

Circuit Court for Prince George's County
Case No.: CAL19-07816

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1537

September Term, 2022

KLENIER ZEPEDA

v.

CASA BUILDERS AND
REMODELING INC., *et al.*

Arthur,
Tang,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 28, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In 2018, Klenier Zepeda, appellant, injured his back when he fell off a roof while working for Casa Builders and Remodeling, Inc., appellee. Zepeda then filed a claim against Casa with the Workers' Compensation Commission. The Commission found that Zepeda was a covered employee of Casa, which was uninsured at the time of the accident. Casa sought judicial review of the Commission's determination in the Circuit Court for Prince George's County. Following a two-day trial, a jury returned a verdict in Casa's favor, finding that Zepeda was an independent subcontractor instead of a covered employee. This timely appeal followed.

Zepeda presents three arguments for our review. *First*, he contends that the evidence was insufficient to support the jury's verdict. *Second*, he contends the trial court erred in admitting an incomplete W-9 into evidence. And *third*, he contends none of the witnesses were relevant to prove his relationship with Casa.

We decline to address Zepeda's first and third issues because they are unpreserved. To preserve an argument raising the sufficiency of the evidence in a jury trial, the party claiming that the evidence was insufficient must have made a motion for judgment at the close of the evidence offered by an opposing party and at the close of all the evidence. *See Baltimore County v. Quinlan*, 466 Md. 1, 15 (2019); *see also* Md. Rule 2-519. Zepeda failed to do so, and thus did not preserve his sufficiency challenge. Similarly, Maryland Rule 2-517(a) requires "[a]n objection to the admission of evidence . . . be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Zepeda neither objected to the calling of any witness nor did he move to strike any testimony. He thus did not preserve this challenge either.

Zepeda did, however, preserve his objection to the admission of the W-9. On appeal, he argues that the trial court erred in admitting the document because it was irrelevant. We disagree. Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Md. Rule 5-401. We review *de novo* a trial court’s determination that evidence is relevant. *See Perry v. Asphalt & Concrete Services, Inc.*, 447 Md. 31, 48 (2016). The sole issue at trial was Zepeda’s relationship to Casa: Was he an employee or an independent subcontractor? The W-9, which Zepeda acknowledged he signed, was dated less than two months before the accident and contained Zepeda’s Employer Identification Number. Even though the form had been submitted to a third-party, rather than Casa, the Employer Identification Number made it more probable that Zepeda owned his own business that subcontracted to Casa and that he was not Casa’s employee. The trial court therefore did not err in finding the evidence relevant and admitting it.

**JUDGMENTS OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**