

The New Year Brings a More Relaxed, Pro-Business Summary-Judgment Standard

By Christopher D. Donovan

In the waning hours of 2020, the Florida Supreme Court changed Florida's summary-judgment standard by adopting the much more relaxed federal standard. Although the change does not take effect until May 2021—and even then, Florida judges may initially apply it inconsistently as they grapple with a new standard for the first time in over 50 years—the change's long-term effect should help businesses reduce litigation costs by short-circuiting unfounded claims and defenses long before trial.

The Florida and federal summary-judgment rules were both designed to balance one party's right to a trial against another's right to avoid the time and expense of a trial when no genuine dispute exists about the case's facts. Textually, the rules are nearly identical. But Florida's rule fell far short of this objective in application due to a 1966 case that often makes it nearly impossible to obtain summary judgment.

Under that 1966 case, those moving for summary judgment must not only prove their theory of the case, but also disprove their opponent's theory to eliminate any factual dispute. For example, in one case, a paternity test indicated a 99.03% chance that the litigant was a child's father, but a court reversed summary judgment because the issue was not conclusive and irrefutably proven. This restrictive standard made summary judgment almost a waste of time in Florida, especially in cases involving personal injury, oral agreements, and allegations of fraud.

But as technology advanced, especially the ubiquity of videos, courts began questioning Florida's standard. In a recent personal-injury case, [Wilsonart, LLC v. Lopez](#), the Florida Supreme Court was asked whether an exception should exist when a movant's video evidence completely negates any conflicting evidence and there has been no suggestion that the video was altered or doctored. Rather than creating an exception, the Supreme Court decided to just [amend the summary-judgment rule of procedure](#) by expressly adopting the federal summary-judgment standard.

Several differences between the old Florida standard and the federal standard should result in more summary judgments, thereby lowering litigation costs.

For example, under the old Florida standard, movants had to present evidence negating each of their opponent's defenses. This often required movants to prove a negative—i.e., that opponents had no evidence to support their defenses. Until this negative was proven, opponents were not required to present any evidence refuting summary judgment or supporting their defenses. But under the federal standard, movants need not present evidence to disprove their opponents' defenses. Rather, movants only need to prove their claims and then their opponents must come forward with competing evidence supporting their defenses to avoid summary judgment.

Another key difference is that the federal standard will allow courts to consider the strength or probative value of the evidence. Under Florida's old standard, if there was any evidence—no matter how credible, incredible, or even trivial—then courts had to deny summary judgment because courts could only weigh

the evidence and make credibility decisions at trial and not on summary judgment. So often a nonmovant would file an affidavit that only generally disagreed with the movants' evidence, and there was nothing the trial court could do but deny summary judgment and have a trial.

With Florida adopting the federal standard, the test now becomes whether the evidence is sufficiently probative that a reasonable jury could return a verdict for the nonmovant. If it is not, then summary judgment must be granted. Thus, nonmovants will now have to show more than a scintilla of evidence to avoid summary judgment. As [one federal case explained](#): "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 should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." This will also greatly increase the value of video evidence.

Under this new standard, Florida courts will also have to consider the relevant evidentiary burden of proof for a given claim or defense before granting summary judgment. Every claim or defense has an evidentiary burden that must be met before the claim or defense is deemed proven. Under Florida's old summary-judgment standard, the burden of proof only mattered at trial because summary judgment had to be proven irrefutably. Florida courts will now have to consider the amount of and probative value of the evidence before resolving summary judgment. This consideration will be particularly relevant to claims with higher burdens of proof, such as the clear-and-convincing burden, which applies to claims for punitive damages, civil theft, usury, constructive trusts, and defamation.

These and other features of the federal standard should revitalize summary judgment as a procedural device in Florida for avoiding the time and expense of trial against those who sue or defend on merely a hope and a prayer. Indeed, the [Florida Supreme Court opined](#) that courts should no longer view summary judgments as a "disfavored procedural device," but rather as a way to "improve the fairness and efficiency of Florida's civil justice system, to relieve parties from the expense and burdens of meritless litigation, and to save the work of juries for cases where there are real factual disputes that need resolution." But only time will tell whether the change will achieve this laudable goal.

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