

# Common Misconception Debunked:

## Illinois Appellate Court (Fifth District)

### Dismisses Attempted Interlocutory

### Appeal Challenging Venue

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A misconception of many Illinois lawyers—perhaps even some appellate practitioners—is that any trial court ruling concerning proper venue is subject to interlocutory appeal.

As the following case illustrates, that misconception persists. In short, only some trial court rulings concerning proper venue are subject to interlocutory appeal.

#### **Strike One: Trial Court Denies Motion to Transfer Venue**

In *Highland Management Group, LLC v. Society Insurance*, 2022 IL App (5th) 210348, the plaintiff, an Illinois limited liability company (LLC), hired a broker who procured an insurance policy to protect the company's business operations. The company later filed an insurance claim for losses sustained by the interruption of its business operations, but the insurer denied coverage.

The company then filed a lawsuit against the broker and insurer in Madison County, Illinois, alleging venue was proper there because that was where the company's president and sole member resided. See 735 ILCS 5/2-103(e). The company further argued that Illinois law does not specify the proper venue for claims involving LLCs, and requested that the court treat them like partnerships, such that the residence of its members should determine proper venue (thus making Madison County, where the company's president resided, a proper venue).

The defendants filed a motion to transfer venue, asserting that venue was improper in Madison County because neither defendant resided there, and no part of the procurement of the insurance policy occurred there. At the hearing, the circuit court observed that an LLC could reside in multiple counties for purposes of venue (e.g., if owned by several members residing in different counties), and denied the motion.

### **Strikeout: Fifth District Dismisses Appeal**

Relying on Rule 306(a)(4), the defendants appealed the denial of their motion to transfer venue. That rule permits a party to petition for leave to appeal an order “denying a motion to transfer venue based on the assertion that the defendant is not a resident of the county in which the action was commenced” (emphasis added). But the Fifth District issued an opinion finding that appellate jurisdiction was lacking, because the defendants’ appeal—when construed properly—was really founded on the assertion that the plaintiff was not a resident of the county in which the action was commenced, and Rule 306(a)(4) only applies when a motion to transfer venue is based on the defendant not being a resident of the county where the action was filed.

The court went on to state that Rule 306(a)(4) appears to correspond with the general venue provision of 735 ILCS 5/2-101, which generally states that every action must be commenced either in the defendant’s county of residence or in the county in which all or part of the transaction occurred that gave rise to the cause of action. In this case, however, the motion was not truly directed to the general venue provision, but rather to the venue provision of Section 2-103(e) (see 735 ILCS 5/2-103). Section 2-103(e) provides that actions against insurers may be brought in any county where the plaintiff resides. At issue for the Fifth District was whether Rule 306(a)(4) could be read to encompass a motion to transfer venue based on Section 2-103(e) rather than the general venue statute. The court (1) found that it lacked jurisdiction to hear the appeal, because Rule 306(a)(4) did not apply; and (2) noted that only the Illinois Supreme Court has the authority to expand the scope of the Rule.

### **Takeaways:**

This case yields at least two takeaways.

First, believe it or not, the plain language of a rule often determines the outcome, even though (generally speaking) the law is known for having an exception for seemingly everything. This case teaches (or reminds us) that for Rule 306(a)(4) to apply, a motion to transfer venue must be based on the assertion that the defendant is not a resident of the county where the action commenced, not on the allegation that the plaintiff is not such a resident.

Second, appellate courts generally guard their jurisdiction closely. Attorneys must carefully consider whether there is truly a basis for an appellate court to act, particularly when seeking to pursue an interlocutory appeal. In this case, regardless of how the defendants framed their challenge to venue (i.e., directed to defendants’ residence or plaintiff’s residence), the appellate court applied the controlling venue statute and found a lack of appellate jurisdiction.