

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Kevin Simek and Falynn Simek v. Heritage Property & Casualty Insurance Company

No. 2D2024-2463 · No. 2D2024-2463 · Decided October 1, 2025

SUMMARY

The Florida Second District Court of Appeal reversed an order transferring the Simeks' insurance dispute from Hillsborough County to Polk County on forum non conveniens grounds. The court held that Hillsborough County was a proper venue and that Heritage failed to provide evidence showing substantial inconvenience or undue expense sufficient to overcome the plaintiffs' venue choice.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	LaROSE, Judge; KHOUZAM, J.; SLEET, J.
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	October 1, 2025
DOCKET	2D2024-2463
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The insureds appealed an order granting Heritage's motion to transfer venue from Hillsborough County to Polk County on forum non conveniens grounds.
STANDARD OF REVIEW	A ruling transferring venue is reviewed for abuse of discretion, while the trial court's legal conclusions are reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; precedential value subject to Florida law and any later court treatment.
PARTIES	Kevin Simek, Falynn Simek, f/k/a Falynn Sisk v. Heritage Property & Casualty Insurance Company

TOPICS

- forum non conveniens
- venue
- appellate procedure
- standard of review
- insurance

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Hillsborough County was a proper venue under section 47.051, Florida Statutes.
2. Whether Heritage met its burden to overcome the plaintiffs' choice of Hillsborough County by proving that Polk County was a more convenient forum under the doctrine of forum non conveniens.
3. Whether the trial court abused its discretion by transferring venue based on an unsupported motion and speculation rather than competent evidence.

HOLDINGS

1. Hillsborough County was a proper venue because Heritage maintained its principal place of business there, and section 47.051 permits an action against a corporation to be filed in the county where the corporation has or usually keeps an office for transacting its customary business.
2. When a plaintiff selects a venue that is proper under the applicable venue statute, the plaintiff's choice is presumptively correct, and the defendant must prove substantial inconvenience or undue expense requiring a change for the convenience of the parties or witnesses.
3. An unsupported and unverified motion, together with speculation about travel and depositions, does not establish the substantial inconvenience or undue expense necessary to transfer venue on forum non conveniens grounds.

KEY QUOTATIONS

"To overcome the Simeks' venue choice, Heritage had to prove that Polk County is a more convenient forum."
(at 3)

"Heritage bore the burden; it failed to displace the Simeks' choice of venue." (at 4)

FACTUAL BACKGROUND

Heritage insured the Simeks' home in Lakeland, Florida, which was damaged by Hurricane Ian. After Heritage refused to pay the full amount of the claim, the Simeks filed a breach-of-contract action in Hillsborough County, where Heritage maintained its principal place of business. Heritage asserted that the claim, property, inspections, residences, and contract were connected to Polk County, but its motion to transfer was unverified and unsupported by affidavits, sworn testimony, or other evidence of substantial inconvenience or undue expense.

PROCEDURAL HISTORY

The Simeks sued Heritage in Hillsborough County for breach of an insurance contract after Heritage allegedly failed to pay the full amount of their Hurricane Ian claim. Heritage moved to dismiss or alternatively transfer venue to Polk County, asserting that Polk County was the proper and more convenient forum. The trial court granted the transfer motion, and the Second District reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings after reversal of the order transferring venue.

CASES CITED

- RJG Env't, Inc. v. State Farm Fla. Ins., 62 So. 3d 678, 679 (Fla. 2d DCA 2011)
- PricewaterhouseCoopers LLP v. Cedar Res., Inc., 761 So. 2d 1131, 1133 (Fla. 2d DCA 1999)
- Hightower v. Est. of Lyman, 58 So. 3d 377, 379 (Fla. 2d DCA 2011)
- Eth-Wha, Inc. v. Blankenship, 483 So. 2d 872, 873 (Fla. 2d DCA 1986)
- P.V. Holding Corp. v. Tenore, 721 So. 2d 430, 431 (Fla. 3d DCA 1998)
- Johnson v. Johnson, 288 So. 3d 745, 748 (Fla. 2d DCA 2019)
- Eggers v. Eggers, 776 So. 2d 1096, 1098 (Fla. 5th DCA 2001)
- Sheffield Steel Prods., Inc. v. Powell Bros., 385 So. 2d 161, 162 (Fla. 5th DCA 1980)
- Fla. Health Scis. Ctr., Inc. v. Elsenheimer, 952 So. 2d 575, 579 (Fla. 2d DCA 2007)

OPINION

Simek, Simek v. Heritage Property & Casualty Insurance Company

PER CURIAM.

DISTRICT COURT OF APPEAL OF FLORIDA

SECOND DISTRICT

KEVIN SIMEK and FALYNN SIMEK,

f/k/a FALYNN SISK, Appellants, v.

