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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-147

Filed: 6 December 2016

Iredell County, No. 13 CVS 1431

CAROLINA VISION INVESTMENTS I, LLC, a Florida limited liability company,  
Plaintiff,

v.

ANTHONY VACCARO, a sole proprietor d/b/a SPIFFY LUBE REPAIRS, Defendant.

Appeal by plaintiff from judgment entered 10 September 2015 by Judge Stanley L. Allen in Iredell County Superior Court. Heard in the Court of Appeals 25 August 2016.

*Jones, Childers, McLurkin & Donaldson, PLLC, by Kevin C. Donaldson, for plaintiff-appellant.*

*Barone Law Offices, PC, by Charles F. Barone, for defendant-appellee.*

DIETZ, Judge.

Plaintiff Carolina Vision Investments I, LLC challenges the trial court's decision to permit a witness to testify at the one-day bench trial in this case. As explained below, the trial court's decision to permit this witness to testify is reviewed for abuse of discretion. Because Carolina Vision has not shown that it suffered any prejudice from the late notice that this witness would testify, we find no abuse of discretion in the trial court's judgment. Accordingly, we affirm.

### **Facts and Procedural History**

Defendant Anthony Vaccaro leased commercial property from Carolina Vision. Vaccaro initially leased one unit but soon concluded that he needed to lease a second, adjoining unit to provide sufficient space for his business. Vaccaro later demolished the wall separating the two units.

After the leases expired, a dispute broke out concerning which party should bear the costs of tearing down and then rebuilding the wall. Carolina Vision sued Vaccaro for the cost of rebuilding the wall and Vaccaro counterclaimed for the costs of tearing down the wall initially.

Among the witnesses to testify at the one-day bench trial was Peter Rosenkrans, whom Vaccaro hired to demolish the wall. Vaccaro did not identify Rosenkrans as a potential trial witness until just a few days before trial. Rozenkrans corroborated Vaccaro's testimony concerning the cost of tearing down the wall between the two units.

The trial court found that both parties breached the lease agreements and awarded \$15,244.00 to Carolina Vision and \$9,575.00 to Vaccaro. Carolina Vision timely appealed.

### **Analysis**

The sole issue on appeal is whether the trial court erred by admitting the testimony of Peter Rosenkrans during the one-day bench trial. As explained below,

*Opinion of the Court*

we review this issue under the narrow abuse-of-discretion standard of review and, applying that standard, must affirm the trial court's judgment.

When a trial court permits the testimony of an alleged surprise witness at trial, we review that decision for abuse of discretion. *Kinlaw v. N.C. Farm Bureau Mut. Ins. Co.*, 98 N.C. App. 13, 19, 389 S.E.2d 840, 844 (1990). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

Carolina Vision repeatedly (and correctly) argues that it requested during discovery the names of all potential witnesses who might testify on the topics to which Rosenkrans ultimately testified. Nevertheless, Vaccaro did not disclose Rosenkrans as a potential witness during discovery. Instead, Vaccaro provided a copy of the witness subpoena to Carolina Vision just a few days before trial.

Carolina Vision argues that "Vaccaro did not have a legitimate excuse for failing to identify Mr. Rosenkrans through discovery." Carolina Vision then asserts that, because it had little notice that Rosenkrans would testify, and because Vaccaro had no excuse for not disclosing him during discovery, Carolina Vision was "unfairly surprised and prejudiced by his trial testimony."

What is crucially missing in Carolina Vision's brief, however, is any argument about *how* it was prejudiced. We likewise find no explanation for how Carolina Vision

*Opinion of the Court*

was prejudiced in the trial court record. That missing argument hamstrings our review of this appeal. The trial court has broad discretion to control proceedings at trial, including the decision to permit a witness to testify in the interests of justice. If Carolina Vision had offered some explanation of how their inability to prepare for examination of this alleged surprise witness impacted the case or changed the result, this appeal might raise a closer question. But Carolina Vision's focus is not on how it was prejudiced, but simply on the notion that the trial court should have refused to allow the witness to testify. Without some showing of actual prejudice, we cannot hold that the trial court's decision was so arbitrary or irrational that it "could not have been the result of a reasoned decision." *See Wilson Cty Bd. of Educ. v. Lamm*, 276 N.C. 487, 492-93, 172 S.E.2d 281, 285 (1970); *Hennis*, 323 N.C. at 285, 372 S.E.2d at 527. Accordingly, under the narrow standard of review applicable here, we must affirm the trial court.

**Conclusion**

We affirm the trial court.

AFFIRMED.

Judges HUNTER, JR. and McCULLOUGH concur.

Report per Rule 30(e).