



FILED
LEWIS COUNTY
THE HONORABLE JAMES W.

2022 MAY 31 AM 11:00
Date of Hearing: June 1, 2022 @ 9:00 a.m.

SUPERIOR COURT
CLERK'S OFFICE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, LEWIS COUNTY

| | |
|--|--------------------------|
| SCOTT HAMILTON, as guardian ad litem for) | |
| Z.H.,) | NO. 20-2-00543-21 |
| Plaintiffs,) | |
| vs.) | REPLY IN SUPPORT OF |
| | PLAINTIFF'S AMENDED |
| LINDA AMONDSON-MULLER, Personal) | MOTIONS <i>IN LIMINE</i> |
| Representative of the ESTATE of LAURA) | |
| HAMILTON,) | |
| Defendants.) | |

The plaintiff submits the following reply in support of plaintiff's amended motions in limine:

1. The Defense Should be Precluded from Using the Name Zack.

The Court should grant plaintiff's motion. The defense has no idea what Z.H.'s customary name is. Further, the defense should not be allowed to pretend they are his friends. This is misleading and prejudicial.

It is irrelevant that plaintiff's counsel did not object to the use of the name in depositions. The arrogance of defense counsel is truly monumental that counsel can presume Z.H.'s customary name without evidence, and that they can call him by a nickname without permission.

3. Exclude Testimony of the Personal Representative.

Defendant Hamilton's unfortunate passing does not change the rules of evidence. The Court should not allow defendant Hamilton to use Covid-19 and unsupported claims of prejudice to bring inadmissible evidence into this trial. Any testimony from Ms. Amondson-Muller about the number of babies delivered by Laura Hamilton or the 50 deliveries she claims to have

1 attended goes beyond qualifications and into evidence of defendant Hamilton's character for
2 skillful and safe midwifery. This is analogous to asking a defendant-physician in a surgical
3 malpractice case how many times they performed the surgical procedure in which the plaintiff
4 was injured prior to the injury. This evidence creates a clear inference of conformity between the
5 episodes of prior successful care and the care at issue in the trial. Conformity evidence of this
6 nature is barred by 404(b). The defendant is free to offer this evidence in the absence of objection,
7 however, once defendant does so, the door opens to cross examination about prior poor surgical
8 outcomes and surgical malpractice.

9 Defense counsel once again tries to characterize plaintiff's counsel's motivations using
10 hyperbolic language. The motivation for plaintiff's motion to exclude Ms. Amondson-Muller's
11 testimony is that she has nothing relevant to say. Any relevant testimony she can present is both
12 hearsay and inadmissible character evidence that will mislead the jury and further open the door
13 to prior bad outcomes under defendant Hamilton's care and disciplinary actions against her
14 midwifery license by the Washington Department of Health. Defendant Hamilton has chosen to
15 go to trial. The rules of evidence do not change to accommodate the unfortunate passing of Laura
16 Hamilton or the shortcomings of the defense case.

17 The plaintiff has already submitted her entire deposition for the Court's examination.

18 **15. Plaintiff's Financial Status or "Secondary Gain."**

19 Any mention of Z.H.'s parents' financial status will just be a continuation of defense
20 counsel's attempts to intimidate and humiliate the Hamilton family. The defense sought their tax
21 returns and wanted to search their home. Now, the defense wants to prejudice Z.H. by inquiring
22 into his parents' financial status in front of the jury.

23 If the defense thought that Scott and Seng Hamilton were at fault for Z.H.'s injuries, it was
24 required to plead that affirmative defense. There is no evidence for the defense to even make this
25

1 argument. The fact is that Laura Hamilton never recommended any additional testing. The defense
2 cannot argue that the Hamilton's could not afford medical treatment that Laura Hamilton did not
3 recommend.

