

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GUSSIE DICK, as Administrator of the)
Estate of Roger (Roggie) Dick, and)
GUSSIE DICK, Individually,)
)
Plaintiffs,)
)
v.)
)
BEATRICE MCLEAN, Facility Director of)
Searcy State Hospital,)
)
Defendant.)

Case No. 2:07-cv-00065-WKW

MEMORANDUM OPINION AND ORDER

The case is before the court on the defendant’s Motion to Dismiss or, Alternatively, for Change of Venue.¹ For the reasons stated below, the motion is due to be granted as to the transfer of venue and due to be denied as to the dismissal.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff Gussie Dick (“Dick”) originally brought this action against the Commissioner of the State of Alabama Department of Mental Health and Mental Retardation. (See Doc. # 1.) The Commissioner was subsequently dismissed (Doc. # 10), and Dick amended her complaint (Doc. # 9) to name Beatrice McLean (“McLean”) as the defendant. Dick filed a second amended complaint (Doc. # 22) in order to make a more definite statement of her claims. McLean is sued in her individual capacity and in her official capacity as Director of Searcy Hospital. The Second Amended Complaint contains allegations that Searcy Hospital is located in Mobile County,

¹ It appears that the defendant may have inadvertently filed the same motion twice as the substance of the two motions (Docs. # 23 & # 25) is identical.

Alabama, and that the actions complained of occurred there.² McLean then filed the instant motions. The motion to dismiss is premised on improper venue pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure, and the alternative motion seeks a change of venue from the Middle District of Alabama to the Southern District of Alabama pursuant to 28 U.S.C. § 1404 and the doctrine of *forum non conveniens*.³ The plaintiff does not oppose this action being transferred to the Southern District of Alabama. (*See* Doc. # 29.)

II. DISCUSSION

A district court is authorized to transfer a civil action to any other district in which it might have been brought “for the convenience of the parties and witnesses, in the interests of justice.” 28 U.S.C. § 1404(a). Because federal courts normally accord deference to a plaintiff’s choice of forum in a motion under § 1404, the burden is on the movant to show that the suggested forum is more convenient or that litigation there would be in the interest of justice. *In re Ricoh Corp.*, 870 F.2d 570, 572 (11th Cir. 1989) (per curiam). However, a district court has “broad discretion in weighing the conflicting arguments as to venue.” *England v. ITT Thompson Indus., Inc.*, 856 F.2d 1518, 1520 (11th Cir. 1988). The court faced with a motion to transfer must engage in an “individualized case-by-case consideration of convenience and fairness.” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (internal quotation marks and citation omitted).

This matter is due to be transferred to the Southern District of Alabama. Both parties are located in the Southern District as is Searcy Hospital; thus, most if not all discovery will take place

² Mobile County, Alabama, is located in the Southern District of Alabama. 28 U.S.C. § 81(c)(2).

³ McLean also avers that she resides in Mobile County, Alabama. (McLean Aff.)

