

## CLIENT ALERT

### Florida's New Year's Resolution: A "More Rational, More Fair, and More Consistent" Summary Judgment Standard

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At the close of 2020, the Supreme Court of Florida amended Florida Rule of Civil Procedure 1.510 to adopt the federal summary judgment standard, noting that the federal "standard is more rational, more fair, and more consistent with the structure and purpose of [Florida's] rules of civil procedure."<sup>1</sup> In doing so, Florida joins thirty-eight states that have embraced, in whole or in part, the federal summary judgment standard.

This decision follows the Court's invitation for the parties in a fatal car-accident case, *Wilsonart, LLC, et al. v. Lopez*, "to brief the question whether Florida should adopt the federal summary judgment standard."<sup>2</sup> With the benefit of this briefing, as well as briefing from numerous *amici*, the Court was "persuaded that Florida should adopt the federal summary judgment standard[.]" although the Court in *Wilsonart* noted, also on December 31, 2020, that "the right way to enact th[e] change is through a prospective rule amendment."<sup>3</sup>

#### Prior Standard – Like the Federal Rules in Name Only

The decision, entered on December 31, 2020, recognized the similarities between the Florida and federal standards, but clarified that they had not yet been aligned under Florida jurisprudence. "[A]s a purely textual matter, the critical sentences in Florida's summary judgment rule and in the federal summary judgment rule are materially indistinguishable."<sup>4</sup> Nevertheless, although the purpose and text of Florida Rule of Civil Procedure 1.510 and Federal Rule of Civil Procedure 56(a) are consistent, "Florida and federal courts have not been aligned in their summary judgment jurisprudence." The Court proceeded to explain three "particularly consequential differences" between Florida and federal jurisprudence, but was careful to note that the "discussion is not intended to limit the scope of the rule amendment" adopted.

First, while Florida courts have "declined to recognize the fundamental similarity between a motion for directed verdict and a motion for summary judgment[.]" federal courts have "held that the federal summary judgment standard 'mirrors' the standard for a directed verdict." Second, Florida courts have placed the burden on the moving party to conclusively "disprove the nonmovant's theory of the case in order to eliminate any issue of fact." In contrast, federal jurisprudence holds that there is "no express or implied requirement" in the summary judgment standard "that the moving party support its motion with affidavits or other similar materials *negating* the opponent's claim." Instead, under the federal standard, the moving party's burden depends on who bears the burden of persuasion at trial. Third, Florida courts have employed an "expansive understanding of what constitutes a genuine . . . issue of material fact[.]" one under which the "slightest doubt" precludes summary judgment. The inquiry employed by federal courts, however, focuses on "whether the evidence is such that a reasonable jury could return a

verdict for the nonmoving party.” In other words, “[i]f the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.”

### **New Standard - Aligns with Purpose of Florida Rules of Civil Procedure**

After articulating these differences, the Court echoed the United States Supreme Court’s reasoning in *Celotex* that “[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of [our rules] as a whole.”<sup>55</sup> The Court further opined that although the purpose of the Florida Rules of Civil Procedure is “to secure the just, speedy, and inexpensive determination of every action[,]” the interpretation of Florida’s summary judgment rule by Florida courts has “unnecessarily failed to contribute to that objective.”

### **What the Future Holds**

It remains to be seen how consistently Florida courts will apply this new, more fair summary judgment standard. In the long run, however, the amendment should result in earlier disposition of unfounded claims and defenses before trial, along with a corresponding reduction in unnecessary litigation expenses. In addition to the benefits to litigants, the judiciary and taxpayers of Florida may see some relief as well. The earlier resolution of claims should help ease the overtaxed judiciary in a state that has been considered one of the most litigious states in the country. Finally, coming on the heels of Florida’s recent formal adoption of the federal *Daubert* expert standard,<sup>66</sup> this signals the state’s continued movement towards a civil litigation system that prioritizes a more balanced, gatekeeping role.

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<sup>1</sup> *In re: Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490, 2020 WL 7778179 (Fla. Dec. 31, 2020).

<sup>2</sup> *Id.* at \*2 (citing *Wilsonart, LLC v. Lopez*, No. SC19-1336, 2019 WL 5188546, at \*1 (Fla. Oct. 15, 2019)).

<sup>3</sup> *Wilsonart, LLC v. Lopez*, No. SC19-1336, 2020 WL 7778226, at \*2 (Fla. Dec. 31, 2020).

<sup>4</sup> *In re: Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490, 2020 WL 7778179.

<sup>5</sup> *Id.*, at \*1 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)).

<sup>6</sup> *In re: Amendments to the Florida Evidence Code*, 278 So.3d 551 (Fla. 2019).

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