

# Third District Court of Appeal

## State of Florida

Opinion filed October 21, 2020.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D18-2419  
Lower Tribunal No. 06-390-K

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**Clifford Jason Gregory,**  
Appellant,

vs.

**Key West Welding and Fabrications, Inc., et al.,**  
Appellees.

An Appeal from the Circuit Court for Monroe County, Timothy J. Koenig,  
Judge.

Hugh Morgan; W. Sam Holland; Wasson & Associates, Chartered, and Roy  
D. Wasson, for appellant.

Butler Weihmuller Katz Craig LLP, and Carol M. Rooney (Tampa), for  
appellees.

Before EMAS, C.J., and HENDON and GORDO, JJ.

EMAS, C.J.

Clifford Jason Gregory appeals final judgment entered by the trial court following a trial, asserting the court made several errors which require a new trial. Upon review, and with one exception described below, we affirm the final judgment.

First, we find no error in the trial court's exclusion of the insurance adjuster's report, as it was protected work product and Gregory failed to establish an applicable exception to the prohibition against the use of such materials at trial. See Fla. R. Civ. P. 1.280(b)(4); Int'l House of Pancakes (IHOP) v. Robinson, 124 So. 3d 1004 (Fla. 4th DCA 2013). In addition, we agree with the trial court's determination that there was no waiver of the work product privilege in this case. See Abamar Hous. & Dev., Inc. v. Lisa Daly Lady Décor, Inc., 698 So. 2d 276, 278 (Fla. 3d DCA 1997).

We also find no abuse of discretion in the trial court's decision to deny Gregory's request to be recalled to the witness stand as a rebuttal witness. See Gutierrez v. Vargas, 239 So. 3d 615, 625 (Fla. 2018) (holding: "Courts should exercise their discretion to avoid the needless waste of time through unnecessary presentation of cumulative evidence.")

Finally, we affirm the trial court's order granting a collateral source set-off, with the exception of the \$555.80 paid by Gregory to Sweet Bay Pharmacy, which was erroneously excluded by the trial court. The undisputed post-judgment evidence presented to the trial court established Gregory's payment of the Sweet Bay Pharmacy bill in this amount, and thus, the trial court should have included that

figure in its calculation of the amounts to be awarded in the final judgment. On remand, the final judgment should be amended to include that amount, reduced by the corresponding comparative negligence as determined by the jury's verdict.

We affirm without discussion of the other points raised by Gregory in this appeal.

Affirmed in part, reversed in part and remanded for further proceedings.