

Affirmed and Opinion filed February 17, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-01023-CV

**SAIMA SYEDA, INDIVIDUALLY AND AS NEXT FRIEND OF ALI A. JAFRI,
Appellant**

V.

PETROLEUM WHOLESALE, INC., Appellee

**On Appeal from the 269th District Court
Harris County, Texas
Trial Court Cause No. 96-34847**

O P I N I O N

This appeal turns on a question of whether a motion in limine is sufficient to preserve error when a designated expert testifies and has failed to supplement discovery with the expert's "opinions" as requested. We hold that an objection must be made at the time the testimony is offered. Because no objection was made at the time the testimony was proffered, error, if any, was waived. We therefore affirm.

Ali Jafri was killed during a robbery at the convenience store where he worked. His widow, Syema Saida, sued Petroleum Wholesale, the owner of the premises, alleging that the company had failed

to provide a safe working environment. Trial was to a jury, which found against Saida's claim. In a single point of error Saida claims the trial court erred in permitting one of PWI's experts to testify at trial.

Saida served interrogatories on PWI in July 1996 seeking the identity of its expert witnesses, "the subject matter on which each expert is expected to testify; the mental impressions and opinions held by each expert; and [t]he facts known to each expert which relate to or form the basis of the mental impressions and opinions held by that expert." PWI's initial response stated that, other than medical and police personnel, "a decision of whether such experts will be necessary or who [other] experts will be has not yet been made." PWI timely supplemented and designated Merlyn Moore as an expert who would testify "as to security matters generally, the security measures used at the business in question, security measures used in similar businesses, the nature of the crime, criminal conduct, and the criminal mind as regards deterrence, and liability issues generally." PWI did not produce Moore's report until February 19, eleven days before trial. The trial court heard pretrial motions on March 2. Saida sought a motion in limine to exclude Moore's testimony. The trial court denied the motion.

When Moore testified at trial, Saida did not object. However, Saida argues she did not waive her objection to Moore's testimony because the trial court had definitively ruled on her motion before trial. Saida cites as authority for her position *Owens-Corning Fiberglas Corp. v. Malone*, 916 S.W.2d 551, 557 (Tex. App.-Houston[1st Dist.] 1996, *aff'd on other grounds*, 972 S.W.2d 35 (Tex. 1998)). We find *Owens-Corning* to be inapposite. In *Owens-Corning*, an asbestos exposure case with numerous defendants, the trial court held a pretrial hearing and ruled on dozens of objected-to documents and exhibits. The trial court made it clear that defense attorneys were not to object again when those documents were offered at trial: "I'll make it clear. No lawyer is allowed to repeat their [sic] objections. The court has preruled on everything but authentication." *Id.* at 556.

Here the record plainly shows that the trial court was not definitively ruling on a motion to "exclude" testimony. Saida's attorney introduced his motion by saying, "Your Honor we have a motion in limine." At the conclusion of lengthy arguments and citation of authority, the trial court says, "Any other - - I'm going to look at this - - this motion in limine before giving you a ruling." And when giving his ruling, the trial court stated, "With regard to the plaintiff's motion in limine . . . the plaintiff's motion is overruled."

It is well-established that a timely objection at trial is required to preserve complaints about expert testimony. *See, e.g., Bushnell v. Dean*, 803 S.W.2d 711, 712 (Tex. 1991). It is also well-established that an adverse ruling on a motion in limine preserves nothing for appellate review if there is no objection at trial when the testimony is offered. *Collins v. Collins*, 904 S.W.2d 792, 798 (Tex. App.–Houston [1st Dist.] 1995, writ denied); *Johnson v. Garza*, 884 S.W.2d 831, 834 (Tex. App.–Austin 1994, writ denied). Here, although Saida sought to exclude Moore’s testimony via a motion in limine, her failure to object when Moore’s testimony was offered at trial failed to preserve any complaint on appeal.

The judgment of the trial court is therefore affirmed.

/s/ Ross A. Sears
 Justice

Judgment rendered and Opinion filed February 17, 2000.

Panel consists of Justices Sears, Draughn, and Evans.*

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* Senior Justices Ross A. Sears, Joe L. Draughn, and Frank G. Evans sitting by assignment.