STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF MARION)	FOR THE TWELFTH JUDICIAL CIRCUIT
Demetrice Utley, Individually and as Personal Representative of the Estate of Taylor Danielle Price,)	Case No.: 2022-CP-33-00362
Plaintiff,)	**ORDER DENYING DEFENDANTS' MOTION FOR CHANGE OF VENUE**
vs.)	
McLeod Physician Associates II, Charles A. Trant, MD, Marion County School District,)	
Defendants.)	

This matter is before the court upon motion of defendants McLeod Physician Associates, II (MPAII) and Charles A. Trant, M.D. (Trant) for a change of venue. For the reasons stated below, the motion is denied**.**

This action was scheduled for a day-certain for trial in Marion County on September 9, 2024. Plaintiff, defendant MPAII, defendant Trant, and then-defendant Marion County School District (the school district) all participated in jury selection. After the jury was selected and seated in the jury box, plaintiff's attorneys advised the court that they had reached a settlement agreement with the school district. Trant and MPAII immediately moved for a change of venue to Florence County under S.C. Code Ann. §15-7-30. They also moved for a mistrial on the grounds that the school district tainted the jury selection process by participating in it under false pretenses that it

would be a party at trial but knowing that it had a settlement agreement and that it would not be a party at trial.[1]

It was obvious to the court and not disputed by plaintiff or the school district that the settlement agreement between them was reached before jury selection began. Trant and MPAII agree that plaintiffs and the school district can settle if they choose and do not need their consent. However, the appropriate course of action would have been for the school district attorney to not participate in the jury selection process with the attorneys for Trant and MPAII. Participation was evident. Trant and MPAII contend this made the jury selection process unfair and prejudicial to them. The court agrees.

To remedy the unfair and prejudicial jury selection process, the court dismissed the jury and the trial was continued. This made the motion for mistrial moot. The settlement between plaintiff and Marion County School District was put on the record and approved by the court. Trant and MPAII then renewed their motion to transfer venue pursuant to S.C. Code Ann §15-7-30 contending that the school district was no longer a party and, therefore, venue was now proper only in Florence County where Trant resides, where the incident of alleged malpractice occurred, and where MPAII has its principal place of business.

LEGAL STANDARD

After an action has been properly instituted in a proper forum county, the Court may change the place of trial if: (i) there is reason to believe that a fair and impartial trial cannot be had there;

[1] The school district, Trant and MPAII were at the same table for the jury roll call, statutory qualification questions, and voir dire. They were in the same room discussing challenges for cause and peremptory strikes. At least some degree of input to the jury selection process was given by the school district attorney and considered by the attorneys for Trant and MPAII. Trant and MPAII maintain that had they known the school district had settled, they would not have allowed the school district to participate in the jury selection process with them and would have requested that the 4 preemptory strikes and 1 alternate strike allotted for all defendants be theirs alone instead of shared with the school district.

or (ii) the convenience of witnesses and the ends of justice would be promoted by the change. *See* S.C. Code Ann. § 15-7-100(A). Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue. *See Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 440, 633 S.E.2d 143, 147 (2006). If the moving party "makes a *prima facie* showing [that] a venue change will serve both the convenience of the witnesses and the ends of justice, the burden shifts to the party resisting the motion to overcome at least one of these requirements." *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 336, 479 S.E.2d 67, 71 (Ct. App. 1996).

FINDINGS OF FACT

This action was brought in Marion County against three (3) defendants: (i) McLeod Physician Associates, II; (ii) Charles A. Trant, MD; and (iii) Marion County School District. The decedent, Taylor Danielle Price, was a lifelong resident of Marion County and suffered a sudden cardiac death in Marion County. Defendant McLeod Physician Associates II ("MPA II") owns property, employs physicians and employees, sees patients and conducts business in Marion County. Specifically, "McLeod Family Medicine Marion" is located at 3032 East Highway 76, in Mullins, Marion County, South Carolina, which is owned and operated by MPA II.

Defendant Charles A. Trant, MD ("Dr. Trant") is a resident of Florence County, a neighboring county. Dr. Trant served as the pediatric cardiologist for the thirteen (13) counties of the Pee Dee Region, including Marion County. *See Dep. of Def. Charles Trant, MD,* p. 16:9-10. Dr. Trant was on staff at multiple hospitals across the Pee Dee Region and received referrals from

Marion County. *Id.*, at pp. 7:25-8:2. Dr. Trant regularly saw and treated patients throughout the region, including patients from Marion County such as Taylor Danielle Price, whose death occurred in Marion County.

