

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

TRACY HERBERT, Individually and as	:	CIVIL ACTION
Administrator of the Estate of Charles H.	:	
Herbert, III, deceased	:	NO. 04-1984
	:	
v.	:	
	:	
CHRISTIANA CARE CORPORATION and	:	
CHRISTIANA CARE HEALTH SERVICES,	:	
INC., <u>et al.</u>	:	

MEMORANDUM AND ORDER

Kauffman, J.

November 8, 2004

Plaintiff Tracy Herbert, individually and as the Administrator of the Estate of Charles H. Herbert, brings this action against Defendants Kamar T. Adeleke, M.D., Tri-State Cardiovascular, Tri-State Cardiovascular Institute, P.A., Christiana Care Corporation and Christiana Care Health Services, Inc. (collectively “Defendants”), alleging negligence, vicarious liability, joint venture, wrongful death, survival action, and loss of consortium. Now before the Court is Defendant Kamar Adeleke, M.D.’s (“Defendant Adeleke”) Motion to Quash Service of Summons and Motion to Dismiss Based upon Insufficiency of Service of Process, Improper Venue, and Lack of Jurisdiction, or in the alternative to transfer venue. For the following reasons, the Court will grant Defendant’s Motion, and transfer venue to the District of Delaware.

I. Background

Plaintiff alleges that: (1) On August 24, 2002, Charles H. Herbert, III (“Decedent”), was taken to Christiana Hospital on an emergency basis complaining of dizziness and chest pain. See Complaint at ¶ 12; (2) Christiana Hospital assigned Defendant Adeleke and other medical

personnel to perform a cardiac catheterization and an angiography. Id. at ¶ 14; (3) During the angiography, an obvious aortic aneurysm was captured on film. Id. at ¶¶ 17-18, 20; (4) Defendant Adeleke either failed to recognize or ignored the aneurysm. Id. at ¶¶ 19; (5) Defendants failed to provide Decedent further testing or treatment of his condition. Id. at ¶¶ 19, 32; and, (6) On August 26, 2002, while Decedent was at his home in Philadelphia, the aneurysm ruptured and caused his death. Id. at ¶ 24-25.

In this diversity medical malpractice action, Plaintiff alleges that she a citizen of Pennsylvania and that all Defendants reside in Delaware. Id. at ¶¶ 3-8.¹

II. Legal Standard

A defendant may assert improper venue in a motion to dismiss. Fed. R. Civ. P. 12(b)(3). The venue statute in diversity actions provides that venue lies in “(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, *if there is no district in which the action may otherwise be brought.*” 28 U.S.C. 1391(a) (emphasis added). “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.” 28 U.S.C. § 1406(a).

¹ The Court notes that Plaintiff has filed an action based on the same underlying claims against the same defendants in the Delaware Superior Court. See Delaware case no. 04C-08-075 SCD.

III. Analysis

In this case, venue would be proper in the District of Delaware because all Defendants reside in that state. Plaintiff claims that venue would also be proper in the Eastern District of Pennsylvania under 28 U.S.C. § 1391(a)(2) because a substantial part of the events giving rise to the claim occurred here, specifically the rupture of the aortic aneurysm and the decedent's death. See Complaint at ¶ 25. However, these acts or events must be "more than tangentially connected to qualify as substantial under § 1391(a)(2)." Siegel v. Homestore, Inc., 255 F. Supp. 2d 451, 455 (E.D. Pa. 2003). The test for determining venue is "not the defendant's 'contacts' with a particular district, but rather the location of those 'events or omissions giving rise to the claim.'" Cottman Transmission Systems, Inc. v. Martino, 36 F.3d 291, 294 (3d Cir. 1994).

Cases in this and other jurisdictions have held that where tortious conduct occurs in one jurisdiction, a mere effect of that conduct being felt in a second is not enough to support venue in that second jurisdiction. See, e.g., Henshell Corp. v. Childerston, 1999 WL 549027, at * 3-4 (E.D. Pa. July 28, 1999) (holding where few of the actions or omissions giving rise to a claim of legal malpractice occurred in the Eastern District, venue was proper in Delaware District Court even though the plaintiff contended that the harm it suffered occurred in this district); Nagele v. Holy Redeemer Visiting Nurse Agency, Inc., 813 F.Supp. 1143, 1146 (E.D. Pa. 1993) (finding venue in the Eastern District was improper in a negligence case where all of the allegedly negligent nursing care was provided in New Jersey); Wisland v. Admiral Beverage Corp., 119 F.3d 733, 736 (8th Cir. 1997) (holding venue in Wisconsin was not proper under § 1391(a)(2) as the events giving rise to the plaintiff's action involved the alleged negligence of the defendants in

South Dakota, not the nature of her medical treatment in Wisconsin); Smith v. Fortenberry, 903 F. Supp. 1018, 1020-21 (E.D. La. 1995) (holding that the plaintiff's ongoing medical treatment in Louisiana after an accident that occurred in Mississippi was not a substantial part of the events giving rise to his claim under § 1391(a)(2)).

Since venue is improper in this District under 28 U.S.C. § 1391(a), this Court must either dismiss or transfer this action to any district or division in which it could have been brought. 28 U.S.C. § 1406(a). Accordingly, Defendant Adeleke's Motion will be granted, and the action will be transferred to the United States District Court for the District of Delaware.

IV. Conclusion

For the foregoing reasons, the Court will grant Defendant Adeleke's Motion and transfer jurisdiction to the District of Delaware. An appropriate Order follows.

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

TRACY HERBERT, Individually and as	:	CIVIL ACTION
Administrator of the Estate of Charles H.	:	
Herbert, III, deceased	:	NO. 04-1984
	:	
v.	:	
	:	
CHRISTIANA CARE CORPORATION and	:	
CHRISTIANA CARE HEALTH SERVICES,	:	
INC., <u>et al.</u>	:	

ORDER

AND NOW, this _____ day of November, 2004, for the reasons stated in the accompanying Memorandum, **IT IS ORDERED** that Defendant Adeleke's Motion (docket no. 18) is **GRANTED** and the action is **TRANSFERRED** to the United States District Court for the District of Delaware.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.