NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 2002

A.D.M. PRODUCTIONS, INC., etc.,

Appellant,

vs.

DAVID SOLOMON,

Appellee.

CASE NO. 3D02-2018

LOWER TRIBUNAL
CASE NO[S]. 02-8722

Opinion filed November 27, 2002.

An Appeal of a non-final order from the Circuit Court of Miami-Dade County, Ronald M. Friedman, Judge.

McClosky, D'Anna, Ioannou & Dieterle and Gordon A. Dieterle and David J. Pascuzzi (Boca Raton), for appellant.

Jennifer M. Gillihan, for appellee.

Before COPE, FLETCHER, and SHEVIN, JJ.

FLETCHER, Judge.

A.D.M. Productions, Inc. [ADM] seeks the reversal of a trial court order which denies ADM's forum non conveniens motion to dismiss.[1] We reverse and remand for the purposes of the trial

[1] ADM contends that New York is the proper forum.

court's conducting an analysis as required by Kinney System, Inc. v. Continental Ins. Co., 674 So. 2d 86 (Fla. 1996), and providing a written order which sets forth the court's findings of fact supporting its conclusion. From the record we have before us it appears that the trial court denied ADM's motion to dismiss for inconvenient forum solely on the basis that there are to be, or may be, witnesses who reside in Florida. The trial court stated, apparently as a matter of policy [App.53]:

> "The Court: As long as I have witnesses here, I keep it here."

Such a policy eviscerates Kinney by making the plaintiff's witness list conclusive as to the forum. "Adequate access to witnesses," part of a Kinney analysis, does not mean that having local witnesses on the plaintiff's witness list automatically defeats an inconvenient forum motion to dismiss. The trial court must evaluate the relevancy and materiality of the potential testimony that a listed witness may bring to the issues.

In the instant case, from the record, we know little or nothing about what evidence is proposed to be elicited from Solomon's listed witnesses. Accordingly, we remand the cause to the trial court to perform a Kinney analysis, and to provide us

with its findings in support of its conclusion to grant or deny the motion.

Reversed and remanded.