

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

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|-------------------------------------|---|---------------------|
| LINDA DAVIS, | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| RELIANCE STANDARD LIFE | : | |
| INSURANCE COMPANY, DAVID | : | |
| COMBES, ASHLEY COMBES, | : | |
| the ESTATE of BRENDA COMBES, | : | |
| and TAYLOR FUNERAL HOME, | : | |
| Defendants. | : | NO. 98-1061 |

MEMORANDUM ORDER

Reed, J.

AND NOW, this 22nd day of September, upon consideration of the motion of defendants David Combes, Ashley Combes and the Estate of Brenda Combes, (collectively “the Combes defendants”), to dismiss the complaint pursuant to Federal R. Civ. P. 12(b), or, in the alternative, to transfer this case to the Northern District of Illinois, (Doc. No. 7), and the response of plaintiff thereto, and having made the following findings and conclusions, the action will be transferred:

1. Plaintiff, Linda Davis, (“Davis”), is a resident of North Carolina. The Combes defendants are residents of Illinois, as is defendant Taylor Funeral Home (Amended Complaint ¶¶ 5, 7-10). Defendant Reliance Standard Life Insurance Company (“Reliance”) is incorporated in Illinois and conducts business in Illinois, although its principal office is in Pennsylvania (Def. Mem. at 13). Davis seeks, among other things, a judgement against Reliance in the amount of \$272,000, i.e., the proceeds from a life insurance policy insuring her sister Brenda Combes, as well as injunctive relief

preventing the Combes defendants and Taylor Funeral Home from asserting any claim to the proceeds (Amended Complaint ¶ 29; Pl. Mem. Exh. C.);

2. The plaintiff has the burden of establishing the court's personal jurisdiction over the defendant once the defendant raises the defense.¹ See Provident Nat'l Bank v. California Federal Sav. & Loan Ass'n, 819 F.2d 434, 437 (3d Cir. 1987). A federal district court is permitted to exercise "personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state." Id. at 436. Pennsylvania's long-arm statute provides for both general and specific jurisdiction to the "fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b). The due process limit on a long-arm statute is satisfied when the defendant purposefully establishes "minimum contacts" in the forum state, by deliberately engaging in significant activities or by creating continuing obligations such that he has purposefully "availed himself of the privilege of conducting business there." Burger King v. Rudzewicz, 471 U.S. 462, 475-76 (1985); International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). These acts must be "such that [a defendant] should reasonably anticipate being haled into court [in the forum state]." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). A defendant should not be subjected to a jurisdiction "solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts. . . ." Burger King, 471 U.S. at 475. Specific

¹Subject matter jurisdiction is not contested. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (diversity of citizenship and amount in controversy).

personal jurisdiction arises from a defendant's activities in the forum state that relate to the cause of action being litigated. See id. at 472-73;

3. I find that the Combes defendants do not have the requisite minimum contacts with Pennsylvania to support the exercise of personal jurisdiction. Davis concedes that the Court does not have general jurisdiction pursuant to 42 Pa. Cons. Stat. Ann. § 5301. Additionally, I find that, in this case, simply asserting a claim to a life insurance policy (which Brenda Combes secured through her employer's insurance plan in Illinois) is not sufficient contact to support specific jurisdiction pursuant to 42 Pa. Cons. Stat. Ann. § 5322.² In support of her position, Davis asserts that the cause of action arises from the communication of the Combes defendants with Reliance. However, the letter cited as support for this contention is a letter from Reliance to Davis merely acknowledging receipt of her claim and the existence of several claims, including the claim of the Combes defendants (Pl. Mem. Exh. A). In addition, Davis argues that the motion by Reliance to interplead the insurance funds gives the Court jurisdiction over the funds, allowing the Court to decide the issue of disbursement without personal jurisdiction over the claimants (Pl. Mem. at 6-13). The motion of Reliance to interplead the funds, however, has been dismissed without prejudice (Doc. Nos. 19 & 23).³ Accordingly, I

²The statute outlines activities which serve as a bases of personal jurisdiction if conducted in Pennsylvania, including: transacting business; doing acts for the purpose of realizing a pecuniary benefit; engaging in a business or profession; owning, using, having an interest in, or possessing real property; contracting to supply services or things; causing harm or tortious injury by act or omission; and contracting to insure any person, property, or risk in Pennsylvania. See 42 Pa. Cons. Stat. Ann. § 5322.

