

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-14135

Non-Argument Calendar

MARIA NOGARA,

Plaintiff-Appellant,

versus

LYNN LAW OFFICE, P.C.,
f.k.a. Lynn and Stein, P.C.,
JOEL K. STEIN,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

D.C. Docket No. 1:22-cv-23142-AHS

Before WILLIAM PRYOR, Chief Judge, and BRASHER and ABUDU, Circuit Judges.

PER CURIAM:

Maria Nogara appeals the summary judgment in favor of Joel K. Stein and Lynn Law Office, P.C., and against her complaint of legal malpractice because she failed to proffer expert testimony as to whether Stein breached the standard of care. She also challenges the decision to admit the lawyers' expert testimony under Federal Rule of Civil Procedure 37(c). We affirm.

Stein drafted trust documents for Carl R. Doran naming Maria Nogara as an intended beneficiary. A Florida court later determined that the trust documents were invalid under Florida law because they lacked two attesting signatures. As a result, Nogara did not receive her designated interest in the trust. Nogara then filed a complaint of legal malpractice against Stein and the Law Office.

The district court extended the deadline to exchange expert witness reports to July 12, 2023, and rebuttal expert reports to July 26, 2023. On July 12, the lawyers disclosed their expert witnesses to Nogara and included a summary of the experts' opinions, curricula vitae, history of serving as expert witnesses, and hourly rates. On July 26, Nogara moved to strike the lawyers' expert witnesses because the lawyers did not submit their expert witnesses' signed reports with their disclosures. She alleged that the lawyers intended

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to submit their expert reports after her deadline to submit rebuttal expert reports. The lawyers responded that their failure to include the reports was an unintentional oversight and attached their expert witnesses' signed reports.

The district court denied Nogara's request to strike the lawyers' expert witnesses. It stated that although the lawyers asserted that they were confused as to which experts were required to provide reports, Rule 26 outlined those requirements. It ruled that Nogara was not prejudiced when the experts' identities and opinions were timely disclosed, but it extended the discovery deadline to August 21, 2023, for Nogara to depose the lawyers' expert witnesses.

The lawyers moved for summary judgment on the ground that Nogara failed to present expert testimony that Stein breached the standard of care. They argued that Stein determined that Doran was domiciled in Indiana, so the documents were valid under Indiana and Florida law. The lawyers filed expert affidavits along with their motion for summary judgment. The experts opined that Stein used the reasonable degree of knowledge and skill exercised by Florida and Indiana lawyers of ordinary ability and skill in drafting the trust documents and determining Doran's domicile.

The district court granted summary judgment in favor of the lawyers because Nogara failed to offer expert testimony that Stein breached the standard of care. It concluded that expert testimony was required because the issues were not so obvious that it was a matter of common knowledge. It ruled that the additional facts to

which Nogara pointed—including that Stein did not fully read the trust documents and did not research Florida law—could not defeat summary judgment because the lawyers’ experts opined that Stein’s conduct was consistent with the standard of care and because Nogara had not established that Stein’s failure to read the documents caused her damages.

We review a summary judgment *de novo*. *Newcomb v. Spring Creek Cooler Inc.*, 926 F.3d 709, 713 (11th Cir. 2019). “We must view all of the evidence in a light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor.” *Id.* (internal quotation marks omitted). Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). We review the decision to admit or exclude expert testimony under Rule 37(c)(1) for abuse of discretion. *Cedant v. United States*, 75 F.4th 1314, 1319 (11th Cir. 2023).

The district court did not abuse its discretion in denying Nogara’s motion to exclude the lawyers’ expert reports. Rule 26 requires a party to disclose the written report of any expert witness who will testify at trial at the times and sequence that the court orders. Fed. R. Civ. P. 26(a)(2). The disclosure requirements aim to provide parties with a reasonable opportunity to prepare for cross-examination and arrange for rebuttal experts. *Reese v. Herbert*, 527 F.3d 1253, 1265 (11th Cir. 2008). Rule 37 provides that a party is not allowed to use information if it fails to provide information required under Rule 26(a), “unless the failure was substantially

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justified or is harmless.” Fed. R. Civ. P. 37(c)(1). In determining whether the failure to disclose was justified or harmless, courts consider the non-disclosing party’s explanation for its failure to disclose, the importance of the information, and any prejudice to the opposing party. *Romero v. Drummond Co., Inc.*, 552 F.3d 1303, 1321 (11th Cir. 2008). Although Rule 37 allows a district court to exclude an expert report as a sanction for a discovery violation, “the admission of expert testimony is a matter left to the discretion of the district court” that we will not overturn unless its decision is “manifestly erroneous.” *Lakeman v. Otis Elevator Co.*, 930 F.2d 1547, 1554 (11th Cir. 1991) (citation and internal quotation marks omitted).

