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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1320-14T2

JANET NICHOLAS,

Plaintiff-Appellant,

v.

GILSON SOUZA,

Defendant-Respondent.

Argued December 1, 2016 — Decided February 27, 2017

Before Judges Lihotz and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Hunterdon County, Docket No. DC-
0597-14.

Janet Nicholas, appellant, argued the cause
pro se.

Respondent has not filed a brief.

PER CURIAM

Plaintiff Janet Nicholas appeals from a September 9, 2014
order dismissing her complaint with prejudice. We affirm.

Plaintiff filed a complaint on January 10, 2014, asserting a
\$10,000 claim against defendant, Gilson Souza, for destruction of

property and defective engine repair. On February 20, 2014, defendant answered, admitting he repaired plaintiff's engine but denied plaintiff's claim for money damages.

The case was tried on September 9, 2014. Since plaintiff was self-represented, the trial judge conducted questioning. Plaintiff testified she took her vehicle to defendant's repair shop to replace the engine of her vehicle. Plaintiff had her vehicle towed to defendant's shop but was uncertain about the exact date. Defendant told her the cost would be \$5324.08 and he required a \$2995 deposit. Plaintiff picked up her vehicle on February 25, 2013, at which time she received an invoice for the repairs. She testified she began to have problems with her vehicle as soon as she picked it up. Specifically, plaintiff testified the vehicle was shaking, running slowly, and the windshield was cracked.

Plaintiff called defendant who denied responsibility for damage but eventually agreed to replace the windshield. Plaintiff testified the windshield defendant installed was not of the same quality and did not have the features of the windshield it replaced. Plaintiff also testified about numerous other problems and repairs, some allegedly necessitated by defendant's engine replacement, including oil and coolant leaks, the engine smoking,

a broken fan, holes drilled into the radiator, a broken antenna and a broken decal.

Plaintiff's expert, a factory-trained mechanic from a BMW dealership where plaintiff brought her vehicle for service, also testified. During his testimony he revealed he had not worked on, nor had he ever seen, plaintiff's car. The trial judge granted the defense motion to strike plaintiff's expert, as he had no personal knowledge of plaintiff's vehicle.

At the end of plaintiff's case, defendant moved for dismissal. Considering the facts in the light most favorable to plaintiff, the trial judge determined, plaintiff could not sustain the burden of proving the jerking and smoking engine were the result of defendant's work on the vehicle without the benefit of expert testimony. Regarding the windshield, the trial judge determined the replaced windshield met all the criteria of the original windshield. The trial judge granted defendant's motion to dismiss with prejudice as to claims concerning the engine and windshield. With respect to the broken decal, the broken fan, and holes drilled into the radiator, the trial judge determined these claims did not require expert testimony and denied defendant's motion as to those items.

Defendant testified in detail about the work he performed on plaintiff's vehicle, including the installation of the engine, the

radiator, and subsequent oil changes. Defendant testified the car wash broke the vehicle's antenna, but defendant replaced it. Defendant denied responsibility for breaking plaintiff's decal or the fan.

At the conclusion of the trial, the judge found no evidence to support plaintiff's claims regarding the radiator, the decal, or the fan, and signed an order dismissing plaintiff's complaint with prejudice. This appeal followed.

On appeal, plaintiff argues the trial judge erred by refusing to permit her expert to testify. Plaintiff also argues the judge treated her unfairly throughout the trial. After a thorough review of the trial record, we disagree and affirm.

The admissibility of expert testimony is committed to the sound discretion of the trial court. Townsend v. Pierre, 221 N.J. 36, 52 (2015) (citing State v. Berry, 140 N.J. 280, 293 (1995)). A trial court's grant or denial of a motion to preclude expert testimony is entitled to deference on appellate review. Ibid. (citations omitted). We are instructed to "apply [a] deferential approach to a trial court's decision to admit expert testimony, reviewing it against an abuse of discretion standard." Id. at 53 (alteration in original) (quoting Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371-72 (2011)). Expert testimony is admissible when the intended testimony concerns

(1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the art such that an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony.

[State v. Kelly, 97 N.J. 178, 208 (1984).]

Expert testimony is inadmissible if based upon "mere speculation or possibility, unsupported by the evidence." Vuocolo v. Diamond Shamrock Chems. Co., 240 N.J. Super. 289, 299 (App. Div. 1990).

Here, the trial judge struck plaintiff's expert because, although familiar with plaintiff's type of vehicle, he had no personal knowledge about her particular vehicle and could not testify about the condition of the vehicle. We discern no abuse of the trial judge's discretion to strike plaintiff's expert. Moreover, there is no evidence in the record to suggest the trial judge treated plaintiff unfairly or demonstrated bias. "Bias cannot be inferred from adverse rulings against a party." Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION