

Pitfalls Of Relying On Evidence Previously Filed “For Any Purpose” When Opposing Summary Judgment

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Your opponent files a motion for summary judgment. At a hearing on the motion, you point to an affidavit in the record to show that material questions of fact exist. Long before your opponent moved for summary judgment, you had filed that affidavit along with a notice stating your intent to rely upon the affidavit “for any purpose” permitted by the rules of civil procedure and the rules of evidence. The trial judge grants the summary judgment motion over your objection. Is your reliance on the affidavit preserved? A Florida rule of civil procedure complicates

this question and affected the answer in *State Farm Mutual Automobile Insurance Co. v. Figler Family Chiropractic, P.A.*, 189 So. 3d 970 (Fla. 4th Dist. Ct. App. 2016). Unlike its federal rule counterpart, the Florida summary judgment rule requires that a party opposing a summary judgment motion file a notice identifying any summary judgment evidence on which the party relies. Over a dissent, the appellate court held that the party opposing summary judgment in that case could not properly rely on the affidavit, even though it had previously been filed “for any purpose,” because it had not been specifically identified in opposition to the motion. **Preservation Issue:**

- All evidence to be used in opposing a summary judgment motion should be identified through a filing specifically made in opposition to the motion, even if the evidence was previously filed “for any purpose,” at least in Florida and any other jurisdiction that requires parties opposing summary judgment to give notice of the evidence they intend to rely upon.

Tips: Attorneys sometimes file affidavits or depositions without connecting them to a particular use. Doing so may not satisfy a rule in your forum that requires evidence to be specifically identified when opposing a summary judgment or similar motion. Be sure to check the rules in your jurisdiction. On a

related note, not connected to preservation but still potentially important, such “for any purpose” filings may also run afoul of modern rules designed to reduce the potential for personal information to be contained in court files. For instance, Florida rule of civil procedure 1.280(g) prohibits filing information obtained during discovery unless such information is filed in compliance with a particular rule of procedure or a court order. Such rules call into question any practice of filing documents with a notice saying that they are intended for any purpose permitted by the rules of procedure.

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