

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

JOSEPH COHEN and GALIT	:	
DADOUN-COHEN, Individually	:	CIVIL TRIAL DIVISION
and in their own right as Co-Administrators	:	
of the Estate of ETHAN AMOS	:	FEBRUARY TERM, 2007
DADOUN-COHEN, Deceased	:	No. 1401
	:	
Appellants/Plaintiffs	:	Superior Court Docket No.
	:	1270 EDA 2007
v.	:	
	:	
KATHLEEN FURIN, MSW, CCE,	:	
MATERNAL WELLNESS CENTER,	:	
RONNI ROTHMAN, CNM,	:	
JULIANNA THOMPSON, CNM,	:	
WOMAN WISE MIDWIFERY,	:	
ERIC CARLSON, D.O.,	:	
MAIN LINE PERINATAL ASSOCIATES, a	:	
Division of Women’s Health Care Group of	:	
Pennsylvania, LLC, and	:	
MAIN LINE HOSPITALS, INC., d/b/a	:	
LANKENAU HOSPITAL	:	
	:	
Appellees/Defendants	:	

OPINION

PROCEDURAL HISTORY

Plaintiffs Joseph Cohen and Galit Dadoun-Cohen, individually and in their own right as co-administrators of the estate of Ethan Amos Dadoun-Cohen, deceased, appeal from the Court’s Order, dated April 24, 2007, wherein the Court granted preliminary objections of Defendants Eric Carlson, D.O., and Main Line Perinatal Associates, transferring the matter to the Court of Common Pleas of Montgomery County, Pennsylvania.

FACTUAL BACKGROUND

Plaintiffs discovered about September, 2005, that they were expecting their first child. (Complaint, ¶ 20). Upon learning the news, Plaintiff, Dadoun-Cohen began treating with Yvonne Prioleau, M.D., of Pennsylvania Hospital in Philadelphia¹ and received an expected due date of “on or about June 11, 2006.” (*Id.*, ¶¶ 21, 22).

At about the thirty-second week of her pregnancy, Plaintiff, Dadoun-Cohen was diagnosed with polyhydramnios.² (Complaint, ¶ 23). Gestational diabetes was suspected. (*Id.*, ¶ 25). After discussing this complication of her pregnancy with Dr. Prioleau, Plaintiff “sought assistance” with Defendant Kathleen Furin, MSW, CCE,³ of the Defendant Maternal Wellness Center. (Complaint, ¶ 26).⁴ The Maternal Wellness Center, where Furin leads “an educational course for expectant mothers to ‘help mothers make choices about birthing,’” is located in Philadelphia. *Id.* Defendants Furin and the Maternal Wellness Center appear to be the only connection between this matter and Philadelphia County. *See* footnotes 1, 7.

At about the thirty-fourth week of her pregnancy, after another conversation with Furin, Plaintiff decided to treat with Defendants Ronni Rothman, CNM,⁵ and Julianna Thompson, CNM, of Woman Wise Midwifery, and to plan to deliver her baby at Defendant Lankenau Hospital. (Complaint, ¶¶ 30, 32, 34). Woman Wise Midwifery is a

¹ Dr. Prioleau and Pennsylvania Hospital are not defendants in this suit.

² This rare, “abnormal condition of pregnancy,” also known simply as hydramnios, is “characterized by an excess of amniotic fluid” and increased risks of “premature rupture of the membranes, premature labor, and perinatal mortality.” Douglas M. Anderson, M.A., ed., *Mosby’s Medical Dictionary* 835-36 (6th Edition 2002).

³ “Certified Childbirth Educator.” The record does not indicate what governing body has granted Ms. Furin this certification, nor does the record indicate whether Ms. Furin is a statutorily licensed health care provider.

⁴ The Maternal Wellness Center “is a non-profit charitable organization whose mission is to support, educate, and empower women and families during the transition to parenthood.” Expectant Mother’s Guide, <http://www.expectantmothersguide.com/>.

