

FILED
Lewis County Superior Court
Clerk's Office
JUN 16 2022

20-2-00543-21
OR 123
Order
12563554



Scott Tinney, Clerk
By _____, Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LEWIS

SCOTT HAMILTON, as guardian ad
litem for Z.H.,

Plaintiffs,

v.

LINDA AMONDSO-N-MULLER,
Personal Representative of the ESTATE
of LAURA HAMILTON,

Defendants.

NO. 20-2-00543-21

~~PROPOSED~~ ORDER ON
DEFENDANT HAMILTON'S
MOTIONS *IN LIMINE*

THIS MATTER having come on regularly before the Court on Defendant Hamilton's ("Defendant") Motions *in Limine*, and the Court having reviewed the defendant's and plaintiff's submissions and the pleadings and records on file herein; and the Court having heard oral argument of counsel, and the Court being fully advised in the premises, it is **HEREBY ORDERED** that:

- A. The parties will offer no evidence, argument, exhibits, testimony, or any other statement before the jury regarding any subject matter addressed in the Motions *in Limine* that have been excluded by the Court;
- B. The attorneys are instructed to inform all of their witnesses regarding the scope of this Order;
- C. There is an affirmative duty upon each attorney who believes that evidence excluded by this Order has become admissible, due to testimony that has been elicited at trial, to raise any argument regarding the admissibility of such evidence

ORDER ON DEFENDANT HAMILTON'S MOTIONS *IN LIMINE*

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with the Court, outside the presence of the jury; and

D. Specifically, the Court Orders as to Defendant's Motions *in Limine*, as outlined below. The Court further incorporates by reference any oral ruling made during the June 1, 2022, hearing as to Defendant's Motions *in Limine*, which may provide clarification on scope and other matters as appropriate.

- 1. **No questioning of witnesses about their religion, relationship with God, communications with God, or anything of the sort.**

Agreed Granted Denied

 X _____ _____

Comment: _____

- 2. **Dr. Freeman should be excluded because his testimony is misleading and unhelpful to the jury.**

Agreed Granted Denied

_____ _____ X

Comment: _____

- 3. **Motion to exclude Plaintiffs' untimely disclosed fact and expert witnesses, and for terms.**

Agreed Granted Denied

_____ _____ X

Comment: Agreed as to Plaintiffs' theology expert.

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4. Any reference to pain and suffering of the parents or family members and/or any claim for damages for the same must be excluded.

Agreed Granted Denied
_____ X _____

Comment: _____

5. Evidence regarding the defendant's history of prior medical malpractice lawsuits and/or Department of Health proceedings must be excluded.

Agreed Granted Denied
_____ X _____

Comment: _____

6. Evidence that Defendant Hamilton had other "bad outcomes" or brachial plexus injuries must be excluded.

Agreed Granted Denied
_____ X _____

Comment: _____

7. Plaintiffs' counsel should be precluded from asking witnesses questions intended to elicit improper character testimony about Laura Hamilton, such as whether she was a "good" and/or "safe" midwife.

Agreed Granted Denied
_____ X _____

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Comment: _____

8. Any criticisms of Defendant Hamilton's care that are not linked to Z.H.'s alleged damages by standard of care and causation testimony must be excluded.

Agreed	Granted	Denied
_____	<u> X </u>	_____

Comment: _____

9. Any evidence regarding Seng Hamilton's subsequent gestational diabetes and/or diabetes must be excluded.

Agreed	Granted	Denied
_____	_____	<u> X </u>

Comment: _____

10. Defendant Hamilton respectfully requests that the Court exclude any argument by plaintiff's counsel requesting the jurors place themselves in the position of the plaintiff.

Agreed	Granted	Denied
<u> X </u>	_____	_____

Comment: _____

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11. Plaintiffs should be precluded from substituting "safety" standards with the standard of care.

Agreed Granted Denied
_____ _____ X

Comment: _____

12. All arguments – direct or indirect – about "sending a message" or otherwise punishing the Defendant must be excluded.

Agreed Granted Denied
 X _____ _____

Comment: _____

13. Defendant Hamilton respectfully requests that the Court require a trial schedule.

Agreed Granted Denied
_____ X _____

Comment: Each side is limited to 5-days of testimony.

14. Defendant Hamilton respectfully requests that the Parties be required to give 48-hour notice of witnesses to be called at trial.

Agreed Granted Denied
 X _____ _____

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Comment: _____

15. No claim or evidence concerning lost earning capacity of Z.H.

Agreed Granted Denied

 X _____

Comment: This Order does not preclude Plaintiffs from presenting general damages, provided a proper foundation is laid.

