

dbr DAILY BUSINESS REVIEW

NOT FOR REPRINT

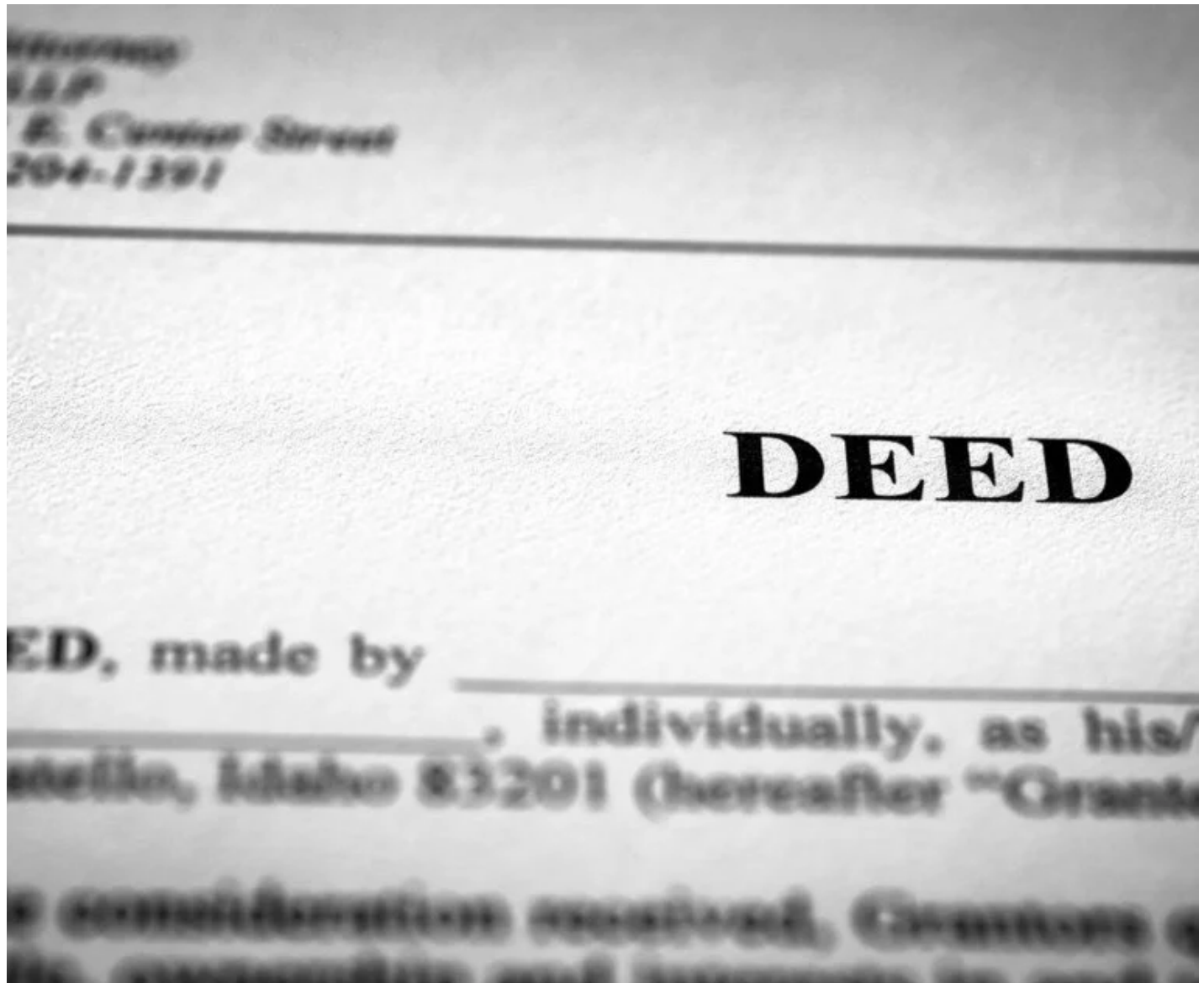
🖨 Click to print or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/dailybusinessreview/2022/02/10/long-overdue-florida-supreme-court-ruling-clarifies-notaries-statutory-duties-negligence/>

'Long Overdue': Appellate Ruling Clarifies Notaries' Statutory Duties, Negligence

"Notaries hold an important position in our society to prevent fraud, and these days they are more necessary than ever due to seemingly increasing fraudulent acts," attorney Daren Stabinski said. "They must take their jobs seriously with due care, or else be held responsible."

By Jasmine Floyd | February 10, 2022



Deed to real estate transfer title ownership to land or home. Credit: Lane V. Erickson/Shutterstock

A ruling from Florida's Fourth District Court of Appeal clarifies the statutory duties of notaries, as the panel held an official liable for a nearly quarter-million-dollar real estate deal involving a fraudulent document.

The ruling came in a case where the lower court had found that notary Nea Richardson's notarization of a forged deed was of no consequence, because the document was later found to be fraudulent, and therefore voided.

However the appellate court disagreed, reinstating a \$247,000 jury verdict after finding the notary's "negligence operated in combination with the fraud."



