

The Order of the Court is stated below:

Dated: November 07, 2023
10:38:03 AM

/s/ JEFFREY C WILCOX
District Court Judge



NAN T. BASSETT, Bar No. 8909
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IN THE FIFTH JUDICIAL DISTRICT COURT - CEDAR CITY

IRON COUNTY - STATE OF UTAH

<p>1 DAVID HINSON, Plaintiff, vs. DARRELL L. WILSON, M.D.; JARED C. COX, D.O.; KIMBERLY D. HAYCOCK, P.A.; and DOE INDIVIDUALS 1 through 10; and ROE ENTITIES 1 through 10, inclusive, Defendants.</p>	<p>ORDER ON MOTIONS IN LIMINE CASE NO. 170500085 JUDGE JEFFREY C. WILCOX TIER 3</p>
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The Court held a hearing on the parties' motions in limine on September 11, 2023. Having reviewed the briefing and heard oral argument, the Court ORDERS as follows regarding Motions to which the parties did not stipulate either before or during the hearing:

PLAINTIFF'S MOTIONS IN LIMINE

Motion in Limine #1 (Too many lawsuits)

The Court grants Plaintiff's Motion in Limine #1. There will be no references to the effects of lawsuits either generally or personally on hospitals or physicians or that there are too many lawsuits, a "medical malpractice crisis," "frivolous lawsuits."

Motion in Limine #6 (Similar treatment in the past)

The Court denies Plaintiff's Motion in Limine #6. Defendants can speak to their own experience and practice. The Court does not believe this is a character issue. That being said, the Court will entertain a similar motion at the time of trial should the circumstances arise.

Motion in Limine #8 (Expert testimony from witnesses not designated)

The Court defers ruling on this motion until after pretrial disclosures are made.

Motion in Limine #9 (Factual testimony from witnesses not properly identified)

The Court defers ruling on this motion until after pretrial disclosures are made.

Motion in Limine #10 (Collateral sources)

The Court grants in part and defers in part Plaintiff's Motion in Limine #10. As to past collateral sources, the Court grants the motion precluding evidence or references to past collateral sources. As to future collateral sources, the Court defers the decision on whether to preclude such evidence to the time of trial pending the laying of the proper foundation. If proper foundation is laid, future government payments, etc. referred to in UCA §78B-3-405(5) will be allowed. Also, Defendants will be allowed to cross examine Plaintiff's economic loss expert regarding such future benefits, even if Defendants do not call their own economic loss expert.

Motion in Limine #12 (Allocating fault to non-party medical provider)

The Court defers ruling on this motion until the time of trial. Defendants will not be allowed to allocate fault to non-party medical providers. However, as for any related questioning that any parties feel may be inappropriate, those objections will be addressed on a question-by-question basis at trial.

Motion in Limine #14 (Speculation as to why individual said or did something)

The Court grants Plaintiff's Motion in Limine #14. A witness will not be permitted to speculate on why another individual said or did something. Also, any objections as to speculative testimony will be addressed at the time raised during trial.

Motion in Limine #17 (References to previously named parties)

The Court grants Plaintiff's Motion in Limine #17. Defendants will not be permitted to make references to the fact that there were additional named parties in this lawsuit.

DEFENDANTS' MOTIONS IN LIMINE

Motion in Limine #8 (Sequence of testifying witnesses)

The Court denies Defendants' Motion in Limine #8 in that the relief sought is not properly sought through a motion in limine. However, the Court notes that it makes sense to exchange witness lists in advance, so as to avoid surprise. Plaintiff's counsel agrees to provide 24-48 hours notice regarding Plaintiff's order of witnesses, with the caveat that unforeseen changes may be necessary.

Motion in Limine #12 (Preclusion of expert testimony from lay witnesses)

The Court grants Defendants' Motion in Limine #12. Lay witnesses will be allowed to testify about their observations, but not reach conclusions regarding Plaintiff's condition and/or what activities he can or cannot perform that would require expert testimony. If related objections are raised at trial, those will be addressed on a case-by-case basis.

