

FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT

John A. Miller v. Janay Conney

Miller v. Conney, No. 1D2023-1919 (Fla. 1st DCA June 18, 2025) · No. 1D2023-1919 · Decided June 18, 2025

SUMMARY

The Florida First District Court of Appeal held that the trial court abused its discretion by admitting a late-disclosed radiofrequency ablation cost estimate and related testimony concerning the plaintiff’s future medical expenses. Applying the *Binger v. King* Pest Control analysis, the court found that the evidence created unfair surprise and that the defendant lacked a sufficient opportunity to cure the prejudice. The court reversed the award for future medical expenses and remanded for a new trial limited to those damages, affirming the judgment in all other respects.

CASE DETAILS

COURT	Florida District Court of Appeal, First District
WRITING FOR THE COURT	Per Curiam; Lewis, J.; Roberts, J.; Tanenbaum, J.
JURISDICTION	Florida First District Court of Appeal
DECIDED	June 18, 2025
DOCKET	1D2023-1919
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Miller appealed a final judgment entered after a jury trial in favor of Conney in an automobile-collision negligence action. He challenged the denial of his motions for a directed verdict and a new trial and the admission of an RFA cost estimate and related testimony.
STANDARD OF REVIEW	Clear abuse of discretion for the trial court's ruling on the admissibility of evidence.
PRECEDENTIAL VALUE	published
PARTIES	John A. Miller v. Janay Conney

TOPICS

- evidence
- preservation of error
- motion for new trial
- damages
- negligence

PRACTICE AREAS

- evidence
- civil procedure
- personal injury
- negligence
- damages

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion under *Binger v. King Pest Control* by admitting a late-disclosed RFA cost estimate and related new testimony concerning future medical expenses.
2. Whether the trial court erred by denying Miller's motion for a continuance to consult his expert about the late-disclosed cost estimate.
3. Whether the trial court erred by denying Miller's motion for a directed verdict regarding future medical expenses.
4. Whether the hearsay and personal-knowledge objections to the cost estimate were preserved for appellate review.

HOLDINGS

1. The trial court abused its discretion by admitting the RFA cost estimate and Dr. Saatman's corresponding testimony because the estimate was new evidence disclosed during trial after discovery had closed, creating surprise and prejudice under the *Binger* analysis.
2. A party seeking future medical expenses must present evidence from which the jury can determine the amount of those expenses with reasonable certainty; the undisclosed RFA estimate and related testimony could not properly serve as the sole proof of that amount under the circumstances presented.
3. The hearsay challenge was not preserved because Miller did not state hearsay as the specific legal ground for his trial objection.

KEY QUOTATIONS

“Prejudice in this sense refers to the surprise in fact of the objecting party, and it is not dependent on the adverse nature of the testimony.” (4)

“Thus, Conney’s production of the cost estimate letter mid-trial is a classic example of surprise and trial by ambush.” (5)

“For the foregoing reasons, we conclude that the trial court abused its discretion by admitting into evidence the RFA cost estimate and Dr. Saatman’s corresponding testimony, which served as Conney’s only evidence of her future medical expenses.” (6)

“AFFIRMED in part, REVERSED in part, and REMANDED with directions.” (6)

“When an expert’s testimony acts as a conduit for inadmissible hearsay, the evidence is presented to the jury without affording the opposing party an opportunity to cross-examine and impeach the source of the hearsay.” (8)

FACTUAL BACKGROUND

Conney sought damages after an automobile collision and claimed future medical expenses for radiofrequency ablation procedures. Her treating physician, Dr. Donna Saatman, disclosed before trial that she recommended the procedures but testified at deposition that she did not know their total cost. During the second day of trial, Conney produced a cost estimate prepared by an undisclosed surgery-center administrator stating that the

procedure would cost approximately \$35,000 to \$45,000. The trial court admitted the estimate and allowed Dr. Saatman to testify about it, even though the administrator did not testify and the estimate was Conney's only evidence of future medical costs.

PROCEDURAL HISTORY

Conney sued Miller for damages allegedly resulting from Miller's negligent operation of a vehicle. After the trial court admitted a previously undisclosed RFA cost estimate and denied Miller's motion for a continuance, the jury awarded Conney future and past medical expenses and pain-and-suffering damages. The trial court denied Miller's motion for a new trial and entered final judgment for \$298,656.97. The First District affirmed the judgment in all respects except the award of future medical expenses, which it reversed and remanded for a new trial limited to those damages.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the award for future medical expenses and remand for a new trial on future medical expenses only. Affirm the final judgment in all other respects.

CASES CITED

- *Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981)
- *Shaw v. Jain*, 914 So. 2d 458, 460 (Fla. 1st DCA 2005)
- *Ray v. State*, 755 So. 2d 604, 610 (Fla. 2000)
- *Drs. Co. v. Plummer*, 210 So. 3d 711, 718 (Fla. 5th DCA 2017)
- *Montero v. Corzo*, 320 So. 3d 976, 980 (Fla. 3d DCA 2021)
- *Smith v. Univ. Med. Ctr., Inc.*, 559 So. 2d 393, 395 (Fla. 1st DCA 1990)
- *Gen. Emps. Ins. Co. v. Isaacs*, 206 So. 3d 62, 63 (Fla. 4th DCA 2016)
- *Lee v. Sovereign Camp, W.O.W.*, 152 So. 17, 18 (Fla. 1934)
- *Linn v. Fossum*, 946 So. 2d 1032, 1037-38 (Fla. 2006)
- *Crawford v. Washington*, 541 U.S. 36 (2004)
- *Special v. W. Boca Med. Ctr.*, 160 So. 3d 1251, 1256 (Fla. 2014)
- *Ruiz v. Tenet Hialeah Healthsystem, Inc.*, 260 So. 3d 977, 983 (Fla. 2018)