

YOUNG & ROMAN: “REASONABLENESS” DOESN’T REFER TO THE AMOUNT OF THE BILL

Florida law has long held that the plaintiff in a personal injury action seeking damages for past medical expenses has the burden of proving the “reasonableness and necessity of medical expenses.” See *Albertson's Inc. v. Brady*, 475 So. 2d 986, 988 (Fla. 2d DCA 1985). Since the decision in *Albertson's*, however, there has been debate about the predicate a plaintiff must lay to establish “reasonableness and necessity,” and specifically if “reasonableness” went not just to the need for the treatment, but the *amount* the provider charged for it. Counsel defending lawsuits where past medical expenses are at issue have relied upon language in *Albertson's* that, “[a]lthough some jurisdictions consider evidence of the amount of a medical bill to be sufficient proof of reasonableness, many, including Florida, require something more,” *Albertson's*, 275 So.2d at 988, to argue a plaintiff must present evidence the amount charged is reasonable for the medical bills to establish prima facie evidence of damages. A relatively recent Order from Judge Mary Scriven in the Federal Court for the Middle District of Florida undertook a lengthy analysis in rejecting this approach, holding that Florida law does “not require [p]laintiffs to prove that the amounts of their medical bills were reasonable as compared to, for example, average rates charged for similar treatment in the community.”

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TRANSITORY FOREIGN SUBSTANCES AND THE VALUE OF QUALITY SURVEILLANCE SYSTEMS

On March 5, 2026, the United States Court of Appeals for the Eleventh Circuit affirmed a trial court ruling granting Defendant, Costco’s Motion for Summary Judgment. The facts establish that on November 28, 2021, Plaintiff, Nidia Valderrama, was shopping at an Orlando Costco. Thankfully, this particular location had a high-quality CCTV system that captured the entire event from the time the condition was created to Plaintiff’s fall.

An unidentified customer, while exiting the store, ran over and dragged what was believed to be a grape across the floor. As the Court described, the “smooshed” grape and a faint trail are visible in the video footage. Below is a still pulled from the Defendant’s Motion for Summary Judgment.

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Judge Scriven's Order addressed this issue in *Young v. Panera, LLC*, 2025 U.S. Dist. LEXIS 161234 (M.D. Fla. 2025). Relying heavily on the Second District Court of Appeals' decision in *Roman v. Sos*, 393 So.3d 1263 (Fla. 2d DCA 2024), Judge Scriven systematically addressed and rejected the argument that any Florida precedent required a plaintiff to establish, "proof of the reasonableness of the dollar amount charged" in order to avoid a defendant's motion for directed verdict and post-trial motions for new trial and judgment as a matter of law. *Young*, 2025 U.S. Dist. LEXIS 161234 at 10 (quoting *Roman*, 393 So.3d at 1267). Upon reaching that conclusion, Judge Scriven undertook a similarly extensive analysis of the plaintiff's evidence of past medical expenses in the case. She documented the plaintiff's testimony about the nature of his pain and injuries and his specific visits to specific treating physicians. Judge Scriven's Order then also described the testimony of the plaintiff's treating physicians in detail. The analysis concluded by noting the plaintiff identified an exhibit containing "a collection of his medical bills," testified that "all these bills were for treatment related to the injuries he suffered because of the accident," and that "none of the bills were for treatment for any conditions that pre-existed the accident for unrelated conditions unrelated to the accident." *Young*, 2025 U.S. Dist. LEXIS 161234 at 22-23. Based upon this evidence, Judge Scriven ultimately held plaintiff's evidence, "was sufficient to establish that Plaintiff's 'incurred medical expenses, that the incurrence of these medical expenses was necessary, and that the particular medical expenses were reasonably related to injuries related to the subject accident.'" *Id.* 26 (quoting *Roman*, 393 So.3d at 1267).

Judge Scriven's Order in *Young* is not altogether surprising given the precedents from *Roman* and *Walerowicz v. Armand-Hosang*, 248 So.3d 140 (Fla. 4th DCA 2018). The *Young* Order is instructive for defense counsel, however, because of how it could dictate attacks on medical bill damages, particularly for counsel practicing in the Middle District of Florida. There are a few specific practice points to keep in mind.

