

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

666

CA 11-02552

PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND MARTOCHE, JJ.

LAWRENCE D. SEGUIN AND KATHLEEN M. SEGUIN,
PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

MATTHEW J. LANDFRIED, M.D., GENESEE
ORTHOPAEDICS AND SPORTS MEDICINE, LLP,
VALERIE S. THOMAS, P.A., PETER T. JANES, M.D.,
DEBRA M. OMIATEK, M.D., JOHN A. BRACH, M.D.,
MICHAEL D. MERRILL, M.D., JOSEPH V. OTTEN, M.D.,
UNITED MEMORIAL MEDICAL CENTER,
DEFENDANTS-APPELLANTS,
ET AL., DEFENDANTS.

ROACH, BROWN, MCCARTHY & GRUBER, P.C., BUFFALO (J. MARK GRUBER OF
COUNSEL), FOR DEFENDANTS-APPELLANTS MATTHEW J. LANDFRIED, M.D.,
GENESEE ORTHOPAEDICS AND SPORTS MEDICINE, LLP, VALERIE S. THOMAS,
P.A., AND JOSEPH V. OTTEN, M.D.

GIBSON, MCASKILL & CROSBY, LLP, BUFFALO (ANGELO S. GAMBINO OF
COUNSEL), FOR DEFENDANTS-APPELLANTS PETER T. JANES, M.D., DEBRA M.
OMIATEK, M.D., JOHN A. BRACH, M.D., AND MICHAEL D. MERRILL, M.D.

FELDMAN KIEFFER, LLP, BUFFALO (RANDY C. MALLABER OF COUNSEL), FOR
DEFENDANT-APPELLANT UNITED MEMORIAL MEDICAL CENTER.

BRIAN P. FITZGERALD, P.C., BUFFALO (DEREK J. ROLLER OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeals from an order of the Supreme Court, Erie County (Tracey A. Bannister, J.), entered July 19, 2011 in a medical malpractice action. The order denied the motions of defendants-appellants for a change of venue.

It is hereby ORDERED that the order so appealed from is unanimously reversed in the exercise of discretion without costs and the motions are granted.

Memorandum: We agree with defendants-appellants (defendants) that Supreme Court improvidently exercised its discretion in denying their respective motions pursuant to CPLR 510 (3) seeking to change the venue of this medical malpractice action from Erie County to Genesee County (*see Costello v Forbes*, 294 AD2d 856). In support of their motions, defendants provided, inter alia, the physicians'

affirmations and nurses' affidavits of 14 nonparty witnesses who treated Lawrence D. Seguin (plaintiff) at defendant United Memorial Medical Center in Genesee County and at Strong Memorial Hospital in Monroe County. The nonparty witnesses stated the nature of their treatment of plaintiff and their respective reasons for the inconvenience of traveling from their respective homes or places of work to Erie County (see *McLaughlin v City of Buffalo*, 259 AD2d 1014, 1015; cf. *Rochester Drug Coop., Inc. v Marcott Pharmacy N. Corp.*, 15 AD3d 899). Plaintiff Kathleen M. Seguin, who has asserted a derivative cause of action, moved to Erie County several months following plaintiff's treatment and it is upon the basis of her residence that the action was commenced in Erie County. Plaintiffs have "failed to demonstrate any other consideration that would favor [Erie] County as the proper venue of this action" (*McLaughlin*, 259 AD2d at 1015; see *Costello*, 294 AD2d at 856-857). We therefore conclude that defendants established that "the convenience of material witnesses and the ends of justice will be promoted by the change" of venue (CPLR 510 [3]; cf. *1093 Group, LLC v Canale*, 72 AD3d 1561, 1562).

Entered: June 8, 2012

Frances E. Cafarell
Clerk of the Court