Third District Court of Appeal

State of Florida

Opinion filed September 4, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1289
Lower Tribunal No. 16-33154

Corinna Clarke,
Appellant,

vs.

Coca-Cola Refreshments USA, Inc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Navarro McKown, and Luis F. Navarro, for appellant.

Weinberg Wheeler Hudgins Gunn & Dial, LLC, and Lawrence E. Burkhalter, Kate D. Spinelli and Kyle R. Jackson, Sr., for appellees.

Before SALTER, SCALES and LOBREE, JJ.

SCALES, J.

In 2013, a truck belonging to appellee Coca-Cola Refreshments USA ("Coca-Cola") was involved in a two-vehicle accident that caused the truck to crash into a home where appellant Corinna Clarke ("Clarke") lived. Members of Clarke's family who also either occupied or owned the home filed a negligence lawsuit against Coca-Cola (the "First Lawsuit"). On the eve of the First Lawsuit's trial, plaintiffs voluntarily dismissed the First Lawsuit, which prompted the trial court to tax costs against the plaintiffs.[1]

After the dismissal of the First Lawsuit, Clarke – who was not a party in that action, but who is represented by the same counsel who represents the First Lawsuit's plaintiffs – filed her own negligence lawsuit against Coca-Cola (the "Clarke Lawsuit"). In her amended complaint, Clarke sought damages for lost personal property and displacement from her home as a result of the accident.

During the pendency of the Clarke Lawsuit, Clarke sought to depose the Coca-Cola truck driver, Kenroy Buckle, and to obtain production of documents from him. Coca-Cola sought a protective order on the ground that, in the First Lawsuit, Mr. Buckle already had responded to multiple discovery requests, including sitting for two lengthy depositions, on the same subject matter. On February 8, 2018, the trial court granted the protective order as to Mr. Buckle's deposition only (noting a

[1] This Court affirmed the trial court's costs award in Clarke-Morales v. Coca-Cola Refreshments USA, Inc., 271 So. 3d 1128 (Fla. 3d DCA 2019).

lack of objection by Coca-Cola to Clarke using the deposition transcripts from the First Lawsuit), and allowed other discovery sought by Clarke to proceed. Subsequently, Coca-Cola moved for summary judgment, and, on May 21, 2018, the trial court entered final summary judgment in favor of Coca-Cola.[2]

We have jurisdiction to review the protective order. Fla. App. R. Proc. 9.110(h). A trial court "for good cause shown" may enter a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fla. R. Civ. P. 1.280(c); Beekie v. Morgan, 751 So. 2d 694, 697 (Fla. 5th DCA 2000). In this case, the trial court recognized a hardship on Mr. Buckle to sit for another deposition, only to be questioned by the same attorney who had deposed him twice already.

While we understand the practical efficiencies the trial court sought to advance, we conclude that the trial court did not sufficiently consider and balance Clarke's due process right to full discovery. The trial court denied the protective order for all discovery except the Buckle deposition. Yet, "oral depositions are considered essential by most trial attorneys." Beekie, 751 So. 2d at 697. That Clarke had not participated in the earlier case in which Mr. Buckle was deposed was a factor

[2] Clarke has appealed the summary judgment order as well as the interlocutory protective order. Our reversal of the protective order herein necessitates reversal of the summary judgment; and therefore, we need not, and do not, reach the appellate issues related to the summary judgment.

too important to disregard in the granting of Coca-Cola's motion for protective order. See Marshall v. Buttonwood Bay Condo. Ass'n, 118 So. 3d 901, 903 (Fla. 3d DCA 2013).

We cannot assume that Clarke could not propound a new or different line of questions in a deposition of Mr. Buckle. That a material witness has undergone extensive questioning in an earlier deposition in a related case is not a justification under the facts of this case to deny Clarke the opportunity to probe further. Expert Installation Serv. Inc. v. Fuerte, 933 So. 2d 1231, 1232-33 (Fla. 3d DCA 2006). Because depositions are an essential part of civil discovery practice, the mere existence of a deposition transcript from an earlier lawsuit involving similar issues does not necessarily preclude a new deposition of a material witness. See Shindorf v. Bell, 207 So. 3d 371, 373 (Fla. 2d DCA 2016).

While we acknowledge both the hardship on Mr. Buckle to sit for another deposition and the trial court's goal of judicial efficiency, Clarke is entitled to a thorough preparation of her case, including her taking Mr. Buckle's deposition. Accordingly, we reverse the protective order and the ensuing summary judgment.

Reversed and remanded.