At least four (4) witnesses were prepared to appear and to testify at trial: (i) Plaintiff Demetrice Utley, the decedent's mother; (ii) Emerson Hunt, the decedent's stepfather; (iii) Linda Scott, a retired teacher; and (iv) Thuy Tran, a records custodian for multiple medical providers that were involved in the underlying circumstances of the case. Each of these witnesses reside or work in Marion County. Conversely, two (2) witnesses work or reside in Florence County, Dr. Trant and Christina Stewart. The expert witnesses in this case are from neither Marion County nor Florence County. Plaintiff's expert (Anthony Chang, MD) is from Irvine, California. The two expert witnesses being called by the Medical Defendants are either from Charleston (Nicole Cain, MD) or Columbia (Claudius Shuler, MD). As noted above, the matter is at the top of the docket in Marion County and is ready for trial. The parties are fully ready to proceed. Any potential transfer of the case to another venue, particularly to a county with a busy docket, would likely result in delay of trial.

ANALYSIS AND CONCLUSIONS

For the reasons below, the Court finds that the Medical Defendants have not presented a sufficient legal basis for transfer of this case to Florence County. As the Medical Defendants concede that a fair and impartial trial is available in Marion County, but fail to demonstrate how the ends of justice or the convenience of the witnesses would be promoted by changing venue, the Motion for Change of Venue is **DENIED**.

I. BECAUSE THE ACTION WAS COMMENCED IN A PROPER VENUE WHEN FILED, THE RESIDENCY PROVISIONS OF S.C. CODE § 15-7-30 DO NOT PROVIDE A BASIS FOR TRANSFERRING VENUE

As noted above, this action was commenced in Marion County against multiple defendants, including a defendant that was resident in Marion County. South Carolina law is clear that, where there are multiple defendants in an action who reside in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. *Jeter*, 369 S.C. at 442, 633 S.E.2d at 148. In a case where more than one venue is proper, "the plaintiff ordinarily has the right of election as to the county in which an action will be brought." *Id*. Our Supreme Court has recognized that an action properly commenced in any one of two or more venues, and properly brought in one such venue, "is removable to the other proper venue only if there exists some statutory ground for removal ***other than*** the bringing of suit in the wrong venue." *Jeter*, 369 S.C. at 442, 633 S.E.2d at 148 (emphasis added). A plaintiff's choice of forum "should rarely be disturbed." *See Braten Apparel Corp. v. Bankers Tr. Co*., 273 S.C. 663, 668, 259 S.E.2d 110, 113 (1979).

In their Memorandum, the Medical Defendants argue that Florence County is the proper venue since Marion County School District has been released as a party. The Medical Defendants cite to the South Carolina Supreme Court's holding that "when motion to change venue is brought pursuant to S.C. Code § 15–7–30 and the facts concerning the defendant's residence are uncontradicted, the trial court must change the venue to the county where the defendant resides." *See Chestnut v. Reid*, 299 S.C. 305, 307, 384 S.E.2d 713, 714 (1989). However, the Medical Defendants' reliance on *Chestnut* is misplaced. In *Chestnut*, the plaintiff initiated an action in Horry County relating to an automobile accident that occurred in Horry County. The sole defendant in that action was a resident of York County, which causes *Chestnut* to be entirely

distinguishable and inapplicable to the situation presented here. *Id*. at 306, 384 S.E.2d at 714. This action was instituted against multiple defendants and was instituted in a proper venue.

The Court finds that, because this action was properly commenced in Marion County, venue can only be changed at this stage of the litigation for a reason other than the bringing of suit in the wrong venue. *See Jeter*, 369 S.C. at 442, 633 S.E.2d at 148. It is undisputed that this action was properly commenced in Marion County in which one of the defendants resided at the time of the commencement of the action. *See* S.C. Code §15-7-30. Therefore, the Medical Defendants are not entitled to a transfer of venue on the basis of the residency provisions of S.C. Code 15-7-30.

II. THE MEDICAL DEFENDANTS HAVE NOT SHOWN THAT A CHANGE IN VENUE WILL SERVE BOTH THE CONVENIENCE OF WITNESSES AND THE ENDS OF JUSTICE

After a plaintiff brings his/her action in a proper venue, South Carolina law provides that venue may ***only*** be changed if: (1) "there is reason to believe that a fair and impartial trial cannot be had there; or" (2) both "the convenience of witnesses and the ends of justice would be promoted by the change." *See* S.C. Code § 15-7-100; *see also* S.C. Code § 15-7-110 (allowing a party to request to transfer venue if supported by affidavit proving that a fair and impartial trial cannot be had).[2] The Court finds that the Medical Defendants have failed to make the necessary showing to support the requested change in venue from Marion County to Florence County, as neither of the statutory tests have been met.

With respect to the first factor, the Court finds that the Medical Defendants have failed to demonstrate that a fair and impartial trial cannot be had in Marion County. The Medical

[2] During the hearing of the Motion, counsel for the Medical Defendants agreed that a fair and impartial trial could be had in Marion County. Accordingly, the Court finds that the Medical Defendants have failed to make the necessary showing that "there is reason to believe that a fair and impartial trial cannot be had" in Marion County. *See* S.C. Code § 15-7-100.