16. Defendant Hamilton respectfully requests that the Court exclude all witnesses from the courtroom prior to their testimony, except for expert witnesses.

Agreed Granted Denied

 X _____

Comment: This Order applies to all witnesses, including experts. However, this order does not exclude Scott Hamilton or Linda Amondson-Muller as they are parties.

17. Defendant Hamilton respectfully requests that expert witnesses be allowed to review trial transcripts prior to their testimony.

Agreed Granted Denied

 _____ X

Comment: _____

1 18. Plaintiffs should only be permitted to offer rebuttal witnesses or evidence that is
2 not repetitive or whose testimony could not have been anticipated in their case
3 in chief.

4 Agreed Granted Denied

5 X _____ _____

6 Comment: _____

7 _____

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9 19. Testimony by lay witnesses, including Z.H.'s parents, as to what they have been
10 told by treating providers is hearsay and should be excluded.

11 Agreed Granted Denied

12 _____ X _____

13 Comment: Statements by Laura Hamilton are outside the scope of this Order. The
14 court will follow the hearsay rule as to Laura Hamilton and Scott Hamilton.

15
16 20. Testimony by lay witnesses, including Z.H.'s parents, about Z.H.'s state of mind,
17 feelings, and pain and suffering is speculative and should be excluded.

18 Agreed Granted Denied

19 _____ X _____

20 Comment: _____

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24 21. Learned treatises and medical literature are hearsay and Defendant Hamilton
25 respectfully requests the Court allow their limited use only after proper
26 authentication.

Agreed Granted Denied

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Comment: _____

22. All mention of settlement, settlement discussions, or the absence of settlement discussions is prohibited under ER 408 and should be excluded.

Agreed Granted Denied
 X _____ _____

Comment: _____

23. Any reference to Defendant Hamilton's liability insurance should be excluded.

Agreed Granted Denied
 X _____ _____

Comment: This Order also excludes evidence relating to the assets of Laura Hamilton's estate.

24. Motion to permit questioning of Seng Hamilton's prior disciplinary history by the Washington State Bar Association for the purposes of impeachment on cross examination.

Agreed Granted Denied
_____ _____ X

Comment: _____

1 **25. Motion to preclude any evidence or argument of any theories of recovery or**
2 **damages not disclosed in the Pleadings or discovery responses.**

3 Agreed Granted Denied

4 _____ X _____

5 Comment: _____

6 _____

7 _____

8 **26. Evidence of collateral source benefits is admissible in a medical malpractice**
9 **action, and under the facts of this case.**

10 Agreed Granted Denied

11 _____ X _____

12 Comment: Evidence of past payments may be admitted consistent with RCW
13 7.70.080. Only the amount actually paid for past medical care (not merely billed) is
14 admissible and shall be presented to the jury.
15

16 **27. The parties should be limited to one expert per discipline.**

17 Agreed Granted Denied

18 _____ _____ X

19 Comment: _____

20 _____

21 _____

22 **28. The Court should order that the parties confer no later than one week before**
23 **trial to discuss a possible stipulation to facts.**

24 Agreed Granted Denied

25 _____ _____ X

1 Comment: _____

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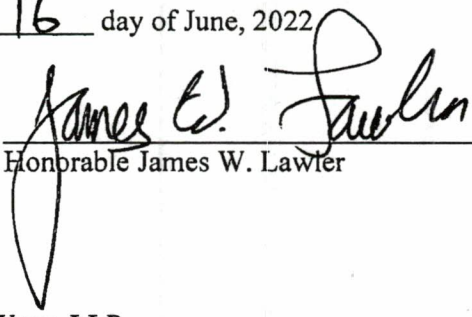
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5 **29. Dr. Allen should be precluded from offering testimony on standard of care and
6 from offering personal opinions on the credibility of ACOG.**

7 Agreed Granted (in part) Denied

8 _____ X _____

9 Comment: Plaintiffs agree that Dr. Allen will not testify to the standard of care. He
10 may testify about forces as measured in his studies. They further agree that Dr. Allen
11 will not provide his personal opinions as to the motivation for ACOG publications.

12 DONE IN OPEN COURT this 16 day of June, 2022

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14 
15 _____
16 Honorable James W. Lawler

17 Presented By:

18 JOHNSON, GRAFFE, KEAY, MONIZ & WICK, LLP

19 s/ Donna Moniz
20 s/ Pierce Rand

21 _____
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1 Approved as to form:

2 OSBORN MACHLER

3 s/ Susan Machler

4 _____
5 Simeon J. Osborn, Esq., WSBA#14484

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