³The motion of Reliance to interplead was entered into the docket twice (Doc. Nos. 11 & 13). Therefore, after the motion was dismissed without prejudice (Doc No. 19), a second order was issued dismissing the redundant docket entry as moot (Doc. No. 23).

find that the Combes defendants did not act “such that [they] should reasonably anticipate being haled into court [in Pennsylvania].” World-Wide Volkswagen Corp., 444 U.S. at 297;

4. It is clear that the Court has the power under both 28 U.S.C. § 1404(a) and 28 U.S.C. § 1406(a) to transfer a case despite the lack of personal jurisdiction over a defendant. See Goldlawr, Inc. v. Heiman, 369 U.S. 463, 465-66 (1962) (transferor court need not have personal jurisdiction over a defendant to transfer action under § 1406(a)); Kitces v. Wood, 917 F. Supp. 338, 343 (D.N.J. 1996) (same); see also United States v. Berkowitz, 328 F.2d 358, 361 (3d Cir.) (extending reasoning of Goldlawr to § 1404(a)), cert. denied, 379 U.S. 821 (1964); American Tel. & Tel. Co. v. MCI Communications Corp., 739 F. Supp. 1294, 1304 n.13 (D.N.J. 1990) (transferor court need not have personal jurisdiction over a defendant to transfer action under §1404(a)). Because venue is proper, the appropriate statutory provision is section 1404(a);⁴

5. A district court may, “for the convenience of parties and witnesses, [and] in the interest of justice, . . . transfer any civil action to any other court where it might have been brought.” 28 U.S.C. § 1404(a). In deciding a motion to transfer, a district court must examine the following statutory factors: (1) the convenience of the parties; (2) the convenience of the witnesses; (3) the interest of justice; and (4) whether the case could have been brought in the proposed transferee forum. American Littoral Soc’y v. United

⁴If venue was not properly laid, the Court would reach the same result under 28 U.S.C. § 1406(a) which provides in relevant part: “The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.”

States Env'tl. Protection Agency, 943 F. Supp. 548, 550 (E.D. Pa. 1996). In addition to examining the elements set out in the statute, the Court must also balance the public and private interests at stake in the litigation.⁵ Id. The moving party bears the burden of establishing that a balancing of proper interests weighs in favor of the transfer. See Machurick v. Crowley Towing and Transp. Co., Civ. No. 96-4480, 1997 WL 152796 at *2 (E.D. Pa. Mar. 27, 1997). Moreover, the district court is vested with wide discretion to weigh all relevant factors. Plum Tree, Inc. v. Stockment, 488 F.2d 754, 756 (3d Cir. 1973). Usually, the plaintiff's choice of forum is entitled a great deal of weight. See Machurick, 1997 WL 152796 at *2. However, when a plaintiff chooses a forum other than his or her home forum, that choice receives less deference. American Littoral Soc., 943 F. Supp. at 551.

6. In their motion to transfer venue, the Combes defendants make, inter alia, the following arguments:

- (i) All the defendants reside or do business in Illinois such that venue would be proper in Illinois;
- (ii) This lawsuit might first have been brought in Illinois;

⁵Such factors include:

- (1) the plaintiff's choice of forum; (2) the relative ease of access to sources of proof; (3) the availability of compulsory process for attendance of unwilling witnesses; (4) the possibility of viewing premises, if applicable; (5) the cost of obtaining attendance of willing witnesses; (6) all other practical problems that make trial of a case easy, expeditious, and inexpensive; and (7) "public interest" factors, including the relative congestion of court dockets, choice of law considerations, and the relationship of the community in which the courts and jurors are required to serve to the occurrences that give rise to the litigation.