The first point is that the analysis in *Young* does not mean defense counsel should completely forsake attacks on the testimony of plaintiffs and their treating physicians regarding the reasonableness, necessity, and relatedness of medical bills incurred. Judge Scriven's Order takes great pains to detail the extensive testimony the plaintiff in that case offered, tying specific treatments to providers and the accident, and the testimony of the treaters tying specific treatments and bills or expenses thereto. Many plaintiffs and their counsel will not present such detailed testimony, so defense counsel should look for omissions in testimony, and that there is testimony establishing relatedness *to each and every treatment and bill*. The second point is that the battlefield of "reasonableness" is now almost wholly one involving the jury. Defense counsel should be prepared to extensively argue that even if the treatment is related to the accident, the *cost of that care* that the plaintiff was charged was not *reasonable*. The passage of Florida Statute § 768.0427 (2025), permitting defense counsel to admit evidence of insurance payments or factors or Medicare or Medicaid payments, further necessitates and benefits this strategy. Of course, the key to this strategy will be identifying, retaining, and calling as witnesses billing experts who can offer such evidence and whose testimony is admissible on the topic. Done correctly, and in the correct circumstances, this evidence and argument will not only permit a jury to award an amount of medical damages that is much smaller than that requested by a plaintiff, but also supplement any evidence and argument that the treatment and bills were incurred unnecessarily and for profit in the lawsuit.

By: M. Ryan Williams



From the time the grape was present on the floor until Plaintiff's fall was about four (4) minutes, according to the time stamps. It was also clear that none of the employees noticed or were made aware of the smooshed grape prior to Plaintiff's slip-and-fall. This matter was originally filed in state court; however, it was removed to the United States District Court for the Middle District of Florida based on diversity jurisdiction.

The Middle District, applying Florida Law, found that Plaintiff lacked competent substantial evidence to show that Costco had actual notice of the condition. On appeal, the Appellate Court found that Plaintiff was required to show the Defendant had actual or constructive knowledge of the condition. The Plaintiff conceded that this was not a case of constructive knowledge due to the short time the grape was on the floor.

Instead, it was argued that a reasonable jury could conclude the Costco employees caused the grape to be on the floor and that Costco knew of the condition and had time to correct it. The District Court found no merit to the first argument as there was no evidence any employee was aware of the grape on the floor. The Appellate Court affirmed this finding. The second argument fared no better. The CCTV footage showed that a manager noticed another, unrelated spill, and cleaned it in minutes. Again, based on the footage, there was no evidence any of the employees knew of the condition. Since Plaintiff was unable to prove actual or constructive knowledge, her claim failed.

The first key lesson to take away from this case is the invaluable nature of a high-quality CCTV system. There is a saying that a picture speaks a thousand words; however, a video tells the entire story. Without the video in this case, there would be no evidence on how long the condition existed prior to Plaintiff's fall, making it next to impossible to defeat an argument for constructive notice. Finally, there is timing; it is arguable that four (4) minutes is insufficient time to establish constructive notice or sufficient opportunity to correct a condition.

By: David A. Belford

SOVEREIGN IMMUNITY FINDS LIMITS IN WRONGFUL DEATH CASE AGAINST SHERIFF

In *Gordon v. Lee*, the First District Court of Appeal recently reviewed the issue of sovereign immunity in the context of a wrongful death case brought against a county sheriff. In the case, a driver left his house “extremely impaired” on prescription medications and lost control of the vehicle, landing in a ditch. *Smith v. Lee*, No. 1D2025-1731, (Fla. 1st DCA May 20, 2026). Two narcotics officers employed by the Florida Department of Corrections happened to drive by and stopped. Both officers recognized that the driver was under the influence, observing slurred speech and unsteadiness, as well as an empty Suboxone package that appeared to have fallen out of the vehicle’s door. When the deputy sheriff arrived on scene, the corrections officers shared their suspicion that the driver was under the influence. The deputy called her supervisor for assistance with a DUI investigation, as the deputy had never conducted one. After the supervising deputy arrived, he observed the unsteadiness and slurred speech, but declined to do field sobriety. Instead, the first deputy was instructed to call a tow service to remove the vehicle from the ditch and to write a ticket for careless driving. After the vehicle was removed from the ditch, the supervising deputy told the driver to drive away, even after the driver asked for some time to regain his faculties. Minutes later, the driver crossed the center line and struck Lee’s vehicle head-on, killing Lee instantly.

