Third District Court of Appeal

State of Florida

Opinion filed October 28, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D25-1982
Lower Tribunal No. 23-11400-CA-01

Amanda Miguel Collado Laguna,
Appellant,

vs.

The Berry Farm, LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Javier A. Enriquez, Judge.

Eaton & Wolk, PL and Daniel R. Schwartz and Douglas F. Eaton, for appellant.

AndersonGlenn LLP, and John J. Glenn and Amanda N. Rumker (Boca Raton), for appellee.

Before MILLER, LOBREE and GOODEN, JJ.

LOBREE, J.

Amanda Miguel Collado Laguna ("Collado") appeals a final summary judgment entered in favor of The Berry Farm, LLC ("Berry") in this negligence action in which Collado seeks damages for the personal injuries she suffered when using a slide located on Berry's premises. The trial court entered summary judgment for Berry on the basis that it was immune from liability under section 570.88(1), Florida Statutes (2021). We conclude that the trial court erred in granting summary judgment because there are genuine issues of material fact as to Berry's compliance with the posting and notice requirements of section 570.89, Florida Statutes (2021), which are necessary to invoke the privilege of immunity provided by section 570.88(1).

BACKGROUND

Berry is a working farm located in Miami. On October 10, 2021, Collado visited Berry with her three year old son to attend Berry's annual Harvest Festival. While there, Collado fractured her right ankle when her feet hit the ground after going down a slide in the children's playground area. Collado subsequently filed an amended complaint for negligence against Berry alleging that it: (1) failed to maintain reasonable care of its premises and allowed a dangerous condition to be on its premises for an unreasonable amount of time, causing her to fall, and that Berry had a duty to warn her about the dangerous conditions; and (2) failed in its obligation to implement

proper safety protocols when operating the slide and failed in its obligation to ensure that the slide was operated in a safe manner. Berry answered and raised numerous affirmative defenses, including that it was immune from liability under section 570.88, Florida Statutes.

Berry moved for summary judgment, arguing in part that as an "agritourism operator" as defined by section 570.86(2), Florida Statutes (2021), it was shielded from liability for Collado's injury under section 570.88(1) because Collado's injury resulted from an inherent risk of an agritourism activity, and on the date of the incident it had posted "at its entrance and next to the playground area" signs containing the notice of inherent risk as required by section 570.89. In support, Berry relied on the affidavit of Karl Wiegandt, the owner and managing member of Berry. Wiegandt attested that Berry's premises includes playground areas to provide entertainment and recreational activities for children, and those playgrounds have slides for use by children. Wiegandt further attested that on October 11, 2021, Berry had "several signs posted on the property containing the notice of inherent risk specified in Section 570.89, Florida Statutes, including at its entrance and next to the playground area where Plaintiff was allegedly injured." The body of the affidavit included three

photos of “examples” of the signs that were posted “throughout The Berry’s Farm’s property.”

Collado responded in opposition to Berry’s summary judgment motion. Relevant here, Collado asserted that there is a genuine issue of material fact as to whether any signs were posted in accordance with section 570.89 on the date of the incident because: (1) the photos that Berry relies on to show that the signs were posted on October 21, 2021, have a date stamp of June 15, 2022; (2) Wiegandt was unable to testify in his deposition as to when the signs were put up; (3) a screenshot from Berry’s Instagram account six days before the incident shows only one sign posted in the playground, and an inspection of the premises on May 8, 2025, showed that sign stated that parental supervision is required for use of the playground; and (4) Collado testified in her deposition that she did not see a sign at the entrance of the property or at the playground site. In support of her response, Collado relied on: Wiegandt’s deposition; a photograph of a sign stating that parental supervision is required for use of the playground; her own deposition; photographs of warning signs provided by Berry; screenshots from Berry’s Instagram account from August 1, 2021, September 15, 2021, and October 4, 2021.

Collado testified in her deposition that she did not recall what the entrance to Berry looks like and she did not remember any signs outside the entrance. When asked if she noticed "any warning signs on the day of the incident before you slid down the slide," Collado responded that "[t]here was nothing there." Collado was then shown a defense exhibit of images of two warning signs. When asked if she had seen the signs on the day of the incident, Collado answered that she had not, and then testified that the signs were "not present on the day" of the incident and "[t]hey were nowhere inside." In his deposition, Wiegandt testified about the photographs of the signs date stamped June 15, 2022. He stated that the signs are located to the right and left of the main pavilion, and that the signs were placed on the property before Berry's first opening.

