

IN THE CIRCUIT COURT OF
THE FOURTH JUDICIAL
CIRCUIT IN AND FOR CLAY
COUNTY, FLORIDA

VERONICA ROUNTREE,

Plaintiff,

CASE NO.: 2024-CA-1049
DIVISION: B

vs.

MICHAEL REKAU and GOVERNMENT
EMPLOYEES INSURANCE COMPANY,

Defendants.

**ORDER ON DEFENDANT, MICHAEL REKAU'S
MOTION TO APPLY FLORIDA TORT REFORM**

This matter came before the Court on Defendant's, Michael Rekau, Motion to Apply Florida Tort Reform (Dkt. #52) and Plaintiff's response thereto (Dkt. #66). A hearing was held on September 16, 2025. Having reviewed the motion and response, and having heard the arguments of counsel, and being otherwise advised in the premises, the Court finds as follows.

This lawsuit arises from an automobile accident that is alleged to have occurred on November 11, 2022, and concerns the injuries that Plaintiff alleges to have suffered as a result. Plaintiff filed this lawsuit on November 26, 2024. On March 24, 2023, Florida enacted sweeping tort reforms that, by the plain language of the statute, applies to "causes of action *filed* after the effective date of this act." Ch. 2023-15, §30, laws of Fla. (emphasis added). Mr. Rekau's motion asks that the Court apply those reforms to this case, which was clearly filed after the effective date of the statute, but which concerns Plaintiff's cause of action which accrued prior to the effective date of the law.

Defendant makes four specific requests in his motion:

(1) As to past medical expenses already paid, allow Plaintiff to offer *only* evidence of the amount actually paid by any payer, pursuant to section 768.0427(2)(a);

(2) As to past medical expenses not yet paid, allow Defendants to offer any evidence specifically permitted by section 768.0427(2)(b), including but not limited to, evidence of 120 percent of the Medicare reimbursement rate in effect on the date of Plaintiff's incurred medical treatment or services, or, if there is no applicable Medicare rate for services, 170 percent of the applicable state Medicaid rate, and evidence of the amount any-third party loan services were paid for the right to receive payments under letters of protection;

(3) As to future medical expenses, allow Defendants to offer any evidence specifically permitted by section 768.0427(2)(c);

(4) As to the shift to a modified comparative fault system, apply the procedural changes state in section 768.81(6)

This case was *filed* after the effective date of the statute. Therefore, Defendant asserts, the law applies to this case. However, Plaintiff's cause of action accrued prior to the effective date of the law. Plaintiff asserts that the law is substantive and, therefore, it cannot be applied retroactively to this claim. To resolve this dispute, the Court must determine whether the tort reform laws are procedural or substantive.

"The general rule is that a substantive statute will not operate retrospectively absent a clear legislative intent to the contrary, but a procedural or remedial statute is to operate retrospectively. Even when the legislature does expressly state that a statute is to have retroactive application, this court has refused to apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties." *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1995). "A substantive law prescribes legal duties and rights." *Weaver v. Volusia County*, 352 So.3d 392, 394 (Fla.

5th DCA 2022) citing *Maronda Homes, Inc. of Fla. V. Lakeview Rsrv. Homeowners Ass'n*, 127 So.3d 1258, 1272 (Fla. 2013). “A procedural/remedial law, on the other hand, ‘do[es] not create new or take away vested rights, but only operate[s] in furtherance of the remedy or confirmation of rights already existing.” *Id. citing Smiley v. State*, 966 So.2d 330, 334 (Fla. 2007).

The Court starts with Defendant’s request that the modification to comparative fault set forth in §768.81(6), Fla. Stat. (2023) be applied to this case. That statute states that “any party found to be greater than 50 percent at fault for his or her own harm may not recover any damages.” This statute is clearly substantive. Prior to the enactment of this statute, and for the sake of this analysis assuming that Plaintiff was 51% at fault for her injuries sustained in the November 11, 2022, automobile accident, she would have been able to recover damages. After enactment of the statute, Plaintiff is no longer able to do so. The 2023 modification to comparative fault takes away Plaintiff’s right to recover the 49% of damages that were someone else’s fault. Thus, because it impairs Plaintiff’s vested right, the statute is substantive and cannot be applied retroactively to this cause of action.

A similar analysis applies to Defendant request that §768.0427(2)(a), Fla. Stat. (2023) apply to limit evidence of Plaintiff’s past medical expenses that have already been paid to the amount actually paid by any payer. To the extent that Plaintiff made medical treatment decisions based on the law in effect at the time of the accident and the cost for that treatment was already paid, recovery of those costs became a vested right at the time

such costs were incurred. To the extent that §768.0427(2)(a) serves to abrogate that right, the statute is substantive and cannot be applied retroactively to this claim.¹

The remaining two requests concern past medical expenses not yet paid and future medical expenses. Defendant wants to be allowed to offer the evidence permitted by §768.0427(2)(b) & (c). The ability to introduce evidence at trial does not eliminate Plaintiff's cause of action. It does not create any new obligation or impose a penalty. It does not add or delete any element of the claim that Plaintiff must prove. It does not prevent Plaintiff's recovery of past or future medical expenses. The change in the rules regarding introduction of evidence of Plaintiff's past and future medical expense simply alters the manner and means by which a jury adjudicates Plaintiff's claim. In this instance, Defendant's introduction of evidence permitted by the statute is procedural.

Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. Defendant's, Michael Rekau, Motion to Apply Florida Tort Reform (Dkt. #52) is **GRANTED in part and DENIED in part.**
2. In accordance with the analysis above, §768.81(6), Fla. Stat. is not applicable to this case and shall not serve to limit Plaintiff's ability to recover damage if her percentage of fault is found to be greater than 50 percent.

¹ This may be a distinction without a difference because the rules in effect at the time of the accident would still apply and any award Plaintiff received would be offset by any collateral source payments made on Plaintiff's behalf. Furthermore, Defendant is not prohibited from introducing evidence of any payments Plaintiff made out-of-pocket.

3. Plaintiff is not limited to offering only evidence of amounts actually paid by any payer for past medical expenses, but such amounts may be offset by any collateral source payments made.

4. Defendant shall be allowed to offer evidence permitted by §768.0427(2)(b) & (c), Fla. Stat.

DONE AND ORDERED at Green Cove Springs, Clay County, Florida this 24 day of September, 2025.


JAMES E. KALLAHER
CIRCUIT COURT JUDGE

Copies to: All counsel of record.