

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT

Thomas Farese v. Alan B. Aker, M.D. and Aker Kasten Eye Center,
Inc.

No. 4D2024-0454 (Fla. 4th DCA June 4, 2025) · No. 4D2024-0454 · Decided June 4, 2025

SUMMARY

The Florida Fourth District Court of Appeal reversed a final summary judgment entered for a doctor and his medical practice in a medical malpractice action arising from cataract surgery. The court held that the patient's expert testimony created genuine issues of material fact regarding the doctor's alleged failure to obtain a complete medical history, conduct an adequate pre-surgery examination, obtain an ophthalmology consultation, and provide appropriate care.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	May, J.; Gross, J.; Conner, J.
JURISDICTION	District Court of Appeal of the State of Florida, Fourth District
DECIDED	June 4, 2025
DOCKET	4D2024-0454
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final summary judgment entered for the doctor and his medical practice in a medical malpractice action following cataract surgery.
STANDARD OF REVIEW	De novo review of a summary judgment.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Thomas Farese v. Alan B. Aker, M.D., Aker Kasten Eye Center, Inc.

TOPICS

summary judgment

medical malpractice

professional negligence

standard of review

appellate procedure

PRACTICE AREAS

medical malpractice

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether final summary judgment was proper when the patient's expert testimony created a genuine issue of material fact concerning the doctor's alleged negligence and proximate causation.
2. Whether expert testimony must use precise or talismanic language expressly stating that the defendant's conduct fell below the standard of care to defeat summary judgment.

HOLDINGS

1. Final summary judgment was improper because the patient's expert opinion created a genuine issue of material fact concerning the doctor's alleged negligence and proximate causation.
2. An expert need not use talismanic or precisely prescribed words expressly stating that the defendant's conduct was below the standard of care when the testimony, considered as a whole, creates a genuine issue of material fact.

KEY QUOTATIONS

“Summary judgment cannot be granted unless the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits, if any, conclusively show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

“To prevail in a medical malpractice case[,] a plaintiff must establish the following: the standard of care owed by the defendant, the defendant’s breach of the standard of care, and that said breach proximately caused the damages claimed.”

“If a plaintiff does offer expert testimony, the expert need not incant any talismanic phrases to survive a motion for directed verdict, and the expert’s testimony should be considered as a whole.”

FACTUAL BACKGROUND

Following cataract surgery, the patient suffered a ruptured lens capsule in the left eye and alleged permanent injury. The patient's expert opined that the doctor failed to obtain a complete eye history, perform a complete and proper presurgery examination, and obtain an ophthalmology consultation concerning complications. The expert further opined that the doctor's acts or omissions constituted negligence and proximately caused the patient's permanent injuries and damages.

PROCEDURAL HISTORY

The patient sued the doctor and his practice for medical malpractice. The Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County entered final summary judgment for the defendants. The patient appealed, and the Fourth District Court of Appeal reversed and remanded because the expert evidence created genuine issues of material fact.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The final summary judgment is reversed, and the case is remanded for further proceedings.

CASES CITED

- Volusia Cnty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000)
- Hurchalla v. Homeowners Choice Prop. & Cas. Ins., 281 So. 3d 510, 512-13 (Fla. 4th DCA 2019)
- First Realty Corp. of Boca Raton v. Standard Steel Treating Co., 268 So. 2d 410, 411 (Fla. 4th DCA 1972)
- Gooding v. Univ. Hosp. Bldg., Inc., 445 So. 2d 1015, 1018 (Fla. 1984)
- Wale v. Barnes, 278 So. 2d 601, 603 (Fla. 1973)
- Claire's Boutiques v. Locastro, 85 So. 3d 1192, 1195 (Fla. 4th DCA 2012)
- Edwards v. Simon, 961 So. 2d 973, 974-75 (Fla. 4th DCA 2007)
- Scalice v. Orlando Reg'l Healthcare, 120 So. 3d 215, 217 (Fla. 5th DCA 2013)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT
THOMAS FARESE, Appellant, v. ALAN B. AKER, M.D. and AKER KASTEN EYE CENTER, INC., Appellees. No. 4D2024-0454 [June 4, 2025] Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Luis Delgado, Jr., Judge; L.T. Case No. 50-2021-CA-013575-XXXX-MB. Bard D. Rockenbach and Adam Richardson of Burlington & Rockenbach, P.A., West Palm Beach, for appellant.

Dinah S. Stein and Philip M. Berberian of Hicks, Porter, Ebenfeld & Stein, P.A., Miami, and James L. White, III of White & Russell, P.A., Palm Beach Gardens, for appellees. MAY, J. Following cataract surgery, a patient appeals a final summary judgment in favor of a doctor and his practice in a medical malpractice action.

The patient argues the trial court erred in entering summary judgment for the doctor and his practice because genuine issues of material fact existed, precluding appropriate entry of summary judgment. We agree and reverse.

We have de novo review of this summary judgment. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). "Summary judgment cannot be granted unless the pleadings, depositions, answers to interrogatories, and admissions on file together with affidavits, if any, conclusively show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Hurchalla v. Homeowners Choice Prop. & Cas.*

Ins., 281 So. 3d 510, 512-13 (Fla. 4th DCA 2019). Every possible inference is drawn "in a light most favorable to" the party challenging the entry of final summary judgment. *First Realty Corp. of Boca Raton v. Standard Steel Treating Co.*, 268 So. 2d 410, 411 (Fla. 4th DCA 1972). "To

prevail in a medical malpractice case[,] a plaintiff must establish the following: the standard of care owed by the defendant, the defendant's breach of the standard of care, and that said breach proximately caused the damages claimed." *Gooding v. Univ.*

Hosp. Bldg., Inc., 445 So. 2d 1015, 1018 (Fla. 1984) (citing *Wale v. Barnes*, 278 So. 2d 601, 603 (Fla. 1973)). "If a plaintiff does offer expert testimony, the expert need not incant any talismanic phrases to survive a motion for directed verdict, and the expert's testimony should be considered as a whole." *Claire's Boutiques v. Locastro*, 85 So. 3d 1192, 1195 (Fla.

4th DCA 2012) (citing *Edwards v. Simon*, 961 So. 2d 973, 974-75 (Fla. 4th DCA 2007)). Additionally, "expert opinion testimony—specifically saying in precise words that having any surgery was below the standard of care—was" deemed not "necessary to defeat the motion for summary judgment." *Edwards v. Simon*, 961 So. 2d 973, 974 (Fla. 4th DCA 2007).

Here, the patient provided an expert opinion that created a genuine issue of material fact concerning the doctor's negligence. The patient's expert opined the doctor failed to: • obtain a complete history of the patient's eye; • undertake "a complete and proper pre-surgery examination;" and • attain an ophthalmology consult concerning the patient's complications.

The expert further attested that he believed there were "reasonable grounds to support" the doctor's negligence and that it "resulted in significant and permanent injury to" the patient. The expert opined that a statement taken from the patient demonstrated the doctor "reviewed [the patient's records] only the morning after the surgery resulting in [the patient's] ruptured lens capsule in the left eye." Most importantly, the expert attested that "[a]s a direct and proximate result of the acts and/or omissions by [the doctor], [the patient] was permanently injured and sustained damages...." In short, these attestations were sufficient to withstand the doctor's and his practice's motion for summary judgment.

See *Scalice v. Orlando Reg'l 2 Healthcare*, 120 So. 3d 215, 217 (Fla. 5th DCA 2013) (concluding a genuine issue of material fact existed on affidavits presented). Reversed and Remanded. GROSS and CONNER, JJ., concur. * * * Not final until disposition of timely filed motion for rehearing. 3