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Appellate Ruling Sets New Standard for Summary Judgment

BY WILLIAM W. LARGE, PRESIDENT
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Spiraling lawsuits for asset-rich, heavy industries like transportation builders are nothing new. Over the last few years, headline after headline has told of “brutally tough” commercial insurance rate renewals as a result of nuclear verdicts and a worsening litigation environment.

In response, companies have increasingly turned to video evidence to manage risk, control litigation expenses, and most importantly, defend against lawsuits alleging fault.

Against that backdrop, a recent court decision compelled the Florida Justice Reform Institute to take action on behalf of its members.

In *WilsonArt v. Lopez*, the Florida Justice Reform Institute, the leading organization working to restore fairness and personal re-

sponsibility to Florida’s civil justice system, filed a “friend of the Court” brief with the Florida Supreme Court. In the brief, we urged adoption of the federal summary judgment standard – a standard to improve the fairness and efficiency of Florida’s civil justice system, relieve parties from the expense and burdens of meritless litigation, and save the work of juries for cases where there are real factual disputes that need resolution.

The facts of the underlying case will probably not surprise you.

Jon Lopez crashed his vehicle into the back of a freightliner that was coming to a stop. He died as a result of his injuries. Video from the tractor dashcam showed unequivocally that the freightliner was traveling in

a safe manner in its lane before being struck all of a sudden from behind.

After being sued by Lopez’s estate, WilsonArt successfully asked the judge to rule directly in their favor under a “summary judgment” without the expense and delay of a trial, since the video evidence clearly showed there was no real basis for the lawsuit.

On appeal, Lopez’s estate submitted one man’s testimony that he saw the freightliner change lanes in the moments before impact. The estate also had an “expert” who concluded, mostly from the eyewitness testimony, that the freightliner was partially in the right lane before impact. Essentially, in the face of the video evidence, their argument was who are you going to believe, me or your lying eyes?

In their ruling, the 5th District Court of Appeal said that under the current Florida summary judgment standard, even the slightest doubt of an issue of material fact prevented granting summary judgment. In this case, the court said, the eyewitness and expert testimony conflicted with the video evidence, and therefore a jury – not a judge – should weigh the issues and determine the conclusive facts.

That's a very high bar to clear in order to avoid a lawsuit.

Luckily, recognizing this result raised serious questions, the 5th DCA asked the Florida Supreme Court to clarify the standard when video evidence “completely negates or refutes any conflicting evidence,” and there is no evidence that the video was altered.

In our brief, we noted that Florida's rules of civil procedure exist expressly to achieve the “just, speedy, and inexpensive” resolution of litigation. In this case, though, the standard as interpreted allowed Lopez to contradict objective evidence with subjective evidence and avoid summary judgment, prolonging the litigation.

Instead, we argued that the Court should adopt the federal standard for summary judgment. Under that standard, when there is no *genuine* issue of material fact that prevents awarding summary judgment to the party ask-

ing for it, *the burden shifts to the other party* who must come forward with enough credible evidence to establish a genuine, as opposed to alleged, factual dispute.

Meanwhile, the Florida Supreme Court has evolved over the past two years with Gov. DeSantis making five appointments to the Court. Since those appointments, the Court has demonstrated through other actions, like adopting the federal *Daubert* expert evidence standard (a story for another day), that it is open to improving the efficiency, fairness, and predictability of Florida jurisprudence.

Thankfully, at the beginning of this year, the Court announced its intent to make a change. Transportation builders are certainly familiar with agency rulemaking, and the Courts are no different. After publishing the proposed change and accepting public comments, including comments from FJRI, the Florida Supreme Court formally adopted the federal summary judgment standard as *In re Amends. to Fla. R. Civ. P. 1.510*, No. SC20-1490 (Fla. Apr. 29, 2021).

The Court chose to adopt the entire text of the federal rule, with some modest exceptions for timing-related issues, in order to “provide greater certainty and eliminate unproductive speculation and litigation over differences between [the federal and state] rules.” The Court

also helpfully mandated that trial courts explain any decision to grant or deny summary judgment, which will provide useful guidance to the parties and, if necessary, allow for appellate review.

The rule took effect on May 1, 2021, and it applies to any summary judgment motion decided on or after that date, including in pending cases. In pending cases where a summary judgment motion was briefed or even denied under the *old* rule, the court must give the parties a reasonable opportunity to amend or file a renewed motion under the new rule.

Overall, the Court's move to the federal summary judgment standard is a welcome change and another indication that with Gov. DeSantis's leadership, Florida's litigation environment continues to improve.

About the Author



William W. Large is a passionate advocate for legal reform and an experienced attorney who served as Gov. Jeb Bush's deputy chief of staff. William is a lobbyist who brings extensive legal and political expertise to Florida Justice Reform Institute, and he has worked in the highest levels of Florida government to bring about civil justice and tort reform. He can be reached at (850) 222-0170.



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