4 **18. Opinions Regarding the Truthfulness of Witnesses.**

5 It is well-settled under Washington law that an expert may not "usurp the exclusive
6 function of the jury to weigh the evidence and determine credibility." *State v. Dunn*, 125 Wash.
7 App. 582, 584, 105 P.3d 1022, 1023 (2005). Defendant Hamilton states they expect defense
8 experts to opine that the testimony of plaintiff's fact witnesses is "unreliable and inaccurate."
9 This is a usurpation of the jury's role in this case and a clear violation of Washington law. The
10 Court should prohibit defendant Hamilton's experts from offering any opinion testimony as to
11 the credibility of plaintiff's witnesses. It is the role of the jury, not the defense experts, to
12 consider the evidence and determine its weight.
13

14 Similarly, defense experts should be precluded from offering the opinion that plaintiff's
15 witnesses have "misinterpreted the medical records." This again is an opinion as to witness
16 credibility that must be reserved for the jury. Defendant Hamilton may of course offer their
17 own differing interpretation of the medical records and argue, in closing, that plaintiff's
18 interpretation is incorrect. However, defense witnesses should not be permitted to invade the
19 province of the jury.
20

21 The Court should grant this motion and prevent usurpation of the jury's role in this case
22 by defense experts.

23 **23. Preclude Admission of Medical Records.**

24 The plaintiff seeks to preclude the admission of stacks of medical records for which there
25

1 has been no foundation testimony. The jury cannot read medical records and form their own
2 medical opinions. That would be impermissible speculation.

3 **28. Events From Dr. Freeman's Past.**

4 The Court should exclude any reference regarding Dr. Freeman's suspension from
5 chiropractic school over 30 years ago. It was too remote in time to meet the requirements for
6 impeachment under ER 608(b). Indeed, it is difficult to imagine a situation where alleged
7 impeachment evidence involving specific acts was more remote in time.

8 As for the letter, the letter is inadmissible hearsay, and the defense cannot even
9 authenticate it. There is no witness who can authenticate the letter. Dr. Freeman testified that he
10 has no recollection of the letter. Machler Reply Decl., Exh. 1, p. 117, line 14 through p. 118, line
11 12. So, the defense cannot get the letter authenticated through Dr. Freeman. Further, this letter is
12 the exact sort of extrinsic impeachment evidence not permitted under ER 608(b).

13 Just because the letter has made its rounds in the defense bar, that does not authenticate it.
14 Attempting to admit it through ER 904 also is insufficient. It is not one of the enumerated kinds of
15 documents admissible under the rule. Nor is it a document having equivalent circumstantial
16 guaranties of trustworthiness. The letter could have been typed by a defense attorney and passed
17 around to smear the credibility of Dr. Freeman.

18 The case cited by the defense is evidence that one court allowed inquiry of this nature, out
19 of hundreds in which he has testified. It is misleading for the defense to claim that many courts
20 have admitted this evidence when it can only come up with one. Also, the decision in *Hausman* is
21 irrelevant to this case. The defense *in this case* cannot authenticate the letter, and it cannot be used
22 to impeach Dr. Freeman. Further, the letter is inadmissible hearsay and should be excluded.
23
24
25

1 The Court should grant the plaintiff's motion to exclude the chiropractic school
2 suspension and the lawsuit.

3 **30. Dr. Gurewitsch Allen's Brachial Plexus Case.**

4 The defense mischaracterizes Dr. Gurewitsch Allen's testimony and confuses standard
5 of care with causation. Dr. Gurewitsch Allen testified:

6 Q. And you believe that Laura Hamilton used excessive force, based
7 on the findings of the ruptured nerves in the brachial plexus in the child; correct?

8 A. So you're using the work, "Excessive." Excessive applies a
9 standard of care issue, so I would – I – would probably agree that it was
10 excessive in this case. But using the word, "Excessive" because it's an amount
outside the standard of care that was not justified by the clinical circumstances.

11 Q. So in your opinion, there are times when ruptured nerves in the
12 brachial plexus could be caused by appropriate force of the clinician, but this is
not one of those cases in your opinion?

