

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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MELISSA BUCK; CHAD BUCK; SHAMBER FLORE; ST. VINCENT CATHOLIC CHARITIES,	:	
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	:	
Plaintiffs,	:	
	:	
v.	:	No. 1:19-cv-00286-RJJ-PJG
	:	
ROBERT GORDON, in his official capacity as the Director of the Michigan Department of Health and Human Services; HERMAN MCCALL, in his official capacity as the Executive Director of the Michigan Children’s Services Agency; DANA NESSEL, in her official capacity as Attorney General of Michigan; ALEX AZAR, in his official capacity as the Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,	:	HON. ROBERT J. JONKER
	:	
	:	<b><u>[PROPOSED] INTERVENOR DEFENDANTS’ [PROPOSED] MOTION TO TRANSFER</u></b>
	:	
Defendants.	:	<b>ORAL ARGUMENT REQUESTED</b>
	:	
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[Proposed] Intervenor Defendants Kristy Dumont and Dana Dumont (collectively, “the Dumonts”) respectfully move this Court under 28 U.S.C. § 1404(a) to transfer the above-captioned action (the “Action”) to the Eastern District of Michigan for the reasons below and explained more fully in the brief filed in support of this motion (the “Motion”).

1. The Dumonts respectfully seek to transfer this Action to the Eastern District of Michigan. 28 U.S.C. § 1404(a). The Dumonts satisfy the standard for transfer: “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” *Id.* “[I]n ruling

on a motion to transfer under § 1404(a), a district court should consider the private interests of the parties, including their convenience and the convenience of potential witnesses, as well as other public-interest concerns, such as systemic integrity and fairness, which come under the rubric of ‘interests of justice.’” *Moses v. Bus. Card Express, Inc.*, 929 F.2d 1131, 1137 (6th Cir. 1991) (citing *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 30 (1998)). The Dumonts satisfy each of these requirements.

2. *First*, transfer is in the interest of justice because this Action is at base a collateral attack on *Dumont et al. v. Gordon et al.*, 2:17-cv-13080-PDF-EAS (E.D. Mich. 2019).<sup>1</sup> In *Dumont*, the Honorable Judge Paul D. Borman presided for eighteen months over a matter among the same parties who raised the same issues Plaintiffs would raise here and in which the parties engaged in extensive discovery and motion practice. “[T]ransferring this case . . . will promote the interests of justice because the transferee district has supervised related cases involving the same facts, transactions and parties” and because “allowing the instant case to

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<sup>1</sup> On September 20, 2017, the Dumonts, Erin Busk-Sutton, Rebecca Busk-Sutton and Jennifer Ludolph (the “*Dumont* Plaintiffs”) filed a complaint against Nick Lyon, in his official capacity as the Director of the Michigan Department of Health and Human Services, and Herman McCall, in his official capacity as the Executive Director of the Michigan Children’s Services Agency, in the Eastern District of Michigan seeking declaratory and injunctive relief directing officials of the Michigan Department of Health and Human Services and its sub-agency, the Children’s Services Agency (collectively, the “*Dumont* State Defendants”), to ensure that state-contracted taxpayer-funded agencies do not turn away same-sex couples or other potentially qualified families based on religious criteria. *Dumont*, ECF No. 1 at 16–17.

Melissa Buck, Chad Buck, Shamber Flore and St. Vincent Catholic Charities (the “*Buck* Plaintiffs”), represented by the same counsel as in this Action, intervened in *Dumont*, ECF Nos. 33 & 34, and the *Dumont* State Defendants and the *Buck* Plaintiffs both moved to dismiss the Complaint. The *Dumont* court denied the motions to dismiss in relevant part, holding that the *Dumont* Plaintiffs adequately alleged that the State’s practice violates the Establishment and Equal Protection Clauses. *Dumont v. Lyon*, 341 F. Supp. 3d 706, 753 (E.D. Mich. 2018). The court further said it was “unconvinced that [the *Buck* Plaintiffs] can prevail on a claim that prohibiting the State from allowing the use of religious criteria by those private agencies hired to do the State’s work would violate St. Vincent’s Free Exercise or Free Speech Rights.” *Dumont*, Dk. 49 at PageId.1152.

remain in the [Western] District of Michigan would be wasteful and unnecessarily duplicative.” *Butcher v. Lawyers Title Ins. Corp.*, 2005 WL 8154943, at \*3 (E.D. Mich. Feb. 4, 2005). *See also Fed. Hous. Fin. Agency v. First Tenn. Bank Nat’l Ass’n*, 856 F. Supp. 2d 186, 196 (D. D.C. 2012) (“[T]he interests of justice weigh strongly in favor of transferring this case . . . in order to avoid duplicative and potentially inconsistent rulings.”). Transfer is also in the interest of justice to discourage forum shopping. Once the *Buck* Plaintiffs knew that the *Dumont* State Defendants and *Dumont* Plaintiffs were in settlement discussions that could affect their interests, and even after the Settlement Agreement was executed, they had ample legal recourse to protect their interests in the Eastern District or otherwise object to the settlement. But the *Buck* Plaintiffs did nothing to address the settlement that resolved *Dumont*. Instead, they filed a *new* action in a *new* court, apparently hoping that a different judge and a different forum would yield better results for them. Giving weight to the *Buck* Plaintiffs’ efforts to avoid the Eastern District “would abet a form of forum shopping that should not be encouraged.” *Johnson v. New York Life Ins. Co.*, 2013 WL 1003432, at \*3 (D. Mass. Mar. 14, 2013). Transfer is also in the interest of justice because the Eastern District expressly retained jurisdiction over the Settlement Agreement. *See RE/MAX In’l, Inc. v. Realty One, Inc.*, 271 F.3d 633, 641 (6th Cir. 2001) (“[A] district court [has] the authority to dismiss pending claims while retaining jurisdiction over the future enforcement of a settlement agreement.”). Finally, the Dumonts’ choice of the Eastern District should control because the *Buck* plaintiffs voluntarily opted in to that action and litigated that case in the Eastern District and a litigant’s choice of forum is not entitled to deference where, as here, there is evidence of one or more of “extraordinary circumstances, inequitable conduct, bad faith, anticipatory suits, and forum shopping.” *Zide Sport Shop of Ohio, Inc. v. Ed Tobergte Assoc., Inc.*, 16 Fed. Appx. 433, 437 (6th Cir. 2001).

3. *Second*, transfer would be convenient to parties and witnesses because the Eastern District could more efficiently preside of this action given Judge Borman's familiarity with the parties, the underlying facts, and the relevant legal issues, as well as the positions taken by the same parties in the *Dumont* matter. *Cf. Central States, Southeast and Southwest Areas Health and Welfare Fund v. First Agency, Inc.*, 2013 WL 4094345 (W.D. Mich. Aug. 13, 2013) (rejecting motion to transfer where defendants were "simply trying to escape the unfavorable decisions applicable in the Western District of Michigan" and where the transferor court was "extremely familiar with the governing law, having decided the same issues and claims in the related case involving these same parties, which clearly mandates that efficiency and the interests of justice are best served by resolving this litigation in this Court.").

4. *Finally*, this case could have been brought in the Eastern District of Michigan because that court has subject matter jurisdiction under 28 U.S.C. § 1331, each Defendant is resident in the Eastern District of Michigan and a substantial part of the events giving rise to the Complaint arose in the Eastern District of Michigan.

Dated: May 21, 2019

Respectfully submitted,

*s/ Daniel S. Korobkin*

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