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Monumental Shift to Florida's Summary Judgment Standard
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Executive Summary: In a monumental shift for state-court litigators and litigants, the Florida Supreme Court recently decided to forego the established state law standard for summary judgment in favor of adopting the more lenient, and more defense-friendly, federal standard articulated by the United States Supreme Court in the trilogy of cases of *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Florida now joins 38 other states in adopting the federal standard.

Under federal and Florida law, summary judgment is designed "to secure the just, speedy, and inexpensive determination of every action" by providing a mechanism for the early disposition of cases that do not present genuine triable issues. *See* Fla. R. Civ. P. 1.010; Fed. R. Civ. P. 1. Despite similarities between Federal Rule of Civil Procedure 56 and Florida Rule of Civil Procedure Rule 1.510(c), interpretation and application of both standards could not be more different.

Winning summary judgment in Florida state court is not easy. Since the 1966 decision by the Florida Supreme Court in *Holl v Talcott*, 191 So. 2d 40 (Fla. 1966), Florida courts have taken an expansive view of what constitutes a "genuine issue of material fact" sufficient to defeat summary judgment. In a nutshell, a moving party is required to conclusively disprove the nonmoving party's theory of the case in order to eliminate any issue of fact. Accordingly, the existence of *any* competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment so long as the *slightest doubt* has been raised. This is very difficult burden to overcome, especially for defense practitioners in employment-related suits, who almost universally move for summary judgment before trial and who are often challenged by a litany of conflicting facts borne out through discovery. Indeed, application of the current Florida standard has produced inconsistent results and led to the unnecessary prolonging of specious claims.

By contrast, the federal standard does not require the moving party to negate their opponent's claim. Rather, under the federal standard, the movant's burden may be discharged by showing that there is an absence of evidence to support the nonmoving party's case. The United States Supreme Court has described the federal test to be "whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 248, 106 S.Ct. 250. Further, a party opposing summary judgment must do more than simply show that there is some theoretical doubt as to the material facts. When 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 following the federal standard should not adopt that version of the facts for purposes of ruling on a motion for summary judgment. But under the Florida standard, that was permissible and was routine. That is, until now.

Effective May 1, 2021, the federal summary judgment standard will apply to all claims in Florida state court. This is a welcome change for defendants and defense practitioners,

especially in light of the backlog that Florida courts are still facing due to the COVID-19 pandemic. This rule change was prompted by a recent certified question from the Fifth District Court of Appeal to the Florida Supreme Court in *Lopez v. Wilsonart, LLC,* 275 So. 3d 831 (Fla. 5th DCA 2019).

In *Wilsonart, LLC v. Lopez,* SC19-1336 (Fla. Dec. 31, 2020), the certified issue before the court was: "[s]hould there be an exception to the present summary judgment standards that are applied by state courts in Florida that would allow for the entry of final summary judgment in favor of the moving party when the movant's video evidence completely negates or refutes any conflicting evidence presented by the non-moving party in opposing to the summary judgment and there is no evidence or suggestion that the videotape evidence has been altered or doctored?"

The Florida Supreme Court answered no.

Wilsonart arose from a fatal car crash. The decedent's estate sued the front car driver and the driver's employer. The trial court granted summary judgment for the defendants in reliance on video evidence from the front car's dashboard camera. The trial court held the video refuted the plaintiff's position and demonstrated the defendants were not negligent. On appeal, the Fifth District Court of Appeal reversed, finding the trial court improperly weighed competing evidence on material facts. The above question was certified to the Florida Supreme Court for review. The Florida Supreme Court asked the parties to brief whether Florida should adopt the federal summary judgment standard and, if so, whether Florida Rule of Civil Procedure 1.510 should be amended. Ultimately, the court found no reason to adopt an *ad hoc* video evidence exception to the existing summary judgment standard. As such, the court approved the Fifth District's reversal of the defendants' summary judgment.

On the same day, the Florida Supreme Court, on its own motion, issued *In re Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490 (Fla. Dec. 31, 2020). In the rules opinion, the court addressed the definition of "genuine issue" found in Florida's summary judgment standard and explained why adoption of the federal summary judgment standard was warranted. The court amended Florida Rule of Civil Procedure 1.510, adopting the federal summary judgment standard, effective May 1, 2021. In its opinion, the Florida Supreme Court explained that the amendments to Fla. R. Civ. P. 1.1510 will have three major impacts:

1. Most importantly, the requirement that the moving party must negate or otherwise conclusively "disprove the nonmovant's theory of the case in order to eliminate any issue of fact" is abandoned. *See id*. at 3. Instead, the movant will prevail if the nonmoving party cannot show that it will have sufficient evidence to establish the elements of its claims. *See id*. 3–4.

2. There will be a new definition of what constitutes a genuine issue of material fact. The old Florida definition – the "slightest doubt" – is now replaced with the federal definition – whether a "reasonable jury could return a verdict for the nonmoving party." *See id*. at 4–5; *see also Jones v. Dirs. Guild of Am., Inc.*, 584 So. 2d 1057, 1059 (Fla. 1st DCA 1991) (discussing "slightest doubt" definition).

3. Courts now must recognize the similarity between a motion for directed verdict and a motion for summary judgment. *See id*. at 2–3. In both contexts, the inquiry will now be identical. The court will consider "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id*.

In addition to the Florida Supreme Court's above assessment of its rule change, the implications of the court's adoption of the federal summary judgment standard are significant, especially for defense counsel. When the rule change takes effect on May 1, 2021, not only will dispositive motion practice proceed in a more meaningful way, but defendants will be able to prevail on plaintiffs' failure to produce sufficient record evidence to support their claims—the directed verdict standard that for decades Florida courts have declined to recognize in summary judgment proceedings. In addition to making it easier to obtain summary judgment in Florida, it is also anticipated that Florida litigants may be dissuaded from bringing dubious claims – which is not so under the current Florida standard.