

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-7142

September Term, 2018

Filed On: April 29, 2019

TAMEA GRANT,

APPELLANT

v.

ENTERTAINMENT CRUISES AND SPIRIT CRUISES, LLC, 17-CV-1410,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cv-01159)

Before: GARLAND, *Chief Judge*, HENDERSON, *Circuit Judge*, and SENTELLE, *Senior Circuit Judge*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia and the briefs of the parties. The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). For the reasons set forth in the attached memorandum, it is

ORDERED AND ADJUDGED that the decision of the District Court be affirmed.

Pursuant to Rule 36 of this Court, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. *See* Fed R. App. P. 41(b); D.C. Cir. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

No. 18-7142**September Term, 2018****MEMORANDUM**

Grant appeals from a judgment entered against her after a bench trial in an action for personal injury she brought under the Jones Act, 46 U.S.C. § 30104. She asserts two assignments of error, neither of which presents any reversible error on the part of the trial court.

The first assignment alleges that the district court erred in restricting the testimony of her two proffered expert witnesses regarding diagnosis and physical restrictions related to her injuries allegedly sustained in her employment as a seaman. However, she did not disclose any expert testimony in compliance with Rule 26(a)(2)(D) of the Federal Rules of Civil Procedure. It was not until six weeks after the expiration of the disclosure deadline set by the district judge, and only forty-five days before trial, that she disclosed her intention to call two medical doctors to testify and offer expert opinions. Upon motion of the defendants, the district court ruled that Grant's failure to disclose was not "substantially justified or [] harmless," within the meaning of Rule 37(c)(1). Fed. R. Civ. P. 37(c)(1). The court therefore precluded the witnesses as experts, but allowed the treating physician to testify as a fact witness. Appellant assigns this ruling as error. We disagree.

Rule 37(c)(1) governs a party's failure to make timely disclosure of such matters as proposed expert witnesses. The rule gives the trial court broad options for dealing with such failure to disclose. In particular, it provides that, "[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 . . . at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). In addition, the court "may impose other appropriate sanctions, including any of the orders

listed in Rule 37(b)(2)(A)(i)–(vi).” Fed. R. Civ. P. 37(c)(1)(C). The referenced sanctions include “prohibiting the disobedient party . . . from introducing designated matters in evidence.” Fed. R. Civ. P. 37(b)(2)(A)(ii). The district judge’s ruling on this matter falls well within the discretion afforded by the rules.

Federal Rule of Civil Procedure 26(a)(2)(D) requires that, “[a]bsent a stipulation or a court order, the disclosures [of expert testimony] must be made: [] at least 90 days before the date set for trial or for the case to be ready for trial.” As we have observed, “Under Rule 37(c)(1), if a party fails to disclose the information required by Rule 26(a), its expert may not testify as to that information—‘unless such failure is harmless.’” *Muldrow ex rel. Estate of Muldrow v. Re-Direct, Inc.*, 493 F.3d 160, 167 (D.C. Cir. 2007) (quoting Fed. R. Civ. P. 37(c)(1)).

As one of our sister circuits has observed, a trial court’s decision to preclude testimony that was not disclosed as required under Rule 26(a) “falls in the heartland of case management decisions—the area where a trial judge has the remorseless responsibility, evenhandedly and efficiently, to govern, monitor, and police the progress of an endless line of cases through the court.” *Gagnon v. Teledyne Princeton, Inc.*, 437 F.3d 188, 191 (1st Cir. 2006).

Our review is highly deferential. Appellant has offered nothing to establish that the district court has abused its broad discretion and the court plainly held that failure to disclose was not substantially justified or harmless. In short, appellant’s first issue not only discloses no reversible error, it discloses no error at all.

Appellant’s second allegation of error argues that the district court erred in concluding that her testimony was not credible and that the defendant’s witnesses’ testimony was. If anything, this argument urges us to invade even more deeply into the district court’s discretion than did the first.

Findings of fact and determinations of credibility are reviewed only under the most deferential of standards. “Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court’s opportunity to judge the witnesses’ credibility.” Fed. R. Civ. P. 52(a)(6); *see Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985).

Where, as here, “findings are based on determinations regarding the credibility of witnesses, Rule 52(a) demands even greater deference to the trial court’s findings; for only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener’s understanding of and belief in what is said.” *Anderson*, 470 U.S. at 575. By rule and by caselaw, we are most constrained in our review of findings, and especially of credibility. Appellant offers nothing to take this case outside the norm.

For the foregoing reasons, we affirm the decision of the district court granting judgment for the defendant.