

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

TIMOTHY S. RISTER : CIVIL ACTION  
: :  
v. : :  
: :  
LEANNE N. CUPON, D.C. and PENN :  
JERSEY CHIROPRACTIC & :  
REHABILITATION CLINIC, P.C. : NO. 01-2897

MEMORANDUM ORDER

This case arises from plaintiff's receipt of chiropractic treatment from defendants in July 1999. Plaintiff is a citizen of Pennsylvania and resident of Easton. Defendant Cupon is a citizen of New Jersey and resident of Warren County where she operates the defendant clinic.

Plaintiff alleges that Dr. Cupon failed to provide proper treatment, obtained and reviewed his medical records without his authorization, defamed him with a physical gesture and authored a libelous letter about him on August 11, 1999. He has asserted claims for negligence or medical malpractice, defamation, libel and invasion of privacy. Plaintiff has pled each discrete act comprising the alleged malpractice as a distinct count, resulting in a 49 count complaint.

The complaint was filed on June 12, 2001 and served upon defendant on June 16, 2001. Defendants have filed a motion to dismiss for lack of subject matter jurisdiction, personal jurisdiction and venue. Plaintiff has not responded.

While no amount in controversy is pled in the complaint, plaintiff represented in the accompanying arbitration certification that the damages recoverable exceed \$150,000 and has alleged a "permanent" aggravation of a painful medical condition. It appears that the court has subject matter jurisdiction. See 28 U.S.C. § 1332(a).

Once a defendant asserts the defense of lack of personal jurisdiction, the burden is upon the plaintiff to make a prima facie showing with sworn affidavits or other competent evidence that such jurisdiction exists. See Mellon Bank PSFS v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66-67 n.9 (3d Cir. 1984) ("at no point may a plaintiff rely upon the bare pleadings alone in order to withstand a defendant's Rule 12(b)(2) motion to dismiss for lack of in personam jurisdiction"); Leonard A. Fineberg, Inc. v. Central Asia Capital Corp., 936 F. Supp. 250, 253-54 (E.D. Pa. 1996). A plaintiff must establish with "reasonable particularity" contacts between a defendant and the forum sufficient to support an exercise of personal jurisdiction. See Farino, 960 F.2d at 1223. Plaintiff has not done so.

To the contrary, it appears that all of the conduct complained of was undertaken by defendant Cupon at the defendant clinic in New Jersey. There is no showing or averment that defendants regularly solicited or performed business in the

forum. That plaintiff resides in Pennsylvania does not establish a connection between his claims or the defendants and the forum. See Wolf v. Richmond County Hospital Authority, 745 F.2d 904, 911 (4th Cir. 1984); Gelineau v. New York University Hospital, 375 F. Supp. 661, 667 (D.N.J. 1974). Plaintiff's claims do not arise from or relate to activities by defendants in the forum.

No defendant resides in Pennsylvania. The defendant professional corporation is not subject to personal jurisdiction in this district. A substantial part of the events giving rise to plaintiff's claims did not occur in this district. Thus, venue is also lacking in this district. See 28 U.S.C. §§ 1391(a) & (c).

It does not necessarily follow, however, that the action must be dismissed. In the interest of justice, a court without venue may transfer a case to a district in which the case could have been brought. See 28 U.S.C. § 1406(a).

Section 1406(a) has also been read to permit a district court that lacks personal jurisdiction to transfer a case in the interest of justice to a district in which personal jurisdiction can be established. See Porter v. Groat, 840 F.2d 255, 257 (4th Cir. 1988); Manley v Engram, 755 F.2d 1463, 1467 (11th Cir. 1985) (§ 1406(a) may be used when suit is filed in a district in which venue or personal jurisdiction is improper); Sinclair v. Kleindienst, 711 F.2d 291, 294 (D.C. Cir. 1983) (§ 1406(a)

transfer appropriate to remove obstacles presented by "lack of personal jurisdiction"); Corke v. Sameiet M.S. Song of Norway, 572 F.2d 77, 80 (2d Cir. 1978); Taylor v. Love, 415 F.2d 1118, 1120 (6th Cir. 1969), cert. denied, 397 U.S. 1023 (1970); Mayo Clinic v. Kaiser, 383 F.2d 653, 656 (8th Cir. 1967); Dubin v. U.S., 380 F.2d 813, 815 (5th Cir. 1967); Shaw v. Boyd, 658 F. Supp. 89, 92 (E.D. Pa. 1987). Also, 28 U.S.C. § 1631 provides that in the interest of justice, a case may be transferred to another court in which the case could have been originally brought if it cannot be maintained in the present court due to a lack of jurisdiction. This section encompasses transfers for lack of personal, as well as subject matter, jurisdiction. See Ross v. Colorado Outward Bound School, Inc., 822 F.2d 1524, 1527 (10th Cir. 1987); Carty v. Beech Aircraft Corp., 679 F.2d 1051, 1065-66 & n. 17 (3d Cir. 1982); Jaffe v. Julien, 754 F. Supp. 49, 53 (E.D. Pa.1991); Nolt & Nolt, Inc. v. Rio Grande, Inc., 738 F. Supp. 163, 166 (E.D. Pa. 1990).

The two year statute of limitations under New Jersey, as well as Pennsylvania, law has now run on plaintiff's malpractice claim. See N.J. Stat. Ann § 2A:14-2; 42 Pa. C.S.A. § 5524. It is thus in the interest of justice to transfer the case so plaintiff may have his proverbial day in court and this dispute can be resolved on the merits. The one year limitation period under New Jersey, as well as Pennsylvania, law for

plaintiff's defamation and invasion of privacy claims had expired at the time this action was commenced. See N.J. Stat. Ann § 2A:14-3; 42 Pa. C.S.A. § 5523; Rumbauskas v. Cantor, 649 A.2d 853, 858 (N.J. 1994).

The District of New Jersey has subject matter jurisdiction. Venue would be proper in that district as a substantial part of the events or omissions underlying the claims took place in that district. The defendants are subject to general and specific personal jurisdiction in New Jersey.

**ACCORDINGLY**, this                    day of September, 2001, upon consideration of defendants' Motion to Dismiss (Doc. #7) and in the absence of any response from plaintiff thereto, consistent with the foregoing, **IT IS HEREBY ORDERED** that said Motion is **DENIED** and, pursuant to 28 U.S.C. §§ 1406(a) & 1631, this action is **TRANSFERRED** to the United States District Court for the District of New Jersey at Newark.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**