After a hearing, the trial court granted summary judgment for Berry. As to the requirements of section 570.89, the trial court found that Weigant's "unrebutted" affidavit showed "that signs compliant with Section 570.89, Florida Statutes, were posted at the entrance and by the playground as early as 2020." The trial court found that Collado "presented no admissible evidence showing that such signs were not posted on the date of the incident." Specifically, Collado's "inability to recall seeing a sign," and reliance on Instagram images that do not depict the entire premises or

playground area, did not create a genuine issue of material fact. The trial court concluded that because Collado was injured while participating in an agritourism activity which had an inherent risk and Berry posted warning signs in accordance with section 570.89, Berry's liability for Collado's injury was precluded under section 570.88. Thereafter, the trial court entered final judgment for Berry.

STANDARD OF REVIEW

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a). "Accordingly, 'the correct test for the existence of a genuine factual dispute is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."'" Feldman v. Schocket, 366 So. 3d 1104, 1107 (Fla. 3d DCA 2022) (quoting In re Amends. to Fla. Rule of Civ. Proc. 1.510, 317 So. 3d 72, 75 (Fla. 2021)); see also Ortega v. JW Marriott Inv., LLC, 405 So. 3d 473, 477 (Fla. 3d DCA 2025) ("Properly understood, summary judgment is akin to a pre-trial directed verdict." (quoting CG Tides LLC v. SHEDDF3 VNB, LLC, 388 So. 3d 1081, 1084 (Fla. 3d DCA 2024)).

Because Berry raised section 570.88 as an affirmative defense, it has the burden of proof at trial to show its entitlement to immunity from liability

under that section. See Custer Med. Ctr. v. United Auto. Ins. Co., 62 So. 3d 1086, 1096 (Fla. 2010). Where the party moving for summary judgment has the burden of proof at trial, "the movant must affirmatively show the absence of a genuine issue of material fact: it must support its motion with credible evidence that would entitle it to a directed verdict if not controverted at trial." K & M Elec. Supply, Inc. v. Brown Elec. Sols., LLC, 432 So. 3d 1045, 1049 (Fla. 4th DCA 2026); see also United States v. Four Parcels of Real Prop. in Greene & Tuscaloosa Ctys. in State of Ala., 941 F.2d 1428, 1438 (11th Cir. 1991) (stating that when the party moving for summary judgment has the burden of proof at trial, it "must show that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the nonmoving party. If the moving party makes such an affirmative showing, it is entitled to summary judgment unless the nonmoving party, in response, 'come[s] forward with significant, probative evidence demonstrating the existence of a triable issue of fact.'" (cleaned up) (quoting Chanel, Inc. v. Italian Activewear of Fla., Inc., 931 F.2d 1472, 1477 (11th Cir. 1991))). "The evidence in the summary judgment record is interpreted in the light most favorable to the non-moving party." CG Tides LLC, 388 So. 3d at 1085.

ANALYSIS

Collado argues that the trial court erred in entering summary judgment for Berry because genuine issues of material fact exist as to whether on the day of her injury Berry was in compliance with the notice and posting requirements of 570.89. Specifically, Collado contends that the trial court disregarded her deposition testimony that there were no warning signs present on the day of the incident. We agree.

Sections 570.85–89, Florida Statutes, govern agritourism in Florida. Section 570.88 affords a limitation on legal liability to an agritourism operator where a plaintiff's injury resulted from the inherent risks of an agritourism activity. That section provides as follows, in part:

> (1) Except as provided in subsection (2), an agritourism operator, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs is not liable for injury or death of, or damage or loss to, a participant resulting from the inherent risks of agritourism activities <u>if the notice of risk required under s. 570.89 is posted as required.</u> Except as provided in subsection (2), a participant, or a participant's representative, may not maintain an action against or recover from an agritourism operator, his or her employer or employee, or the owner of the underlying land on which the agritourism occurs for the injury or death of, or damage or loss to, an agritourism participant resulting exclusively from any of the inherent risks of agritourism activities.