Lee’s husband filed a wrongful death suit against the sheriff, alleging the deputies negligently enabled a severely impaired person to drive away from a scene of a crash. The sheriff moved for summary judgment on grounds that the sheriff did not owe a duty of care to Lee and that sovereign immunity barred the claim because the decision not to arrest the driver was a discretionary act. The trial court disagreed with the sheriff and denied summary judgment, finding that the decision not to arrest the driver and instructing him to drive despite the obvious impairment were operational functions that are not protected by sovereign immunity.

On appeal, the First DCA explained that while it can review a non-final order on interlocutory appeal related to sovereign immunity, it could not review a non-final order that denies a motion on the basis of a lack of duty of care. Thus, the court’s review was limited to the appealable portion of the order related to sovereign immunity. In analyzing the sovereign immunity ruling, the Court outlined the basics of discretionary planning-level functions versus operational. A discretionary, planning-level function involves an exercise of executive or legislative power such that a court’s intervention would inappropriately entangle the court in fundamental questions of policy and planning. On the other hand, an operational function is one not necessary to or inherent in policy or planning, that merely reflects a secondary decision as to how those policies or plans will be implemented. Activities are placed into four basic categories: (I) legislative, permitting, licensing, and executive officer functions; (II) enforcement of laws and the protection of public safety; (III) capital improvements and property control operations; and (IV) providing professional, educational, and general services for the health and welfare of the citizens. There is no governmental tort liability for the discretionary functions in categories I and II, but there may be liability under categories III and IV.

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OBTAINING RELEVANT FINANCIAL RECORDS

In a recent opinion issued May 6, 2026, the Third District dealt with a matter regarding the production of financial records, which generally are shielded from disclosure under the law. The case, *Ontario Wound Mgmt., LLC v. Legacy Med. Consultants, L.P.*, 2026 Fla. App. LEXIS 3428 (Fla. 3d DCA 2026) dealt with a lawsuit by a consulting company (“the Plaintiff”) against a management company (“the Defendant”) for intentional misrepresentation, negligent misrepresentation, conversion, and civil theft. *Id.* at 1. The heart of the lawsuit was the allegation that funds were misappropriated by the Defendant. *Id.* During the discovery process, the Plaintiff filed a notice of intent to obtain the bank records of the Defendant in order to trace the flow of funds during a two-year period. *Id.* at 2. The Defendant objected, claiming that the request was overbroad and irrelevant, and that the request sought confidential information that should be protected from disclosure. *Id.* The trial court denied the Defendant’s objections and authorized the issuance of the subpoena, and the Defendant appealed.

The Third District first restated that financial accounts and information count as privileged records, which are generally protected from disclosure under the right to privacy provision of Article I, section 23 of the Florida Constitution. *Id.* As such, unwarranted disclosure of such information could cause irreparable injury to a party and was thus subject to certiorari review. *Id.* However, the Third District noted that if the discovery was reasonably calculated to lead to admissible evidence and relevant to the matters framed by the pleadings, it was not error to allow discovery of such financial information. *Id.* at 3. The showing by the party seeking production of said records was a showing of relevancy in order to compel production. *Id.*

Because the electronic trail of the allegedly misappropriated funds was at the heart of the lawsuit, the Third District affirmed the trial court’s order authorizing the subpoena, and denied the Defendant’s petition. *Id.*

By: Syed M. Qadri

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The Court determined that the deputies' actions of calling a tow truck to remove the vehicle from the ditch and then directing the driver to leave, while expressly denying his request to remain on the roadside to regain his faculties, fall within category IV because it involved the provision of general services rather than the enforcement of laws. The allegations were particular to the analysis here because the negligence claim is not based on the deputies’ actions of merely permitting an intoxicated person to drive through a failure to arrest him. Rather, the claim is based on the affirmative actions of enabling and ordering the intoxicated person to drive. Likewise, the act of calling the tow truck was not for the enforcement of laws or protection of the public, but a general service for the driver’s welfare. The acts of the deputies did not involve a basic governmental policy and instead were the operational manner in which the roadside encounter was concluded. Subjecting the sheriff to accountability in this case did not involve judicial scrutiny of any discretionary policy-making function. Consequently, the Court held the sheriff was not entitled to sovereign immunity.

