

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

SHIRLEY DELL ROGERS	:	APPEAL NO. C-070173
	:	TRIAL NO. A-0608973
and	:	
SHERRI ROGERS,	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs-Appellants,	:	
vs.	:	
WESTERN EXPRESS, INC.,	:	
and	:	
TRAVIS K. BYNUM,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Raising a single assignment of error, plaintiffs-appellants Shirley Dell Rogers and his wife, Sherri Rogers, appeal the trial court’s dismissal of their complaint for negligence and loss of consortium against defendants-appellees Western Express, Inc., and Travis K. Bynum (“Western Express”). We affirm the trial court’s judgment.

On June 13, 2005, a Western Express tractor and semi-trailer driven by Bynum struck the rear of a tractor and semi-trailer driven by Shirley Rogers. The accident occurred in Washington County, Pennsylvania. The Rogerses are residents of Ohio.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Bynum is a resident of Florida, and Western Express is a corporation organized under the laws of Tennessee. The Rogerses filed this case in the Hamilton County Common Pleas Court, seeking damages in excess of \$60,000 for personal injury and loss of consortium.

Western Express moved to dismiss the complaint, alleging that Hamilton County, Ohio, was not a proper venue for the lawsuit. In the alternative, Western Express also asserted that the complaint should be dismissed on the basis of the doctrine of forum non conveniens. After receiving the parties' memoranda on the motion, the trial court granted the motion to dismiss by a one-paragraph written entry. But the court did not identify the basis of its decision.

The Rogerses first argue that the trial court erred in dismissing for lack of proper venue. Western Express agrees that the court did not follow the procedure for dismissal for lack of proper venue identified in Civ.R. 3(D). But this failure, it contends, reflects only that the trial court considered its entry to have been based on forum non conveniens. We agree.

The doctrine of forum non conveniens permits a court to dismiss an action to further the ends of justice and to promote the convenience of the parties, even though jurisdiction and venue are proper in the court chosen by the plaintiff.² In determining whether dismissal on the basis of forum non conveniens is proper, the trial court weighs the facts of each case, balancing the private interests of the litigants and the public interest involving the courts and citizens of the forum state.³

The decision whether to grant a motion to dismiss on the basis of forum non conveniens rests with the trial court's discretion, the exercise of which an appellate court

² See *Chambers v. Merrell-Dow Pharmaceuticals, Inc.* (1988), 35 Ohio St.3d 123, 125, 519 N.E.2d 370; see, also, *Stidham v. Butsch*, 163 Ohio App.3d 227, 2005-Ohio-4591, 837 N.E.2d 433, at ¶18.

³ See *Chambers*, 35 Ohio St.3d at 126-127, 519 N.E.2d 370.

may reverse only upon a showing of an abuse of that discretion.⁴ While the trial court’s judgment entry in this case did not identify which private and public interests it had considered, it was not required “to spell out its analysis” in the entry of dismissal.⁵

The term “abuse of discretion” connotes more than an error in judgment.⁶ To abuse its discretion, a court must have acted unreasonably, arbitrarily, or unconscionably.⁷ Here, the underlying accident occurred in Pennsylvania, the investigating police officers and other witnesses are in Pennsylvania, the state of Ohio has little relation to or interest in the controversy between the parties, and an alternative forum likely exists in which the Rogerses may bring their complaint. In light of these factors, the trial court’s decision exhibited a sound reasoning process.⁸ The assignment of error is overruled.

Therefore, the trial court’s judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 26, 2008
per order of the Court _____
Presiding Judge

⁴ See *id.* at 127, 519 N.E.2d 370.

⁵ *Travelers Cas. & Sur. Co. v. Cincinnati Gas & Elec. Co.*, 169 Ohio App.3d 207, 2006-Ohio-5350, 862 N.E.2d 201, at ¶11, citing *Mitrovich v. Hammer*, 8th Dist. Nos. 86211 and 86236, 2005-Ohio-5451, at ¶9-10; *Commercial Union Ins. Co. v. Great Amer. Ins. Co.* (1997), 124 Ohio App.3d 1, 7, 705 N.E.2d 370.

⁶ See *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

⁷ See *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 97, 482 N.E.2d 1248.

⁸ See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.