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State of Minnesota
7/1/2022 2:54 PM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

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Craig Stevenson, Marie Stevenson,

Plaintiffs, File No. 56-CV-20-2928

vs. Transcript of Proceedings

Sean Stevenson, Renee Stevenson,
Lisa Stevenson-Allen, Ashley Anderson,

Defendants.

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MOTION

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The above-entitled matter came before the Honorable Kevin M. Miller, Judge of District Court, at the Otter Tail County Courthouse, via Zoom technology, Fergus Falls, Minnesota, on March 25, 2022.

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APPEARANCES

For the Plaintiffs:	Cassandra Wolfgram 14985 Glazier Ave, Suite 525 Apple Valley, MN 55124
For the Defendants: Ashley Anderson and Lisa Stevenson-Allen	Ross Tentinger 14665 Galaxie Ave, Suite 140 Apple Valley, MN 55124
For Defendants: Renee Stevenson and Sean Stevenson	Stephen Couillard France Place 3601 Minnesota Dr, Suite 450 Minneapolis, MN 55435

Dana Eifert
Official Court Reporter

(Proceedings commenced.)

THE COURT: All right. I think everybody is connected, so at this time I am going to call Craig Stevenson, Marie Stevenson versus Sean Stevenson, et al; 56-CV-20-2928.

I have Ms. Wolfgram on behalf of the plaintiffs, and I have Mr. Tentinger and Mr. -- is it -- how do you say your last name, sir?

MR. COUILLARD: Couillard.

THE COURT: Couillard. I was going to say that and then I wasn't sure.

All right. So, we're here on motions here today and Mr. Couillard this is your motion. I can inform everybody I've read every document and the motion and all the exhibits prior to today's hearing. So, Mr. Couillard, you may proceed.

MR. COUILLARD: Thank you, Your Honor. Because you've read everything, I'll try to keep it pretty brief. Now, as you know our first motion is to compel an IME of Marie Stevenson, specifically, a psych exam. And as you know Rule 35 allows upon a good showing -- a showing of good cause the Court to specify --

(Loud noises coming from audio.)

MR. COUILLARD: -- Sorry if you guys can hear this. There's construction directly above me in our

office.

THE COURT: Perfect. The world of Zoom.

MR. COUILLARD: Yeah. On a showing of good cause, the Court can specify the time, place, manner, conditions, and scope of a physical or mental examination. And obviously, there's no dispute here amongst the parties that defendants are entitled to examine Marie. It's just a question of the conditions or the setting. And the most important condition to defendants in this matter is that the exam be conducted in person. And obviously, it's laid out in briefs, but the primary reasons for that are just, first of all for the effectiveness and the reliability of the exam. As is noted in the Minnesota Federal case that was cited, *Tomlin*, an unimpeded one-on-one exchange is necessary for a truly reliable psychological exam. And as is being made clear by this hearing sometimes remote hearings are just not an adequate substitute for in-person communication. Whether that's because of, you know, nonverbals that are hard to pick up or a delayed computer screen. It's just quite simply not the same. It doesn't (inaudible) picture of really the communication.

We did previously request that Craig Stevenson not be present, and it seems like he's agreed to that condition. However, there's still no -- there's still no

guarantee of outside distractions or disruptions. Whether that's from something in the room that Marie is using or on her computer, or noise in the house, and so on. So, truly the only way that adequate conditions can be guaranteed for this exam would be that it is in person rather than done remotely.

Plaintiffs do mention a survey about telehealth and about how many practitioners will continue it ever after the pandemic. However, within that survey, they don't specify the types of services that they are plans to be offered remotely. And I would venture to guess that psychological examines are not one of them.

In part because the technology has been around for at least a decade. Whether that was via Skype, or FaceTime, or other methods to conduct these exams remotely but it was pre-covid doing these exams remotely was simply unheard of. And doing them remotely during the pandemic was not ever considered to be an ideal substitute but merely one out of pure necessity. So, we would ask that it be in person.