13 THE WITNESS: That's exactly correct. Machler Reply Decl., Exh. 2, p.
14 88, lines 4-18.

15 Dr. Gurewitsch Allen's testimony is entirely consistent with her opinion in her own
16 case that she met the standard of care despite an injury. Questioning Dr. Gurewitsch Allen
17 about the facts of her case will just be another lengthy defense sideshow. The defense made a
18 motion for a strict schedule, and yet, it wants to examine plaintiff's witnesses about extraneous
19 issues.

20 The Court should preclude the defense from questioning Dr. Gurewitsch Allen about the
21 case.

22 **31. Dr. Allen and Dr. Gurewitsch Allen's Marriage and Daughter.**

23 The fact that the defense opposes this motion is breathtaking. That the Drs. Allen hired
24 their daughter to work for them is just another timewaster on the part of the defense.
25

1 **32. Prohibition Regarding Reputation of Defendant.**

2 The defense has already opened the door to defendant Hamilton’s character for skillful
3 and safe midwifery through the deposition testimony of Dr. DeMott, the defense standard of care
4 expert. See Plaintiff’s Response to Defendant Hamilton’s Motion in Limine No. 6. Dr. DeMott
5 testified that his opinion that Laura Hamilton did not use excessive traction is based *solely and*
6 *exclusively* on conformity evidence that she “normally” uses gentle traction during her delivery of
7 “thousands of babies without deficits” in her “many years of experience as a midwife.” This
8 testimony is grossly misleading at best and at worst categorically false. Dr. DeMott testified in this
9 very courtroom during the Myhre trial, where Laura Hamilton delivered a child with nearly an
10 identical deficit to the one suffered by Z.H., a permanent multi-level brachial plexus avulsion
11 injury. As defendant Hamilton’s standard of care expert. Dr. DeMott’s opinion is central to this
12 case. The fact that Dr. DeMott testified in the Myhre trial is highly probative impeachment
13 evidence that attacks the sole basis for Dr. DeMott’s opinion. The Court should not permit the
14 defense to mislead the jury in this manner.

15
16 Defendant Hamilton has also opened the door to otherwise inadmissible character
17 evidence by putting her personal history supportive of character for midwifery skill and safety in
18 front of the jury. Defendant Hamilton submitted 41 certificates of continuing education and 32
19 certificates of professional membership to state and national midwifery organization in her ER
20 904 disclosure. See Plaintiff’s Response to Defendant Hamilton’s Motion in Limine No. 5. The
21 defense has also indicated they intend to elicit testimony as to the number of babies successfully
22 delivered by Laura Hamilton in her career. See Defendant Hamilton’s Response to Plaintiff’s
23 Motion in Limine No. 3.

1 Taken together, this evidence and the testimony of Dr. DeMott will leave the jury with
2 grossly misleading impression as to midwife Hamilton's character for midwifery skill and safety.
3 The jury will hear that she is a skilled and safe midwife with dozens of continuing education
4 certificates and professional memberships, decades of experience, and thousands of successful
5 deliveries who always complies with the standard of care. This goes far beyond establishing
6 midwife Hamilton's qualifications and well into the realm of character evidence. Plaintiff is
7 entitled to rebut the defense's injection of evidence of defendant Hamilton's character into this
8 trial.
9

10 **35. Failure to Mitigate Damages.**

11 The plaintiff anticipates that the defense may accuse Z.H.'s parents of conduct suggestive of
12 a failure to mitigate argument. After the defense accused plaintiff of modifying, rehearsing, or
13 staging evidence of the extent of Z.H.'s disability, the plaintiff is concerned that the defense will
14 make these kinds of suggestions in front of the jury.

15 Dated this 30th day of May, 2022.

16 OSBORN MACHLER

17 

18
19 Simeon J. Osborn, WSBA #14484
20 Susan Machler, WSBA #23256
21 Austin Neff, WSBA #57059
22 *Attorneys for Plaintiff*
23
24
25

