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Using Florida's Amended Summary Judgment Standard in Litigation

Article By:

David B. Weinstein

Christopher Torres

Jillian M. Askren

"*When you engage in actual fighting, if victory is long in coming, then men's weapons will grow dull and their ardor will be damped*."

Sun Tzu, Art of War, II.2

Florida's summary judgment standard has long frustrated attempts to achieve an early and appropriate resolution to litigation. The Florida Supreme Court, however, has recently addressed this issue by amending Florida's summary judgment standard in May 2021. Under the previous standard, a movant seeking summary judgment had the burden of conclusively "proving a negative, *i.e*., the non-existence of a genuine issue of material fact." *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966). In fact, summary judgment was appropriate only where "the record affirmatively showed that the plaintiff could not possibly prove her case, and not because she had simply failed to come forward with evidence doing so." *Visingardi v. Tirone*, 193 So. 2d 601, 605 (Fla. 1966). The result was an unreasonably heavy burden on movants, which prolonged litigation and consumed judicial and party resources. The amended standard now provides litigants a meaningful opportunity for summary judgment without having to prove the absence of any genuine issue of material fact. If applied as outlined by the Florida Supreme Court, the amended summary judgment standard should streamline litigation in Florida state courts.

The Florida Supreme Court has finally aligned the Florida summary judgment standard with the Federal standard, which changes the burden on the moving party. Not only did the Florida Supreme Court revise the standard, it also added the requirement that the trial court state the reasons for its decision on the record. These changes constitute a dramatic shift in Florida's litigation landscape and now gives litigants a meaningful opportunity to resolve a case through summary judgment and have an adequate record for appeal.

A. Summary judgment cannot be defeated by the nonmoving party introducing a "mere scintilla of evidence" in support of their position.

Under Florida's amended summary judgment rule a "court *shall* grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[1] The amended rule requires that "[t]he summary judgment standard . . . shall be construed and applied in accordance with the federal summary judgment standard."[2]

The amended rule now requires Florida courts to apply a directed verdict standard in ruling on a summary judgment motion. Thus, a trial court must address "whether the evidence presents a sufficient disagreement to require submission to a jury."[3] Unlike the prior "slightest doubt" justification for avoiding summary judgment, "[t]he substantive evidentiary burden of proof that the respective parties must meet at trial is the only touchstone that accurately measures whether a genuine issue of material fact exists to be tried."[4] "[T]he correct test for the existence of a genuine factual dispute is whether 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'"[5] And "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."[6]

Practitioners should carefully evaluate this change and consider how motions for summary judgment, including partial summary judgment, could be used to resolve a case in whole or in part. For litigants defending a case, summary judgment is now more attainable because "if the nonmoving party must prove X to prevail [at trial], the moving party at summary judgment can either produce evidence that X is not so or point out that the nonmoving party lacks the evidence to prove X."[7] In fact, "[a] movant for summary judgment need not set forth evidence when the nonmovant bears the burden of persuasion at trial."[8] When drafting summary judgment motions, counsel should cite this standard and explain why there is not sufficient disagreement as to any material fact that would require submission to a jury.

For the nonmoving party, avoiding summary judgment requires more than showing the existence of some "metaphysical doubt as to the material facts."[9] Instead, the nonmoving party must present specific facts proving that a genuine factual dispute exists by "citing to particular parts of the materials in the record."[10] "The mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient" to overcome summary judgment.[11] When preparing a case, parties with affirmative claims must recognize this higher burden and consider this standard when conducting discovery to ensure that any issue of material fact is properly explored and can be addressed in response to a summary judgment motion. Factoring this new standard into early case planning and assessment is particularly important because the requirements when the nonmoving party bears the ultimate burden of persuasion are "not onerous."[12] In fact, that burden can now "regularly be discharged with ease."[13]

B. Courts must state on the record the reasons for granting or denying summary judgment.

The amended summary judgment rule also requires a court to "state on the record the reasons for granting or denying the motion."[14] This requirement facilitates appellate review, as appeals courts no longer have to analyze summary judgment decisions from orders that deny or grant motions without explanation.[15] And if a court denies a motion for summary judgment, litigants also benefit from this amendment because they will know what the judge considers to be the genuine issues of material fact for trial and focus their efforts accordingly.

