[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-11131

Non-Argument Calendar

ALVIN SCOTT,

Plaintiff-Appellant,

versus

CARNIVAL CORPORATION,
a Foreign Profit Corporation
d.b.a. Carnival Cruise Line,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-21936-KMM

Before ROSENBAUM, ABUDU, and MARCUS, Circuit Judges.

PER CURIAM:

This is a maritime personal injury action in which Alvin Scott seeks to recover damages for injuries he sustained following a slip-and-fall accident while aboard a cruise ship owned and operated by the defendant, Carnival Corporation. On appeal, Scott challenges the district court's grant of summary judgment to Carnival, arguing, among other things, that the court should not have found that there was no genuine issue of material fact as to medical causation. While Scott admits he did not provide any expert opinion concerning medical causation -- which is necessary for each of his claims -- he says the district court abused its discretion when it found Scott's failure to properly and timely disclose his experts was neither substantially justified nor harmless under Federal Rule of Civil Procedure 37(c)(1). After thorough review, we affirm.

I.

The background, for purposes of summary judgment, is this. On May 26, 2022, while walking toward the entrance of a dining area on Carnival's Horizon cruise ship, Scott encountered a Carnival employee who advised Scott to take an alternate route due to a

large amount of water on the pool deck. Upon entering the area into which he was directed, Scott immediately discovered that this area also was covered in water. According to Scott, water from an overflowing pool was "pumping like oil all over the floor" and water was "all over the deck." Scott walked across the wet pool deck; but then, upon entering the dining area, he stepped across a carpeted runner and onto a tile floor where he slipped and fell. Thereafter, Scott underwent surgery for injuries to his back.

In May 2023, Scott brought this lawsuit against Carnival, alleging that it was negligent when it allowed the pool to overflow onto the deck and an employee directed him to walk through the flooded area into the dining area, and that the employee was negligent in failing to cordon the area off. The complaint brought claims against Carnival for (1) negligence, (2) negligent maintenance, (3) negligent failure to warn, and (4) vicarious liability. Following discovery, Carnival moved for summary judgment, arguing, in relevant part, that Scott had failed to put forth any evidence of medical causation. The district court agreed on this basis and others, and granted summary judgment in favor of Carnival.

This timely appeal follows.

II.

We review a district court's grant of summary judgment *de novo*. *McAlpin v. Sneads*, 61 F.4th 916, 927 (11th Cir. 2023). Summary judgment should only be granted when the record, including the pleadings, depositions, answers to interrogatories, and affidavits, shows "there is no genuine issue as to any material fact and

the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The summary judgment movant bears the initial burden "of showing the absence of a genuine issue as to any material fact, and in deciding whether the movant has met this burden the court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the nonmoving party." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997). If this burden is met, the burden shifts to the nonmovant to establish a material issue of fact that precludes summary judgment. *Id.* "For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009). "Speculation does not create a *genuine* issue of fact." *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

Our review of a district court's ruling on discovery sanctions under "Rule 37 is sharply limited to a search for an abuse of discretion and a determination that the findings of the trial court are fully supported by the record." *Serra Chevrolet, Inc. v. GMC*, 446 F.3d 1137, 1146–47 (11th Cir. 2006) (citation modified); Fed. R. Civ. P. 37. A court abuses its discretion when it "misconstrues its proper role, ignores or misunderstands the relevant evidence, and bases its decision upon considerations having little factual support." *Arlook v. S. Lichtenberg & Co.*, 952 F.2d 367, 374 (11th Cir. 1992).

III.

In this case, the district court granted summary judgment to Carnival on all counts because, among other things, Scott did not disclose any expert medical reports or opinions as he was required

to do, so there was no evidence establishing that his fall on the cruise caused his claimed damages. Scott has not argued here, or in district court, that his injuries -- namely, "an injury to his back which required surgical repair" -- were readily observable, nor does he dispute that medical causation testimony is mandatory.[1] The dispute on appeal instead concerns Scott's failure to put forth evidence of medical causation in the summary judgment record.

