

57 So.3d 896

District Court of Appeal of Florida,
Fourth District.

Alexander WEBSTER, individually, and
as Personal Representative of the Estate
of Louise Webster, deceased, Appellant,

v.

MARTIN MEMORIAL MEDICAL
CENTER, INC., Appellee.

No. 4D09–2497. | March 2, 2011.
| Rehearing Denied April 21, 2011.

Synopsis

Background: Patient and her husband brought medical malpractice action against hospital. The Nineteenth Judicial Circuit Court, Martin County, [William L. Roby, J.](#), awarded summary judgment to hospital. Husband, individually and as personal representative for the estate of patient, who had subsequently died, appealed.

Holding: The District Court of Appeal held that trial court misplaced the burden of proof in awarding summary judgment to hospital.

Reversed.

West Headnotes (1)

[1] Judgment

🔑 Presumptions and burden of proof

Trial court misplaced the burden of proof in awarding summary judgment to hospital in medical malpractice action on the grounds that the evidence produced by patient established a mere possibility that hospital's negligence caused patient's injuries, and that patient had failed to produce evidence on the element of causation; unlike on a motion for directed verdict at trial, on motion for summary judgment hospital had the burden to establish that there was no issue of fact regarding causation, which it failed to do.

Attorneys and Law Firms

*896 [Joel S. Perwin](#) of Joel S. Perwin, P.A., Miami, [Gloria Seidule](#) of Law Office of Gloria Seidule, Stuart, and [Kevin O'Connor](#) of Foley Mansfield, Miami, for appellant.

[Janet W. Adams](#) and [Heidi J. Livingston](#) of Hill, Adams, Hall & Schieffelin, P.A., Winter Park, for appellee.

Opinion

*897 PER CURIAM.

We reverse the order granting the defendant hospital's motion for summary judgment in a medical malpractice action. According to the Florida Supreme Court,

in medical malpractice actions, courts should grant summary judgment in favor of the defendant cautiously. A summary judgment is properly rendered only upon showing a complete absence of any genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The proof must be such as to overcome all reasonable inferences in favor of the party opposing summary judgment.

[Univ. of Miami v. Bogorff](#), 583 So.2d 1000, 1005 (Fla.1991) (citations omitted). The issue is reviewed de novo. *E.g.*, [Holmes v. Bridgestone/Firestone, Inc.](#), 891 So.2d 1188, 1191 (Fla. 4th DCA 2005).

This case is controlled by [Visingardi v. Tirone](#), 193 So.2d 601 (Fla.1966), which explained that the plaintiff has a lesser burden when opposing a motion for summary judgment than when opposing a motion for directed verdict at trial:

At the trial, to be sure, the plaintiff herein would have the burden of proving, not only the acts of negligence, but their causal relationship with the injury alleged. However, unless the record that is considered on motion for summary

judgment otherwise shows an absence of such causal relationship, the plaintiff, who is opposing the motion, is under no obligation to put in evidence showing such causal relationship.

Id. at 604. The trial court in this case granted summary judgment based on its conclusion that Webster's evidence had established "a mere possibility of causation," which was insufficient and because Webster had failed to produce "factual support" or "any evidence on the element of causation." It appears that the trial court misplaced the burden and that the defendant hospital failed to establish that there was no issue of fact regarding causation.

In *Visingardi*, also a medical malpractice case, the defendant doctor argued:

'On defendant's motion for summary judgment the plaintiff must come forward with sufficient, substantial, competent, evidentiary support for each and every fact which he must establish in order to prevail. If it appears that he has not, and that a directed verdict would be justified were the case at trial, the trial court must grant summary judgment in favor of the defendant'

....

"In an attempt to meet his burden to show by expert testimony that defendant had departed from the requisite standard of care, and that this departure proximately caused the edema or Mrs. Visingardi's death therefrom, plaintiff filed the affidavit in question."¹

Id. at 605. The supreme court rejected the doctor's argument that equated a plaintiff's burden at summary judgment with the burden of overcoming a motion for directed verdict at trial:

Both passages correctly state the burden of the plaintiff at trial; both are inaccurate as to his burden as the party opposing a motion for summary judgment.

Id. It noted that summary judgment is proper where

the record affirmatively showed that the plaintiff could not possibly prove her case, and not because she had simply *898 failed to come forward with evidence doing so.

Id.

The trial court relied on two cases which do not control here, as both involve appeals following jury trials, where no evidence was presented that causally linked the negligence with damages. See *Murphy v. Sarasota Ostrich Farm/Ranch, Inc.*, 875 So.2d 767, 768–769 (Fla. 2d DCA 2004); *Greene v. Flewelling*, 366 So.2d 777, 779–80 (Fla. 2d DCA 1978).

On remand, the trial court may reconsider the plaintiff's motion to amend to add a claim for punitive damages under section 768.72, Florida Statutes (2002), since it does not appear that the court decided the motion on its merits, but relied primarily on the fact that the motion was untimely, since it was filed four days before trial.

Reversed.

GROSS, C.J., TAYLOR and HAZOURI, JJ., concur.

Parallel Citations

36 Fla. L. Weekly D447

Footnotes

¹ The Supreme Court in *Visingardi* directly quoted the defendant doctor's brief.