

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

NEVA ANDREA QUINTANA,  
Appellant,

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 50-2018-AP-000047-CAXX-MB  
L.T. NO.: 50-2016-CC-006253-XXXX-MB

v.

FINANCIAL SERVICES VEHICLE TRUST,  
Appellee.

---

Opinion filed: FEB 21 2019

Appeal from the County Court in and for Palm Beach County,  
Judge Dana M. Santino.

For Appellant: Kansas R. Gooden, Esq.  
201 North Hogan Street, Suite 400  
Jacksonville, Florida 32202  
kgooden@boydjen.com

Kevin D. Franz, Esq.  
1001 Yamato Road, Suite 102  
Boca Raton, Florida 33431  
kfranz@boydjen.com

For Appellee: Stephanie G. Brito, Esq.  
6750 North Andrews Avenue, Suite 200  
Fort Lauderdale, Florida 33309  
stephanie.brito@goldfeinclaims.com

PER CURIAM.

Appellant, Neva Andrea Quintana (“Quintana”), appeals the trial court’s final judgment in favor of Financial Services Vehicle Trust (“Financial Services”) arising from a jury verdict in favor of Financial Services, and the trial court’s subsequent denial of a Motion for New Trial. Quintana was involved in an accident with another vehicle on July 5, 2013.<sup>1</sup> Financial Services, as owner of the 2012 BMW allegedly struck by Quintana, brought suit against Quintana seeking the diminution in value of its 2012 BMW from the pre-crash value to the vehicle’s post-repair value. The case proceeded to trial with the jury returning a verdict in favor of Financial Services.

Quintana raises three issues on appeal. First, Quintana argues the trial court erred by denying her motions for directed verdict, asserting that no competent, substantial evidence linked the 2012 BMW to the July 5, 2013 accident with Quintana.<sup>2</sup> Second, Quintana argues the trial court abused its discretion by excluding the testimony of an Infinity Insurance Company records custodian or other qualified witness, thereby precluding Quintana from entering Infinity Insurance records from a prior accident involving the BMW into evidence. Finally, Quintana argues the trial court further abused its discretion by not allowing her to introduce the Infinity Insurance records to impeach Financial Services’ expert. We disagree with Quintana’s first argument, and find that Financial Services presented competent, substantial evidence linking the 2012 BMW to the July 5, 2013 accident, and therefore affirm the trial court’s denial of Quintana’s motions for directed verdict without further comment.<sup>3</sup> However, we find that the trial court abused its discretion in excluding the records custodian or other qualified witness from testifying and laying predicate to

---

<sup>1</sup> The actual vehicle struck was a fact in dispute before the trial court.

<sup>2</sup> Despite Financial Services’ claim to the contrary, we find this issue was properly preserved because it was raised in Quintana’s Motion for New Trial. *See Fulton Cty. Adm’r v. Sullivan*, 753 So. 2d 549, 553–54 (Fla. 1999) (holding a motion for new trial preserves a motion for appellate review when it “encompasses the same legal basis upon which [the] motion for directed verdict was made during the trial and at the close of evidence . . .”).

<sup>3</sup> We also affirm the trial court’s denial of Quintana’s Motion for New Trial as it relates to this same argument.

the admission of the prior loss records, and therefore also in denying Quintana's Motion for New Trial raising this same argument. Because we find this second issue requires a new trial on the issue of damages, we decline to address Quintana's third argument.

We review evidentiary issues for an abuse of discretion. *Cardona v. Nationstar Mortg., LLC*, 174 So. 3d 491, 493 (Fla. 4th DCA 2015). Likewise, we also review a trial court's denial of a motion for a new trial for an abuse of discretion. *Izquierdo v. Gyroscope, Inc.*, 946 So. 2d 115, 117 (Fla. 4th DCA 2007). Abuse of discretion turns on the reasonableness of a trial court's actions. *See Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980). "[A] trial court can properly exclude the testimony of a witness whose name has not been disclosed in accordance with a pretrial order." *Binger v. King Pest Control*, 401 So. 2d 1310, 1313 (Fla. 1981). "Exclusion of witness testimony . . . is a 'drastic' remedy and should be invoked 'only under the most compelling circumstances.'" *Clair v. Perry*, 66 So. 3d 1078, 1080 (Fla. 4th DCA 2011) (quoting *Dep't of Health & Rehab. Servs. v. J.B. By & Through Spivak*, 675 So. 2d 241, 244 (Fla. 4th DCA 1996)).