Maritime law governs actions "arising from alleged torts committed aboard a ship sailing in navigable waters." *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019). In analyzing a maritime tort case, we "rely on general principles of negligence law." *Id.* To succeed on a negligence claim, "a plaintiff must show that (1) the defendant had a duty to protect the plaintiff from a particular injury, (2) the defendant breached that duty, (3) the breach actually and proximately caused the plaintiff's injury, and (4) the plaintiff suffered actual harm." *Id.* (citation modified). We've "formally recognize[d] in the maritime context that non-readily observable injuries require medical expert testimony to prove causation." *Willis v. Royal Caribbean Cruises, Ltd.*, 77 F.4th 1332, 1338 (11th Cir. 2023).

Federal Rule of Civil Procedure 26 requires a party to disclose in its initial disclosures information including the name,

---

[1] Notably, according to Scott's interrogatories and deposition testimony, before the incident on the Horizon, Scott had four prior injuries to his neck and back between 2004 and 2015 that resulted in him being "permanent[ly] disab[led]," and he had three prior neck surgeries in 2004, 2008, and 2012.

address and phone number "of each individual likely to have discoverable information," plus all relevant documents. Fed. R. Civ. P. 26(a)(1)(A)(i)–(ii). "In addition to the disclosures required by Rule 26(a)(1), a party must disclose . . . the identity of any [expert] witness it may use at trial," along with other expert-dependent information. *Id.* 26(a)(2)(A). A detailed written report is required "if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony." *Id.* 26(a)(2)(B). Expert witnesses outside this category are "not required to provide a written report," and the disclosure must simply state the subject matter of the witness's expected testimony and "a summary of the facts and opinions to which the witness is expected to testify." *Id.* 26(a)(2)(C). "A party must make these disclosures at the times and in the sequence" the court orders. *Id.* 26(a)(2)(D).

The district court's scheduling order in this case directed the parties to file their Rule 26(a)(2) expert disclosures by November 16, 2023; discovery to be completed by December 16, 2023; and pretrial motions to be filed by January 5, 2024. However, Scott did not file *any* Rule 26(a)(2) expert disclosures by the deadline, or ever. Instead, Scott's opposition to Carnival's motion for summary judgment relied on his initial Rule 26(a)(1)(A) disclosures, his answers to interrogatories, and his claim that he concurrently was serving on Carnival an expert report containing a causation opinion.

These materials did not qualify as expert disclosures under either the Rules or the scheduling order. Scott admits as much on

appeal, accepting that his "disclosures were not adequate to meet the requirements of . . . Rule 26(a)(2)(C), nor did Mr. Scott's attorney timely or adequately disclose his retained expert under Rule 26(a)(2)(B)."[2] And because Scott never met his expert disclosure obligations under Rule 26(a)(2), no causation opinion from a medical expert was ever before the district court.

---

[2] While treating physicians may be non-retained experts who do not have to file expert witness reports in order to testify, *see Cedant v. United States*, 75 F.4th 1314, 1323 (11th Cir. 2023), Scott's initial disclosure only listed as his "expert witnesses not specifically retained" seven *facilities* where he sought medical treatment, repeating for each one that it has "[k]nowledge of damages and opinions regarding causation." His disclosure did not, however, contain any names of doctors or any summary of facts and opinions to which any witness would testify. Fed. R. Civ. P. 26(a)(2)(C). Scott's answers to interrogatories listed the same facilities, again without identifying any doctors as experts and without any expert opinion summaries. Scott's opposition to Carnival's motion for summary judgment also did not name any non-retained treating physician who would opine that Scott's fall caused his injuries. It merely repeated that one or more unnamed treating doctors would testify as to causation.

Scott's opposition to Carnival's motion for summary judgment also said that he had retained Dr. Andrew Ellowitz who authored a report dated December 18, 2023. According to the opposition, Dr. Ellowitz's report opined that "Alvin Scott sustained an injury . . . when he fell on a Carnival cruise ship on 5/26/2022 . . . . The injury caused [medical conditions which] required a stand-alone fusion on 11/22/2022 by Dr. James Bishop." But even if this report were timely disclosed -- which it was not -- it was never filed with the district court. Because claims in a party's statement of material facts are themselves not evidence but require a foundation in the record, *see* Fed. R. Civ. P. 56(c)(1), and because Scott never made Dr. Ellowitz's report a part of the record, the report could not create a genuine dispute as to causation. *Id*.

