IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 2005

CAROLE MARTIN,

Appellant,

v.

LEA OF BROWARD, INC., d/b/**a** Pinch A Penny 44 And 55,

Appellee.

CASE NO. 4D03-2687 & 4D04-732

Opinion filed January 19, 2005

Consolidated appeals from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Patti Englander Henning, Judge; L.T. Case No. 98-3062 (03).

Joseph H. Lowe and Cory W. Eichhorn of Stephens, Lynn, Klein, LaCava, Hoffman & Puya, P.A., Miami, for appellant.

Hinda Klein of Conroy, Simberg, Ganon, Drevans & Abel, P.A., Hollywood, for appellee.

PER CURIAM.

Plaintiff appeals an adverse Final Judgment in a slip and fall negligence action. We reverse because the trial court permitted the surprise admission of a highly prejudicial incident report over plaintiff's objection. *See Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981) (trial court's discretion must not be exercised blindly). Plaintiff requested production of the report during discovery. Defendant claimed it was privileged work product and did not list it on the joint pre-trial stipulation.

The substance of the incident report was that plaintiff stated she tripped over her own two feet at the time she fell. Plaintiff was surprised in fact at trial, and the resulting prejudice in the context of this slip and fall action is self-evident. We thus reverse for a new trial. *See Binger*, 401 So. 2d at 1314 (pre-trial order should be modified if trial court cannot conclude that use of undisclosed evidence will not substantially endanger the fairness of the proceeding).

REVERSED.

FARMER, C.J., SHAHOOD and TAYLOR, JJ., concur.

NOT FINAL UNTIL DISPOSITION OF ANY TIMELY FILED MOTION FOR REHEARING.