

**IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION**

Michael T. Flynn,
Plaintiff,

v.

Case No.: 2023 CA 004264 NC

Jim Stewartson,
Defendant.

**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION
FOR ENTRY OF A PROTECTIVE ORDER REGARDING DEPOSITION
APPEARANCE**

Defendant, JIM STEWARTSON, by and through undersigned counsel, hereby files this Memorandum in Opposition to Plaintiff's Emergency Motion for Entry of a Protective Order Regarding Deposition Appearance, and in support thereof, states as follows:

1. After months of the Defendant attempting to schedule the Plaintiff for an in-person deposition, the Plaintiff has filed a Motion for Entry of a Protective Order to alleviate the presumption that he appear in-person for his deposition.
2. Florida courts disapprove of "the entry of protective orders prohibiting the taking of depositions generally and orders providing for lengthy postponements of discovery." *Bush v. Schiavo*, 866 So. 2d 136, 138 (Fla. 2d DCA 2004).
3. There is no presumption that a party is entitled to be deposed remotely rather than in-person. Depositions may be taken by audio-visual communication technology "if stipulated by the parties or if ordered by the court on its own motion or on motion of a party." Fla. R. Civ. P. 1.310(b)(7).
4. While Courts often afford flexibility to defendants and non-parties and the location of their depositions, "A plaintiff is generally required to be

deposed in the forum where the action is pending.” *Fortune Ins. Co. v. Santelli*, 621 So. 2d 546, 547 (Fla. 3d DCA 1993), citing *Ormond Beach First Nat'l Bank v. J. M. Montgomery Roofing Co.*, 189 So. 2d 239, 243 (Fla. 1st DCA 1966).

5. Because the Plaintiff chose to file this lawsuit in Sarasota County, Florida, it stands to reason that he "may reasonably be required to appear there for the taking of his deposition." *Brown v. Brown*, 500 So. 2d 655, 656 (Fla. 1st DCA 1986). The Plaintiff is also a resident of Sarasota County, Florida.
6. In order to avoid this presumption that they will sit for their deposition in the forum where the action is pending, a Plaintiff must demonstrate a legally sufficient showing of good cause. See *City of Oldsmar v. Kimmins Contracting Corp.*, 805 So. 2d 1091 (Fla. 2d DCA 2002). The “good cause” to be shown to obtain a protective order should be specific and factual rather than based on conclusions. Good cause can be shown “by evidence: an affidavit, documents, testimony under oath, etc.” *Kaminester v. State Farm Mutual Automobile Insurance Co.*, 775 So. 2d 981, 985 (Fla. 4th DCA 2001).
7. Unsworn representations of counsel are insufficient to meet the required showing of good cause. *Bob Hilson & Co. v. Garcia*, 985 So. 2d 1176, 1177 (Fla. 3d DCA 2008); see also *Haverley v. Clann*, 196 So. 2d 38 (Fla. 2d DCA 1967).
8. The Plaintiff’s motion relies primarily upon the unsworn representations of counsel, and is therefore legally insufficient to meet a showing of good cause.
9. Plaintiff’s case is for defamation, and Plaintiff’s case appears to rely heavily if not exclusively on Plaintiff’s own testimony. An in-person deposition is appropriate given that the Plaintiff chose to pursue litigation in Sarasota County, Florida and that the Plaintiff is a critical witness in a case that calls for credibility assessments.

10. While *irrelevant* to whether this Court should grant a protective order, Plaintiff mischaracterizes and misrepresents the history of efforts undertaken to schedule this deposition. The actual history is as follows:
- a. This deposition was first scheduled for **March 4, 2025** (6 ½ months ago) to take place in-person in Sarasota County, Florida and was cancelled the afternoon before at the request of Plaintiff’s counsel. [DIN # 140]
 - b. This deposition was first rescheduled for **March 25, 2025** to take place in-person in Sarasota County, Florida and postponed upon the mutual agreement of counsel. [DIN # 155]
 - c. This deposition was then rescheduled for **April 28, 2025** to take place in-person in Sarasota County, Florida, a date Plaintiff declined to attend due to business travel and the asserted need for a confidentiality order—items that were not discussed until the business day before the deposition. Plaintiff then failed to attend the deposition, which was not cancelled.
 - d. Admittedly, Plaintiff’s counsel did email on September 1, 2025¹ that Plaintiff was available on September 10, 11, 19th, and 22nd for deposition. Two of those dates were not practicable as it was before the Court hearing on a protective order and was demanding assent to Plaintiff’s desired protective order to proceed. While the Court adopted a protective order, its protective order differed significantly from Plaintiff’s proposed language.
 - e. Upon the Court resolving issues related to a protective order on September 15, 2025, the Court entered an Order stating that “the Court understands that General Flynn’s deposition will be scheduled and expeditiously” and further stating that “If, however,

¹ Undersigned counsel was out of the office through September 8, 2025, and had an email auto-response indicating such. Defendant’s lead counsel/undersigned’s co-counsel is out of the country from September 16, 2025 through September 28, 2025. Undersigned counsel’s paralegal was also unexpectedly out of the office with a severe case of COVID-19 at this time for approximately two weeks, returning to the office on September 15, 2025.

General Flynn ultimately does not schedule or sit for his deposition, the Court will entertain further motion practice relating to this deposition.” [DIN # 209]

- f. Defendant’s counsel reached out on September 15, 2025 (at 1:24pm), September 16, 2025 (at 11:11pm), and September 19, 2025 (at 10:20am) in efforts to seek an in-person deposition. Dates Defendants’ attorneys were available were provided. Ultimately, the only availability response was received on September 22, 2025, offering only times for a remote deposition on dates Defendants’ counsel is unavailable.
 - g. In contrast with Plaintiff, counsel for Plaintiff and Defendant were able to identify multiple potential dates for the Defendant’s deposition and quickly confirmed one of those dates on September 25, 2025.
11. Plaintiff’s “business travel” does not excuse his refusal to attend an in-person deposition in this matter. In *Turner v. Anderson*, 376 So. 2d 899 (Fla. 2d DCA 1979), a Plaintiff who was an active-duty member of the military and was stationed out-of-state with no leave time accrued was found to be required to appear at an in-person deposition.
 12. Plaintiff’s security concerns can be addressed through a less drastic measure than prohibiting the Defendant to take Plaintiff’s deposition in-person. For example, the Notice of Taking Deposition could be filed with the Court with the deposition location information redacted (or notice not be filed with the Court at all) or the deposition could be taken at a secure facility such as a courthouse conference room. Defendant would not oppose such security precautions that allow the Plaintiff to have an extra layer of security at his deposition while protecting the Defendant’s right to depose the Plaintiff in-person.
 13. Defendant’s tweets about Charlie Kirk have no relevance to whether the Plaintiff should be required to attend an in-person deposition. The

Defendant does not reside anywhere near the venue (he lives on the other side of the country) nor plans to attend the deposition in-person.

WHEREFORE, Defendant, JIM STEWARTSON, respectfully requests that this Court deny Plaintiff's Motion for a Protective Order; require that Plaintiff appear for an in-person deposition; and grant Defendant any other relief that this Court deems proper and just.

Dated: September 22, 2025

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and proper copy of the foregoing document was served upon Jared Roberts, Esquire (jared@binnall.com); Stephen B. French, Esquire (stephen@binnall.com); Craig A. Whisenhunt, Esquire (craig@grwrlawfirm.com and efiling@rightingwrongsflorida.com) via the Florida E-Filing Portal on this 22nd day of September, 2025.

/s/ George A.D. Thurlow

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