Recognizing this, Scott now argues that the district court abused its discretion when it found that Scott's failure to disclose his experts was neither substantially justified nor harmless under Rule 37(c). Under Rule 37(c), "[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). The burden of establishing that a failure to disclose was substantially justified or harmless rests on the nondisclosing party. *See Knight through Kerr v. Miami-Dade Cnty.*, 856 F.3d 795, 812 (11th Cir. 2017).

In evaluating whether the district court abused its discretion in excluding the testimony of a late witness under Rule 37, we consider: (1) the importance of the testimony; (2) the explanation for the failure to disclose the witness; and (3) the prejudice to the opposing party if the witness had been allowed to testify. *Romero v. Drummond*, 552 F.3d 1303, 1321 (11th Cir. 2008). We've held that the second and third factors, "together, can outweigh" the first. *Id.* In this case, the district court also considered a fourth factor -- the availability of a continuance to cure any prejudice caused by Scott's failure to disclose. *See Murphy v. Magnolia Elec. Power Ass'n*, 639 F.2d 232, 235 (5th Cir. 1981).[3] "Courts have broad discretion to exclude untimely expert testimony." *Guevara*, 920 F.3d at 718.

---

[3] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all Fifth Circuit decisions issued before October 1, 1981.

As for the first factor, the district court found that it weighed against exclusion because an expert opinion is required to prove medical causation in this kind of case. Scott does not challenge this finding but argues that because of its importance, this factor alone should have been dispositive of the district court's Rule 37(c)(1) analysis. However, we've said just the opposite: that the first factor is *less* important than the other two combined. *See Romero*, 552 F.3d at 1321 ("Regardless of the importance of the testimony, the reasons for the delay in the disclosure and the consequent prejudice that the testimony would have caused the nonmoving party require us to affirm the district court's ruling." (citation modified)). Accordingly, the district court's finding that the importance of the purported expert opinions weighed against exclusion did not preclude it from finding that the other factors justified exclusion.

As for the second factor, the district court did not improperly weigh Scott's explanation for his failure to make timely and adequate expert disclosures. On appeal, Scott gives no explanation, despite the requirement in the Rule itself for a "substantial" justification for a failure to provide expert disclosures that are not otherwise made known. Fed. R. Civ. P. 37(c)(1). Because Scott has not offered any explanation as to why he could not complete his expert disclosures by the deadline, we cannot say that the district court improperly weighed in favor of Rule 37(c)(1) exclusion Scott's reason (or lack thereof) for his untimely expert disclosure.[4]

[4] In district court, Scott argued that his late disclosure of Dr. Ellowitz was due to an agreement between the parties "to continue conducting discovery past

Turning to the third factor, Scott says that Carnival was not prejudiced by his late expert disclosures, and, moreover, accuses Carnival's counsel of "gamesmanship" by "fail[ing] to complain either to the Plaintiff or the district court that the Plaintiff's disclosures were inadequate." We are unpersuaded by Scott's suggestion that it was opposing counsel's duty to prosecute his case for him, especially where his counsel made no attempt to satisfy the clear schedule set in the case.

It's noteworthy that Scott was represented by counsel. To the extent the Rules Committee contemplated excusing inexperienced noncompliance with discovery rules, where the expert was not otherwise made known, it only did so for *pro se* litigants. *See id.*, Adv. Cmte.'s Note (1993) (excluding from penalties a situation involving "the lack of knowledge of a *pro se* litigant of the requirement to make disclosures," but only if the court or opposing party had not put the *pro se* party on notice of the requirement). This makes sense. "[C]ounsel are charged with knowledge of a reasonable interpretation of the law." *Booker v. Dugger*, 825 F.2d 281, 285 (11th Cir. 1987). And our law has long instructed that a plaintiff like Scott has the burden of proving medical causation, and that expert evidence is necessary to meet that burden. *See Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1320 (11th Cir. 1999) (noting

---

the original deadline." The district court found this argument "entirely unavailing" under Rule 26(a)(2)(D), which provides that parties "must make [expert] disclosures at the times and in the sequence that the court orders." Scott does not discuss this excuse on appeal and has abandoned the argument. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014).

that when the causal link between alleged injuries and an alleged incident is not readily apparent to a lay person, "medical expert testimony [i]s essential to prove causation"). Indeed, our Court squarely used this rule in the maritime context on August 14, 2023, *see Willis*, 77 F.4th at 1338 -- giving Scott and his counsel notice of his evidentiary needs three months before the November 16 expert disclosure deadline and nearly five months before the January 5 dispositive motion deadline. Yet, despite ample time to secure his expert opinions, Scott offers no reason for his failure to do so.

