

STATE OF MICHIGAN
COURT OF APPEALS

MILTON MOTON and ANNETTE MOTON,
Individually and as Next Friend of ELIJAH
MOTON and ELISHA MOTON,

UNPUBLISHED
May 18, 2001

Plaintiffs-Appellees,

v

OAKWOOD HEALTHCARE, INC., d/b/a
OAKWOOD HEALTHCARE SYSTEMS,

No. 220823
Wayne Circuit Court
LC No. 98-814687-NO

Defendant-Appellant.

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted from the circuit court order granting plaintiffs' motion to strike defendant's supplemental witness list. We decide this appeal without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiff Milton Moton filed this action in May, 1998. Moton claimed that he suffered a closed head injury when he was struck by a television while recuperating from surgery at one of defendant's facilities. The circuit court entered an original scheduling order and later amended that order, on plaintiffs' motions. The court's amended scheduling order required an exchange of witness lists by March 15, 1999.

Defendant originally filed a lengthy witness list. Subsequently, defendant filed a supplemental witness list, seeking to name thirty-seven additional witnesses. The trial court granted plaintiffs' motion to strike the amended list, but allowed defendant to add one expert witness. The court denied rehearing and this Court granted defendant's application for leave to appeal.

A trial court's decision whether to allow a party to add a witness is discretionary. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1992). The objective of pretrial discovery is to make available to all parties in advance of trial all relevant facts that might be admitted into evidence. Further, the purpose of witness lists is to avoid trial by surprise. *Grubor Enterprises, Inc v Kortidis*, 201 Mich App 625, 628; 506 NW2d 614 (1993). A party may move for modification of a scheduling order at any time. MCR 2.401(B)(2)(c)(iii). When the order

requires the filing of a witness list by a certain deadline, the trial court may order that any witness not listed is prohibited from testifying at trial except for good cause shown. MCR 2.401(I)(2).

Defendant has failed to show that the court abused its discretion in striking the supplemental witness list. There is no evidence in the record indicating a mutual agreement to postpone discovery. Further, defendant had a full opportunity to make its arguments before the trial court. Defendant filed a written response to the motion and was given sufficient time at oral argument to address all of the relevant factors. While plaintiffs' deposition was delayed, that does not explain defendant's failure to conduct timely discovery from plaintiffs' treating physicians and co-workers. Defendant failed to adequately explain its delay in obtaining the private investigators' material. The trial court's decision to limit their testimony to events that occurred after mediation is not unreasonable. The court did not abuse its discretion in granting the motion to strike.

Finally, defendant argues that the trial court should have accepted the supplemental witness list because defendant explicitly reserved the right to amend its original witness list. However, allowing parties to circumvent the rules by claiming a reservation of rights would defeat the purpose and authority of the court rules. The reservation is subject to the power of the trial court to control discovery.

Affirmed. We lift the stay of proceedings previously granted by this Court.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly