

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH
DISTRICT**

**At Home Auto Glass, LLC a/a/o Andre Bryant v. Mendota Insurance
Company**

At Home Auto Glass · No. 5D21-2052; lower tribunal case no. 2021-SC-000970 · Decided August 12, 2022

SUMMARY

The Florida Fifth District Court of Appeal reversed a nonfinal order transferring an insurance-related breach-of-contract action from Seminole County to Alachua County under Florida Statutes section 47.122. The court held that Mendota Insurance Company failed to provide affidavits or other competent evidence showing that the identified witness would be inconvenienced or that his testimony was necessary. The court also held that the asserted interest of justice did not support transfer because the insurer provided no competent evidence and the plaintiff had not demanded a jury trial.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fifth District
WRITING FOR THE COURT	LAMBERT, C.J.; EVANDER, J.; EDWARDS, J.
JURISDICTION	Florida
DECIDED	August 12, 2022
DOCKET	5D21-2052; lower tribunal case no. 2021-SC-000970
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Nonfinal appeal from an order transferring venue from Seminole County to Alachua County under Florida's forum non conveniens statute, section 47.122, Florida Statutes.
STANDARD OF REVIEW	An order transferring venue under section 47.122 is generally reviewed for abuse of discretion; the court's legal conclusion concerning the face-of-the-complaint exception to the evidentiary requirement is reviewed de novo.
PRECEDENTIAL VALUE	published Florida Fifth District Court of Appeal opinion
PARTIES	At Home Auto Glass, LLC a/a/o Andre Bryant v. Mendota Insurance Company

TOPICS

forum non conveniens

venue

appellate procedure

standard of review

breach of contract

PRACTICE AREAS

civil procedure

insurance

contracts

QUESTIONS PRESENTED

1. Whether Mendota established the evidentiary basis required to transfer venue under section 47.122 for the convenience of witnesses.
2. Whether the trial court could transfer venue solely on the interest-of-justice ground based on avoiding the burden of jury duty and controlling the local docket.
3. Whether the face of the complaint itself demonstrated that a forum non conveniens transfer was warranted.

HOLDINGS

1. A party seeking transfer under section 47.122 must provide affidavits or other competent evidence identifying the witnesses, explaining the significance of their testimony, and showing how the selected venue would substantially inconvenience the witnesses or parties. Mendota failed to meet that burden.
2. The trial court abused its discretion by transferring venue on the interest-of-justice ground because the asserted jury burden lacked record support and Mendota offered no competent evidence showing how the interest of justice would otherwise be served by transfer.
3. The face of the complaint did not establish that a forum non conveniens transfer was warranted.

KEY QUOTATIONS

“When a forum non conveniens challenge is raised, it is incumbent upon the parties to submit affidavits or other evidence that will shed necessary light on the issue of the convenience of the parties and witnesses and the interest of justice.” (3)

“A court’s desire to conserve judicial and jury resources (or to reduce its own docket for judicial convenience), standing alone, is not a proper ground to transfer venue under section 47.122, Florida Statutes (2020).” (7)

FACTUAL BACKGROUND

At Home Auto Glass replaced the windshield of Andre Bryant, an insured of Mendota Insurance Company, and received an assignment of Bryant's insurance benefits. After Mendota refused to pay the amount demanded, At Home Auto Glass sued in Seminole County for breach of contract. Mendota sought transfer to Alachua County, asserting that Bryant lived there, the windshield replacement and assignment occurred there, and venue in Seminole County would burden an uninvolved jury. Mendota submitted no affidavits, sworn evidence, or live testimony supporting the motion, while At Home Auto Glass submitted an affidavit stating that the dispute concerned pricing and that its corporate and potential expert witnesses would not be inconvenienced by proceeding in Seminole County.

PROCEDURAL HISTORY

At Home Auto Glass filed a small-claims breach-of-contract action in Seminole County concerning payment for windshield replacement services assigned by the insured. Mendota moved to transfer venue to Alachua County based on convenience of the witnesses and the interest of justice. The county court granted the motion, and At Home Auto Glass appealed the nonfinal order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order transferring venue to Alachua County is reversed, and the case is remanded for further proceedings.

CASES CITED

- Eggers v. Eggers, 776 So. 2d 1096, 1098 (Fla. 5th DCA 2001)
- Vero v. Vero, 659 So. 2d 1348, 1349 (Fla. 5th DCA 1995)
- Hall v. Animals.com, L.L.C., 171 So. 3d 216, 218 (Fla. 5th DCA 2015)
- Johnson v. Johnson, 288 So. 3d 745, 749 (Fla. 2d DCA 2019)
- Blimpie Cap. Venture, Inc. v. Palms Plaza Partners, Ltd., 636 So. 2d 838, 840 (Fla. 2d DCA 1994)
- R.C. Storage One, Inc. v. Strand Realty, Inc., 714 So. 2d 634, 636 (Fla. 4th DCA 1998)
- Brown & Williamson Tobacco Corp. v. Young, 690 So. 2d 1377, 1379 (Fla. 1st DCA 1997)
- R.J. Reynolds Tobacco Co. v. Mooney, 147 So. 3d 42, 46 (Fla. 3d DCA 2014)
- Ground Improvement Techs., Inc. v. Merchs. Bonding Co., 707 So. 2d 1138, 1139 (Fla. 5th DCA 1998)
- Hartford Fire Ins. v. Smith, 203 So. 3d 1013, 1015-16 (Fla. 4th DCA 2016)
- Cohen v. Scarnato, 270 So. 3d 410, 412 (Fla. 4th DCA 2019)
- Advanced Diagnostic Group v. Ocean Harbor Casualty Insurance, 321 So. 3d 772, 774 (Fla. 4th DCA 2021)
- Gov't Emps. Ins. Co. v. Burns, 672 So. 2d 834, 836 (Fla. 3d DCA 1996)
- Ashland Oil, Inc. v. Fla. Dep't of Transp., 352 So. 2d 567, 569 (Fla. 2d DCA 1977)