⁵ Certified Nurse-Midwife.

healthcare facility located at Lankenau Hospital in Wynnewood, Montgomery County, Pennsylvania. Plaintiff's prenatal treatment "includ[ed] office visits" at that location. (*Id.*, ¶ 34). There is no indication in the record that she received any further medical care in Philadelphia, from Dr. Prioleau, Pennsylvania Hospital, or any named defendant, after transferring her care to Women Wise Midwifery and Lankenau Hospital after the thirty-fourth week of her pregnancy.

Plaintiff's contractions began in the evening of June 20, 2006. (Complaint, ¶ 35). After Mr. Cohen communicated with Defendant Rothman, he and Mrs. Dadoun-Cohen traveled to Lankenau Hospital, where she was admitted. (*Id.*, ¶ 37). During her labor and delivery at Lankenau Hospital, Plaintiff was under the treatment of Defendants Rothman, Thompson, Woman Wise Midwifery, Lankenau Hospital, Eric Carlson, D.O., and Main Line Perinatal Associates. (*Id.*, ¶¶ 38, 40).

Plaintiff's course of treatment during labor included "periodic fetal monitoring." (Complaint, ¶ 39). At or about 7:00 a.m. on June 21, 2006, she was offered a choice of either Pitocin⁶ or a cesarean section. (*Id.*, ¶ 41). At or about 7:55 a.m., Ethan Amos Dadoun-Cohen was delivered via cesarean section. (*Id.*, ¶ 42). After initial treatment in the neonatal intensive care unit of Lankenau Hospital, Ethan was transferred to Thomas Jefferson University Hospital⁷ on June 21, due to "seizures, perinatal asphyxia, head cooling evaluation, hypoglycemia and a suspicion for sepsis." (*Id.*, ¶ 43). Tragically, he passed away at Thomas Jefferson University Hospital on June 23. (*Id.*, ¶ 44).

Plaintiffs filed their Complaint on February 15, 2007. (*See* Docket). Plaintiffs allege negligence, professional malpractice, wrongful death, and negligent infliction of

⁶ Pitocin is a brand name of oxytocin, a hormone that stimulates uterine contractions. *See* Anderson, *supra* note 2, at 1258.

⁷ Thomas Jefferson University Hospital is not a defendant in this suit.

emotional distress against Furin, Maternal Wellness Center, Rothman, Thompson, Woman Wise Midwifery, Carlson, Main Line Perinatal Associates, and Lankenau Hospital. Defendants Carlson and Main Line Perinatal Associates timely filed Preliminary Objections in the form of, *inter alia*, a Motion to Transfer Venue to Montgomery County, Pennsylvania. (*Id.*). This Court ordered the matter transferred on April 24, 2007, and Plaintiffs appealed the Order. (*Id.*). Upon the Court's Order, dated May 31, 2007, Plaintiffs timely filed their Pa.R.A.P. 1925(b) Statement of Matters Complained of on Appeal on June 11, 2007. (*Id.*). Plaintiffs assert, in the first place, that venue properly lies in Philadelphia against Defendants Furin, Maternal Wellness Center, Rothman, and Woman Wise Midwifery; and in the second place, that the matter should not be transferred to Montgomery County before allowing limited discovery on the issue of venue. (*See* Plaintiffs' Statement of Matters Complained of on Appeal).

The issues to be addressed by this Court are: (1) whether the lower Court committed an abuse of discretion or error of law in granting preliminary objections of defendants Eric Carlson, D.O., and Main Line Perinatal Associates, thereby transferring the matter to the Court of Common Pleas of Montgomery County, Pennsylvania; and (2) whether the lower Court committed an abuse of discretion or error of law in ordering the transfer without allowing limited discovery on the issue of venue.