§ 570.88(1), Fla. Stat. (emphasis added). In order to "invok[e] the privileges of immunity provided by this section," an "agritourism operator . . . or the owner of the underlying land on which the agritourism occurs" must comply

with sections 570.89(1),(2). § 570.89(3), Fla. Stat. Those sections provide as follows:

> (1)(a) Each agritourism operator shall post and maintain signs that contain the notice of inherent risk specified in subsection (2). A sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The notice of inherent risk must consist of a sign in black letters, with each letter a minimum of 1 inch in height, with sufficient color contrast to be clearly visible.
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> . . . .
>
> (2) The sign and contract required under subsection (1) must contain the following notice of inherent risk:
>
> WARNING
>
> Under Florida law, an agritourism operator is not liable for injury or death of, or damage or loss to, a participant in an agritourism activity conducted at this agritourism location if such injury, death, damage, or loss results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury, death, damage, or loss. You are assuming the risk of participating in this agritourism activity.

§ 570.89(1)(a),(2), Fla. Stat. (emphasis added).

Here, the trial court found that Wiegandt's affidavit demonstrated "that signs compliant with Section 570.89, Florida Statutes, were posted at the entrance and by the playground as early as 2020." The trial court then found that Collado's "inability to recall seeing a sign, or pointing to photos that simply do not capture signage" did not create a genuine issue of material fact

on the issue of Berry compliance with section 570.89, and concluded that Weigandt's testimony was "undisputed and unrebutted." In so concluding, the trial court failed to consider the entirety of Collado's deposition testimony. Although Collado testified that she did not remember any signs outside the entrance to Berry, she further testified that warning signs were not present at Berry on the day of incident and that "they were nowhere inside." Credibility determinations are for the jury, and a reasonable jury could conclude that Collado's testimony was more believable than Weingardt's statement that signs containing the notice requirement of section 570.89 were posted at Berry's entrance and the playground area. "While '[t]he new Florida Rule of Civil Procedure 1.510 indubitably endows the trial court with considerably broader authority to resolve a case on summary judgment, the general rule remains intact: credibility determinations and weighing the evidence are jury functions, not those of a judge.'" Katha, LLC v. SHEDDF3-AE, LLC, 394 So. 3d 707, 710 (Fla. 3d DCA 2024) (cleaned up) (quoting Navarro v. Borges, 388 So. 3d 1044, 1047 (Fla. 3d DCA 2024)). Additionally, the three images of "example" signs contained in the body of Wiegandt's affidavit do not contradict Collado's testimony that there were no signs the day of the incident. Two of the images reflect a June 2022 date, which is eight months after the incident, and the location of the third, undated

"example" of a sign is unclear as to its location. See, e.g., Del Rio v. Russell Eng'g, Inc., 351 So. 3d 1180, 1183 (Fla. 3d DCA 2022) (reversing summary judgment entered in favor of defendant where neither party's photograph established how or where relevant manhole appeared on date of accident and therefore photographic evidence did not contradict plaintiff's testimony as to manhole's location; "[Plaintiff]'s testimony was sufficient to establish a disputed issue of material fact concerning the location of the manhole cover. The photographic evidence produced did not definitively disprove [plaintiff]'s testimony. Rather, when [plaintiff]'s testimony and the photographic evidence at issue are taken together, it is clear they present an issue of fact for a jury to decide.").

Viewing the record in the light most favorable to the non-movant, there remains a triable issue of fact as to whether Berry was in compliance with section 570.89 on the day of the incident such that a reasonable jury could return a verdict for Collado.[1] See Chowdhury v. BankUnited, N.A., 366 So. 3d 1130, 1134 (Fla. 3d DCA 2023) ("Our new summary judgment standard mirrors the standard for a directed verdict such that the inquiry focuses on

[1] As we reverse on this single basis, we do not reach Collado's alternative contention that the trial court erred in entering summary judgment because her injury did not result from "inherent risks of agritourism activities." § 570.88(1), Fla. Stat. (2021).

'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" (quoting In re Amends. to Fla. Rule of Civ. Proc. 1.510, 309 So. 3d 192, 192 (Fla. 2020))). We therefore find that the trial court erred in granting summary judgment for Berry as a matter of law. Accordingly, we reverse the summary judgment entered in Berry's favor and remand for further proceedings.

Reversed and remanded.