

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Mashelia Gibson v. Maryland Motor Vehicle Administration

Gibson · No. 20-cv-3220-ABA · Decided April 6, 2026

SUMMARY

The United States District Court for the District of Maryland granted the Maryland Motor Vehicle Administration’s motion to strike and exclude the de bene esse deposition testimony of Plaintiff’s handwriting expert, Wendy Carlson. The court held that the opinions offered at deposition were not disclosed in the expert report and that the nondisclosure was neither substantially justified nor harmless under Federal Rules of Civil Procedure 26 and 37.

CASE DETAILS

COURT	United States District Court for the District of Maryland
WRITING FOR THE COURT	Adam B. Abelson
JURISDICTION	United States District Court for the District of Maryland
DECIDED	April 6, 2026
DOCKET	20-cv-3220-ABA
DISPOSITION	other
PROCEDURAL POSTURE	The court considered the defendant's motion to strike and exclude the plaintiff's handwriting expert's de bene esse deposition testimony from use at trial.
STANDARD OF REVIEW	Under Federal Rule of Civil Procedure 37(c)(1), an undisclosed expert opinion is excluded unless the failure to disclose was substantially justified or harmless.
PRECEDENTIAL VALUE	unpublished
PARTIES	Mashelia Gibson v. Maryland Motor Vehicle Administration

TOPICS

- expert testimony
- discovery dispute
- evidence
- civil procedure

PRACTICE AREAS

- civil procedure
- evidence
- expert testimony
- employment and civil rights litigation

QUESTIONS PRESENTED

1. Whether the plaintiff's handwriting expert's de bene esse deposition testimony should be excluded because it disclosed opinions not contained in the expert's report.
2. Whether the plaintiff's failure to supplement or provide a rebuttal expert report was substantially justified or harmless under Federal Rule of Civil Procedure 37(c)(1).
3. Whether the plaintiff could testify about her own handwriting and writing conduct without offering specialized handwriting-analysis opinions.

HOLDINGS

1. An expert may not offer at trial opinions that were not disclosed in the expert's report or in a required supplemental or rebuttal report.
2. Exclusion was warranted because the plaintiff's failure to disclose the additional expert opinions was neither substantially justified nor harmless.
3. The plaintiff may generally testify about how she writes and what she did or did not write, but may not offer testimony requiring specialized knowledge of handwriting analysis.

KEY QUOTATIONS

“that it is highly probable that the person who signed the Mashelia Gibson signatures on the ‘K’ documents was not the author of the Mashelia Gibson signature on the questioned document” (ECF No. 193-1 at 3)

“Because Plaintiff has failed to comply with the expert disclosure requirements in Rule 26(a)(2), and because the failure is neither substantially justified nor harmless under Rule 37(c), Defendant’s motion to exclude Ms. Carlson’s de bene esse testimony is granted, and Plaintiff may not offer or refer to that testimony at trial.”
(Memorandum Opinion and Order)

FACTUAL BACKGROUND

The plaintiff disclosed a handwriting expert report addressing whether questioned initialed signatures labeled Q1 through Q4 were authored by the person whose known signatures were labeled K1 through K5. During the expert's de bene esse deposition, the expert did not testify about that disclosed opinion and instead offered additional opinions concerning the authorship of other writing and markings on a mileage log, including whether different entries were written by different people. The plaintiff had not disclosed those additional opinions in a supplemental or rebuttal report, and the defendant's expert therefore could not review or effectively respond to them.

PROCEDURAL HISTORY

The defendant moved to exclude the de bene esse deposition testimony of the plaintiff's handwriting expert, arguing that the testimony addressed opinions not disclosed in the expert's report and that the plaintiff had not served a supplemental or rebuttal report. After a hearing on April 6, 2026, the court granted the motion and excluded the deposition testimony. The court did not reach the defendant's alternative challenge to the expert's methodology or factual basis, and the plaintiff subsequently notified the court that she did not intend to call the expert at trial.