LEGAL ANALYSIS

I. VENUE LIES IN MONTGOMERY COUNTY

The standard of review in cases of venue is abuse of discretion. *See Catagnus v. Allstate Ins. Co.*, 864 A.2d 1259, 1263, 2004 PA Super 486, *9 (Pa.Super. 2004). The trial court's "considerable discretion" to transfer a matter to another forum will not be

disturbed unless “the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record.” *Id.*, citing *Johns v. First Union Corp.*, 777 A.2d 489, 491, 2001 PA Super 150 (Pa. Super. 2001), *Zimmerman v. Harleysville Mut. Ins. Co.*, 860 A.2d 167, 174, 2004 PA Super 383, *22 (Pa. Super. 2004). “[I]f there exists any proper basis for the trial court's decision to grant the petition to transfer venue, the decision must stand.” *Krosnowski v. Ward*, 836 A.2d 143, 146, 2003 Pa. Super. 414, *4 (Pa. Super. 2003) (*en banc*).

“For the convenience of parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could originally have been brought.” Pa.R.C.P. 1006(d)(1). “[A] medical professional liability action may be brought against a health care provider for a medical professional liability claim only in a county in which the cause of action arose.” Pa.R.C.P. 1006(a.1), 42 Pa.C.S. § 5101.1(b) (MCARE Act). A “medical professional liability claim” is a “claim seeking the recovery of damages or loss from a health care provider. . . .” 42 Pa.C.S. § 5101.1(c). A “health care provider” is a “primary health care center, a personal care home . . . or a person, including a corporation, university or other educational institution licensed or approved by the Commonwealth to provide health care or professional medical services as a physician, a certified nurse midwife, a podiatrist, hospital, nursing home, birth center, and an officer, employee or agent of any of them acting in the course and scope of employment. *Id.* A “primary health care center” is a “community-based nonprofit corporation” providing “preventive, diagnostic, therapeutic and basic emergency health care by licensed practitioners.” *Id.*

A. Venue Lies in Montgomery County Because the Medical Care Was Furnished There

The tenuous connection with Philadelphia County is based upon a conversation with Defendant Kathleen Furin, who is employed by the Maternal Wellness Center, the only Philadelphia defendants (hereinafter the “Philadelphia defendants”). Ms. Furin is a social worker and a childbirth educator. As a result of this conversation, Plaintiff made the exclusive decision to transfer her maternal care during her thirty-fourth week of pregnancy to Woman Wise Midwifery and Lankenau Hospital, both defendants here, which are located in Montgomery County.

In Count I of the Complaint, wherein Plaintiffs recite their allegations against the Philadelphia defendants, Plaintiffs fail to identify any negligent medical care by these defendants. Plaintiffs’ allegations are fairly characterized as “recommending and assisting in the transfer” to the alternate care providers (Complaint, ¶ 46(a)) and “failing to initiate, commit to and follow up with Plaintiff.” (Complaint, ¶ 46(h)). Throughout Count I, the acts complained of are not acts of medical care which were rendered by other defendants, but appear to be based upon some duty to exercise management of the care.

In Count II and the remaining Counts, which merely mimic Count II, the Plaintiffs go on to state the medical care rendered by the remaining defendants, who are all in Montgomery County. The care alleged includes:

- (a) failing to diagnose and properly treat a macrosomic fetus;
- (b) failing to treat Plaintiff, Galit Dadoun-Cohen, as a high risk patient;
- (c) failing to induce delivery at an earlier date and time given the clinical picture;
- (d) failing to initiate, commit to and follow up with Plaintiff, Galit Dadoun-Cohen, to ensure that appropriate treatment was rendered and extra surveillance performed given Plaintiff’s clinical picture;

- (e) failing to recognize and diagnose the Plaintiff's decedent with arrest of labor in the active stage when, after 7:00 a.m. on June 21, 2006, there was no change in the cervix of Plaintiff, Galit Dadoun-Cohen, since the time of her admission, some nine (9) hours earlier;
- (f) failing to continuously monitor the fetus during the labor and delivery process particularly after thick particulate meconium was documented;
- (g) failing to evaluate the patient from 5:00 p.m. to 10:00 p.m. by direct contact on June 20, 2006;
- (h) failing to notify Defendant Carlson of Plaintiff's decedent's condition prior to 7:10 a.m. on June 21, 2006 given Plaintiff's clinical picture;
- (i) failing to administer intravenous fluids until approximately 5:00 a.m. on June 21, 2006 at least ten (10) hours after the onset of labor and coupled with diminished fetal heart tone variability;
- (j) failing to utilize continuous internal fetal monitoring before 6:54 a.m. on June 21, 2006;
- (k) failing to properly oversee the labor given Plaintiff's clinical picture;
- (l) failing to timely and properly examine Plaintiff, Galit Dadoun-Cohen, to determine the size of Plaintiff's decedent;
- (m) failing to timely perform a Caesarean section given Plaintiff's clinical picture; and,
- (n) failing to timely recognize, diagnose, respond to and treat fetal distress.