Orders applying the new standard are just starting to make their way through the appellate courts, so

practitioners can expect continued guidance in the months and years to come. Nevertheless, recent decisions help explain how appellate courts consider the directive for trial courts to state their reasoning on the record. For example, the Third District Court of Appeal considered a challenge to a summary judgment order in which the court granted summary judgment without explaining its reasoning.[16] The appellate court explained that a mere pronouncement that summary judgment is granted or denied does not provide the specificity required by the new rule.[17] Acknowledging the burdens of busy trial court judges, the court stated that judges need not write lengthy opinions but "must take reasonable steps to ensure the parties and appellate courts are informed as to the reasons for granting or denying the motion on which their rulings rest under our new standard."[18]

In another Third DCA case, the court considered whether a discussion on the record of the reasons for granting a motion for summary judgment satisfies the new rule.[19] In that case, the trial judge entered only a brief order granting summary judgment, but had held two hearings on the motion and even requested additional case law on a specific issue.[20] The appellate court determined that "the transcripts of the two hearings held on [defendant's] motion demonstrate that the trial court stated the reasons for its decision with enough specificity to allow for appellate review by this Court."[21] Attorneys should remember this new requirement when evaluating potential appeals and should consider requesting a judge to explain his or her reasoning on the record if the court denies or grants a motion during a hearing without sufficient explanation.

Conclusion

As appellate courts review more cases applying the new summary judgment standard, the case law will continue to expand and provide additional guidance for practitioners. That said, counsel should be mindful of this important change in Florida law and ensure that they conduct appropriate discovery to avoid potential issues of disputed fact and properly brief the new standard and their positions on why summary judgment is or is not appropriate. Finally, practitioners should request that trial courts adequately state on the record their reasons for granting or denying summary judgment motions. Counsel should also consider the role summary judgment will play in resolving a case before trial and include the appropriate use of summary judgment motions in case management and discovery plans.

FOOTNOTES

[1] Fla. R. Civ. P. 1.510(a) (emphasis added).

[2] *Id*.

[3] *In re Amends. to Fla. Rule Civ. Proc. 1.510*, 317 So. 3d 72, 77 (Fla. 2021) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)).

[4] *Id*. (quoting Thomas Logue & Javier Alberto Soto, *Florida Should Adopt the Celotex Standard for Summary Judgments,* 76 Fla. Bar J., Feb. 2002, at 26.).

[5] *Id*. (quoting *Anderson*, 477 U.S. at 248).

[6] *Id*. at 75-76 (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)).

[7] *Id*. at 75 (quoting *Bedford v. Doe*, 880 F.3d 993, 996–97 (8th Cir. 2018)).

[8] *Id*. (quoting *Wease v. Ocwen Loan Servicing, L.L.C.*, 915 F.3d 987, 997 (5th Cir. 2019)).

[9] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (citation omitted).

[10] Fla. R. Civ. P. 1.510(c)(1)(a).

[11] *Anderson*, 477 U.S. at 252.

[12] *In re Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d at 77 (quoting *Modrowski v. Pigatto,* 712 F.3d 1166, 1168 (7th Cir. 2013)).

[13] *Id*. (quoting *Bedford,* 880 F.3d at 996).

[14] Fla. R. Civ. P. 1.510(a).

[15] *In re Amends. to Fla. Rule Civ. Proc. 1.510*, 317 So. 3d at 77 ("The court must state the reasons for its decision with enough specificity to provide useful guidance to the parties and, if necessary, to allow for appellate review. . . . [T]his requirement is critical to ensuring that Florida courts embrace the federal summary judgment standard in practice and not just on paper.")

[16] *Jones v. Ervolino*, 3D21-2037, 2022 WL 1560675, at *1 (Fla. 3d DCA May 18, 2022).

[17] *Id.* at *2.

[18] *Id.*

[19] *Simmons v. Pub. Health Tr. of Miami-Dade Cty.*, 3D21-1388, 2022 WL 1397454, at *2–3 (Fla. 3d DCA May 4, 2022)

[20] *Id.*

[21] *Id.* at *3.

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