**Fort Lauderdale partner
Daren Stabinski, of Daren A.
Stabinski. Courtesy photo**

"Before this case, there was not much law in Florida interpreting a notary public's statutory duties, so this case was long overdue," said appellant counsel Daren Stabinski, who teamed with attorney Daniel Caine of Stabinski and Funt in Miami. "Notaries hold an important position in our society to prevent fraud, and these days they are more necessary than ever, due to seemingly increasing fraudulent acts. They must take their jobs seriously with due care, or else be held responsible."

Samuel D. Lopez of Samuel D. Lopez P.A. in Southwest Ranches represented the appellee, notary public Richardson, but did not respond to requests for comment.

On appeal, appellant Jeffrey Scheible, personal representative of the estate of Janice Johnson, challenged an order granting a new trial after a jury verdict in favor of the estate. The jury had awarded damages to the estate for the notary's negligence in notarizing a forged deed used to sell Jonson's property.

But the trial court had determined Scheible had not proven that the notary's negligence in notarizing the deed was a proximate cause of the estate's damages, because the forged deed was void and had an invalid legal description.

But the appellate court found otherwise.

"The fact that the deed was void, however, does not, as a matter of law, relieve Richardson of liability where she has been sued in negligence," Fourth DCA Judge Martha Warner wrote, with Chief Judge Burton Conner and Judge Jeffrey Kuntz concurring. "Even if the deed is of no effect and does not pass title, that does not mean that no damages have resulted from the fact that the forged deed was recorded, and the property sold."

Read the ruling

Emmitt v. First Transit, Inc., 300 So. 3d 225, 228 (Fla. 4th DCA 2020).

To prove a cause of action for negligence, a plaintiff must prove that the defendant had a legal duty of care to the plaintiff; the defendant breached that duty; the breach proximately caused the plaintiff's injury; and the plaintiff incurred damages as a result. *Bryan v. Galley Maid Marine Prods., Inc.*, 287 So. 3d 1281, 1285 (Fla. 4th DCA 2020).

3

As a notary, Richardson had a statutory duty to have "satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument." § 117.05(5)(b), Fla. Stat. (2015). Further, section 117.107(9) provides that "[a] notary public may not notarize a signature on a document if the person whose signature is being notarized is not in the presence of the notary public at the time the signature is notarized." § 117.107(9), Fla. Stat. (2015). The breach of that statutory duty creates liability when it is the proximate cause of the damages sustained by the plaintiff. See *Ameriseal of N.E. Fla., Inc. v. Leiffer*, 673 So. 2d 68 (Fla. 5th DCA 1996). There was sufficient evidence to show that Richardson breached her statutory duty. The court, in its ruling, focused on the proximate cause of the loss to Scheible and determined that Richardson could not be the proximate cause.

The test for proximate cause is contained within the standard jury instructions. "Negligence is a legal cause of [loss] [injury] [or] [damage] if it directly and in natural and continuous sequence produces or contributes substantially to producing such [loss] [injury] [or] [damage], so that it can reasonably be said that, but for the negligence, the [loss] [injury]

The case dates back to 2008 when Scheible's sister, Joyce Johnson, left him a house that she owned in Pembroke Pines. Scheible gave permission to Johnson's daughter — his niece Janice — to live in the house rent-free, as long as the niece paid expenses, such as taxes and utilities, the ruling stated.

Scheible then transferred the property via a quit-claim deed to the niece, who lived in the house with her boyfriend Audley Brown. But when the niece died in June 2015 without a will, Scheible became personal representative of her estate.

But months later, around October 2015, Scheible discovered that the niece's boyfriend, Brown, had sold the property to third-party purchasers. Further investigation revealed a quit-claim deed dated Feb. 9, 2015 had transferred the property from the niece to Brown.

That deed had been notarized by appellee Richardson, and was recorded July 8, 2015—about a month after the niece's death.

On July 28, a quit claim deed marked "corrective deed" was recorded. It showed to be the same quit claim deed as was recorded on July 8, with a lengthier legal description attached. The deed was neither re-executed nor re-notarized, according to the appellate opinion.

A third warranty deed, dated Oct. 26, 2015, transferred the subject property from Brown to the third-party purchasers.

Scheible filed suit against multiple parties, including Richardson. He claimed damages against Richardson for alleged negligence in notarizing the deed without properly ascertaining the identity of the individual signing the deed.

Richardson allegedly moved for a directed verdict, arguing that she had not notarized the corrective deed, and it was void. Therefore, she didn't cause any loss, she argued. However, the court denied the motion.

Richardson claimed to have no memory of notarizing the document, and admitted she had not recorded the entire driver's license number of the signatory—although she should have, the ruling stated. She also acknowledged the differences between the signature and the name on the driver's license.

The notary later moved for directed verdict again, which was denied.

In the end, the jury awarded the estate \$247,000 in damages, but the lower court granted a new trial.

Now, the appellate panel has remanded the case with instructions to undo that outcome.

Scheible's counsel, Stabinski, celebrated the decision.

Stabinski said, "On behalf of my client ..., we are certainly happy with the court's decision to reinstate the jury's verdict."

Copyright 2022. ALM Media Properties, LLC. All rights reserved.