Therefore, it is quite clear that Plaintiffs' allegations support this Court's conclusions that the medical care was furnished in Montgomery County.

In *Olshan v. Tenet Health Sys. City Ave. LLC* our Superior Court had an opportunity to review the then newly amended MCARE Act, 42 Pa.C.S. § 5101.1, for the purpose of deciding where health care had been "furnished," which would in turn establish venue under the Act. *Olshan*, 849 A.2d 1214, 1216 (Pa.Super 2004). Plaintiff in *Olshan* alleged that certain corporate activities were negligently administered. These activities included "failing to retain competent physicians"; "failing to formulate, adopt and enforce adequate rules and policies to ensure quality care"; and "failing to oversee the activities of its agents, servants, employees and/or ostensible agents." *Olshan*, 849

A.2d, at 1215. These acts or non-acts were alleged to occur in Philadelphia, where the corporate offices were located; the actual treatment or medical care was furnished and received in Montgomery County. *Id.*

As part of its holding in *Olshan*, the Superior Court stated, “[h]owever, to create venue, it is not the county where the corporate action took place that determines venue, but the county where the action affected the patient. That is where the care was ‘furnished.’” *Olshan*, 849 A.2d, at 1216. In *obiter dicta* the court went on to give an example which is instructive.

For example, if a hospital pharmacy in Philadelphia mislabeled a drug in Philadelphia by putting it into the wrong vials when repacking it for administration to patients, and a patient in a Montgomery County received the drug, certainly the hospital would be liable as a health care provider. However, since the drug was *furnished* to the patient in Montgomery County, venue would not be proper in Philadelphia. Likewise, an x-ray taken and read in Montgomery County by a staff radiologist employed by a Philadelphia hospital and paid out of the Philadelphia office would be an act of the Philadelphia hospital as health care provider but still would not create venue in Philadelphia.

Olshan, 849 A.2d, at 1216.

In the instant matter, the alleged negligent advice by the Philadelphia defendants is the type of non-medical care activity which cannot be the basis for venue under the MCARE Act. Even if a Philadelphia County conversation between Furin and Plaintiff led eventually to the result, the alleged malpractice complained of occurred during Plaintiff’s labor at Lankenau Hospital or during the office visits in Montgomery County in the weeks immediately preceding labor. Plaintiffs allege no medical treatment in Philadelphia County by the certified nurse midwives of Woman Wise Midwifery; rather,

she alleges five “office visits” with Woman Wise Midwifery in Montgomery County. (Complaint, ¶ 34). Hence, even if the Court were to accept Plaintiff’s argument that her conversation with Furin could be characterized as a medical prescription, “the county where the action affected the patient,” as stated in *Olshan*, was Montgomery County. *Id.* at 1216.

The Complaint further alleges that on the evening Plaintiff’s contractions began, Mr. Cohen “made contact with Defendant, Ronni Rothman,” one of the certified nurse midwives with Woman Wise Midwifery at Lankenau Hospital. (Complaint, ¶ 36). This contact is not enough to permit venue to lie in Philadelphia County, because there is no allegation of a location where the “contact” occurred, nor is there an allegation describing the nature of the contact. But even if the contact took place in Philadelphia County, and even if the nature of the contact was a medical one, proper venue lies in Montgomery County because the allegedly negligent medical care resulting from the contact occurred there.