HERITAGE PROPERTY & CASUALTY

INSURANCE COMPANY,

Appellee. No. 2D2024-2463 October 1, 2025 Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Hillsborough County; Melissa Polo, Judge. Sandford B. Kinne and Jeremy D. Bailie of Weber, Crabb & Wein, P.A., St. Petersburg, for Appellants. Angela C. Flowers of Kubicki Draper, Ocala, for Appellee. LaROSE, Judge. Kevin and Falynn Simek appeal the trial court's order granting Heritage Property & Casualty Insurance Company's motion to transfer venue from Hillsborough County to Polk County.¹ We reverse. Heritage insured the Simeks' Lakeland, Florida, home. After Hurricane Ian damaged their home, the Simeks filed a claim; Heritage refused to pay the full amount. The Simeks sued Heritage in Hillsborough County for breach of contract. Heritage's principal place of business is in Hillsborough County. See generally § 47.051, Fla. Stat. (2024) (permitting the plaintiff to file a lawsuit "in the county where such corporation has, or usually keeps, an office for transaction of its customary business, where the cause of action accrued, or where the property in litigation is located"). Heritage moved to dismiss or,

alternatively, transfer venue due to forum non conveniens. It noted that Polk County was the proper venue because "the cause of action accrued in Polk County" and "the subject property is located in Polk County." It further claimed that Polk County was the convenient forum because "all inspections of the subject property occurred (and any additional inspections will occur) in Polk County . . . and the depositions of the Plaintiffs will likely occur in Polk County." The motion was unverified and was not accompanied by any affidavits, sworn testimony, or other evidence. At a hearing on the motion, Heritage speculated that the Simeks would not want to drive to Hillsborough County for in-person depositions and that "[t]hose depositions would either occur via Zoom or in person, in Polk County." The Simeks countered that they chose to file the lawsuit in Hillsborough County. As their attorney stated, "[T]hey have 1 We have jurisdiction. See Fla. R. App. P. 9.130(a)(3)(A). 2 agreed to travel to Hillsborough County if and when a trial is to occur. As for depositions, . . . depositions nowadays are taken via Zoom for the most part, so that should not be an issue either." The trial court granted the motion based on forum non conveniens. On appeal, the Simeks argue that Hillsborough County is a proper forum. They also stress that Heritage offered no proof of substantial inconvenience or undue expense that it would incur by litigating in its home county. As it did in the trial court, Heritage claims that the undisputed facts show that (1) the Simeks reside in, (2) the insured home is in, (3) the alleged damage occurred in, (4) the inspections have and will occur in, and (5) the insurance contract was made in Polk County. Generally, we review the trial court's ruling to transfer venue for abuse of discretion. See *RJG Env't, Inc. v. State Farm Fla. Ins.*, 62 So. 3d 678, 679 (Fla. 2d DCA 2011) (citing *PricewaterhouseCoopers LLP v. Cedar Res., Inc.*, 761 So. 2d 1131, 1133 (Fla. 2d DCA 1999)). We review its legal conclusions de novo. See *id.* "It is the plaintiff's prerogative to initially select the venue in accordance with the applicable venue statute" *Hightower v. Est. of Lyman*, 58 So. 3d 377, 379 (Fla. 2d DCA 2011) (quoting *Eth-Wha, Inc. v. Blankenship*, 483 So. 2d 872, 873 (Fla. 2d DCA 1986)); see also *P.V. Holding Corp. v. Tenore*, 721 So. 2d 430, 431 (Fla. 3d DCA 1998) ("It is well established that where venue is proper in more than one county, the choice of forum rests with the plaintiff."). There can be no serious dispute that Hillsborough County is a proper venue. See § 47.051. To overcome the Simeks' venue choice, Heritage had to prove that Polk County is a more convenient forum. See *Johnson v. Johnson*, 288 So. 3d 745, 748 (Fla. 2d DCA 2019) ("[A] plaintiff's forum selection is 3 presumptively correct and the burden is on the defendant to show either substantial inconvenience or that undue expense requires change for the convenience of the parties or witnesses." (quoting *Eggers v. Eggers*, 776 So. 2d 1096, 1098 (Fla. 5th DCA 2001))); *Sheffield Steel Prods., Inc. v. Powell Bros.*, 385 So. 2d 161, 162 (Fla. 5th DCA 1980) ("Upon a proper showing, the trial court should grant a change of venue if a lawsuit is filed in the wrong county, or if it would be more convenient for the parties and witnesses to try the case in a different county." (footnotes omitted)). Obviously, the lawsuit has ties to Polk County. Yet, the Simeks are committed to proceeding in Hillsborough County. But interestingly, Heritage presented no affidavits or other evidence to establish that it or any witnesses would incur substantial

inconvenience or undue expense by litigating in Hillsborough County. Heritage bore the burden; it failed to displace the Simeks' choice of venue. Accordingly, the trial court should have denied Heritage's motion. Compare Fla. Health Scis. Ctr., Inc. v. Elsenheimer, 952 So. 2d 575, 579 (Fla. 2d DCA 2007) (holding that the trial court acted within its discretion in denying the transfer where the defendant's affidavit did "not identify the potential witnesses from Hillsborough County, describe their anticipated testimony, or establish the relevance of their anticipated testimony"), and Sheffield Steel Prods., Inc., 385 So. 2d at 162 (concluding that there was no "basis to support a change of venue on the grounds of forum non conveniens" where the trial court transferred venue "[b]ased on the unverified pleadings alone"), with Eggers, 776 So. 2d at 1098 (holding that the trial court should have granted the transfer motion where the defendant offered "a sworn motion to transfer/dismiss and attached affidavits from prospective witnesses indicating they 4 resided in Hillsborough County and that it would be a hardship if they had to travel to Citrus County to testify" and the plaintiff "countered with no sworn evidence on the relevant issues"). We reverse the order transferring venue. We remand this case for further proceedings. Reversed and remanded. KHOUZAM and SLEET, JJ., Concur. Opinion subject to revision prior to official publication. 5