



FILED
LEWIS COUNTY

2022 JUN 14 AM 11:17 HONORABLE JAMES W. LAWLER

SUPERIOR COURT Hearing Date: June 16, 2022 @ 9:00 a.m.
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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.)	PLAINTIFF'S RESPONSE TO
	DEFENDANT HAMILTON'S
LINDA AMONDSO-N-MULLER, Personal)	MOTION TO EXCLUDE
Representative of the ESTATE of LAURA)	STANDARD OF CARE OPINIONS
HAMILTON,)	FROM DR. SOLLERS
Defendants.)	

The plaintiff submits the following opposition to defendant's motion to exclude standard of care opinions from Dr. Sollers.

A. The motion was improperly filed without sufficient notice.

LCR 5 requires that a party give seven days' notice for a motion hearing. The defense did not ask permission from the Court to hear yet another motion to exclude one of plaintiff's experts with 48-hours notice. The Court should deny the motion for this reason alone.

Proper notice is a constitutional issue and one of essential fairness. The plaintiff is substantially prejudiced by a motion to exclude one of his experts with 48-hour notice and less than one week from the start of trial. The plaintiff will have no opportunity to find another expert at the same time that the defense has added a third midwife expert.

PLAINTIFF'S RESPONSE TO DEFENDANT
HAMILTON'S MOTION TO EXCLUDE STANDARD OF
CARE OPINIONS FROM DR. SOLLERS - 1

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B. This motion is a defense tactic to prejudice the plaintiff and was filed for an improper purpose.

The defense seeks to exclude the testimony of one of plaintiff's expert witnesses with 48-hour notice. Defense counsel offers no justification for this violation of the rules, other than glibly stating "these things happen." Machler Decl., Exh. 1. Dr. Sollers' deposition was taken on January 7, 2022, more than six months ago, and defense counsel now claims that it just came to their attention. This motion should have been filed along with the motions in limine and heard weeks ago.

Clearly, this motion is an attempt by the defense to waste plaintiff counsel's time and prevent them from preparing for trial. CR 11 prohibits filing a motion for an improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The plaintiff anticipates more motions to exclude plaintiff's evidence to be filed over the holiday weekend, particularly a possible motion to exclude the testimony of Scott and Seng Hamilton based upon the deadman statute. Plaintiff expected a motion in limine based on the deadman statute, but none was timely filed. Now, it seems the defense will file the in the final few days before trial or even on the day of trial.

The current motion is just another defense tactic to ambush the plaintiff and prejudice the plaintiff's ability to present his case.

C. Dr. Sollers is now familiar with the standard of care for a lay midwife in Washington.

Since his deposition, Dr. Sollers has reviewed the deposition of midwife Sandra Wilkinson, and he now familiar with the standard of care for a lay midwife in Washington. His opinions have not changed since reviewing the deposition. Decl. of Brian Sollers, D.O.

1 **D. Dr. Sollers is familiar with the standard of care in the relevant specialty.**

2 In Washington, the scope of an expert's knowledge, not his or her professional specialty,
3 governs "the threshold question of admissibility of expert medical testimony in a malpractice
4 case." *Hill v. Sacred Heart Med. Ctr.*, 143 Wn. App. 438, 447 "A physician with a medical
5 degree is qualified to express an opinion on any sort of medical question, including questions in
6 areas in which the physician is not a specialist, so long as the physician has sufficient expertise to
7 demonstrate familiarity with the procedure or medical problem at issue in the ... action." *Id.*
8

9 For example, in *Leaverton v. Cascade Surgical Partners, PLLC*, 160 Wash. App. 512,
10 517, 248 P.3d 136, 138 (2011), the court found that an otolaryngologist had the requisite
11 knowledge about the standard of care for a surgeon treating a certain condition. The Court must
12 determine the relevant specialty. In another example, the Court of Appeals determined that a
13 plastic surgeon could testify regarding the standard of care for an orthopedic surgeon because the
14 relevant specialty was the removal of cutaneous malignancies and bone grafting, which both the
15 plastic surgeon and orthopedic surgeon were qualified to perform. *Seybold v. Neu*, 105 Wn. App.
16 666, 679-680, 19 P.3d 1068 (2001).

17 In the present case, the relevant specialty is providing prenatal care and delivering babies.
18 There will no testimony from anyone that nurse midwives, lay midwives, and obstetricians have
19 different standards of care for providing prenatal care in what the defense claims was a non-high
20 risk pregnancy. Certainly, there will be no testimony from anyone that the standard of care is
21 different among midwives, regardless of their license. If this is a new defense claim, then the
22 plaintiff should be allowed to present a lack of informed consent claim. *Scott and Seng Hamilton*
23 were never informed that Laura Hamilton would provide substandard care.
24

25 The Court should find that the relevant specialties are providing adequate prenatal care

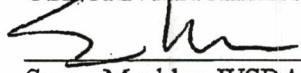
1 and safely delivering babies. Dr. Sollers is competent to testify to the standard of care in these
2 specialties.

3 The Court should deny the motion.

4 Dated this 14th day of June 2022.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that I caused the foregoing to serve upon the following in the manner indicated below:

Attorneys for Defendant:

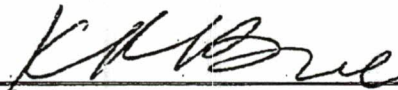
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Dated this 14th day of June 2022 at Seattle, Washington.


Katie Bue
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