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Florida Adopts Text of the Federal Summary Judgment Standard

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May 04, 2021

Nearly four months to the day from when the Florida Supreme Court announced the state's adoption of the federal summary judgment standard, the Court went a step further and announced the adoption of the text of the federal summary judgment rule itself. This ruling comes after the Court received comments and heard oral argument on the scope of the amendment of Florida Rule of Civil Procedure 1.510. Based on that feedback, the Court deemed that fully adopting the text of federal Rule 56 ensured Florida courts' adoption of the standard as intended, provided greater certainty going forward, and offered judges and litigants the large body of case law that has developed interpreting the rule.

The Court expressly acknowledged that this change is meant to attach Florida to the principles established in the *Celotex* trilogy, primarily that summary judgment is a useful tool of litigation, not a disfavored outcome. In doing so, certain elements of Florida's summary judgment case law, specifically any judicial precedent hindering the use of summary judgment, will be abandoned. The Court supported its decision by reiterating the key points of its December 31 ruling.

First, the Court again stated that the summary judgment and directed verdict standard are fundamentally similar – they both come down to whether the evidence presents a sufficient disagreement to require submission to a jury. Next, the Court made clear that a moving party that does not bear the burden of persuasion at trial can receive summary judgment without disproving the nonmovant's case. It can obtain summary judgment by either: (1) proving that the subject of the nonmoving party's burden of proof affirmatively did not happen or (2) that the nonmoving party lacks the evidence to meet its burden of proof. Lastly, the Court confirmed the correct test for the existence of a genuine factual dispute – whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party. The Court expounded on this last idea by stating that 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, halts a summary judgment inquiry so long as the slightest doubt is raised. It must be possible for a reasonable jury to believe that evidence.

The Court also addressed whether to name the *Celotex* trilogy explicitly in amending Rule 1.510. While the U.S. Supreme Court's *Celotex Corporation v. Catrett* ruling has played a large role in shaping summary judgment jurisprudence, there is more recent judicial precedent interpreting *Celotex* and, in fact, amended text of federal Rule 56 that demonstrates the difficulty in relying solely on that trilogy. The Court deemed that adopting the exact language of federal Rule 56 alleviated concerns both ways – it adopted the standard that *Celotex* played a significant role in developing while accepting the overall body case law interpreting federal Rule 56.

Additionally, the Court specifically noted a commenter's suggestion to include language in the amended Rule 1.510 defining the burden of the moving party. While the Court opted not to do so, it did further emphasize that when the moving party does not bear the burden of production at trial, its requirements to succeed on a motion for summary judgment are not onerous.

To ensure compliance, the Court included language in amended Rule 1.510 to create a mandatory obligation for courts to record their reasons for granting or denying a summary judgment motion. The Court's guidance on

this point was forceful, stating that courts must state the reasons for their decisions with enough specificity to provide useful guidance to the parties and allow for appellate review. With this, the Florida Supreme Court has presented a clear message: amending Rule 1.510 is not ceremonial in nature; the Court expects this change to have practical and meaningful effects on Florida's court system.

The Court finalized its ruling by offering two points of clarification. First, it stated the importance of maintaining summary judgment motion timing requirements that are attached to a hearing. Thus, a summary judgment motion must be filed at least 40 days before the time fixed for a hearing and the nonmovant must respond at least 20 days before the hearing. Additionally, the Court confirmed that new Rule 1.510 would apply to pending summary judgment motions and, in fact, parties to cases where a summary judgment motion was denied under the prior rule should have a reasonable opportunity to file a renewed motion under the amended rule. With these changes overall, the Florida Supreme Court has made clear that it intends for summary judgment motions to play a more substantial role in the Florida court system, but it also provided comfort that the new rule should not replace the sacred province of the jury for resolving genuine factual disputes.

If you have any questions about how this development may impact you or your business, please contact David B. Levin or Josh Kravec for assistance.