STATE OF MICHIGAN

COURT OF APPEALS

SCOTT HIGGINS,

Plaintiff-Appellant,

v

HAYLOFT LOUNGE, INC., BRIAN HINES and THOMAS RUBIO,

Defendants-Appellees,

and

JOHN DOE and RICHARD ROE,

Defendants.

UNPUBLISHED
December 17, 1996

No. 178686
LC No. 90-005258

Before: Wahls, P.J., and Cavanagh and J.F. Kowalski,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the September 27, 1993, judgment of no cause of action in favor of defendants following a jury trial. We affirm.

Plaintiff first argues that the trial court abused its discretion by admitting the testimony of John Warchulski a/k/a John Walker (hereinafter Walker) in violation of the trial court's December 4, 1991, and August 19, 1992, orders relating to discovery. We disagree.

Because plaintiff failed to argue at trial that admission of Walker's testimony was in violation of the December 4, 1991, order, and plaintiff's substantial rights are not affected, we decline to review this issue. MRE 103(a)(1); MRE 103(d).

Moreover, the admission of Walker's testimony did not violate the trial court's August 19, 1992, order in limine. That order stated, in relevant part:

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* Circuit judge, sitting on the Court of Appeals by assignment.

> Defendant shall produce on or before August 24, 1992, a summary of testimony, as required by the Order dated December 4, 1991, relating to: i) any expert Defendant seeks to introduce at trial; ii) any present or former Hayloft employee Defendant seeks to introduce at trial.

Although defendant Hayloft Lounge named several of its employees in a response and supplemental response to this order, it never identified Walker or the proposed substance of his testimony specifically as a response to the motion in limine.

Plaintiff argues that Walker was a present or former Hayloft employee. We disagree. At trial, defense counsel argued that Walker was an independent contractor, and not an employee of Hayloft. Out of the presence of the jury, Walker testified that he was an independent contractor, and that his band played at other establishments. Walker also testified that he was paid partially with cash and partially with a check for his performance on the night in question. At the end of the year, Hayloft issued a 1099 form to Walker. Plaintiff offered no evidence to dispute Walker's characterization or to show that Walker was a present or former employee of Hayloft. Since Walker was neither an expert nor a present or former Hayloft employee, defendants were not required under the terms of the August 19, 1992, order to provide plaintiff with any information regarding Walker. In any case, given the fact that defendants listed Walker on several witness lists, and identified Walker as a member of the band which played at Hayloft on the night in question, we also find that plaintiff should not have been surprised by Walker's testimony.

Next, plaintiff argues that the trial court abused its discretion by denying his motion for a mistrial because it was unreasonable to expect him to identify the December 4, 1991, order as the basis for his objection to Walker's testimony. We disagree.

The party making an objection must specify the grounds for the objection. MRE 103(a)(1). Plaintiff (or his counsel) should have had sufficient knowledge of the existence and contents of the December 4, 1991, order to specify it as a basis for his objection to the admission of Walker's testimony. Thus, the trial court did not abuse its discretion in denying plaintiff's motion for a mistrial on this basis. See *Vaughan v Grand Trunk W R Co*, 153 Mich App 575, 579; 396 NW2d 440 (1986).

Plaintiff also argues that the trial court's interpretation of the August 19, 1992, order in limine was too restrictive. In his motion in limine, plaintiff claimed that defendants failed to list the names of experts expected to be called at trial, the names of Hayloft employees expected to be called at trial and the substance of these witnesses' testimony. Because plaintiff only sought the names of experts, present or former Hayloft employees, and the substance of their testimony, we find that the August 19, 1992, order was not merely a clarification of the December 4, 1991, order. Rather, the order granted, in part, the relief sought by plaintiff in his motion. Therefore, the trial court properly denied plaintiff's motion for a mistrial.

Affirmed.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh
/s/ John F. Kowalski