Nor, in any event, does Scott identify when Carnival would've had the opportunity to alert him or his counsel of his expert discovery deficiencies. This is not a case where he submitted faulty expert disclosures before the deadline that Carnival could have asked him to correct; he submitted nothing at all. Had Carnival informed him of his deficiencies on the last day, it would have been too late -- he would not have had time to correct the deficiencies or file a corrected report by the deadline. *See Romero*, 552 F.3d at 1324 ("The plaintiffs failed to provide any sufficient disclosures 'as required by Rule 26(a),' before the deadline, so they could not offer any expert witnesses at trial. Their decision to make their disclosures on the deadline . . . also meant that there might be no opportunity to supplement the disclosures." (citing Fed. R. Civ. P. 37(c)(1))). Indeed, the only expert report Scott makes reference to -- which he never even made part of the record -- is an expert report

dated December 18, 2023, well after the expert disclosure deadline and even after the discovery deadline.[5]

Further, Carnival has shown that it was prejudiced by Scott's failure. For one thing, there was no way for Carnival to glean from Scott's filings which of his treating physicians was to serve as an expert or what the opinions might be. As we've noted, the section in Scott's Rule 26(a)(1)(A) initial disclosure entitled "Expert

[5] As a result, none of the cases cited in Scott's brief support his claim that Carnival was obligated to compel him to serve a Rule 26(a)(2) expert disclosure, because in most of them, some form of Rule 26(a)(2) disclosure was made. *See Parks v. Walmart, Inc.*, No. 2:22-CV-00230-SCJ, 2024 WL 2161079, at *6, *13 (N.D. Ga. Apr. 29, 2024) (where a *pro se* plaintiff filed a "[n]otice regarding his treating physicians" two weeks after the expert disclosure deadline but before the discovery deadline, the notice identified their names and treatment narratives, and the names were already known to the defendant); *Hornsby v. Carnival Corp.*, No. 22-CV-23135, 2023 WL 8934518, at *10 (S.D. Fla. Dec. 27, 2023) (where the plaintiff "timely provided Defendant with the names of [the treating physicians] and a summary of the topics on which they will offer testimony"); *Torres v. Wal-Mart Stores E., L.P.*, 555 F. Supp. 3d 1276, 1300 (S.D. Fla. 2021) (where the plaintiff served a Rule 26(a)(2) summary for his treating physician before the close of discovery); *Galluccio v. Wal-Mart Stores E. LP*, No. 1:20CV240-MW/GRJ, 2021 WL 5033816, at *2 (N.D. Fla. Oct. 15, 2021) (N.D. Fla. Oct. 15, 2021) (where the plaintiff served a timely but insufficient expert disclosure describing the expert's "opinions, process, and methodology in as much detail as possible without having the final report in hand"); *Rossi v. Darden*, No. 16-21199-CIV, 2017 WL 2129429, at *1-2 (S.D. Fla. May 17, 2017) (where a party served a timely Rule 26(a)(2)(C) expert disclosure, and the later dispute concerned whether a Rule 26(a)(2)(B) disclosure was required); *Indus. Eng'g & Dev., Inc. v. Static Control Components, Inc.*, No. 8:12-CV-691-T-24-MAP, 2014 WL 4983833, at *3 (M.D. Fla. Oct. 6, 2014) (involving a party's untimely disclosure of a *fact* witness, from whom no disclosure of opinions was required, where the witness was known to all parties).

Witnesses Not Specifically Retained" only identified offices and facilities where Scott sought treatment, without the names of any physicians with opinions about causation, or summaries of these opinions. Nor has Scott cited anything for the proposition that Carnival should have assumed that every doctor mentioned in Scott's medical records would be testifying as an expert -- it's one thing for Carnival to use information from the records in the plaintiff's deposition, it's another thing to depose every single doctor mentioned, without any summary of what his or her opinion is. *See Prieto v. Malgor*, 361 F.3d 1313, 1317 (11th Cir. 2004) ("Notice of the expert witness' name is not enough."). Even on appeal, Scott's brief does not make clear which of his treating doctors he intended to present as experts, or state what opinions they would have offered if permitted to testify. Thus, as the district court found, Carnival was deprived of a meaningful opportunity to depose the treating physicians that Scott planned to use as experts.

