

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

ADRIAN RUBIO,
Appellant,

v.

JAMES CUBA and **J.G. O'NEILL, INC.**, a Florida corporation d/b/a
DELRAY ACURA,
Appellees.

No. 4D05-3603

[August 2, 2006]

TAYLOR, J.

Adrian Rubio appeals the trial court's dismissal of his personal injury action for failure to prosecute. We agree with appellant that his filing of a notice of deposition, even though the deposition was subsequently cancelled, was sufficient record activity to preclude dismissal of the action under the bright-line test announced by the Florida Supreme Court in *Wilson v. Salamon*, 923 So. 2d 363 (Fla. 2005).

Reversed and Remanded.

KLEIN and SHAHOOD, JJ., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Diana Lewis, Judge; L.T. Case No. 502002CA005916XXANAF.

Steven H. Meyer of Steven H. Meyer, P.A., Boca Raton, for appellant.

Jonathan A. Berkowitz of Vernis & Bowling of Palm Beach, P.A., North Palm Beach, for appellees.

Not final until disposition of timely filed motion for rehearing.