

**IN THE COURT OF APPEALS OF IOWA**

No. 8-423 / 07-1098

Filed June 25, 2008

**CHARLES K. JAMES, SR.,**  
Plaintiff-Appellant,

**vs.**

**JANET M. MILLER,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Charles James appeals the jury verdict returned in favor of defendant.

**AFFIRMED.**

Donald Williams, Des Moines, for appellant.

Clark Mitchell, Des Moines, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

**SACKETT, C.J.**

Appellant Charles James sued appellee Janet Miller for injuries he claimed to have received in a 2003 automobile accident with Miller where she admitted liability. The jury returned a defendant's verdict. James appeals contending the district court erred in (1) admitting evidence of his criminal background and (2) not granting his motion for continuance when his treating physician was not available to testify. We affirm.

**I. BACKGROUND FACTS AND PROCEEDINGS**

James claims the accident with Miller caused injuries in his neck, shoulders, knee, and lower back. Dr. Kevin Moore, James's treating physician before and after the accident indicated that James had problems with lower back pain before the accident occurred.

At trial the sole issue was whether Miller's admitted fault was a proximate cause of damage to James. Prior to trial James made a motion in limine to exclude evidence regarding his criminal record that Miller planned to introduce to refute James's future earning capacity. The court overruled James's motion but in doing so stated that no documents would be allowed to be introduced into evidence until the court had an opportunity to examine them. When James was later questioned about his criminal background, his attorney did not object.

James also made a motion to continue when he discovered that Dr. Moore would not be available. The court denied the motion to continue reasoning there was uncertainty as to when the witness would be available, James had failed to depose or subpoena the witness, and it would be unfair to make the jury wait.

The jury unanimously found that Miller's fault was not a proximate cause of any damage to James and a verdict was entered for defendant.

## **II. STANDARD OF REVIEW**

We review the district court's ruling on the admission of relevant evidence for an abuse of discretion. *State v. Henderson*, 696 N.W.2d 5, 10 (Iowa 2005). We will not find abuse of discretion unless it is shown that the district court's "discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Morrison*, 323 N.W.2d 254, 256 (Iowa 1982). We review the district court's decision to deny a motion for continuance for an abuse of discretion. *Dep't of Gen. Servs., State of Iowa v. R.M. Boggs Co., Inc.*, 336 N.W.2d 408, 410 (Iowa 1983). The district court's ruling is presumptively correct, and the "party challenging the ruling has a heavy burden to overcome the presumption." *Countryman v. McMains*, 381 N.W.2d 638, 640 (Iowa 1986).

## **III. ADMISSION OF CRIMINAL BACKGROUND EVIDENCE**

James made a motion in limine to exclude documents detailing his criminal history, claiming that the probative value of such information did not outweigh the danger of unfair prejudice. His motion was overruled and he claims this was error.

The general rule is that the denial of a motion in limine is not reversible error. *Tratchel v. Essex Group, Inc.*, 452 N.W.2d 171, 178 (Iowa 1990). Therefore, in order to preserve error after a motion in limine has been denied, generally counsel must object when the evidence is offered. *Id.* An exception to this rule is made and counsel does not have to object to the introduction of such

evidence at trial where the ruling on the motion in limine was an unequivocal holding disposing of the issue raised. *State v. Harlow*, 325 N.W.2d 90, 91 (Iowa 1982). Thus our role is to decide whether the district court resolved the motion in limine “in such a way it is beyond question whether or not the challenged evidence will be admitted during trial.” *State v. Miller*, 229 N.W.2d 762, 768 (Iowa 1975). A ruling which is meant only to grant or deny protection from prejudicial references to challenged evidence is not a final ruling, but a ruling which “reaches the ultimate issue and declares the evidence admissible or inadmissible” is likely a final ruling and objections do not need to be renewed at trial. *State v. O’Connell*, 275 N.W.2d 197, 202 (Iowa 1979).

In considering the motion in limine, the district court said that its purpose was “simply to address initially whether or not the . . . prior convictions [are] so prejudicial that [they] should not even be allowed to be mentioned in front of this jury.” Concerning the documents that James wanted excluded from evidence, the court stated that “without looking at all of these documents, [I’m] not sure that all of these are necessary.” The district court further stated “I will agree at this point in time that any of these documents will not be allowed to be introduced into evidence until I’ve had an opportunity to examine them.” Ultimately, the court decided that it would allow mention of prior convictions until it had a chance to look at all of the documents to which James objected. The district court overruled James’s motion in limine, explaining “to the extent that you’re asking that I preclude the defense from even mentioning these prior convictions . . . I’m overruling your motion at this time.” Finally, the district court clarified that “at this point in time . . . without having the opportunity to address this further outside the

presence of the jury,” limitations would be placed on what evidence could be presented. The district court made it clear that this ruling was an initial ruling. The court expressed concern regarding its lack of opportunity to review and examine all of the documents that were the subject of James’s motion. The court repeatedly used phrases such as “at this point” which indicate that the court’s ruling was not final. Because the district court still had to review the documents in question, it was not “beyond question” that the evidence would be admitted at trial. See *State v. Tangie*, 616 N.W.2d 564, 569 (Iowa 2000). The ruling was not a final ruling, and thus to preserve the issue for appeal, James had to object to the introduction of criminal background evidence at trial. James did not object to the evidence when it was presented at trial and has waived the issue for appeal. *Tratchel*, 452 N.W.2d at 178.

#### **IV. MOTION TO CONTINUE**

James also argues that the district court abused its discretion when it denied his motion to continue filed upon discovering that Dr. Moore, a key witness, was not available to testify.

We look to Iowa Rule of Civil Procedure 1.911(2) which addresses what a party must show in a motion to continue based on the absence of evidence and requires that the moving party show what efforts “have been made to obtain the witness or the witness’ testimony, . . . facts showing reasonable grounds to believe the testimony will be procured by a certain, specified date,” and what particular facts the witness will prove that no other witness could fully prove. Iowa R. Civ. P. 1.911(2).

James did not depose or subpoena Moore. He did not discover that Moore would be unavailable on the day it was planned he would testify until that morning when James called Moore's office and was informed that Moore was still out of the country.

In addition, James was unable to provide a specific date when Moore would be available to testify. Finally, James failed to show that Moore would provide any evidence not already introduced. Forty-five pages of Moore's treating notes had already been admitted into evidence. James informed the court that Moore would not testify about causation. We cannot find that the district court abused its discretion in denying James's motion for continuance.

## **V. CONCLUSION**

We find that James did not preserve error to appeal from the admission of evidence relating to his criminal history and the district court did not err in denying James's motion for continuance.

**AFFIRMED.**