CASE NOTE: *Wilsonart, LLC v. Lopez,* Florida Supreme Court Adopts Federal Summary Judgment Standard: One Step Toward Curbing Litigation Abuse in a "Judicial Hellhole"

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On December 31, 2020, in concurrently issued case and rulemaking opinions,[1] the Florida Supreme Court brought its summary judgment standard out of the minority view and into alignment with the standard used in federal court and a supermajority of the states. The action is notable because Florida's draconian summary judgment standard has long been a contributor to Florida's reputation as a "Judicial Hellhole."[2]

The case opinion – *Wilsonart, LLC v. Lopez*[3]– arises from a commercial motor vehicle fatality, and from, unfortunately, a common fact pattern. As Defendant Samuel Rosario brought his Freightliner truck to a gradual stop at a red light, it was stuck by a vehicle driven by Jon Lopez who was killed in the crash.[4] Fortunately for Rosario and his employer, co-Defendant Wilsonart, LLC, Rosario's Freightliner was equipped with a dashcam that captured footage from the accident.[5] The video evidence was compelling in proving that Rosario had not been negligent.[6] Armed with the video, Defendants moved for summary judgment and for a dismissal of the claims made by Plaintiff, the decedent Lopez's estate. Notwithstanding the video, Lopez's estate opposed the summary judgment motion relying on expert testimony and on testimony from an independent eye witness which (technically) created an issue of fact in that it contradicted what was plain on the video.[7] Plaintiff made no claim and possessed no evidence calling the authenticity of the dashcam video into question.[8]

The trial judge, relying on the United States Supreme Court opinion in *Scott v. Harris*[9] and the Florida Supreme Court opinion in *Wiggins v. Florida Department of Highway Safety and Motor Vehicles,*[10] found the dashcam video "compelling" and, because it "blatantly contradicted" Plaintiff's submission, granted summary judgment in favor of Rosario and Wilsonart, LLC.[11]

On appeal, Florida's Fifth District Court of Appeals, admittedly constrained by Florida's existing summary judgment standard, reversed the trial court's dismissal, finding that the trial judge's use of the admittedly compelling video to negate Plaintiff's evidence amounted to improper weighing of competing evidence on material facts.[12] By weighing the competing evidence, the trial judge "improperly encroached into the jury's province," according to Florida's Fifth DCA, and applied the looser federal standard instead of "Florida's much more restrictive standard."[13] This "much more restrictive standard" requires a Florida trial judge faced with a summary judgment motion to, "if the record raises *the slightest doubt* that material issues could be present," resolve that doubt against the movant and deny the motion for summary judgment.[14]

Clearly bothered by the decision it felt compelled to make, Florida's Fifth DCA certified the issue raised in its opinion as a matter of great public importance to the Florida Supreme Court. Florida's Fifth DCA, properly trying to narrow the question, certified it as follows:

> Should 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 opposition to the summary judgment motion and there is no evidence or suggestion that the videotape evidence has been altered or doctored?[15]

The Florida Supreme Court, seemingly looking to update what had become an archaic standard rendering summary judgment all but useless, accepted the Fifth DCA's invitation to review. *Sua sponte,* and

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recognizing a "deeper flaw" in the existing summary judgment standard, the Florida Supreme Court broadened the issue and asked the *Wilsonart* parties to brief the following question:

> Should Florida adopt the summary judgment standard articulated by the United States Supreme Court in Celotex Corp. v. Catrett, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574 (1986)? If so, must Florida Rule of Civil Procedure 1.510 be amended to reflect any change in the summary judgment standard?[16]

In the case opinion that followed, the Florida Supreme Court announced that, via its rulemaking procedure, it was leaving its rigid summary judgment standard behind and, in recognition of technological evidence becoming more prevalent and (simply) commonsense, adopting the federal summary judgment standard.[17] In the concurrent rulemaking opinion – *In re: Amendments to Florida Rule of Civil Procedure 1.510*[18] – the Florida Supreme Court explained that the manner in which its summary judgment rule had been applied, notwithstanding its similarity to the text of the federal rule, had become contrary to the purpose of Florida's rules of civil procedure, which was "to secure the just, speedy, and inexpensive determination of every action."[19]

With fairness, efficiency, and relief from the expense of meritless litigation in mind, the Florida Supreme Court explicitly adopted the federal summary judgment standard articulated in *Celotex Corp. v. Catrett,*[20] *Anderson v. Liberty Lobby, Inc.*,[21] and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,*[22] bringing Florida's summary judgment standard into line with the prevailing majority view. Stated simply, the federal, majority view, and now Florida's summary judgment test, asks whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party" and "if the evidence is merely colorable, or is not significantly probative, summary judgment may be granted."[23] The amended rule takes effect on May 1, 2021, and the Florida Supreme Court invited opinions on the proposed rule during the 60-day commentary period which followed the opinion.[24]

The changes to Florida Rule of Civil Procedure 1.510 adopted by the Florida Supreme Court in Wilsonart and the companion *In re: Amendments to Florida Rule of Civil Procedure 1.510* are a victory for fairness, efficiency, and common sense. It is axiomatic that giving the trial judge the ability to weigh compelling, reliable evidence, particularly as technology advances, inures to the benefit of the justice system as a whole. As the Florida Justice Reform Institute, in conjunction with the Florida Trucking Association, wrote in its amicus brief supporting the adoption of the federal standard, "reliance on objective video evidence plays a critical role when it comes to managing risk and controlling litigation expense."[25] With Florida's adoption of the federal summary judgment standard, now trial judges can participate in this reliance on objective video evidence, bringing at least some sorely needed tort reform to Florida. Florida has left its old summary judgment standard in 2020, where all bad things belong.

Endnotes

1 *Wilsonart, LLC v. Lopez, Case No.* SC19-1336, 2020 WL 7778226 (Fla. Dec. 31, 2020) ("Wilsonart") and *In re: Amendments to Florida Rule of Civil Procedure 1.510,* No. SC20–1490 (Fla. Dec. 31, 2020).
2 *See* 2017-18 Judicial Hellhole Report, American Tort Reform Association, http://www.judicialhellholes.org/wp-content/uploads/2017/12/judicial-hellholes-report-2017-2018.pdf. When Florida topped this list of crippling litigation environments in 2017-18, the Florida Chamber of Commerce suggested that the state change its nickname to the "Shady State." See https://www.flchamber.com/tag/shady-state/.
3 Case No. SC19-1336, 2020 WL 7778226 (Fla. Dec. 31, 2020).
4 *Lopez v. Wilsonart, LLC,* 275 So.3d 831, 832-33 (Fla. 5th DCA 2019) ("Lopez").
5 *Lopez,* 275 So.3d at 832.
6 *Lopez,* 275 So.3d at 834.
7 *Lopez,* 275 So.3d at 833.
8 *Wilsonart,* 2020 WL 7778226 at *1.
9 550 U.S. 372 (2007).
10 209 So. 3d 1165 (Fla. 2017).
11 *Lopez,* 275 So.3d at 833-34.
12 *Lopez,* 275 So.3d at 834.
13 *Id.*
14 *Lopez,* 275 So.3d at 833 (citing Jones v. Dirs. Guild of Am., Inc., 584 So. 2d 1057, 1059 (Fla. 1st DCA 1991)) (emphasis supplied).
15 *Lopez,* 275 So.3d at 834.
16 *Wilsonart,* 2020 WL 7778226 at *1-2.
17 *Id.*
18 No. SC20–1490 (Fla. Dec. 31, 2020).
19 *Id.* (citing Fla. R. Civ. P. 1.010).
20 477 U.S. 317 (1986).
21 477 U.S. 242 (1986).
22 475 U.S. 574 (1986).

[23] *Anderson,* 477 U.S. at 248-50.

[24] No. SC20–1490 (Fla. Dec. 31, 2020). Ironically, the Florida Supreme Court did not reverse the Fifth DCA's decision in the subject *Wilsonart* case, meaning Rosario and Wilsonart were sent back to the trial court with leave to re-file their motion for summary judgment, presumably after the new summary judgment standard becomes effective. *Wilsonart,* 2020 WL 7778226 at *2.

[25] Brief of Florida Justice Reform Institute and Florida Trucking Association as Amici Curae in Support of Petitioners, Wilsonart, LLC v. Lopez, Case No. SC19-1336, 2020 WL 7778226 (Fla. Dec. 31, 2020).