The expectation -- plainly set forth in the scheduling order, and in Rule 26(a)(2)(A) itself, requiring expert witness disclosures "*[i]n addition to* the disclosures required by Rule 26(a)(1)," (emphasis added) -- is there for a reason. As we've said: "Because the expert witness discovery rules are designed to allow both sides in a case to prepare their cases adequately and to prevent surprise, compliance with the requirements of Rule 26 is not merely aspirational." *Reese v. Herbert*, 527 F.3d 1253, 1266 (11th Cir. 2008) (citation modified).

Scott also claims that Carnival was not prejudiced by his late disclosure of Dr. Ellowitz, a retained expert, in his motion

opposing summary judgment. But he did so *after* discovery closed, *after* the deadline to file motions challenging the experts, and *after* Carnival moved for summary judgment -- which gave Carnival no opportunity to obtain rebuttal opinions or depose Dr. Ellowitz. On this record, we cannot say that the district court abused its discretion in weighing the prejudice factor in favor of exclusion.

Finally, Scott says the trial court considered a fourth factor -- whether to grant a continuance -- but unjustifiably dismissed it. Generally speaking, "[d]istrict courts have unquestionable authority to control their own dockets," which "includes broad discretion in deciding how best to manage the cases before them." *Smith v. Psychiatric Solutions, Inc.*, 750 F.3d 1253, 1262 (11th Cir. 2014) (citation modified). "Discretion means the district court has a range of choice, and . . . its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law." *Josendis v. Wall to Wall Residence Repairs Inc.*, 662 F.3d 1292, 1306 (11th Cir. 2011) (citation modified). So, while a district court may "grant a *post hoc* extension of the discovery deadline for good cause, it [is] under no obligation to do so." *Id.* at 1307.

Not only was it well within the district court's discretion to deny a continuance or the reopening of discovery, but the district court gave a reason -- that trial was to begin in only two weeks and that Scott had not excused his missed deadlines. We've "often held that a district court's decision to hold litigants to the clear terms of its scheduling orders is not an abuse of discretion." *Id.* Particularly so here, where Scott waited until the last possible minute, and did

not explain his deficiency or his delay. *See Bearint ex rel. Bearint v. Dorell Juvenile Grp., Inc.*, 389 F.3d 1339, 1349 (11th Cir. 2004) ("Although the district court may have had discretion to admit an untimely report, it did not abuse its discretion to exclude it as untimely in the circumstances under which the [party] offered it.") (citation omitted).[6]

In short, the district court did not abuse its discretion in excluding Scott's experts under Rule 37(c)(1). Moreover, because Scott failed to submit any evidence establishing that his fall on the cruise was the cause of his claimed damages -- an undisputed element for all of his claims -- the district court did not err in granting summary judgment to Carnival on all counts.[7] Accordingly, we

---

[6] As for Scott's complaint that the district court put his case on a "rocket docket," it ignores his role in scheduling. Under the Southern District of Florida's Local Rules, civil cases fall into one of three case management tracks. The "expedited track" is for "relatively non-complex case[s] requiring only one (1) to three (3) days of trial," and for these cases, "discovery shall be completed within . . . ninety (90) to 179 days from the date of the Scheduling Order." S.D. Fla. R. 16.1(a)(1)(A). In his scheduling report, Scott estimated his trial to take about 3 days. The July 2023 scheduling order set the discovery deadline as December 16, 2023 (100 days before a March 25, 2024 trial date), thus setting 162 days for discovery, which was more than adequate under the Local Rule.

[7] To the extent Scott argues on appeal that the testimony of Carnival's corporate representative, Rolando Diaz, is sufficient evidence of causation, we are unconvinced. First, Scott failed to properly brief this issue and has waived it. *See Sapuppo*, 739 F.3d at 681. But even if he'd preserved the issue, testimony from Carnival's corporate representative is not medical expert testimony, so it is insufficient to establish medical causation. *Cf. Willis*, 77 F.4th at 1339 (holding that the plaintiff's own testimony about her neck injury was not evidence of proximate cause, since she was "not a medical expert").

need not consider the parties' alternate arguments on appeal, *see Willis*, 77 F.4th at 1336 n.6, and we affirm.

AFFIRMED.