

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STACY E. GENT : CIVIL ACTION
: :
v. : :
: :
PENNSYLVANIA STATE UNIVERSITY : NO. 05-5125

MEMORANDUM

Bartle, C.J.

June 14, 2006

Plaintiff Stacy Gent commenced this negligence action against defendant Pennsylvania State University ("Penn State") for personal injuries, including kidney failure, allegedly sustained from dangerous chemicals and toxins in the Penn State water supply. Before this court is the defendant's motion to transfer venue to the Williamsport courthouse in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1404(a).

Plaintiff is currently a resident of Amherst, New York. Penn State is a state university with twenty-four campuses throughout the Commonwealth. From August, 2000 through May, 2004, plaintiff was an undergraduate student at Penn State's main campus in State College, Pennsylvania, which is located in the Middle District of Pennsylvania. According to the complaint, prior to and during her attendance at Penn State, its water supply was contaminated with several toxic chemicals including perchloroethylene, trichloroethylene, vinyl chloride, and ethylene dibromide. While a student, plaintiff regularly drank the water

and consumed food prepared with that water. Her skin also came into frequent contact with it.

Neither party disputes that venue exists in the Eastern District of Pennsylvania. Under 28 U.S.C. § 1391(a) venue is properly laid here because defendant operates several campuses in this District. Nevertheless, 28 U.S.C. § 1404(a) provides, "For 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." While we have the discretion to transfer a case, the moving party has the burden of demonstrating that a transfer is needed. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995).

Penn State argues that we should transfer venue to the Middle District for the convenience of the parties and witnesses. Recognizing that there is no "definitive formula or list of the factors to consider," our Court of Appeals in Jumara outlined a framework we must apply when considering a motion to transfer venue under § 1404(a). Id. Among the Jumara factors are: (1) the plaintiff's choice of forum; (2) the defendant's preferred forum; (3) the place where the claim arose; (4) the relative ease of access to sources of proof, but only to the extent that the proof could not be produced in one of the fora; (5) the convenience of the parties, as demonstrated by financial condition and physical location; (6) the convenience of the witnesses, but only to the extent that they are actually

unavailable for trial in one of the fora; and (7) the public interest in deciding local controversies at home. Id.

When balancing the plaintiff's choice and the defendant's preference, "the plaintiff's choice of venue should not be lightly disturbed." Jumara, 55 F.3d at 879 (internal quotations and citations omitted). While a non-resident plaintiff's choice sometimes receives slightly less favor, her chosen venue is still entitled to deference. See Lony v. E.I. DuPont de Nemours & Co., 935 F.2d 604, 609 (3d Cir. 1991).

Plaintiff has explained that she filed in the Eastern District to avoid potential prejudice against her in the Middle District where Penn State is a large employer. Because we give preference to the plaintiff's valid choice of venue, the defendant's observation that plaintiff has few contacts in the Eastern District is unimportant.

The third Jumara factor, the place where the claim arose, does not lead to transfer because there is no need here to be near the site where plaintiff's injuries took place. Plaintiff does not allege that the Penn State water supply is currently contaminated, and therefore the trial's proximity to current Penn State drinking water is unnecessary. Furthermore, the location of evidence, the fourth Jumara factor, is relevant only if one forum would totally preclude access to proof. In this case, neither district would prevent the parties from accessing evidence, and defendant's counsel has already moved relevant documents to its Philadelphia office. Access to proof,

therefore, does not require transferring this action to the Middle District of Pennsylvania.

The fifth factor, convenience of the parties, also does not support a change of venue. The convenience of the defendant is measured in terms of its financial circumstances and physical location. Jumara, 55 F.3d at 879. Holding a trial in the Eastern District is unlikely to burden defendant. As a major university, Penn State can easily send any relevant personnel from State College to Philadelphia. Furthermore, defendant's counsel is based in Philadelphia and Penn State already conducts its regular activities at several campuses located in the Eastern District. Finally, the difference in distance between State College and Philadelphia and State College and the various places where the federal court sits in the Middle District of Pennsylvania is simply not sufficient to cause cognizable inconvenience to defendant.

The sixth factor for our consideration is the convenience of the witnesses. However, we are not required to consider the burden on defendant's employees independent of defendant's own burden. See Schreiber v. Eli Lilly & Co., Civ.A. No. 05-2616, 2006 WL 782441, at *8 (E.D. Pa. 2006). Eight of the nine anticipated defense witnesses are Penn State employees.¹ As to any other witnesses, inconvenience may be considered only to

1. The ninth anticipated witness is an employee of the Pennsylvania Department of Environmental Protection who lives and works near State College in Philipsburg, Pennsylvania.

the extent they would be unavailable for trial in either of the two fora. Jumara, 55 F.3d at 879. Defendant has not established that any of its witnesses would not be or could not be present in the Eastern District of Pennsylvania for a trial. We are simply unpersuaded that the current venue presents a true hardship for defendant and its anticipated witnesses.

Finally, the public interest in deciding local controversies at home appears to weigh in favor of transfer. Nonetheless, this single factor is insufficient to overcome the counterweight of the plaintiff's choice and the other Jumara factors.

On balance, the Jumara factors weigh heavily against transfer. Defendant has failed to meet its burden of demonstrating the necessity of transfer, and plaintiff's choice of forum must prevail. Accordingly, we will deny the motion of defendant to transfer venue to the Middle District of Pennsylvania.

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ORDER

AND NOW, this 14th day of June, 2006 for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant Pennsylvania State University to transfer proceedings to the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. § 1404(a) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

C.J.