

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)

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