

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

ESTATE OF GERALDINE F.  
JENNINGS, ROBERT J.  
JENNINGS, CHERYL FAZO and  
KIM S. JENNINGS,

Plaintiffs,

v.

Case No.: 2:19-cv-72-FtM-38NPM

GULFSHORE PRIVATE HOME  
CARE, LLC,

Defendant/Third  
Party Plaintiff

CRIS-CAROL SAMUELS,

Third Party Defendant.

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**OPINION AND ORDER**<sup>1</sup>

Before the Court is Defendant Gulfshore Private Home Care, LLC's Fourth Motion for Summary Judgment ([Doc. 155](#)), Plaintiffs' response in opposition ([Doc. 161](#)), and Gulfshore's Reply ([Doc. 170](#)).<sup>2</sup> The Court grants the motion.

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<sup>1</sup> Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

<sup>2</sup> Gulfshore has requested oral argument on its motion. ([Doc. 165](#)). After reviewing the record and the parties' memorandums of law, the Court finds that it has sufficient information to decide the motion without additional oral argument. M.D.Fla.L.R. 3.01(j).

## BACKGROUND

This is a wrongful death action arising under Florida law. Gulfshore is a licensed Florida nurse registry that refers home healthcare professionals to elderly and disabled clients. ([Doc. 88-3 at 3](#)). Gulfshore hires the home healthcare professionals as independent contractors. ([Doc. 154-1](#), 30:12-15; 31:13-15; 112:1; 113:16-17). It uses software to send out potential referrals to its registered independent contractors. ([Doc. 154](#), 140:15-19).

Third-Party Defendant Cris-Carol Samuels is a certified nursing assistant who registered with Gulfshore to receive client referrals in 2016. ([Doc. 153-1](#), 50:3-11). In March 2017, Gulfshore assigned Samuels to transport Antoinette Janich (“the Client”). ([Doc. 53](#) at ¶¶ 11-12; [Doc. 88-1](#) at ¶¶ 11-12). While transporting her, Samuels drove onto the sidewalk and fatally struck Geraldine F. Jennings. ([Doc. 53](#) at ¶ 15; 53-1; [Doc. 88-1](#) at ¶ 15). This suit ensued.

Plaintiffs are Jennings’ estate, husband, and daughter. They sue Gulfshore for wrongful death based on three theories of negligence. ([Doc. 53](#)). In Count I, Plaintiffs claim Samuels was an agent for, or in a joint venture with, Gulfshore. ([Doc. 53 at 4-5](#)). In Count II, Plaintiffs claim “Gulfshore was negligent in selecting, hiring, retaining, instructing, and/or supervising” Samuels. ([Doc. 53 at 5](#)). In Count III, Plaintiffs claim Gulfshore is vicariously

liable for Samuels' negligence because it breached its nondelegable duty to ensure safe transportation services. ([Doc. 53 at 6-7](#)).

Gulfshore moves for summary judgment as to the Estate, husband, and surviving daughters. ([Doc. 150](#)). It argues summary judgment is proper because Samuels was an independent contractor and Gulfshore is not liable for her actions.

After briefing on the motion for summary judgment finished, and nearly five months after discovery ended, Plaintiffs moved to compel Gulfshore to authenticate documents purportedly published on its website. ([Doc. 172](#)). Two subsequent related motions are pending. ([Doc. 175](#); [Doc. 182](#)). The Court denies the requests as procedurally improper. Discovery is over. Plaintiffs could have requested this material during discovery but did not. As Gulfshore points out, Plaintiffs chose not to ask about the material at the 30(b)(6) deposition. It is not appropriate for Plaintiffs to be filing discovery motions as the Court considers a summary judgment motion. And even if the Court considered these materials, it cannot discern from a brief review how they help Plaintiffs' case.<sup>3</sup>

## LEGAL STANDARD

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<sup>3</sup> To wit, one webpage lists "transporting clients to social activities and appointments" as a service nursing assistants provide clients, seeming to contradict Plaintiffs' argument that driving clients is impermissible for a nurse registry. See [Doc. 110-1](#) at 5.

Summary judgment is proper only if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56(a)*; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The moving party bears the initial burden of stating the basis for its motion and identifying those portions of the record demonstrating the absence of genuine issues of material fact. *See O’Ferrell v. United States*, 253 F.3d 1257, 1265 (11th Cir. 2001). An issue is genuine if there is sufficient evidence so that a reasonable jury could return a verdict for either party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

When opposing a motion for summary judgment, the nonmoving party must show the existence of specific facts in the record that create a genuine issue for trial. *See id. at 256*. The Court should view the evidence and the inferences that may be reasonably drawn from the evidence in the light most favorable to the nonmoving party. *See Burton v. City of Belle Glade*, 178 F.3d 1175, 1187 (11th Cir. 1999) (citation omitted). A party opposing a properly supported motion for summary judgment may not rest on mere allegations or denials and “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (citation omitted). Failure to show evidence of any essential element is fatal to the claim and the Court should grant summary judgment. *See Celotex*, 477 U.S. at 322-23. But if reasonable minds could find

a genuine issue of material fact, then summary judgment should be denied. See *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1532 (11th Cir. 1992).

## DISCUSSION

In Florida, a claim for wrongful death is “created and limited by Florida's Wrongful Death Act.” *Cinghina v. Racik*, 647 So.2d 289, 290 (Fla. 4th DCA 1994); *Estate of McCall v. United States*, 134 So.3d 894, 915 (Fla. 2014). It provides a right of action “[w]hen the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person . . . and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued.” Fla. Stat. § 768.19; Plaintiffs allege wrongful death based on three negligence theories. To state a claim for negligence in a wrongful death action, a plaintiff must allege: “(1) the existence of a legal duty owed to the decedent, (2) breach of that duty, (3) legal or proximate cause of death was that breach, and (4) consequential damages.” *Jenkins v. W.L. Roberts, Inc.*, 851 So.2d 781, 783 (Fla. 1st DCA 2003).

The primary disagreement among the parties is whether Samuels is an independent contractor. If she is, Plaintiffs will face an uphill battle ascribing liability to Gulfshore because Florida follows the general rule that the employer of an independent contractor is not liable for the contractor's negligence because the employer has no control over how the work is done.

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