Motion in Limine #13 (Reptile arguments)

The Court grants Defendants' Motion in Limine #13. Parties are prohibited from arguing – either directly to the jury or inferentially through witnesses any of the following:

1. Arguments to the effect that the jury should be swayed by their emotion, sympathy, passion or prejudice, rather than the facts of this case and the applicable law.
2. Arguments asking the jury to “send a message” to the community, the medical industry, or otherwise.
3. Arguments asking the jury to “prevent this from happening again.”
4. Arguments that ask the jury to ignore the standard of care established by expert medical testimony presented at trial.
5. Arguments that ask the jury to apply either a general safety standard or a community standard based on their own beliefs or otherwise.
6. Arguments that suggest that the jury serves as the conscience of the community in rendering a verdict.

Motion in Limine #16 (Preclusion of testimony from Wainwright and Stephens)

The Court denies Motion in Limine #16. The Court finds that Dr. Sheryl Wainwright (“Dr. Wainwright”) meets the threshold requirements under Rule 702 of the Utah Rules of

Evidence to present expert testimony. First, the Court concludes that Dr. Wainwright is qualified to testify. She has been a nurse since 1984. She also has extensive experience as a case manager, looking over the management of people needing care. She is a certified nurse consultant. She has a Doctorate of Healthcare Administration. The Court is satisfied that Dr. Wainwright has the requisite knowledge, skill, experience, training, or education to render opinions made in her life care plan. Defendants' arguments that Dr. Wainwright is not qualified go to the weight of her testimony rather than its admissibility.

Next, the Court feels that Dr. Wainwright will help the trier of fact in deciding what Plaintiff's needs going forward will be. The Court finds that Dr. Wainwright has the foundation required to give these opinions, in reviewing Plaintiff's medical records, deposition transcripts, and conducting an interview. The Court also recognizes that Dr. Wainwright's Life Care Plan was approved by Dr. Miller, who is Plaintiff's personal physician, and Dr. Bishop. Dr. Miller made changes to the life care plan and Dr. Bishop reviewed and approved it. The court holds that Dr. Bishop, as an orthopedic surgeon, can give an opinion as to what help the Plaintiff may require for his household responsibilities. Dr. Wainwright does not need to rely on a lawncare professional or expert mechanic, for example, to say that Plaintiff will require such assistance.

In addition, because Dr. Stephens, Plaintiff's economic loss expert relies upon Wainwright's opinions, he likewise will be allowed to testify.

Motion in Limine #17 (Exclusion of untimely disclosed evidence)

The Court enters an interim order granting Motion in Limine #17, but defers a final order, as follows:

- Plaintiffs will be precluded from presenting at trial any new documents and/or disclosures that should have been made pre-fact discovery.
- The Court declines to define what is “new,” and instead orders the parties to meet and confer in good faith and file a list with the Court regarding what could have, or should have, been produced previously. The parties have met and conferred as ordered and determine that the following documents/ and or disclosures could have, or should have, been produced pre-fact discovery and will therefore be excluded at trial (identified by Plaintiff’s bates numbering):

- YHM 001720, 1921-1980, 1984-2009, 2011-2014, 2099-2103, 2162-2166 (Bent Tree Family Physicians Medical Records)
- YHM 002221-002225 (Family Eye Clinic)
- YHM 002226-002227, 002231 (Precision Cardiac & Vascular Care)
- YHM 002270-002274 (BSW Dallas Diagnostic Assoc.)
- YHM 002336-002342, 002352-002357, 002380-002410 (287 Family Medicine)

Motion in Limine #18 (Limiting Dr. Burg to standard of care opinions)

The Court grants Defendants’ Motion in Limine #18. Plaintiffs’ expert Michael Burg, MD (“Dr. Burg”) will be precluded from offering causation opinions at trial, unless defense

counsel opens the door to such opinions. The fact that causation may have been discussed during Dr. Burg's deposition, does not open the door to him offering causation opinions at trial.

-----END OF ORDER-----

*****SIGNATURE AND SEAL OF COURT APPEARS ON THE FIRST PAGE OF**

THIS ORDER ***

APPROVED AS TO FORM AND CONTENT:

/s/ P. McKay Corbett

Signed with Emailed Permission

Ashton J. Hyde

P. McKay Corbett

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