The next condition would be the recording of the examination. And again, I would cite to the *Tomlin* case mentioning that the presence of a third person, physically or by tape recording is inimical to the conduct of a valid psychiatric examination. Quite simply

even if there's no third person, just the fact that a tape recorder is there is enough to potentially influence the conduct of a person, knows they're being recorded. They very well might be less candid than if they would otherwise be, knowing that someone might listen back to their answers in the future. And then I cited to an Ohio case that I thought was quite relevant based on the various reasons why one might order the recording of an examination which none of those are present here, in that there's no evidence that Marie is likely to say or do things she didn't intend that might be prejudicial to the case. There's no evidence that Dr. Dossa has misused a psych exam to the detriment of the examinee, and there's also no evidence of any factual disputes within any of Dr. Dossa's previous exams.

Plaintiffs note that some -- that one of their experts or maybe multiple, they choose to record their examinations. But Dr. Dossa, being the only one who's willing to travel to St. Cloud, being that he does not allow it we believe some leeway should be allowed for his preference as in mentioned in the case that has been cited. So, we would ask that it be in-person and not be recorded due to the preference of Dr. Dossa.

And then the location of -- the last one we originally -- the last condition we originally mentioned,

obviously, it would be ideal if there were a qualified examiner in the Fergus Falls area but being that we are unable to locate one who's willing to go that far. We offer the best compromise that we could find, being -- traveling to St. Cloud. And defendants recognize the potential difficulties for Marie in getting to an exam but as is noted in our memorandum because plaintiffs chose to bring this lawsuit, they must also realize that they must submit to reasonable discovery to allow defendants to defend against the claims. And defendants would argue that any difficulty in attending the exam is outweighed by the necessity to allow defendants to conduct reasonable discovery and that being an in-person psychiatric exam.

In defendant -- or sorry, plaintiff's responsive memorandum they request that the test conducted be limited to those conducted by their own experts. And as is noted in our reply, this request isn't supported by any authority as to why it should (indiscernible). And we would ask that any tests deemed appropriate and relevant by our examiner be allowed to be conducted, with the note that we would be willing to give the -- that information to plaintiffs once we are made aware of what tests are to be conducted so they can know ahead of time.

And the second big piece of our motion was in regard

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to plaintiff expert disclosures. And admittedly, the exclusion of expert witnesses is a pretty extreme remedy, however, our request is based solely off the text of the Rules of Procedure and the Court's scheduling order in that the scheduling order called for plaintiff's expert disclosure deadline, being January 28th and Rule 26 clearly explaining that with expert disclosure for any witness who's retained to provide expert testimony, if that narrative report is required as any experienced civil litigator should know. However, when it came time to make the disclosures, plaintiffs opted, or -- out of -- they claim that the reports were not finished, so the reports were not included with their disclosures. However, this is not a substantial justification for not including them. As, you know, they had plenty of time prior to that date to ensure that the reports would be completed in a timely manner.

And I didn't mention Rule 37.03.0 -- 37.03 subpart a, which explains that if a party fails to provide information or identify a witness as required by Rule 26 the party is not allowed to use that information or witness to supply evidence on a motion, or at a hearing, or at trial unless the failure was substantially justified or is harmless. And as I mentioned, there wasn't a substantial justification offered by the

plaintiffs and it wasn't a harmless oversight in that defendants did have to conduct their examination or their deposition of Marie without having plaintiff's expert report in front of them and clearly, this would have changed the line of questioning and allow for, you know, additional discovery that we otherwise now aren't able to conduct.

The alternative that we ask for originally was an order to compel the productions of these reports as well as attorneys' fees. And obviously, since the reports have since been produced, this order to compel isn't necessary but we still would request attorneys' fees for having to bring this motion as the reports were not produced until after the motion was filed. I think that's all I have so. Thank you.

THE COURT: All right. And you'd agree, exclusion is pretty draconian given in particularly in a case where I still haven't been able to give you folks, unfortunately, a trial date because we're still working through our COVID world a little bit. Would you think that there might be some other remedies that could take care of the concerns? Be able to address them short of excluding?

