FLORIDA DISTRICT COURT OF APPEAL, SECOND DISTRICT

Waring v. Nationwide Mutual Fire Insurance Co.

65 So. 3d 1207 (Fla. 2d DCA 2011) · Decided July 29, 2011

SUMMARY

The Florida Second District Court of Appeal affirmed summary judgment establishing Waring's liability for a rear-end automobile collision but reversed the judgment as to damages. The court held that Nationwide's evidence of a payment to its insureds did not establish what damages the payment covered or that those damages resulted from the accident, requiring remand to determine the proper damages.

CASE DETAILS

COURT	Florida District Court of Appeal, Second District
WRITING FOR THE COURT	Whatley; Altenbernd; Casanueva
JURISDICTION	Florida
DECIDED	July 29, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Waring appealed a final summary judgment entered for Nationwide in its subrogation action. The appellate court affirmed summary judgment as to liability but reversed and remanded the damages determination.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper only when there is no genuine issue of material fact, viewing every possible inference in favor of the nonmoving party, and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion
PARTIES	Tammy Patrice Waring v. Nationwide Mutual Fire Insurance Company

TOPICS

subrogation · uninsured motorist · summary judgment · damages · appellate procedure

PRACTICE AREAS

Insurance law · Civil procedure · Torts · Appellate procedure · Remedies

QUESTIONS PRESENTED

1. Whether summary judgment was proper as to Waring's liability for the rear-end collision.
2. Whether Nationwide established the absence of genuine issues of material fact concerning the amount of damages attributable to the accident.
3. Whether Waring's argument concerning prejudgment interest remained justiciable after reversal of the damages ruling.

HOLDINGS

1. Summary judgment was properly entered against Waring as to liability because Nationwide established Waring's negligence as the rear driver in the rear-end collision.
2. Summary judgment was improper as to damages because Nationwide did not establish that there were no genuine issues of material fact regarding the amount of damages attributable to the accident or that it was entitled to judgment as a matter of law.
3. Waring's argument regarding prejudgment interest was moot as a result of the reversal of the damages ruling.

KEY QUOTATIONS

> *"Review of a summary judgment is de novo, requiring a two-pronged analysis."* (65 So. 3d at 1207)

> *"Nationwide did not establish what damages the check was intended to cover, much less that such damages were related to the accident."* (65 So. 3d at 1209)

> *"The burden was on Nationwide to prove that there were no genuine issues of material fact, and such burden did not shift to Waring unless Nationwide successfully met its burden."* (65 So. 3d at 1209)

FACTUAL BACKGROUND

Waring was involved in a rear-end automobile collision with Nationwide's insureds, Herbert and Shirley Aruz. Nationwide paid the Aruzes $18,500 under their uninsured motorist policy and then sought subrogation from Waring. Nationwide's summary-judgment evidence established that a payment was made but did not establish what damages the payment covered or that those damages were related to the accident.

PROCEDURAL HISTORY

Nationwide paid its insureds $18,500 under their uninsured motorist coverage after an automobile accident and sued Waring for subrogation. The trial court granted Nationwide summary judgment and ordered Waring to pay $18,500, court costs, and prejudgment interest. Waring appealed, and the appellate court affirmed the liability ruling but reversed the ruling as to damages and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Affirm the summary judgment as to liability, reverse the summary judgment as to damages, and remand for the trial court to determine the appropriate amount of damages.

CASES CITED

- Clampitt v. D.J. Spencer Sales, 786 So. 2d 570 (Fla. 2001)
- Poe v. IMC Phosphates MP, Inc., 885 So. 2d 397, 400-01 (Fla. 2d DCA 2004)
- Holl v. Talcott, 191 So. 2d 40, 43-44 (Fla. 1966)
