IN THE SUPREME COURT OF THE STATE OF NEVADA

CHANTEL PEPPER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ERIC PEPPER; AND TRAVIS AKKERMAN,
Appellants,
vs.
C.R. ENGLAND, A UTAH CORPORATION; AND TESFAYE ALAMIN, INDIVIDUALLY, A RESIDENT OF CLARK COUNTY, NEVADA,
Respondents.

No. 87205

FILED

NOV 22 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This appeal challenges a district court order dismissing a lawsuit based on forum non conveniens. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

This case concerns a lawsuit arising from a traffic accident that occurred in Texas. Defendant Tesfaye Alamin drove a semitruck as part of his employment with defendant C.R. England. On January 1, 2021, he embarked on a long-haul trip from Texas to Colorado. Ice and slush from a snowstorm covered part of his route. He stopped his semitruck in the left lane of a two-lane highway outside Big Spring, Texas. Decedent Eric Pepper could not see the stopped semitruck due to a bend in the highway. His Jeep collided with the back of Alamin's trailer, and Pepper passed away as a result of injuries sustained during that accident. Appellants Chantel Pepper (his wife) and Travis Akkerman (his son) sued defendants C.R. England and Tesfaye Alamin for their alleged roles in the accident. They allege that Alamin negligently parked the semitruck into which Pepper

crashed his vehicle, and that C.R. England negligently hired and trained Alamin.

Each defendant moved to dismiss the lawsuit on the basis of forum non conveniens. In December 2021, the district court granted both motions. We reversed, holding that a motion to dismiss for forum non conveniens must be supported by an affidavit and that the defendants failed to attach such an affidavit. *Pepper v. C.R. England* (*Pepper I*), 139 Nev., Adv. Op. 11, 528 P.3d 587 (2023) (Herndon, Lee, & Parraguirre, JJ.). Upon remand, the defendants filed affidavits and moved to dismiss a second time. The district court again granted the motions. Pepper and Akkerman now appeal for a second time.

We review for an abuse of discretion

We "review[ ] a district court's order dismissing an action for forum non conveniens for an abuse of discretion." *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 300, 350 P.3d 392, 395-96 (2015). An abuse of discretion occurs "when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016).

The district court did not abuse its discretion in dismissing the lawsuit

"NRS 13.050 codifies the doctrine of forum non conveniens." *Pepper I*, 139 Nev., Adv. Op. 11, 528 P.3d at 589. It states that a "court may . . . change the place of the proceeding . . . when the convenience of the witnesses and the ends of justice would be promoted by the change." NRS 13.050(2)(c). The analysis proceeds in three steps: first, a court must determine the level of deference owed to the plaintiff's forum choice. *Placer Dome*, 131 Nev. at 300-01, 350 P.3d at 396. Second, it must determine whether an adequate alternative forum exists. *Id.* If an adequate

alternative forum exists, the court must move to the third step, weighing public and private interest factors to determine whether dismissal is warranted. *Id.* "Dismissal for forum non conveniens is appropriate only in exceptional circumstances when the factors weigh strongly in favor of another forum." *Id.* (internal quotation marks omitted).

We conclude that the district court did not abuse its discretion in dismissing Pepper and Akkerman's lawsuit. It correctly applied the controlling law, gave less deference to the plaintiffs' choice of forum, and then evaluated the alternative forum and interest factors. It found that exceptional circumstances—namely, heightened costs to the parties if the matter were litigated in Nevada—warranted dismissal. Appellants challenge the first and third steps of the district court's order.

At step one, appellants argue that the district court failed to properly consider the case's bona fide connections to Nevada. "[A] sister-state-resident plaintiff should be treated as 'foreign' for the purposes of a forum non conveniens analysis and thus be afforded less deference [than a Nevada-resident plaintiff] in her choice of forum, unless she proves that Nevada is a convenient forum by showing bona fide connections to Nevada." *Pepper I*, 139 Nev., Adv. Op. 11, 528 P.3d at 591. Those connections must exist between "the case" and Nevada. *Placer Dome*, 131 Nev. at 301, 350 P.3d at 396. The district court did not abuse its discretion in finding that the case had few bona fide connections to Nevada. The connections between the case and Nevada are: (1) Alamin resides in Nevada, (2) he received his commercial driver's license in Nevada, and (3) C.R. England partially trained him in Nevada. The district court considered each of these factors but found them insufficient to establish convenience by bona fide connection. The district court did not clearly err in its factual

determinations nor did it disregard controlling law. Thus, the district court did not abuse its discretion in awarding "less deference" to the plaintiffs' choice of forum. *See Mb Am., Inc.*, 132 Nev. at 88, 367 P.3d at 1292.