Rothman’s alleged “contact” with Plaintiffs most closely analogizes to the circumstances in *Goodman v. Fonslick*, 844 A.2d 1252 (Pa.Super. 2004), and *Bilotti-Kerrick v. St. Luke’s Hospital*, 873 A.2d 728 (Pa.Super. 2005), with two important distinctions that further support the conclusion that proper venue in the instant matter lies in Montgomery County. In *Goodman*, the plaintiffs in a medical malpractice case attempted to lay venue in Philadelphia County by establishing that a defendant hospital owned two small offices in Philadelphia. The Superior Court rejected plaintiffs’ assertions that the hospital’s “limited ownership” of the “practices amount[ed] to the regular operation of business” in Philadelphia County and concluded:

The mere fact that these physicians' offices are located in Philadelphia does not constitute sufficient business contacts to support venue. There is no evidence that the two groups, totaling six to eight physicians, are clinics or branch offices of Appellee [Abingdon Memorial] Hospital. All treatment for referrals is conducted at the Montgomery County facility, patients of the hospital cannot seek hospital care at the groups' offices, and there is no ambulance service to these offices. Thus, it is apparent that Appellee Hospital's relationship with these small Philadelphia County practice groups is incidental to its main goal of providing hospital care in Montgomery County.

Goodman, 844 A.2d, at 1255. To create venue, a physician's or hospital's contacts in the jurisdiction must be "essential to the survival of the hospital," "integral to [the] hospital's existence," and with the purpose "to expand or conduct business in" the county at issue. *Id.*, at 1256.

Plaintiffs in this matter fail to meet the *Goodman* test in two ways. First, they do not allege that Rothman or Woman Wise Midwifery maintain "branch offices," *Id.*, or offices of any kind, at the Maternal Wellness Center in Philadelphia County. Second, they do not allege that they sought hospital care by Rothman at the Maternal Wellness Center. Rothman is clearly identified in the Complaint as a practitioner with Woman Wise Midwifery at Lankenau Hospital in Montgomery County. (Complaint, ¶ 6). Furthermore, Plaintiffs do not allege that any treatment by Rothman occurred at the Maternal Wellness Center; but they do allege that the "initial visit" and subsequent "office visits" with Rothman occurred at the Woman Wise Midwifery facility at Lankenau Hospital. (*Id.*, at ¶¶ 31, 34). Plaintiffs allege a bare "contact" with Rothman, without stating where or how the contact was made, during which they "discussed [their] case" with her. (*Id.*, at ¶ 30). Because there is no pleading explaining how this Philadelphia "contact" is "essential to the survival of" Woman Wise Midwifery and

Lankenau Hospital, *Goodman*, 844 A.2d, at 1256, Plaintiffs fail to establish sufficient contacts between Philadelphia County and Rothman and Woman Wise Midwifery.

Even if Plaintiffs could establish sufficient contacts between Rothman and Philadelphia County, their attempt to lay venue in Philadelphia County based on Rothman's contact with Plaintiff on the night her labor began would still fail, because the alleged negligent care that followed this contact occurred in Montgomery County. The circumstances in the case at bar are best analogized to those in *Bilotti-Kerrick v. St. Luke's Hospital*, where a physician gave medical orders via telephone from one county, which were allegedly negligently carried out in another county. There, the Superior Court held, "for venue purposes the cause of action [arises] in the county where the negligent act or omission of failing to provide the needed care occurred." *Bilotti-Kerrick v. St. Luke's Hosp.*, 873 A.2d 728, 731, 2005 PA Super 144, *11 (Pa.Super. 2005). The Superior Court approvingly quoted the trial court's rationale:

Dr. Puleo's negligent conduct would be his failure to treat the decedent as he indicated he would. Even though he gave medical orders over the phone from his home in Northampton County, the orders were carried out in Lehigh County. All of the care provided [or not provided] to the decedent by or through [appellees] occurred in Lehigh County.

Id. (internal quotation marks omitted).

In the instant case, Plaintiffs allege no similar conduct by Rothman, i.e., giving medical orders over the phone to the hospital. They allege a mere "contact" and do not even specify that the "contact" occurred in Philadelphia County on the night labor began. (Complaint, ¶ 36). Thus, because "[a]ll of the care" that was allegedly negligent was

“provided” in Montgomery County, any “contact,” which Plaintiffs do not allege was a medical order of any kind, does not require venue to lie in Philadelphia County.