Defendants did not move at any time prior to the commencement of trial in this case for a transfer of venue due to the alleged inability of this Court to provide a fair and impartial trial, the interests of justice, or any inconvenience of witnesses in this case. Furthermore, the Medical Defendants have not presented evidence or affidavits to support a finding that the conveience of witnesses and the ends of justice require a transfer of venue. *See Mixson v. Agric. Helicopters, Inc.*, 260 S.C. 532, 535, 197 S.E.2d 663, 664 (1973) (recognizing that a party moving to change venue cannot rely merely on the beliefs, opinions, and conclusions of the witnesses).

For the Motion to be granted, the Medical Defendants must provide competent and adequate evidence that establishes both: (a) how the ends of justice will be promoted by a change from Marion County to Florence County; and (b) how the witnesses will be inconvenienced if the trial is held in Marion County rather than Florence County *See* S.C. Code §15-7-100(3). The burden of proof lies with the party who is seeking to change venue. *See, e.g., Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 476, 609 S.E.2d 286, 296 (2005). Any statements provided from witnesses (which were not provided here) must extend beyond mere conclusions to provide probative value in determining convenience. *Id.* at 477, 609 S.E.2d at 297; *see also Sample v. Bedenbaugh*, 158 S.C. 496, 155 S.E. 828, 830 (1930) ("[i]t is essential to the support of a motion to change the place of trial, based upon the grounds just stated, to establish by competent evidence the existence of both conditions. […] It has likewise been determined that the movant in such motions cannot rely merely on the beliefs, opinions, and conclusions of the witnesses offered in support of the motion without a disclosure of the evidence relied on.").

As discussed above, the decedent was a lifelong resident of Marion County and suffered a sudden cardiac death in Marion County. MPA II owns property, employs physicians and employees, sees patients and conducts business in Marion County. Dr. Trant regular treated

patients throughout the Pee Dee Region, including Marion County, and received referrals from Marion County. Dr. Trant served as the pediatric cardiologist for the thirteen (13) counties of the Pee Dee Region, including Marion County. There are at least four (4) witnesses who will testify at the trial who work or reside in Marion County. In view of these facts, trial in Marion County appears to be both convenient for the witnesses and conducive to the ends of justice.

The Court finds that the Medical Defendants have failed to show that the ends of justice would be promoted by changing venue to Florence County. *See Garrett v. Packet Motor Exp. Co., Inc*., 263 S.C. 463, 210 S.E.2d 912 (1975) (finding that the trial court could have properly denied the motion on the ground that there was no showing that the ends of justice would be promoted by the requested change where the affidavits made no reference to the ends of justice). Although two (2) witnesses are from Florence County, applicable law indicates that the short travel distance to a neighboring county would, absent extenuating circumstances, not create such an inconvenience to witnesses and subvert the ends of justice so as to override a plaintiff's choice of venue. *Mixson*, 260 S.C. at 535, 197 S.E.2d at 664 (finding that, due to the quick facility of modern transportation, witnesses would not be inconvenienced by having to testify in one county versus its neighboring county).[3] For these reasons, the Court finds that the Medical Defendants have not shown sufficient grounds under S.C. Code § 15-7-100 or S.C. Code § 15-7-110 for venue to be transferred.

[3] Numerous trial court decisions resolving similar motions are in accord. *See, e.g., Sherman v. Lex. Cnty. Health Servs. Dist*., No. 2019-CP-02-00067 (Oct. 2, 2019) (denying motion to change venue where venue was proper at the time the action was filed); *Barber v. Lex. Health Servs. Dist.*, 2017-CP-40-0003 (May 23, 2017) (same); *Braxton v. Coastal Vascular & Vein Center*, P.A., 2020-CP-08-00159 (Aug. 10, 2020) (same); *Spurlock v. SC Internal Med. Associates, et al.*, 2017-CP-40-04832 (Dec. 4, 2017) (denying motion to change venue to neighboring county where defendants failed to meet burden of showing competent evidence as to how material witnesses would be inconvenienced by the venue that plaintiff had properly selected or how a venue change would advance the ends of justice).

CONCLUSION

As the Medical Defendants do not dispute that a fair and impartial trial can be had in Marion County and have not shown that the convenience of witnesses and ends of justice require a change in venue, the Medical Defendants' Motion for Change of Venue is **DENIED**, as the residency provisions of S.C. Code 15-7-30 do not support a transfer of venue in an action that was instituted in a proper venue at the time of filing.

IT IS SO ORDERED.

The Honorable H. Steven DeBerry, IV
Presiding Judge
Marion County Court of Common Pleas

September ____, 2024

_____, South Carolina

Marion Common Pleas

Case Caption: Demetrice Utley VS Charles A Trant , defendant, et al

Case Number: 2022CP3300362

Type: Order/Change of Venue

H. Steven DeBerry, IV

Circuit Court Judge 2771