MR. COUILLARD: Potentially, Your Honor. I would think that if perhaps being allowed to just briefly

at least re-depose Mrs. Stevenson since we now do have those reports. And then just ensuring that any trial date does allow the proper amount of time which, I don't imagine should be an issue being that we haven't set one yet.

THE COURT: Yeah, and still as I sit here today, I'm not quite there. We're closing to figuring out where our calendars are and dealing with some speedy trial things and those types of things that backed up on us cause everybody probably doesn't know, for Otter Tail County we shut down again for the month of February because our COVID positives were somewhere around thirty percent and we didn't, quite honestly, didn't have the staffing to be able to conduct jury trials for that time. So, once again we got pushed a little bit back but we're seeing the light. So, hopefully, I'll be able to get some guidance from our district as to when I can start doing that cause right now, we can only schedule one jury trial at a time in our county. And obviously, the rule from the Chief Justice right now says no civil trial is to disrupt any major criminal. Well, we all have, I mean, all of us here judges, I think we have twenty-plus trials that are over a year old. So, it's in the red zone and that's probably more information than you needed but, I'm hoping to find out soon. We have a bench

meeting at the beginning of May and I'm hoping to get some guidance from someone that has authority to give me that guidance to update on that.

MR. COUILLARD: Okay.

MR. TENTINGER: Your Honor, if I -- could I expand on one point that my co-counsel made just real quickly?

THE COURT: Sure.

MR. TENTINGER: When it comes to re-deposing Marie Stevenson, there aren't any medical records to support her claim. It'd only be expert testimony or the expert record reports that they provided now after this motion. So, we went into that deposition completely blind as to what medical conditions she has and what she's claiming she has. And there's absolutely no medical records. She never went to the doctor for any of that stuff. So, therefore, I mean, at the very least we'd like the opportunity to be -- to potentially re-depose her after finding out what exactly it is she's claiming. In the complaint, it's about a two-page list about every injury imaginable and it's hard to get into that without any records or any other substance behind it until we actually her reports. So, at the least, we would like an opportunity to re-depose her if it be deemed necessary.

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THE COURT: All right. Thank you for that.

Ms. -- anything further Mr. Tentinger and then -- on any of these and then I'm going to turn to Ms. Wolfgram.

MR. TENTINGER: No, Your Honor. Thank you.

THE COURT: All right. Ms. Wolfgram.

MS. WOLFGRAM: Thank you, Your Honor. Your Honor, I'm going to change my order just slightly because I want to respond first to the request to re-depose Marie.

You have seen the exhibits that were filed in this case, and we made sure that we included all the communications, so you would have a full story on this. Pursuant to those communications in the January 12th telephone conference, Marie's deposition was scheduled for either February 24th or February 25th. We were doing Marie and Craig's back-to-back. That was followed up on January 14th in defendant's exhibit 3, which shows that we -- it was confirmed. Her deposition was going to be the 24th or 25th with Craig's on the other day.

In the meantime, we get the -- we send out our expert disclosures on January 28th. You can see from the responses to that that there was no concern about the deposition. Ms. Hansen just said, we did not actually get any disclosure and I will respond to that at the end. But we explained again on February 4th that we were

waiting for the reports. Now, Mr. Tentinger, Ms. Hansen, none of the defense counsel ever requested a continuance of Ms. Stevenson's deposition.

Now, Your Honor, I want to make it clear that had they requested that, we would have done it. But they have now manufactured a prejudice that is of their own -- own cause at this point. They had that option and didn't do it.