DISPOSITION

other

CASES CITED

- Osunde v. Lewis, 281 F.R.D. 250, 257 (D. Md. 2012)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
MASHELIA GIBSON, Plaintiff, Action No. 20-cv-3220-ABA v. MARYLAND MOTOR
VEHICLE ADMINISTRATION, Defendant
MEMORANDUM OPINION AND ORDER
Upon consideration of Defendant's motion to strike and exclude the de bene esse deposition testimony of Plaintiff's handwriting expert, Wendy Carlson (ECF No. 193) and the response thereto (ECF No. 194), and for the reasons stated during the April 6, 2026 hearing on the motion, it is ORDERED that the motion is GRANTED and Ms. Carlson's de bene esse deposition testimony is STRICKEN and EXCLUDED from use at trial.

In her expert report, Ms. Carlson's opined on whether a series of initialed signatures designated Q1 through Q4, found on a mileage log, were written by Ms. Gibson, by comparing those initialed signatures to a set of known initialed signatures from Plaintiff designated K1 through K5. See ECF No. 193-1 (report).

The parties held a de bene esse deposition of Ms. Carlson on April 2, 2026, at which Ms. Carlson agreed that this was the question asked and the opinion that she offered in her report. See ECF No. 193-2, Tr. 123:10–23. (“Q: Just to be 100 percent crystal clear, your -- the opinion you rendered in your report was that the -- the initials here at the end of these three lines and the initials here on this line were the only things that you rendered an opinion as to the -- the authorship of those lines, correct, those writings?

A: That's -- yes, sir. Q: And it was your official opinion that those four sets of initials were not signed by the person that provided you the purported known signatures, correct? A. Correct.”). At her deposition, Ms. Carlson did not give any testimony on that opinion. Instead, she testified only regarding additional opinions that were not included in her expert report, including that based on the all the writing on the mileage log (rather than just the initialed signatures), the third entry had been written by someone different than the person who wrote the first two entries.

That opinion was not disclosed in her expert report, which as noted above was limited to the opinion that the initialed signatures on the mileage log (labeled Q1 through Q4) were written by someone different than the person who wrote the known initialed signatures (labeled K1 through K5). Plaintiff's counsel acknowledged at the deposition that Ms. Carlson did not testify regarding the opinion found in her expert report.

ECF No. 193-2, Tr. 116:1–12. (“Q: Now, Ms. Carlson, in this case, you rendered an opinion when you compared those initials at the end of the line to the full signatures in the -- your known exemplars. And your opinion was that it was highly probable that the question -- that the -- Q1 through Q4 were forged. Isn’t that -- wasn’t that your opinion?” MR. DAY: Objection.

Mischaracterizes the testimony. MR. DEBES: She hasn’t testified to it yet.”). And Ms. Carlson herself acknowledged that the additional opinions she gave during the deposition were not found in her report. ECF No. 193-2, Tr. 122:21–123:9. (“Q: And there are no specific findings that you made in the report regarding line three compared to lines one and two, correct?

A. Correct. Q: And there are no specific findings in the report where you compared the Q1 through 4 signatures against each other, correct? A: Correct. Q: And you rendered no opinion on your official report about line three compared to lines one and two, correct? A: Correct.”).

Finally, although Plaintiff did not file a rebuttal report, Ms. Carlson provided rebuttal testimony during her de bene esse deposition. ECF No. 193-2, Tr. 28–38. Rule 26(a)(2)(B) requires that a retained expert’s report contain “a complete statement of all opinions the witness will express and the basis and reasons for them [and] the facts or data considered by the witness in forming them.” Fed.

R. Civ. P. 26(a)(2)(B); see also *Osunde v. Lewis*, 281 F.R.D. 250, 257 (D. Md. 2012). And if an expert intends to rebut the opposing party’s expert witness, counsel must file an additional report. Fed. R. Civ. P. 26(a)(2)(D)(ii). Similarly, a party must supplement an expert report “if the party learns that in some material respect the disclosure or response is incomplete or incorrect.” Fed.

