

Third District Court of Appeal

State of Florida

Opinion filed September 4, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1021
Lower Tribunal No. 15-8684

Cesar Alvarenga,
Appellant,

vs.

Milos Enterprises, Inc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, David C. Miller,
Judge.

Corona Law Firm, and Ricardo R. Corona, Paul Alexander Bravo and Ricardo
M. Corona, for appellant.

Wicker Smith O'Hara McCoy & Ford and Constantine G. Nickas and Jessica
L. Gross, for appellee.

Before SALTER, HENDON and LOBREE, JJ.

PER CURIAM.

Cesar Alvarenga appeals certain pretrial rulings, an adverse jury verdict, and a final judgment for the defendant in his lawsuit against the appellee, Milos Enterprises, Inc., franchisee/operator of a McDonald's restaurant ("Milos"). Mr. Alvarenga sought damages for injuries allegedly sustained when he slipped and fell on a wet floor and "wet floor" sign in Milos's premises. For the reasons which follow, we affirm the challenged pretrial rulings, the jury verdict, and the final judgment.

The trial court struck Mr. Alvarenga's late-disclosed and purported expert witness on liability following a motion by Milos. Although the lawsuit was filed in April 2015, and expert witness disclosures had been ordered for February 8, 2018, Mr. Alvarenga did not make the court-ordered disclosure regarding Mr. Gill until March 13, 2018—hours after a court-ordered mediation impasse, and less than four weeks before the scheduled jury trial.

Milos's motion to strike the purported liability expert from the witness list was heard March 27 and 29, 2018. The trial court granted the motion to strike at the March 27 hearing, "without prejudice to [Mr. Alvarenga] to provide for the court's consideration case law on the necessity of a liability expert in this case at the upcoming hearing on Thursday, March 29." The March 29 hearing was conducted, but was not transcribed and made a part of the record before us. The jury trial also was not transcribed, and thus also is not before us.

Mr. Alvarenga did not file additional case law regarding the purported liability expert's proposed testimony or justification for the untimely disclosure. The case was tried without the purported liability expert's testimony.

Mr. Alvarenga's claims on appeal fail to demonstrate reversible error. In addition to the absence of a proffer and sufficient record, see Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979), "[t]he qualification of a person as an expert is within the sound discretion of the trial judge," Penalver v. State, 926 So. 2d 1118, 1134 (Fla. 2006). We find no abuse of that discretion in the present case.

Affirmed.