

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION

ANTHONY ALLEN JORDAN,

Plaintiff,

v.

Case Number: 2017-CA-001913

GAUDENCIA HERNANDEZ, TRINITY  
SERVICES GROUP, INC. a Florida Profit  
Corporation, and RYDER TRUCK RENTAL  
LT, a Florida Trust d/b/a RYDER TRUCK  
RENTAL, INC., a Florida Profit Corporation,

Defendants.

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**PLAINTIFF'S MOTION IN LIMINE REGARDING ALLEGED ADDICTION**

Plaintiff, ANTHONY ALLEN JORDAN, moves this Honorable Court to enter an Order in Limine that prohibits the admission into evidence, elicitation of testimony, expert opinion, questioning, argument, comments, references or discussion by Defendants pertaining to Plaintiff's alleged (and completely speculative) addiction to drugs, including but not limited to cocaine. In support thereof, Plaintiff states as follows:

1. This is a personal injury matter arising out of damages sustained by Plaintiff in a motor vehicle crash, where Defendant, GAUDENCIA HERNANDEZ, while acting in the course and scope of her employment with Defendant, TRINITY SERVICES GROUP, INC., rear-ended Plaintiff.

2. Plaintiff anticipates that Defendants' experts may improperly seek to prejudice Plaintiff and diminish Plaintiff's damages by implying or commenting that Plaintiff suffered from an addiction to any drug, including but not limited to cocaine.

3. Although this Court has already granted *Plaintiff's Motion in Limine Regarding Plaintiff's Prior Alcohol and Drug Usage* on October 26, 2018, and *Plaintiff's Motion in Limine to Exclude Bad Acts or Bad Character* on October 26, 2018. Defendants have continued to disregard this Court's Order specifically through the reports and deposition testimony of their specially retained experts, thus requiring this additional and more specific Motion in Limine.

4. "The purpose of a motion in limine is to exclude irrelevant and immaterial matters." Devoe v. Western Auto Supply Co., 537 So. 2d 188, 189 (Fla. 2d DCA 1989). Moreover, evidence should be excluded if its probative value is outweighed by the danger of unfair prejudice. See Fla. Stat. § 90.403.

5. Defendants' experts, including Dr. Michael Herkov, have testified and provided the opinion that some of Mr. Jordan's behaviors "...could have been a symptom of addiction." See Deposition Transcript of Michael J. Herkov, Ph.D., dated March 4, 2019, attached in pertinent part as **Exhibit A** at p.131:3-7. Any mention of Plaintiff's alleged addiction, however, is completely speculative as there is no more evidence beyond mere allegations that Plaintiff did suffer from any addiction to drugs.

6. In this case, any mention of Plaintiff's alleged prior cocaine use or implication that Plaintiff suffered from an addiction to any drug including cocaine, is not probative of any material fact that is at issue in this litigation. Any effort by Defendants to enter evidence of Plaintiff's speculative addiction is solely to attack Plaintiff's character in an impermissible manner.

7. Character evidence offered solely to prove the inherently bad nature of the plaintiff is improper and should not be permitted. Smith v. Hooligans Pub & Oyster Bar, Ltd., 753 So.2d 596, 599 (Fla. 3d DCA 2000); see also Fla. Stat. § 90.404.

8. This is a personal injury suit where evidence of Plaintiff's prior alcohol and drug use would have absolutely no probative value, particularly where the Defendants have admitted liability. Therefore, this evidence should not be permitted. See Browning v. Lewis, 582 So. 2d 101 (Fla. 2d DCA 1991) (finding error in admitting evidence that mother had used drugs and alcohol, where defendant's experts failed to establish a causal connection to the drug and alcohol use and injury).;; see Nichols v. Benton, 718 So. 2d 925, 926 (Fla. 1st DCA 1998) (holding that evidence of a pedestrian's occasional marijuana smoking and alcohol consumption was not relevant in a negligence action for damages sustained when he was struck by a vehicle and sustained a head injury); see also Mount v. Camelot Care Center of Dade, Inc., 816 So. 2d 669, 670 (Fla. 3rd DCA 2002).

9. This alleged addiction that Dr. Herkov spends a significant time discussing not only in his deposition, but in his report, is purely speculative. Therefore, evidence of same should be excluded.

WHEREFORE Plaintiff, ANTHONY ALLEN JORDAN, requests this Honorable Court enter an Order in Limine prohibiting any referencing to, elicitation in testimony, or entry into evidence of Plaintiff's alleged addiction to any drugs, including but not limited to cocaine, by Defendant GAUDENCIA HERNANDEZ or TRINITY SERVICES GROUP, INC.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail via the Florida E-filing Portal to: **Michael E. Reed, Esq., Christopher A. Cazin, Esq.**, tpacrtpleadings@wickersmith.com; Wicker Smith O'Hara McCoy & Ford, P.A. (Counsel for the Defendants); **Jeffrey S. Glassman, Esq. and William G.K. Smoak, Esq.**, courtdocuments@flatrialcounsel.com; Smoak, Chistolini & Barnett, PLLC (Co-Counsels for

Trinity Service Group, Inc.); **Lisa Ann Kalo, Esq.**, lkalo@kvpalaw.com, (Co-Counsel for Plaintiff), on this **15th** day of **March, 2019**.

/s/Marc Matthews

**MARC MATTHEWS, ESQ.**

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*Attorneys for Plaintiff*

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TWELFTH JUDICIAL CIRCUIT, IN AND  
FOR MANATEE COUNTY, FLORIDA

CASE NO.: 2017-CA-001913

ANTHONY ALLEN JORDAN,

Plaintiff,

vs.

GAUDENCIA HERNANDEZ; TRINITY SERVICES  
GROUP, INC., a Florida Profit Corporation;  
and RYDER TRUCK RENTAL LT, a Florida Trust,  
d/b/a RYDER TRUCK RENTAL, INC., a Florida  
Profit Corporation,

Defendants.

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D E P O S I T I O N

OF

MICHAEL J. HERKOV, Ph.D.  
taken on behalf of the Plaintiff  
pursuant to a Notice of Taking Deposition

DATE: Monday, March 4, 2019

TIME: 1:10 p.m. to 5:00 p.m.

PLACE: Scribe Associates, Inc.  
201 Southeast 2nd Avenue, Suite 207  
Gainesville, Florida

REPORTER: Ingrid T. Cox, RPR  
Notary Public, State of  
Florida at Large

SCRIBE ASSOCIATES  
GAINESVILLE, LAKE CITY, OCALA, STARKE

EXHIBIT A

1 Q. What about irritability?

2 A. Well, I think that could be a part of that.

3 Q. Did you take into consideration the possibility  
4 that the burglary and sexual assault were driven by the  
5 drug use?

6 A. It's a possibility, possibility that they could  
7 have been a symptom of addiction.

8 Q. Could it have been a symptom of one-time drug  
9 use?

10 MR. CAZIN: Object to the form.

11 THE WITNESS: Well, so I think we need to be  
12 careful. And we're at 5:00 and I know we said 5:00  
13 and I've got someplace I've got to be.

14 MS. BOWEN: Sure.

15 THE WITNESS: So if you want to reschedule -- the  
16 one after this one, and then if we have to reschedule  
17 we can do that.

18 The question was -- oh, I think it's dangerous to  
19 blame criminal behavior simply on drug use. Lots of  
20 folks use drugs and lots of folks get intoxicated and  
21 they don't rape people while they do it. And so I  
22 think you're looking at an interaction between the  
23 drugs possibly disinhibiting underlying personality  
24 factors is what you're seeing. Certainly drug use  
25 doesn't result in rape in the vast majority of people