

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

**JANUARY TERM 2002**

**DENNIS G. HILL and  
MARY L. HILL,**

**Appellants,**

**v.**

**CASE NO. 5D01-2717**

**RITA BROWN, As Personal  
Representative, Etc.,**

**Appellee.**

\_\_\_\_\_ /

**Opinion filed March 8, 2002**

**Non-Final Appeal from the Circuit  
Court for Seminole County,  
James E. C. Perry, Judge.**

**William T. Stone and Scott S. Gallagher,  
Jacksonville, for Appellants, Dennis and Mary Hill.**

**Gregory D. Prysock of Morgan, Colling and Gilbert, P.A.,  
Orlando, for Appellee.**

**HARRIS, J.**

Defendants in this civil action moved for a change of venue because of adverse pre-trial publicity. Indeed there were considerable prejudicial news accounts relating to the accident, defendant's conduct, and the criminal charges arising out of it. It may well be that an impartial jury cannot be selected when the time comes to choose a civil jury for this negligence trial.

The trial judge recognized the problem created by the adverse publicity but chose to

wait until the civil trial to see if an impartial jury could be found. We believe this "wait and see" attitude is within the discretion of the trial judge and affirm his decision. Obviously, if it appears that a fair jury cannot be selected when the time comes, a transfer will be required. And if the trial court pushes the case to trial with a juror whose impartiality is fairly challenged, the trial may be for naught. Even though this appeal is hereby resolved, the issue of an impartial jury should remain utmost in the trial judge's mind.

**AFFIRMED.**

**SAWAYA and ORFINGER, R.B., JJ., concur.**