IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

TONYA ROSSMAN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID P. ROSSMAN,

Appellant,

v. Case No. 5D19-1644

ROBERT M. WALLICK, JAMES W. NOBLE, KEVON O. LINDSEY, AND ROBERT WALLICK ASSOCIATES, INC.,

Appellees.

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Opinion filed August 28, 2020

Appeal from the Circuit Court
for Orange County,
Patricia Strowbridge, Judge.

Dale A. Scott and Michael M. Bell, of Bell & Roper, P.A., Orlando, for Appellant.

Richard S. Maselli, of Ogden & Sullivan, P.A., Tampa, for Appellees, Robert M. Wallick and Robert Wallick Associates, Inc.

No Appearance for Other Appellees.

PER CURIAM.

In this wrongful death case, Tonya Rossman, as personal representative of the estate of David Rossman, ("Appellant") challenges the final summary judgment entered in favor of Robert Wallick ("Wallick") and Robert Wallick Associates, Inc. ("RWA"). On

appeal, Appellant argues that the trial court erred by granting summary judgment on a ground not presented in the summary judgment motions. We agree and reverse.

David Rossman ("Rossman") was killed in a workplace accident. Following his death, Appellant sued Wallick, RWA, and two RWA employees. Ultimately, RWA and Wallick filed motions for summary judgment, both asserting entitlement to workers' compensation immunity. RWA contended that the undisputed material facts established that Rossman was injured in the course and scope of his employment for RWA, RWA had not committed an intentional tort, and RWA paid workers' compensation benefits to Appellant. See § 440.11(1), Fla. Stat. (2015). For his part, Wallick claimed to be protected from liability based on the immunity afforded to employees acting in a managerial capacity. See id.

Appellant filed a response in opposition to the motions. In countering RWA's motion, Appellant argued, among other things, that the gross-negligence exception to fellow-employee immunity applied to RWA through operation of the doctrine of respondeat superior. As to Wallick's motion, Appellant argued that Wallick's actions were operational rather than managerial—thereby precluding the applicability of managerial immunity.

Following a hearing, the trial court entered an order granting summary judgment in favor of RWA and Wallick. Specifically, the court determined that, when viewed in the light most favorable to Appellant, the "composite of the facts" did not "establish gross negligence on the part of Wallick." However, the court did not consider the specific immunity-based arguments presented in the summary judgment motions.

Appellant timely sought reconsideration, asserting that the trial court granted summary judgment for Wallick and RWA on grounds not raised in the motions. According to Appellant, had gross negligence been at issue in the motions, she would have submitted additional summary judgment evidence to support a claim of gross negligence against Wallick.[1] By an unelaborated order, the court denied the motion for reconsideration and then entered a final judgment in favor of Wallick and RWA. This appeal timely followed.

On appeal, Appellant contends that the trial court's summary judgment ruling is inconsistent with Florida law in that the court granted summary judgment on a basis not raised in the motions. We agree.

Governing summary judgment motions, Florida Rule of Civil Procedure 1.510(c) provides: "The motion shall state with particularity the grounds upon which it is based and the substantial matters of law to be argued."[2] Based on the particularity requirement in rule 1.510(c), appellate courts have repeatedly held that it is reversible error to enter summary judgment on a ground not raised with particularity in the motion. See Williams v. Bank of Am. Corp., 927 So. 2d 1091, 1093 (Fla. 4th DCA 2006) (citing H.B. Adams, 805 So. 2d at 854; Deluxe Motel, Inc. v. Patel, 727 So. 2d 299, 301 (Fla. 5th DCA 1999); City of Cooper City v. Sunshine Wireless Co., 654 So. 2d 283, 284 (Fla. 4th DCA 1995); George G. Sharp, Inc. v. Doric Marine, Inc., 544 So. 2d 228, 228–29 (Fla. 3d DCA

[1] Appellant further supported this contention by attaching twenty additional exhibits to the motion for reconsideration.

[2] The purpose of this rule is to eliminate surprise and to afford the parties "a full and fair opportunity to argue the issues." H.B. Adams Distribs. Inc. v. Admiral Air of Sarasota Cty., Inc., 805 So. 2d 852, 854 (Fla. 2d DCA 2001).

1989); Cheshire v. Magnacard, Inc., 510 So. 2d 1231, 1234 (Fla. 2d DCA 1987)). And, for purposes of that rule, the trial court should take a strict reading of the papers filed by the moving party. See id. (citations omitted).

Here, as seen above, the trial court granted summary judgment based on the issue of gross negligence—not on any of the immunity-based arguments raised in the motions.[3] Therefore, we hold that the trial court erred in granting summary judgment on a ground not substantively raised by either Wallick or RWA. See Ambrogio v. McQuire, 247 So. 3d 73, 75–77 (Fla. 2d DCA 2018).

Accordingly, we reverse the final judgment and remand for proceedings consistent with this opinion.

REVERSED and REMANDED for further proceedings.

ORFINGER, HARRIS, and GROSSHANS, JJ., concur.

[3] We reject RWA and Wallick's contention that Appellant raised the issue of gross negligence in her response to RWA's motion for summary judgment. This responsive argument focused on the vicarious liability of RWA and did not open the door for the trial court to grant summary judgment on an issue not raised by either RWA or Wallick.