This case is a good reminder that an interlocutory appeal is available for a denial of sovereign immunity, but not as to the question of duty of care, even though the two issues are often intertwined. Second, it is a reminder that the sovereign immunity analysis continues to exist and relies heavily on the allegations and factual circumstances of each case.

By: Jennifer C. Barron

FIRM SUCCESS

SUMMARY JUDGMENT GRANTED IN FAVOR OF CDD MANAGEMENT COMPANY

Jennifer Barron recently obtained a successful ruling granting summary judgment in favor of a management company of a community development district. In the case, the plaintiff alleged that the management company was responsible for maintenance and repair decisions related to district stormwater facilities, resulting in flooding on private property. Despite raising this issue at the onset of the case, the plaintiffs refused to dismiss the management company. Summary judgment was granted as the court found there was no evidence that the management company played a role in maintenance decisions or that it had any of the responsibilities alleged in the complaint.

THE ELEVENTH CIRCUIT COURT OF APPEALS AFFIRMED DISMISSAL

David Jadon recently obtained a successful decision from the United States Eleventh Circuit Court of Appeals, which affirmed the District Court's dismissal of First Amendment claims against a City and two of its officers. In the case, the Plaintiff alleged First Amendment viewpoint discrimination and retaliation against the officers, and a *Monell* claim against the City. The Plaintiff alleged that he was inappropriately trespassed from the City's Public Safety Complex for filming. However, the Eleventh Circuit agreed that the Plaintiff's claims failed because one of the officers did not trespass the Plaintiff. The claims against the second officer failed because the Plaintiff failed to show that the City's ordinance prohibiting filming was selectively enforced against him. Finally, the Court also stated that because there was no underlying constitutional violation – and even if there was one – there would still be no liability against the City under *Monell*.

FIRM SUCCESS

COURT GRANTS SUMMARY JUDGMENT IN FAVOR OF CDD DEFENDANT FOR GOLF COURSE TRIP AND FALL

Attorney Chris Prusinowski recently convinced a Marion County Circuit Court Judge to Grant Summary Judgment in favor of a local CDD Defendant, wherein a Plaintiff tripped and fell on their golf course.

The Plaintiff alleged that the CDD allowed their golf course to fall into a state of disrepair, and was therefore negligent, due to the presence of broken cart stoppers on the course (cart stoppers, also known as cart guides, are meant to act as a visible and physical deterrent to signal that golfers should not drive their golf carts on the grass in that area). Attorney Prusinowski successfully argued that the CDD did not fail to maintain its premises in a reasonably safe condition, nor did it have a duty to warn the Plaintiff of the presence of the cart stoppers due to the following circumstances: 1) Plaintiff had played golf on the same course on twenty-one occasions within the three months prior to the incident; 2) Plaintiff admitted to having seen cart stoppers present on prior visits; 3) there was no evidence to support that the cart stopper Plaintiff tripped over was broken prior to her fall; and 4) there was no evidence of prior incidents where patrons tripped and fell over the stoppers.

The Court, in its ruling, acknowledged the Plaintiff's prior familiarity with the course in support of its decision to grant summary judgment in the CDD's favor. The Court further found that the weather conditions were sunny and clear, and that nothing attributable to the Defendant obstructed the Plaintiff's ability to see and avoid the cart stopper.

SUMMARY JUDGMENT IN CIVIL RIGHTS CASE AGAINST A CITY AND ITS BUILDING OFFICIAL

Ramon Vazquez recently obtained a summary judgment in favor of the Defendants in a lawsuit filed by two registered homeowners against a local City and its Building Official, due to a "Notice to Vacate" that was issued as a result of an inspection of a residence with serious structural and electrical safety issues. The underlying Complaint included claims for malicious prosecution, the alleged violation of Plaintiffs' rights under the Fifth Amendment of the Constitution of the United States, and *Monell* claims. The U.S district judge granted summary judgment in favor of the Defendants on all claims.

FIRM NEWS

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Roper Townsend Sutphen proudly announces:



William Finn
Senior Attorney

Will's practice will include the representation of clients in governmental liability, premises liability, wrongful death, automobile negligence, appellate practice, nursing home negligence and personal injury protection (PIP).

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