Appellants also argue that respondents failed to meet their evidentiary burden to demonstrate inconvenience in Nevada. "[A] foreign plaintiff's choice [of forum] will be entitled to substantial deference only where the case has bona fide connections to and convenience favors the chosen forum." *Placer Dome*, 131 Nev. at 301, 350 P.3d at 396. The district court rejected the idea that convenience favored Nevada and found that respondents met their evidentiary burden by producing a declaration from C.R. England's accident prevention director establishing that the evidence and the parties, except for Alamin, were located in Texas. The declaration stated that almost all of the evidence relevant to its defense was in Texas, including witnesses, documents from the Texas Department of Public Safety, documents from the tow yard, and reports of first responders. It also noted that obtaining such documents would require out-of-state subpoenas, which, the declaration opined, could necessitate the hiring of Texas counsel and motion practice in a Texas court to compel compliance. The district court found further that the documents and witnesses relevant to Eric's lost wages and his family's pain and suffering would be located in Texas. Appellants argue that the declaration does not identify individual witnesses. But they demand a level of specificity disproportionate to the stage of the case. They do not cite law for the premise that respondents must identify prospective witnesses at the motion-to-dismiss stage. The C.R. England declaration identifies general categories of individuals and documents that, in all likelihood, are still in Texas. The district court did not ignore controlling law, nor did it err in its determination of the

sufficiency of respondents' evidence. Therefore, the district court did not abuse its discretion at step one.

At step two, the district court found that Texas was an adequate alternative forum. Appellants do not dispute the propriety of this finding.

At step three, appellants contend that respondents failed to allege specific facts showing that the public or private interest factors demonstrated exceptional circumstances warranting dismissal. A court must "weigh public and private interest factors to determine whether dismissal is warranted. Dismissal . . . is appropriate only in exceptional circumstances when the factors weigh strongly in favor of another forum." *Placer Dome*, 131 Nev. at 301, 350 P.3d at 396 (citation and internal quotation marks omitted).

We conclude that respondents adequately alleged that the public and private interest factors weighed strongly in favor of Texas and that the district court did not abuse its discretion in weighing the factors. "Relevant public interest factors include the local interest in the case, the district court's familiarity with applicable law, the burdens on local courts and jurors, court congestion, and the costs of resolving a dispute unrelated to the plaintiff's chosen forum." *Id.* at 302, 350 P.3d at 397. Respondents alleged, and the district court credited, the public interest factors weighing strongly in favor of Texas. Texas has an interest in people driving safely on its roads. The Texas courts would be more familiar with Texas law than the Nevada courts. Jurors in Texas would be less burdened by attending an accident reconstruction at the site near Big Springs. Meanwhile, both parties would incur significant costs by resolving the dispute in Nevada. Court congestion would not be a factor. So the district court did not abuse

its discretion in determining that the public interest factors weighed strongly in favor of dismissal.

We draw the same conclusion for the private interest factors. "Relevant private interest factors may include the location of a defendant corporation, access to proof, the availability of compulsory process for unwilling witnesses, the cost of obtaining testimony from willing witnesses, and the enforceability of a judgment." *Id.* at 304, 350 P.3d at 398. The district court found that the location of C.R. England, a Utah corporation, did not favor either forum. But the access to proof weighs in favor of Texas, as the collision occurred there, the first responders and pain-and-suffering witnesses live there, and the decedent's family lives there. The district court thus found that Texas would better promote the availability of compulsory process for unwilling witnesses and minimize the cost of obtaining testimony from willing witnesses. And it found that the judgment would be enforceable in either state, as Alamin had agreed to be subject to a judgment in Texas. Therefore, the private interest factors also weigh strongly in favor of dismissal.

Finally, appellants argue that differences in the substantive law between the two states might prejudice them if the Nevada case is dismissed. But "plaintiffs may [not] defeat a motion to dismiss on the ground of *forum non conveniens* merely by showing that the substantive law that would be applied in the alternative forum is less favorable to the plaintiffs than that of the present forum." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 247 (1981). The doctrine of forum non conveniens "is designed in part to help courts avoid conducting complex exercises in comparative law." *Id.* at 251. Therefore, the district court correctly rejected consideration of any difference in the substantive law between prospective forums.

Having concluded that the district court did not abuse its discretion in dismissing this action, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Herndon

_____, J.
Lee

_____, J.
Bell

cc: Hon. Joanna Kishner, District Judge
The Cowden Law Firm, PLLC
Matthew L. Sharp, Ltd.
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP/Las Vegas
Eighth District Court Clerk