to infer that it would be inconvenient for her to travel to Queen Anne’s County to litigate the claims there.

As to the “interests of justice” factor, there was no dispute that many filings had accumulated in the case file, nor was it disputed that the Circuit Court for Queen Anne’s County has only one active judge to handle the claims. *See Smiley v. State*, 442 Md. 168, 191 n.16 (2015) (explaining that a court may take judicial notice of its records). It was reasonable for the court to assume that the nature of the claims and the volume of filings would strain this one-judge court.

Furthermore, neither Mr. Powers nor his claims had any connection to Queen Anne’s County. Thus, the court appropriately accorded less deference to Mr. Powers’s choice of venue due to his non-residency in Queen Anne’s County and the claims being unconnected to the county. *See Murray*, 203 Md. App. at 191. For the reasons stated, the Circuit Court for Queen Anne’s County did not abuse its discretion in granting the motion to transfer the action to the Circuit Court for Frederick County.

**JUDGMENT OF THE CIRCUIT COURT  
FOR QUEEN ANNE’S COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**