

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ELAINE V. LAMB, Personal Representative of the  
ESTATE OF WARREN P. LAMB,

UNPUBLISHED  
May 17, 1996

Plaintiff-Appellant,

v

No. 179871  
LC No. 94-478829-NO

HADEN SCHWEITZER CORPORATION,

Defendant-Appellee.

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Before: Fitzgerald, P.J., and Corrigan and C.C. Schmucker,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from the order dismissing her wrongful death action against defendant on the ground of forum non conveniens. We remand.

Defendant was the prime contractor for sheet metal work and venting system installation at a Toyota plant in Georgetown, Kentucky. Defendant subcontracted with Kirk and Blum Manufacturing to provide sheet metal work. In turn, Kirk and Blum employed Warren Lamb as a sheet metal worker through the Sheet Metal Worker's Hall in Troy, Michigan. On May 14, 1993, a protective floor covering on a roof at the Georgetown job site collapsed, causing Lamb to fall to his death.

Plaintiff, who is Lamb's widow, is the personal representative of Lamb's estate. She filed this wrongful death action in Oakland Circuit Court on June 21, 1994. Plaintiff is a resident of West Bloomfield in Oakland County, as was her decedent. Defendant is an Ohio corporation and maintains its principal place of business in Madison Heights, Oakland County, Michigan. Both parties concede that the Oakland Circuit Court has jurisdiction to hear this case and that Oakland Circuit Court is a proper venue for this action.

Plaintiff served defendant with appropriate notice of suit on June 22, 1994. On August 4, 1994, Defendant filed a motion to decline jurisdiction in favor of the Kentucky courts on the basis of the

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\* Circuit judge, sitting on the Court of Appeals by assignment.

doctrine of forum non conveniens. Following a hearing on the motion, on September 20, 1994, the trial court signed an order granting defendant's motion. Plaintiff's motion for reconsideration was denied.

On appeal, plaintiff contends that the trial court abused its discretion in dismissing the suit on grounds of forum non conveniens because Michigan is the only forum available to plaintiff, and that Michigan is not a seriously inconvenient forum in any event.

The principle of forum non conveniens establishes the right of a court to resist imposition upon its jurisdiction although such jurisdiction could properly be invoked. It presupposes that there are at least two possible choices of forum. The application of the doctrine lies within the discretion of the trial court. *Cray v General Motors Corp*, 389 Mich 382, 395; 207 NW2d 393 (1973). Under *Cray*, the decision to accept or reject jurisdiction requires a balancing out and weighing of the following factors:

1. The private interest of the litigant.
  - a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;
  - b. Ease of access to sources of proof;
  - c. Distance from the situs of the accident or incident which gave rise to the litigation;
  - d. [Enforceability] of any judgment obtained;
  - e. Possible harassment of either party;
  - f. Other practical problems which contribute to the ease, expense and expedition of the trial;
  - g. Possibility of viewing the premises.
2. Matters of public interest.
  - a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
  - b. Consideration of the state law which must govern the case;
  - c. People who are concerned by the proceeding.
3. Reasonable promptness in raising the plea of forum non conveniens.

The courts are charged to consider the plaintiff's choice of forum and to weigh carefully the relative advantages and disadvantages of jurisdiction and the ease and obstacles to a fair trial in this state. [*Id.* At 395-396.]

In arguing that Kentucky is a more convenient forum, defendant stated that none of its witnesses were Michigan residents, that Kentucky law was applicable to the case, and that both convenience and public interest dictated that the case be heard in Kentucky. Plaintiff, on the other hand, argued that the parties were all Michigan residents, that defendant was a resident of Oakland County, that a number of witnesses resided in either Michigan or Ohio, and that the case was of little interest to Kentucky citizens.

Although it appears from the trial court's comments at the hearing on the motion that the court considered the *Cray* factors, we do not know how the trial court analyzed this case under the *Cray* factors because the court failed to engage in any meaningful analysis. In view of the trial court's limited analysis, we find it necessary to remand this matter to the trial court to carefully consider the *Cray* factors and to make specific findings on the record concerning each of the *Cray* factors.

Remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald

/s/ Maura D. Corrigan

/s/ Chad C. Schmucker