The parties agree that the lawyers violated Rule 26 by failing to timely disclose their expert reports. But the district court did not abuse its discretion in admitting the reports. The lawyers timely disclosed the experts’ identities, opinions, curricula vitae, history of serving as expert witnesses, and hourly rates by the deadline. So, Nogara had notice of the lawyers’ experts and their opinions before the deadline for her own rebuttal expert. And the district court extended the deadline for Nogara to depose those experts with the benefit of their reports. We cannot conclude that the district court manifestly erred in admitting the lawyers’ expert reports under Rule 37. *See Lakeman*, 930 F.2d at 1554.

Nogara argues for the first time on appeal that the district court erred by failing to give her additional time to proffer her own rebuttal expert. But she forfeited any right to additional time by failing to request it in the district court. *Access Now, Inc. v. Sw.*

Airlines Co., 385 F.3d 1324, 1332 (11th Cir. 2004) (holding that we will not consider an issue that was not raised in the district court). Her passing statement that the lawyers filed expert reports after her rebuttal deadline was insufficient to request relief from the district court and present the issue “in such a way as to afford the district court an opportunity to recognize and rule on it.” *In re Pan Am. World Airways, Inc.*, 905 F.2d 1457, 1462 (11th Cir. 1990).

The district court also did not err in granting the lawyers summary judgment. Nogara failed to proffer expert testimony establishing that Stein breached the standard of care. Under Florida law, “[e]xpert testimony is required to define the standard of care when the subject matter is beyond the understanding of the average juror.” *Ins. Co. of the W. v. Island Dream Homes, Inc.*, 679 F.3d 1295, 1298 (11th Cir. 2012). Contrary to Nogara’s argument on appeal, Stein’s negligence was not so obvious that she was not required to supply expert testimony. Under Florida law a trust is valid if it complies either “with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation, the settlor was domiciled.” Fla. Stat. § 736.0403(1). So, if Doran was domiciled in Indiana and the trust document complied with Indiana law, the trust documents were valid under Florida law. The key consideration was whether Stein’s determination that Doran was domiciled in Indiana breached the standard of care.

Determining a client’s domicile is a complex legal determination and is not a circumstance where the lawyer’s negligence

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would be obvious to the average juror, unlike an attorney's direction not to answer interrogatories, *Suritz v. Kelner*, 155 So. 2d 831, 834 (Fla. Dist. Ct. App. 1963), failure to file within the statute of limitations, *Galloway v. L. Offs. of Merkle, Bright & Sullivan, P.A.*, 596 So. 2d 1205, 1207 (Fla. Dist. Ct. App. 1992), or failure to file a notice of appearance, *Anderson v. Steven R. Andrews, P.A.*, 692 So. 2d 237, 243 (Fla. Dist. Ct. App. 1997). And legal malpractice cannot be inferred because the state court found the trust invalid. *See Willage v. L. Offs. of Wallace & Breslow, P.A.*, 415 So. 2d 767, 768 (Fla. Dist. Ct. App. 1982) (holding that legal malpractice could not be inferred from the fact that a jury returned a verdict for the opposing party). Nogara's failure to introduce expert testimony as to whether Stein breached the standard of care meant her claims failed as a matter of law. *See Island Dream Homes*, 679 F.3d at 1298.

Nogara argues that the lawyers' experts testified that the standard of care requires a lawyer to read the trust documents he writes and that Stein admitted he failed to read the entire document. But, even drawing all reasonable inferences regarding that testimony in Nogara's favor, she did not establish how Stein's failure to read the entire document caused her damages. *Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1018 (Fla. 1984) (holding that a plaintiff must introduce evidence that it is "more likely than not" that the defendant's conduct caused the injury).

Nogara's argument that there was a genuine dispute of material fact as to whether Stein believed Doran was domiciled in Indiana fails. Any dispute over what Stein believed about Doran's

domicile could not affect the outcome because Nogara failed to proffer expert evidence to establish that Stein breached the standard of care. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (holding that a factual dispute is only material if it could affect the outcome of the suit).

We need not address Nogara's argument that the lawyers' experts' affidavits included inadmissible legal conclusions. Even if the district court excluded those affidavits, it correctly granted summary judgment based on Nogara's failure to proffer expert testimony that Stein breached the standard of care, and we may affirm summary judgment on any ground supported by the record. *Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1264 (11th Cir. 2010).

We **AFFIRM** the summary judgment in favor of the lawyers and the admission of the lawyers' expert testimony under Rule 37.