

## SUMMARY STATEMENT

*Nipper v. Wootton*

Docket No. 49915

This case concerned the application of Rule 56(d) of the Idaho Rules of Civil Procedure in a medical malpractice action. This rule allows counsel to receive additional time to respond to a motion for summary judgment, if certain conditions are met.

Vivian Nipper sued Dr. Lore Wootton, M.D., Dr. Robert Mairs, D.O., and the Weiser Memorial Hospital District for medical malpractice, claiming that she was injured during the delivery of her child. Over a year after the complaint was filed, Dr. Wootton moved for summary judgment. In response to the motion, Nipper moved for Rule 56(d) relief, requesting additional time to respond to Dr. Wootton's motion for summary judgment. However, Nipper's motion failed to set forth what information she was seeking, how that information was essential to rebut Dr. Wootton's expert testimony, what the additional discovery was expected to reveal, and why, more than a year into the case, such information had not yet been obtained. The district court denied the request for Rule 56(d) relief and granted summary judgment in favor of Dr. Wootton.

Over a year later, Dr. Mairs filed a motion for summary judgment. Nipper again filed a motion seeking Rule 56(d) relief. The district court again denied Nipper's request for Rule 56(d) relief and granted summary judgment in favor of Dr. Mairs. The court concluded:

[N]ot only has [Nipper] had more than an additional year to conduct discovery since her previous 56(d) motion was denied, the declaration from plaintiff's counsel does not satisfy the threshold requirements of 56(d) relief. There's been no attempt to articulate what additional discovery is necessary and how it is relevant in responding to the motion. Also, I've already found plaintiff has failed to participate in discovery in good faith.

Nipper appealed to the Idaho Supreme Court, arguing that the district court erred in denying both motions for Rule 56(d) relief and in subsequently granting summary judgment in favor of Dr. Wootton and Dr. Mairs. In its opinion, the Court began by explaining the purpose and function of Rule 56(d) of the Idaho Rules of Civil Procedure. Thereafter, the Court addressed both of Nipper's motions for Rule 56(d) relief. The Idaho Supreme Court affirmed and concluded that the district court did not abuse its discretion in denying both of Nipper's motions for Rule 56(d) relief because both requests fell short of satisfying the requirements of Rule 56(d).

***\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\****