Now, Your Honor, I'm going to go back to the beginning I just wanted to get that out of the way first. Your Honor, one of our biggest problems that we have with these motions is that we have tried to compromise with the defendants. We have made offers to them. We suggest a zoom hearing. And what happens is we make the compromises, and they say, no. We're going to change our reasoning as to why we will not work with you. So, just going, for example, through the reply brief that Mr. Couillard filed. This was the first time that we were informed that the most important thing was to have an in-person evaluation. Throughout the communications that you have, the emails, Ms. Hansen stated that their concern was that Craig could be influencing her. Influencing Marie. Because of that concern they did not like the idea of having it by Zoom. They didn't want him present. And this is stated in exhibit B, the January

13th email. And we said he wouldn't be present. We said that the next day. Yet still, they canceled the IME, and then on January 27th, this is exhibit D, she state -- Ms. Hansen stated a Zoom examination is not realistic. Marie must be seen in person to assure she's not being influenced in any way. Again, there were no concerns about needing face-to-face communication to get a holistic picture of the examinee's mental and psychological health. This was manufactured because of the fact that we said, he would not be there. She agreed he would not be there. We would put in all of these safeguards to make sure that there would not be any conditions or concerns about any influence. Yet because of the fact that we did that, they changed the reasoning to wanting an in-person examination.

Now, as you know, we have had her examined twice, both by video conference. And we provided affidavits from our experts that said that they do these by video conference regularly. Defendants haven't provided any affidavits. Until the reply memorandum was filed, the only expert's name we had been given from defendants was Dr. O'Neill. All we had was an email from Ms. Hansen saying that he does not do video conference evaluations. Nothing else. We don't have an affidavit from him. Nothing. We don't have an affidavit from Dr. Dossa that

he doesn't do evaluations by video conference either. In fact, Ms. Holmberg's affidavit that was filed with the reply memorandum doesn't even say that she asked Dr. Dossa about doing a video conference. It says that she contacted four companies in the Twin Cities and only two would travel. But no questions about a video evaluation. And a video evaluation would solve these problems by not requiring Marie and Craig to travel when they have significant medical conditions.

Your Honor, I just wanted to point out that in the original memo filed by the defendants, they gave you two articles talking about a third-party observer. Making it clear to this Court that their concern was having Craig present. Even though that wasn't an issue because Craig had agreed not to be there. Marie had agreed Craig could not be there. Counsel had agreed Craig would not be there. But they're manufacturing this into an effect to make us look like we are trying to make Craig be there when we had agreed not to. But they need any basis to make that an in-person evaluation.

Now, Your Honor, the next thing that Mr. Couillard brought up was the recording. And don't really want to spend any time on this. I just want to point out one thing. The cases he cited *Tomlin* and an Ohio case are not from Minnesota, and as you are aware federal cases

are helpful if there is not a state case on point and the statutes are identical. But there is a state case on point, and that's *Wood versus Chicago, Milwaukee, St. Paul, and Pacific Rail Company.* And they didn't cite that because it says, the Court has the right to require an evaluation be recorded.

Your Honor, I'm going to move on to the location. As you noted in Ms. Holmberg's affidavit. Ms. Holmberg started with the Twin Cities, she contacted four places in the Twin Cities. And two of them said that they would travel to St. Cloud. There is nothing that the defendants have looked for any location close to the plaintiff's home. There's nothing to suggest that they've looked in Fargo, North Dakota. And a simple Google search shows that there are forensic psychologists in Fargo, North Dakota. There's nothing to suggest that they have searched in Alexandria or Detroit Lakes.

Now, as you are aware, you live in Otter Tail. It's not a big county. But there are larger cities than -- that are closer than St. Cloud and Twin Cities, and those should be searched and looked at before you require somebody to travel two hours one way for a four-hour evaluation. That makes it into an eight-hour day. Now, Fargo, Alexandria, Detroit Lakes, all three of these are within one hour of the plaintiff's location. And that

cuts down two hours of driving time, which is significant when you've got medical conditions that prohibit you from sitting for long periods of time and make it very uncomfortable.

And Your Honor, I would note that this would be consistent with the Minnesota no-fault, IME provision because these are the closest locations to their -- the plaintiff's home. It is -- the defendants cannot start with where they want to have an evaluation and slowly move to the plaintiff's location. They need to start at the plaintiff's location and find what is convenient for them. Not for the defendants. And again, as you noted, there's nothing from Mary Holmberg's affidavit to suggest that they've looked anywhere other than the Twin Cities.

