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Florida Changes its Summary Judgment Rule, and an Old Tool in the Litigator's Kit Just Got Sharpened

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Resolving civil litigation at the summary judgment stage is beneficial for several reasons, including (1) reducing overall litigation costs, (2) streamlining the substantive issues in a case, and (3) avoiding the time and resources necessary to conduct a jury trial—for not only the parties, but also the courts and would-be jurors. Unfortunately, Florida's summary judgment standard has historically made it exceedingly difficult to prevail on a motion for summary judgment. The odds that such a motion would be granted—and survive appeal—ranged from slim to none. But it seems the times, they are a-changin'.

On December 31, 2020, the Florida Supreme Court amended Florida Rule of Civil Procedure 1.510 and adopted "the summary judgment standard articulated by the United States Supreme Court" (i.e., the federal summary judgment standard), effective May 1, 2021.[1] This amendment impacts all new and pending summary judgment motions, and provides litigants whose summary judgment motions were denied under the old rule an opportunity to renew their motions under the new standard.[2]

Under the old standard, "Florida courts . . . required the moving party conclusively 'to disprove the nonmovant's theory of the case in order to eliminate any issue of fact,'" and permitted "***any*** competent evidence creating an issue of fact, however credible or incredible, substantial or trivial" to defeat summary judgment.[3] This essentially placed the burden of proof, in many cases, on a defending party at the summary judgment stage—a burden that Florida law requires the plaintiff to bear at trial—and would allow an opposing party to avoid summary judgment simply by showing that one or more factual issues were disputed, forcing the movant to trial.[4] This high threshold for summary judgment—especially in more complex cases—made early resolution virtually impossible for a great number of civil matters, including low value or "nuisance" cases.

So how does the new summary judgment standard affect litigation going forward? Under the new standard, the moving party's burden is "discharged by 'showing' . . . that there is an ***absence*** of evidence to support the nonmoving party's case," and summary judgment should be precluded only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[5] With these changes to Rule 1.510, "it will no longer be plausible to maintain that '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' is raised.'"[6] Adoption of the federal summary judgment standard effectively prevents opposing parties from blocking summary judgment with arguments of disputed issues of fact that are insignificant or otherwise meritless—especially in cases where claims or defenses lack support to begin with.

Adoption of the federal summary judgment standard not only provides litigants with a larger body of law to which they may refer, but also reduces the burden on the movant—a burden that was unfairly shifted from the plaintiff when a defendant was the movant. In its opinion, the Florida Supreme Court directed trial courts to "recognize that a moving party that does not bear the burden of persuasion at trial [*i.e.*, a defendant] can obtain summary judgment *without* disproving the nonmovant's [plaintiff's] case."[7] In other words, Florida now finally recognizes a "no-evidence" basis for summary judgment; a moving party now may simply

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point out that the nonmoving party ***lacks*** the evidence to prove its case without having to actually offer the movant's own evidence.[8]

The Florida Supreme Court also clarified the test for when summary judgment should be denied: "the 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.'" That is, a nonmovant can no longer throw up a blockade to summary judgment by simply filing a self-serving affidavit that does nothing more than drag out a case and increase litigation costs on both sides. A weak case, which may have survived under the old summary judgment rule, will now face a heavier challenge at summary judgment—and a greater likelihood of disposal at that stage.

Significantly, after receiving comments, the Florida Supreme Court also adjusted the timing for filing a summary judgment motion, increasing the time prior to the hearing that a summary judgment motion must be filed from 20 days to 40 days. The new rule also provides that a nonmovant must respond with "its supporting factual position at least 20 days before the hearing." This eliminates the ability of the nonmovant to strategically file a last-minute response opposing summary judgment.[9]

The substantive change to Rule 1.510 favors earlier resolution of cases—indeed, the Florida Supreme Court's overarching purpose for the amendment was to help secure "the just, speedy, and inexpensive determination of every action."[10] The ability to resolve more cases at the summary judgment stage not only will offer an opportunity to avoid the uncertainty and cost of expensive jury trials but also could present a real threat to an opposing party's case—thereby opening up additional opportunities to settle cases even earlier, before significant costs have been incurred. A litigant with a weak case previously had little reason to fear summary judgment. Now, that same litigant may think twice about whether to settle before heading into a summary judgment hearing. Furthermore, the new standard should help expedite the resolution of frivolous claims, and perhaps deter them from being filed in the first place, thus reducing their burden on Florida's court system. So the overall net impact of the new Rule should be a more efficient judicial process, and that's something every Florida practitioner can get behind.

1. *In re: Amendments to Fla. R. of Civ. P. 1.510, No.* SC20-1490, 309 So. 3d 192 (Fla. Dec. 31, 2020).
2. *In re: Amendments to Fla. R. of Civ. P. 1.510, No.* SC20-1490, 2021 WL 1684095, at *4 (Fla. Apr. 29, 2021).
3. *In re: Amendments to Fla. R. of Civ. P. 1.510,* 309 So. 3d. at 193.
4. Where summary judgment was denied under the old rule, litigants had another opportunity to avoid submission of the case to the jury by moving for a directed verdict. The Florida Supreme Court recognizes the "fundamental similarity between the [federal] summary judgment standard and the directed verdict standard," both of which focus on "whether the evidence presents a sufficient disagreement to require submission to a jury." 2021 WL 1684095 at *2 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252 (1986)).
5. 309 So. 3d. at 193. (emphasis added).
6. 2021 WL 1684095, at *3 (quoting Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* § 1.510:5 (2020 ed.)).
7. *Id.* at *2 ("A movant for summary judgment need not set forth evidence when the nonmovant bears the burden of persuasion at trial.") (quoting *Wease v. Ocwen Loan Servicing*, L.L.C., 915 F.3d 987, 997 (5th Cir. 2019)).
8. *Id.* (emphasis added).
9. The prior version of Rule 1.510 required the nonmoving party to serve upon the moving party any summary judgment upon which it intended to rely 5 days (or 2 business days) prior to the summary judgment hearing. See Fla. R. Civ. P. 1.510(c) (2020).
10. 309 So. 3d. at 192.

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