

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 07-20759-CIV-UNGARO

MARKEISHA JENKINS,
Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,
Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE came before the Court upon Defendants' Motion for Summary Judgment, filed February 29, 2008 (D.E. 61).

THE COURT has reviewed the Motion and the pertinent portions of the record and is otherwise fully advised in the premises. By way of background, this case arises out of Plaintiff's delivery of a child at the North Shore Hospital on August 21, 2004. (Def.'s Mot. 1-2.) In her Complaint, which she brought on March 23, 2007, Plaintiff alleges that Defendants were negligent in delivering her child. (*See generally* Compl.) On February 29, 2008, Defendants filed the instant Motion for Summary Judgment (D.E. 61)¹. As such, Plaintiff's Response to the Motion was due on or before March 17, 2008. Because Plaintiff failed to file a Response by such date, the Court issued an Order to Show Cause requiring Plaintiff to respond by March 25, 2008 and cautioning Plaintiff that if she failed to respond to the pending motions by such date, the Court would grant one or both motions without further notice. Plaintiff has made no response to the Order to Show Cause or either motion.

Summary judgment is authorized only when the moving party meets its burden of

¹ Defendants also filed a Motion to Dismiss on the same day (D.E. 60).

demonstrating that “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56. The Supreme Court explained in *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970), that when assessing whether the movant has met this burden, the court should view the evidence and all factual inferences in the light most favorable to the party opposing the motion.

The party opposing the motion may not simply rest upon mere allegations or denials of the pleadings: after the moving party has met its burden of coming forward with proof of the absence of any genuine issue of material fact, the non-moving party must make a sufficient showing to establish the existence of an essential element to that party’s case, and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrell*, 477 U.S. 317 (1986); *Poole v. Country Club of Columbus, Inc.*, 129 F.3d 551, 553 (11th Cir. 1997); *Barfield v. Brierton*, 883 F.2d 923, 933 (11th Cir. 1989).

If the record presents factual issues, the court must not decide them; it must deny the motion and proceed to trial. *Environmental Defense Fund v. Marsh*, 651 F.2d 983, 991 (5th Cir. 1981).² Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts. *Lighting Fixture & Electric Supply Co. v. Continental Ins. Co.*, 420 F.2d 1211, 1213 (5th Cir. 1969). If reasonable minds might differ on the inferences arising from undisputed facts then the court should deny summary judgment. *Impossible Electronics Techniques, Inc. v. Wackenhut Protective Systems*,

²Decisions of the United States Court of Appeals for the Fifth Circuit entered before October 1, 1981, are binding precedent in the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981).

Inc., 669 F.2d 1026, 1031 (5th Cir. 1982); *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“[T]he dispute about a material fact is ‘genuine,’ ... if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.”).

Moreover, the party opposing a motion for summary judgment need not respond to it with evidence unless and until the movant has properly supported the motion with sufficient evidence. *Adickes*, 398 U.S. at 160. The moving party must demonstrate that the facts underlying all the relevant legal questions raised by the pleadings or otherwise are not in dispute, or else summary judgment will be denied notwithstanding that the non-moving party has introduced no evidence whatsoever. *Brunswick Corp. v. Vineberg*, 370 F.2d 605, 611-12 (5th Cir. 1967). The Court must resolve all ambiguities and draw all justifiable inferences in favor of the non-moving party. *Liberty Lobby, Inc.*, 477 U.S. at 255.

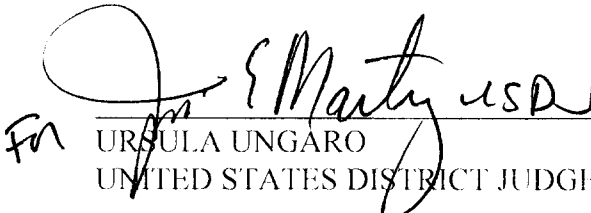
In their Motion, Defendants argue that they are entitled to summary judgment because the undisputed evidence in the record demonstrates that the medical care rendered to Plaintiff during the delivery of her child met the applicable standard of care. (Defs.’ Mot. 6.) The Court agrees. “To prevail in a medical malpractice action, a plaintiff must identify the standard of care owed by the physician, produce evidence that the physician breached the duty to render medical care in accordance with the requisite standard of care, and establish that the breach proximately caused the injury alleged.” *Torres v. Sullivan*, 903 So.2d 1064, 1068 (Fla. 2d DCA 2005). Here, Plaintiff has produced no evidence of either the requisite standard of care or of any breach of such standard of care by Defendants. In fact, Defendants’ expert, Harold Fox, has opined that Defendants met the standard of care in this case. (*See* Defs.’ Mot., Ex. 5.) As such, the Court finds that there is no dispute that Defendants met the requisite standard of care and that summary

judgment is appropriate in favor of Defendants. Fed. R. Civ. P. 56. It is hereby

ORDERED AND ADJUDGED that Defendants' Motion for Summary Judgment (D.E. 61) is GRANTED. This cause is DISMISSED WITH PREJUDICE. It is further

ORDERED AND ADJUDGED that Defendants' Motion to Dismiss is DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 26 day of March, 2008.

For  URSULA UNGARO
UNITED STATES DISTRICT JUDGE

copies provided:
Counsel of Record