

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

STEPHEN F. ALVAREZ d/b/a S & J
ALVAREZ FARMS,

Appellant,

v.

MERRIAM-CALLAHAN INSURANCE
AGENCY, INC., a Florida Corporation,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D02-1413

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Opinion filed May 6, 2003.

An appeal from the Circuit Court for Holmes County.
Judge Russell Cole.

Linda L. Winchenbach, of Moody & Salzman, P.A., Gainesville, for Appellant.

Robert E. O'Quinn, Jr., and Pamela Lynde Bower, Jacksonville, for Appellee.

PER CURIAM.

The transferee court did not have authority under Florida Rule of Civil Procedure 1.060(c) to dismiss the action. Furthermore, dismissal under the circumstances presented in this case constituted an abuse of discretion. Here, the transfer fee had been paid immediately after

appellant's attorneys became aware of the problem, only a few days after the 30-day period provided in the rule and several weeks before the motion to dismiss was filed, and there was no suggestion that appellee was in any way prejudiced by the late payment of the transfer fee. Cf., Burke Co. v. U.S. Telephone Co., 571 So. 2d 33 (Fla. 3d DCA 1990), review denied, 576 So. 2d 285 (Fla. 1991) (affirming trial court's refusal to grant dismissal under similar circumstances).

The order of dismissal is REVERSED, and the case is REMANDED to the trial court for further proceedings.

BARFIELD, BROWNING and LEWIS, JJ., CONCUR.