Here, the trial court excluded Quintana's witness from testifying on the basis that Quintana violated one of the trial court's pretrial orders. Having reviewed the record on appeal, we find no such violation. The trial court entered an "Order Setting Case Management Conference, Calendar Call, Pretrial Procedures and Mandatory Mediation" ("Case Management Order"), and an order simply titled "Order" ("Discovery Order"), on August 31, 2017. In its Case Management Order, the trial court stated that "[n]o later than 20 days prior to trial, the parties shall exchange lists of all trial exhibits, names and addresses of all trial witnesses, and names and addresses of all expert witnesses." Pursuant to the Case Management Order, Quintana timely filed her Witness and Exhibit List on January 31, 2018, more than twenty (20) days before the trial began on February 23, 2018. In her Witness and Exhibit List, Quintana included "Records Custodians or

Representatives” for Infinity Insurance Co., and named the current records custodian in her Witness List. Further, Quintana listed “[c]urrent and/or prior loss records of vehicle(s) involved in accident” as a potential trial exhibit. Thus, there was no violation of the Case Management Order, and the trial court erred by precluding Quintana’s witness from testifying on this basis.

Even assuming Quintana’s several amendments to her Witness List violated the trial court’s Case Management Order, we find no prejudice based on Financial Services’ independent knowledge of the prior accident. Before Quintana submitted her Witness List, Financial Services filed a Motion *in Limine* on January 26, 2018, to exclude evidence concerning the prior accident, but Financial Services later withdrew its Motion *in Limine* and called its expert to testify at trial that the vehicle had been in a prior accident. Moreover, each alteration of the Witness List only changed the name of the record custodian or representative, keeping the address of the record custodian or representative and the language “c/o Infinity Insurance Co.” the same.

Insofar as the trial court excluded Quintana’s witness from testifying on the basis that the prior loss records were provided to Financial Services after the discovery deadline imposed by the trial court, the record shows that the trial court’s separate Discovery Order imposed a deadline on discovery *depositions* only. Thus, the Witness List provided on January 31, 2018, did not violate either pretrial order, and in fact timely notified Financial Services that Quintana was seeking to admit the Infinity Insurance prior loss records through a records custodian or qualified witness. We therefore find the trial court abused its discretion by precluding Quintana’s witness from testifying and laying predicate to the admission of the prior loss records, and consequently further abused its discretion by denying Quintana’s Motion for New Trial (in which she raised this same argument). Accordingly, we **REVERSE** the final judgment, direct the trial court to vacate the

order granting final judgment in favor of Financial Services, and **REMAND** this cause to the trial court for a new trial as to damages only.

We also conditionally **GRANT** Quintana's Motion for Appellate Attorney's Fees filed pursuant to Florida Rule of Appellate Procedure 9.400, section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442, provided the lower court finds in favor of Quintana for an amount at least twenty-five (25) percent less than Quintana's \$350.00 settlement offer, and that Quintana's settlement offer was made in good faith.

COATES, GILLEN, and SMALL, JJ., concur.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 50-2018-AP-000047-CAXX-MB  
L.T. NO.: 50-2016-CC-006253-XXXX-MB

NEVA ANDREA QUINTANA,  
Appellant,

Opinion/Decision filed: FEB 21 2019

v.

Appeal from Palm Beach County Court  
Judge Dana M. Santino

FINANCIAL SERVICES VEHICLE TRUST,  
Appellee.

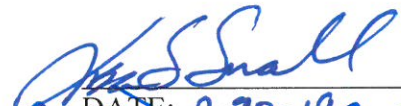
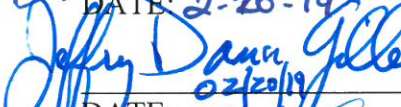
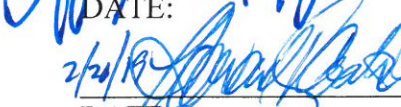
Date of Appeal: April 13, 2018

DATE OF PANEL: DECEMBER 18, 2018

PANEL JUDGES: COATES, GILLEN, SMALL

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
	)		)		)
DATE: 2-20-19 J.	)		)		)
	)		)		)
DATE: 02/20/19 J.	)		)		)
	)		)		)
DATE: 2/20/19 J.	)		)		)