FLORIDA THIRD DISTRICT COURT OF APPEAL

Maria Mesa v. Citizens Property Insurance Corporation

Mesa · No. 3D22-398 · Decided March 1, 2023

SUMMARY

The Florida Third District Court of Appeal reversed a final judgment for Citizens Property Insurance Corporation in a first-party property insurance dispute. The court held that the trial court improperly admitted hearsay testimony from Citizens' corporate representative concerning a field adjuster's report that was not admitted into evidence and that the error was not harmless. The case was remanded for a new trial on whether wind created a roof opening through which rainwater entered.

CASE DETAILS

COURT	Florida Third District Court of Appeal
WRITING FOR THE COURT	SCALES, J.; EMAS, J.; LINDSEY, J.
JURISDICTION	Florida
DECIDED	March 1, 2023
DOCKET	3D22-398
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Insureds appealed a final judgment entered after a jury found that rainwater damage to their home was not covered under their property insurance policy. They challenged, among other things, the admission of testimony by Citizens' corporate representative concerning the contents and opinions of a field adjuster's report.
STANDARD OF REVIEW	Evidentiary rulings and denial of a motion for new trial are reviewed for abuse of discretion. Evidentiary errors in civil cases are subject to harmless-error analysis.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Maria Mesa, Roxana De Leon v. Citizens Property Insurance Corporation

TOPICS

insurance coverage · hearsay · evidence · harmless error · appellate procedure

PRACTICE AREAS

property insurance | civil evidence | Florida appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by permitting Citizens' corporate representative to testify about the contents and opinions of a field adjuster's report when the representative lacked personal knowledge and the report itself was not admitted into evidence.
2. Whether the erroneous admission of the corporate representative's hearsay testimony was harmless.
3. Whether the final judgment should be reversed and the case remanded for a new trial.

HOLDINGS

1. The trial court abused its discretion by allowing Citizens' corporate representative to testify about the contents and opinions of the field adjuster's report when she lacked personal knowledge and the report was not admitted into evidence.
2. The erroneous admission of Wright's hearsay testimony was not harmless because Citizens failed to prove there was no reasonable possibility that the testimony contributed to the jury's verdict.

KEY QUOTATIONS

> *"Because Citizens' primary rebuttal evidence supporting the jury's verdict on this pivotal fact issue was the inadmissible hearsay testimony from Citizens' corporate representative who, admittedly, had no personal knowledge of the facts about which she was allowed to testify, and because we are unable to conclude that such error was harmless, we are compelled to reverse the judgment and remand for a new trial."* (2)

> *"While the business-records exception . . . allows the admission of '[a] memorandum, report, record, or data compilation,' it does not authorize hearsay testimony concerning the contents of business records which have not been admitted into evidence."* (6)

> *"Therefore, the trial court erred by permitting Wright's testimony as to the contents of, and opinions contained within, the field adjuster's report."* (8)

> *"We are therefore compelled to reverse the final judgment for Citizens and remand for a new trial."* (11)

FACTUAL BACKGROUND

Citizens insured the insureds' home from June 24, 2017, through June 24, 2018. Rainwater entered through the roof on July 16, 2017, causing interior damage, and Citizens denied coverage based on a policy exclusion for rain unless a covered peril first created an opening in the roof. Citizens' field adjuster inspected the property but did not testify at trial, and the field adjuster's report was not admitted as a business record. Instead, Citizens' corporate representative, Alicia Wright, testified about the report and its conclusions despite lacking personal knowledge of the inspection.

PROCEDURAL HISTORY

Citizens denied the insureds' claim after its field adjuster determined that the roof had wear and tear and no wind-created opening. The insureds filed a first-party coverage action in the Miami-Dade County Circuit Court. After a three-day jury trial, the jury returned a verdict for Citizens; the trial court denied the insureds' motion for new trial and entered final judgment. The Third District reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the final judgment entered for Citizens and remand for a new trial. The court did not reach the insureds' other appellate issues.

CASES CITED

- Philip Morris USA, Inc. v. Ledoux, 230 So. 3d 530, 536 (Fla. 3d DCA 2017)
- Philip Morris USA, Inc. v. Ledoux, 230 So. 3d 530, 538 (Fla. 3d DCA 2017)
- Mace v. M&T Bank, 292 So. 3d 1215, 1220 (Fla. 2d DCA 2020)
- Roberts v. Direct Gen. Ins. Co., 337 So. 3d 889, 891-92 (Fla. 2d DCA 2022)
- R.J. Reynolds Tobacco Co. v. Hamilton, 316 So. 3d 338, 342-43 (Fla. 4th DCA 2021)
- Special v. W. Boca Med. Ctr., 160 So. 3d 1251, 1256 (Fla. 2014)
- Empire Pro Restoration, Inc. v. Citizens Prop. Ins. Corp., 322 So. 3d 96, 98 (Fla. 4th DCA 2021)
- Fla. Windstorm Underwriting v. Gajwani, 934 So. 2d 501, 506 (Fla. 3d DCA 2005)