R. Civ. P. 26(a)(2)(E), (e)(1)(A). Ms. Carlson’s report disclosed a single opinion: “that it is highly probable that the person who signed the Mashelia Gibson signatures on the ‘K’ documents was not the author of the Mashelia Gibson signature on the questioned document” (in other words that “the person who signed the Mashelia Gibson signatures on the ‘K’ documents was not the author of the Mashelia Gibson signatures on the upper right section of the questioned document”).

ECF No. 193-1 at 3. As stated, Ms. Carlson’s testimony at the de bene esse deposition did not address that opinion; Plaintiff no longer offers expert testimony at trial on the sole opinion for which she disclosed an expert report. Instead, Plaintiff wishes to have Ms. Carlson offer different opinions at trial, including comparing the initials among the “Q” initials—and more broadly to opine about other “markings” on the mileage log—to opine that different people likely wrote different parts of the mileage log.

That opinion is untethered to any comparison to Ms. Gibson’s known initials (the “K” signatures). Thus, the opinion that Plaintiff elicited at the de bene esse deposition and wishes to offer at trial was not among those stated in Ms. Carlson’s report, as required by Rule 26(a)(2)(B). And Plaintiff never disclosed any supplemental or rebuttal report from Ms. Carlson, as would be required for

Plaintiff to be permitted to offer opinions from Ms. Carlson beyond those contained in her original report.

For these reasons, Ms. Carlson's de bene esse deposition testimony is subject to exclusion at trial under Rule 37(c) "unless the failure is substantially justified or is harmless." Fed. R. Civ. P. 37(c) (1). Plaintiff's counsel's questioning at the deposition shows that they were aware of Ms. Carlson's additional opinions and rebuttals, yet they did not file a supplementary report.

In her response, Plaintiff argues that the new arguments were not new and were consistent with the findings in the report. This is an inaccurate depiction of Ms. Carlson's report and her deposition testimony, as explained above; the testimony offered constitute opinions that were not disclosed in Ms. Carlson's report. Plaintiff also argues that allowing the use of Ms. Carlson's de bene esse deposition testimony at trial will not cause any prejudice because Defendant should have been aware that Ms. Carlson would proffer the opinions that she gave during the deposition.

The Court concludes that Plaintiff has not provided substantial justification for her failure to supplement Ms. Carlson's report and that the result is not harmless because Defendant was not able to have its expert review the new opinions or effectively cross-examine Ms. Carlson on them.

Because Plaintiff has failed to comply with the expert disclosure requirements in Rule 26(a)(2), and because the failure is neither substantially justified nor harmless under Rule 37(c), Defendant's motion to exclude Ms. Carlson's de bene esse testimony is granted, and Plaintiff may not offer or refer to that testimony at trial. This order does not necessarily preclude Plaintiff from calling Ms. Carlson to testify at trial about the opinion that was properly disclosed (though to do so Plaintiff would need to call Ms. Carlson as a live witness at trial, as the time has passed for any de bene esse depositions to occur).

As stated during the hearing, if Plaintiff wishes to call Ms. Carlson as a witness, she would need to provide notice to Defendant and the Court of such intent, because Defendant has alternatively moved to exclude Ms. Carlson's testimony based on an inadequate methodology or factual basis. Following the hearing, Plaintiff filed a notice stating that she does not intend to call Ms. Carlson at trial.

Accordingly, the Court need not and does not rule on the merits or timing of Defendant's alternate argument for excluding Ms. Carlson's testimony. Finally, as discussed in more detail during today's hearing, Plaintiff may generally testify about how she writes and what she did or did not write, but Plaintiff may not testify about issues requiring specialized knowledge of handwriting analysis.

April 6, 2026 _____/s/_____ Adam B. Abelson United States District Judge

