

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-14335

Non-Argument Calendar

HENRIETTA PHILLIPS,

Plaintiff-Appellant,

versus

DELTA AIR LINES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cv-80413-DMM

Before JILL PRYOR, BRANCH, and BRASHER, Circuit Judges.

PER CURIAM:

Henrietta Phillips appeals the district court’s grant of summary judgment to Delta Airlines, Inc., on her state-law negligence claim based on injuries she sustained as a passenger on a Delta flight. She argues the district court abused its discretion on several scheduling matters and that it erred in awarding summary judgment to Delta. After careful consideration, we affirm.

I. BACKGROUND

In 2019, Phillips flew on a Delta flight from Fort Lauderdale, Florida to Raleigh, North Carolina to visit her grandchildren. She contends that she was injured when she experienced a “violent jolt inside the cabin,” due to Delta’s negligence in operating the aircraft during landing. Her injuries consist of permanent back and spinal injuries, including a compression fracture in her spine. On February 26, 2021, Phillips sued Delta alleging that Delta’s failure to “train its flight crew in the safe and non-hazardous operation of its aircraft” contributed to the hard landing.

Despite the scheduling order’s May 19 deadline for disclosing her expert witnesses, Phillips submitted her sole expert witness on June 23, a week after Delta’s deadline for expert witness disclosure. Delta filed a motion to strike the witness, which Phillips opposed. The district court granted the motion. At the end of November, the district court granted Delta’s motion for summary

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judgment, concluding that Phillips did not meet her burden of causation due to a lack of medical testimony. Phillips timely appealed.

II. STANDARD OF REVIEW

We review an award of summary judgment *de novo*, viewing the facts in the light most favorable to the nonmovant. *See Zivojinovich v. Barner*, 525 F.3d 1059, 1061 (11th Cir. 2008). Summary judgment is appropriate where “there is no genuine issue as to any material fact,” and the movant is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 319, 322 (1986).

III. DISCUSSION

Although Philips raises several issues about the district court’s scheduling order, there is only one dispositive issue on appeal: whether the district court erred in awarding summary judgment to Delta on Phillips’s state-law negligence claim.

The district court granted summary judgment because Phillips did not disclose a medical expert who could testify that the airplane’s landing caused her injuries. To establish negligence, Florida law requires that a plaintiff show that the defendant breached a legal duty owed to the plaintiff, and the plaintiff suffered actual harm as a result of the injury that was actually and proximately caused by the breach. *Zivojinovich*, 525 F.3d at 1067. Expert testimony is required “to establish causation where the issue is beyond the common knowledge of laymen.” *Benitez v. Joseph Trucking, Inc.*, 60

So. 3d 428, 431 (Fla. 5th DCA 2011). Under Florida law, “[s]oft tissue injuries, such as lower back difficulties, are not readily observable, and hence are not susceptible to evaluation by lay persons.” *Vero Beach Care Center v. Ricks*, 476 So. 2d 262, 264 n.1 (Fla. 1st DCA 1985).

As an initial matter, Phillips contends that the district court abused its discretion by striking the expert witness that she disclosed—an expert in aviation. Phillips contends that this expert testimony “was of the utmost importance,” and that her case had “little hope” in succeeding once the district court excluded her expert, since that testimony would have created a genuine issue of material fact. But this argument is unpersuasive because the expert she sought to introduce was not a medical expert.

Delta’s medical expert testified that he believed Phillips’s fracture occurred before the flight, because “MRI scans indicated an old fracture consistent with osteoporosis unrelated to trauma,” and Phillips “felt no immediate pain and did not seek immediate medical attention.” Because Phillips did not provide any medical evidence to dispute this testimony, the district court correctly concluded that summary judgment for Delta was appropriate. *See Benitez*, 60 So. 3d at 431; *Vero Beach*, 476 So. 2d at 264 n.1.

Without any evidence on causation due to her failure to introduce expert medical testimony, Phillips’s negligence claim ultimately fails. Accordingly, we do not address her remaining arguments regarding the district court’s scheduling orders or its order granting Delta’s motion to strike Phillips’s lay witnesses.

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IV. CONCLUSION

For the foregoing reasons, we **AFFIRM**.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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August 19, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 21-14335-DD
Case Style: Henrietta Phillips v. Delta Air Lines, Inc.
District Court Docket No: 9:21-cv-80413-DMM

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against the appellant.

Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Bradly Wallace Holland, DD at 404-335-6181.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-1A Issuance of Opinion With Costs