Finally, the Superior Court recently affirmed a very similar decision from the Philadelphia Court of Common Pleas. In *Christiansen v. Rathgeber*, the plaintiff was receiving treatment at Doylestown Hospital in Bucks County. The treating doctors called the Hospital of the University of Pennsylvania (HUP) in Philadelphia County and received advice for treatment. Because “the underlying cause of action alleged by Plaintiff [was] that medical personnel at Doylestown Hospital delayed necessary and proper treatment which caused further injury,” the trial court sustained HUP’s preliminary objection as to venue. *Christiansen v. Rathgeber*, 2005 Phila. Ct. Com. Pl. LEXIS 264 , *5-6 (2005). The Superior Court affirmed the trial court, without opinion, in *Christiansen v. Rathgeber*, 895 A.2d 644, 2006 Pa. Super. LEXIS 55 (Pa. Super. Ct., Jan. 20, 2006). The comparison with the instant case is apt even though the nature of the “contact” between Rothman and Mr. Cohen is not alleged with particularity. In *Christiansen*, venue in Bucks County was proper because “[a]ll treatment received by Plaintiff occurred solely . . . in Bucks County,” even though medical advice was given in Philadelphia County. *Christiansen*, at *5. In contrast, Plaintiff Dadoun-Cohen, does not allege that Rothman gave medical advice to the treating providers at Lankenau Hospital; she alleges a “contact” with her on the night her labor began. Thus, even if this unspecified “contact” with her consisted in giving medical advice, venue would lie in Montgomery County because she received her allegedly negligent medical treatment at Lankenau Hospital. Because Plaintiff Dadoun-Cohen chose to follow a course of prenatal care with Woman Wise Midwifery and chose to travel to Lankenau Hospital for

the birth, any non-medical conversations with Defendant Furin and “contact” with Defendant Rothman prior to the allegedly negligent care received at Lankenau Hospital do not affect the conclusion that proper venue lies in Montgomery County.

II. THE COURT DID NOT ERR IN TRANSFERRING THE MATTER TO MONTGOMERY COUNTY BEFORE ALLOWING LIMITED DISCOVERY

The standard of review in cases of venue is abuse of discretion. *See Catagnus v. Allstate Ins. Co.*, 864 A.2d 1259, 1263, 2004 PA Super 486, *9 (Pa.Super. 2004). The trial court holds “considerable discretion” in making the determination to transfer venue. *Id.* “To determine whether venue is indeed improper, the trial court relies on facts raised ‘by depositions or otherwise.’” *Fritz v. Glen Mills Sch.*, 840 A.2d 1021, 1025, 2003 PA Super 516, *8 (Pa.Super. 2003) *citing* Pa.R.C.P. 1028(c)(2). After a review of the pleadings, it may be “well within the trial court’s discretion” to make findings of fact regarding venue “without the benefit of sworn depositions or an evidentiary hearing.” *Id.*

Upon review of the pleadings in the instant case, this Court assumes the factual allegations to be true. In particular, this Court does not find any controverted fact in the pleadings regarding Defendants Furin, Maternal Wellness Center, Rothman, and Woman Wise Midwifery that would create venue in Philadelphia County. Thus, the Court did not err in transferring the matter to Montgomery County, Pennsylvania before allowing limited discovery.

CONCLUSION

For the foregoing reasons, this Court believes that it properly granted preliminary objections of Defendants Eric Carlson, D.O., and Main Line Perinatal Associates, thereby transferring the matter to the Court of Common Pleas of Montgomery County,

Pennsylvania. Therefore, this Court respectfully requests the Superior Court to affirm its decision.

BY THE COURT:

8-22-2007

Date

ALLAN L. TERESHKO, J.

cc:
Richard M. Golomb
Peter A. Callahan
Donna N. Kramer
E.Chandler Hosmer
Charles T. Roessing