

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

PAMELA MURPHY,)	
PAMELA MURPHY,)	
)	
Plaintiffs,)	
vs.)	NO. 4:06-cv-00080-SEB-WGH
)	
LOUISVILLE GAS AND ELECTRIC)	
COMPANY,)	
OPS PLUS, INC.,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

PAMELA MURPHY, Administratrix of the)
Estate of JAMES MURPHY, deceased)
and)
PAMELA MURPHY, Individually,)
)
Plaintiffs,)
)
vs.) 4:06-CV-0080-SEB-WGH
)
LOUISVILLE GAS AND ELECTRIC)
COMPANY and OPS PLUS, INC.,)
)
Defendants.)

ENTRY GRANTING DEFENDANT’S MOTION TO TRANSFER

Defendant Louisville Gas and Electric Company (“LG&E”) has moved to transfer this action to the district where the claims arose, the Western District of Kentucky. LG&E bases its motion on 28 U.S.C. § 1404 and seeks a transfer for the convenience of the parties and witnesses and in the interest of justice. For the reasons explained below, the Court now GRANTS this motion.¹

On April 12, 2006, Plaintiff Pamela Murphy (“Ms. Murphy”), an Indiana citizen, filed this cause in the Floyd Superior Court, Floyd County, Indiana, alleging that on April 13, 2005, James Murphy, also an Indiana citizen, sustained fatal injuries on premises owned and/or operated by the Defendants, LG&E and OPS Plus, Inc. (“OPS”), as a result of Defendants’

¹ On June 30, 2006, Plaintiffs filed a Motion for Hearing Regarding Motion for Transfer. Having found the parties’ briefings sufficient to render a decision in this matter, Plaintiffs’ motion is DENIED.

negligence.² At the time of his life-ending injury, James Murphy was at LG&E's Cane Run Road Generating Plant ("the Plant"), located in Louisville, Kentucky and working as an employee of OPS, which had a contract with LG&E to perform regular, recurrent, and routine testing and inspection work at the Plant. Mot. to Trans. at 2. Both OPS and LG&E are corporations organized under the laws of the Commonwealth of Kentucky with their principal places of business in Kentucky. While James Murphy was attempting to reconnect a "lead" to a "breaker," he "somehow slipped and fell" from a height of eleven feet, landing head first onto a concrete pad below. See Exh. A, Workers Compensation First Report of Injury or Illness. He was provided emergency care at the University of Louisville Hospital, but ultimately died as a result of this accident.³

Discussion

On May 18, 2006, LG&E removed this cause from the Floyd Superior Court to this court. 28 U.S.C. §§ 1332(a)(1), 1441, and 1446(d).⁴ Removal was proper based on the diversity of citizenship between these citizens of different states. Now, LG&E seeks transfer of this case to the Western District of Kentucky for the convenience of the parties and witnesses and in the interest of justice.⁵

² Specifically, the Complaint states that James Murphy's injuries were a "direct and proximate result of the negligence, gross negligence, wanton and reckless disregard for the safety of others and/or intentional acts of the Defendants and their agents and employees of the Defendants. . . ." Compl. ¶¶ 5-7.

³ The date of James Murphy's death is unclear from the record.

⁴ OPS consented to the removal of this action. Notice of Removal ¶ 6.

⁵ Title 28, United States Code, Section 1404(a) provides:
For the convenience of parties and witnesses, in the interest of

(continued...)

“When considering the convenience of witnesses, the principal concern is the location of witnesses who are not under the control or influence of the parties. The courts generally assume that corporate parties will be able to persuade their employees . . . to travel for a trial.” Heartland Packaging Corp. v. Sugar Foods Corp., 2007 WL 101815, *1 (S.D. Ind. 2007). Here, the accident was investigated by Kentucky’s Department of Labor, Office of Occupational Safety and Health. Prior to his demise following the accident, James Murphy was treated at the University of Louisville Hospital in Louisville. The fact that all the witnesses to this accident are likely to be Kentucky residents, or, at the very least, work in Kentucky weighs heavily in favor of transfer.

Ms. Murphy argues that her choice of venue is entitled to deference. Plaintiff’s choice of forum is, indeed, entitled to considerable weight in the transfer calculus. ISI Int’l, Inc. v. Borden Ladner Gervais LLP, 316 F.3d 731, 731-32 (7th Cir. 2003) (“strong presumption” in favor of plaintiff’s choice of forum was overcome, and case was properly dismissed on grounds of forum non conveniens in favor of a Canadian proceeding); FDIC v. Citizens Bank & Trust Co., 592 F.2d 364, 368 (7th Cir. 1979) (trial court must give “some weight” to plaintiff’s choice of forum). However, in cases where the “chosen venue bears no relationship to the case other than being the home base of the plaintiff, the plaintiff’s choice is entitled to little weight.” Heartland Packaging Corp. v. Sugar Foods Corp., 2007 WL 101815, *2 (S.D. Ind. 2007).

At this early stage in the litigation, it appears that Kentucky will supply the substantive

⁵(...continued)

justice, a district court may transfer any civil action to any other district or division where it might have been brought.

law governing this civil action regardless of whether it is heard in Kentucky or Indiana. See Simon v. United States, 805 N.E.2d 798 (Ind. 2004) (describing Indiana’s choice-of-law analysis as applied to tort cases). This becomes an additional factor weighing in favor of transfer because the transferee court will be better versed in the law of Kentucky than will this court.⁶

Because, based on the information supplied to us, it is clear that the only connection between this case and Indiana is Plaintiffs’ residence and because a resolution of this case will be governed by Kentucky substantive law, we find that transfer is appropriate under § 1404(a). All witnesses, besides Ms. Murphy and her children, are likely to be Kentucky residents because the accident occurred in Kentucky, involved Kentucky employers and Kentucky emergency medical providers. This determination will not unduly inconvenience Ms. Murphy or her children because a transfer to the Louisville Division of the Western District of Kentucky entails a distance of only ten miles or so from their residence in Floyds Knobs, Indiana.⁷ For these reasons, Defendant’s Motion to Transfer to the United States District Court for the Western District of Kentucky is GRANTED. IT IS SO ORDERED.

Date: _____

SARAH EVANS BARKER, JUDGE

⁶ We do not know and cannot discern, for example, at this early point in the development of this litigation, whether Kentucky has a workers’ compensation statute which may apply to this case.

⁷ The United States District Court, Western District of Kentucky, Louisville Division, 601 W. Broadway, Louisville, KY is approximately 10.4 miles from the center of Floyds Knobs, Indiana.

United States District Court
Southern District of Indiana

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