American Littoral Soc'y, 943 F. Supp. at 550.

(iii) A transfer to Illinois would be more convenient for the Combes defendants.⁶

Foremost, the Northern District of Illinois is where David Combes lives and works. In addition, he is the Independent Administrator of the estate of decedent Brenda Combes and Guardian of the estates of his minor children, including defendant Ashley Combes. Litigating in Pennsylvania be more expensive and cause hardship by interfering with David Combes's responsibilities as a single parent. In addition, David Combes is presently named as a defendant in a separate interpleader action filed in the Northern District of Illinois by Reliance and must litigate "virtually an identical claim" in Illinois (Def. Mem at 17);

(iv) On balance, any inconvenience to Reliance as a result of litigating this case in Illinois is outweighed by the inconvenience and hardship to the Combes defendants should they be compelled to litigate this lawsuit in Pennsylvania;

(v) Similarly, because Davis lives and works in North Carolina, she must leave home to litigate this case regardless of whether it is litigated in Pennsylvania or Illinois. In addition, Illinois is not completely foreign to Davis as she often visited her sister in Illinois. Moreover, Davis is also a defendant in an interpleader action that has been filed by Continental Assurance Company in the Northern District of Illinois and, therefore, is already obligated to litigate a similar claim in Illinois.

Thus, the inconvenience and hardship to the Combes defendants of litigating in Pennsylvania outweighs the inconvenience to Davis in having the case transferred to Illinois;

⁶Presumably it would also be more convenient for Taylor Funeral Home.

(vi) Also, the Combes defendants will rely on witnesses residing in Illinois to support their claim against Reliance and counterclaims against Davis. Thus, litigating in Pennsylvania will inconvenience potential witnesses;

(vii) Finally, the Combes defendants argue that access to proof will be easier in Illinois. Although they concede that documentary evidence and business records of Reliance may be housed in Pennsylvania, they contend that a significant portion of the evidence underlying the procurement of life insurance, and, more importantly, any changes to beneficiary designations (a significant issue in this case) were made in Illinois;

7. Davis, in her argument opposing transfer, asserts that venue is proper in Pennsylvania and that her choice of forum should not be disturbed. Davis focuses upon her claim against Reliance to the exclusion of the Combes defendants (whom she chose to name in her complaint). Undoubtedly venue is appropriate as to the claim Davis brings against Reliance. Indeed, this Court would have personal jurisdiction over Reliance. Davis, however, simply discounts the relevance of any witnesses the Combes defendants may offer in support of their counterclaims, and relies on her assertion that the only relevant testimony and documentation concerns Reliance and its refusal to pay her the death benefit in controversy. Finally, Davis does not dispute that this lawsuit could have been brought in the Northern District of Illinois and that venue would be proper there;

8. In considering the factors relevant to a motion to transfer, I am mindful of the weight and deference accorded a plaintiff's choice of forum. See, e.g., Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). Nevertheless, having considered the

statutory factors of § 1404(a) as well as the public interest and the private interest of the litigants and having credited the facts and arguments of the Combes defendants set forth in Paragraphs 6(i)-(vii) above, I am persuaded that the balance of convenience weighs in favor of the Illinois forum. I find that the Combes defendants have satisfied their burden as they have shown that this litigation and the parties themselves have a greater connection with Illinois than Pennsylvania, and that for the convenience of the parties and witnesses and in the interest of justice, this action should be transferred to Illinois; accordingly

it is hereby it is hereby **ORDERED** that the motion of the Defendants to transfer this matter to the Northern District of Illinois is **GRANTED** and the action is hereby transferred to the United States District Court for the Northern District of Illinois. **IT IS FURTHER ORDERED** that the Clerk of this Court shall deliver the docket entries and the file in this action to the Clerk of Court for the United States District Court for the Northern District of Illinois subject to the provisions of Local Rule of Civil Procedure 3.2.

LOWELL A. REED, JR., J.