Your Honor, on the types of tests, this -- we do have communications that were not included in the exhibits because we didn't find that they were necessary, but we had a communication with Ms. Hansen when she was looking at Dr. O'Neill. And we asked what tests she would -- Dr. O'Neill would be providing. Ms. Hansen gave those to us and we agreed that those were reasonable. Now, there's no reason we can't same for Dr. Dossa. If they believe that they're using Dr. Dossa, whose name was first given to us one week ago today, they could've gotten those same tests from him, but they haven't.

Now, Marie has gone through eight psychological tests as part of her evaluations. These are all national tests that are well known. There's no reason why we can't limit it to those eight, so we don't have to come back here because that's our concern. Is that they will have a test that we didn't agree to, that we don't think is proper, especially when we're talking about mental health evaluations. And we will be back here for another evalu -- for another motion in front of you.

Your Honor, finally I'm going to move to the motion to exclude expert. As you know, defendants have provided no case law on this. And the reason they provided no case law is because the case law tells them that they cannot have our expert excluded. It is straightforward. They first have to prove prejudiced and as I mentioned before they've manufactured this prejudice by not even requesting a continuance of the deposition which they could have done. And two, if there are any lesser sanctions then that has to be first.

So, to begin with, they can't meet their standard, and when we pointed it out in our memorandum that you can't meet this. You have not proven any prejudice. You can't prove prejudice. And even if we were at the day of trial, what the court is supposed to do is continue it instead of excluding. It is an abuse of discretion to

exclude an expert without prejudice. Instead, the response is no, we're going to stick with the statute. Honestly, Your Honor, this kind of goes into a bad faith motion at this point. There is no case law to support their motion.

Now, I want to just point out that we don't participate up in Otter Tail much, but I've seen many, many scheduling orders and every county does them differently. Most of the scheduling orders I see state that expert reports are due, or it'll say identity of expert. That's not what this expert -- this is not what this scheduling said. It said expert disclosures. Now, that's not very clear. In a dispute over what that means is not a basis for a motion to compel and for sanctions or any exclusions of the expert report.

THE COURT: All right. Anything further, Ms. Wolfgram?

MS. WOLFGRAM: No, Your Honor.

THE COURT: All right. Response Mr. Couillard?

MR. COUILLARD: I don't have anything. I'll defer to Mr. Tentinger if he does.

THE COURT: All right. Mr. Tentinger.

MR. TENTINGER: I have another hearing in just a few minutes, Your Honor, so I will be very brief.

The idea that these affidavits by defendants aren't

adequate to support this motion, now turn to plaintiff's affidavits. There's no medical records or any doctor's note, or any medical record even hinting that these alleged medical issues preventing travel. These are self-induced restrictions. I mean, the fact that they would have to travel to St. Cloud from their home for a psych evaluation in the lawsuit that they brought is not unreasonable. It happens in any med-mal case, any personal injury case across the entire state. Sometimes people have to go a couple hundred miles. I mean, it's agreed that it would be more convenient if we could somebody in Otter Tail but that's not possible.

The idea that they have to go -- they have to travel to -- Craig doesn't even have to travel. Marie has a driver's license. She's capable of driving herself. She used to drive to Wahpeton for her own medical appointments. She could drive herself to St. Cloud for the appointment, go back the same day, and pack one lunch. And again, these restrictions are self-imposed by themselves. If there was medical support for it, they would have submitted it. It's just -- I've just never seen such an opposition to having to travel here for a short distance for an examination like this and to me it just seems unreasonable. I'll leave it at that.

THE COURT: All right. And Ms. Wolfgram, any

response?

MS. WOLFGRAM: Your Honor, the medical conditions are well established in the record. Both in the complaint and multiple affidavits. There's also been a deposition confirming all of these. And, you know, Ms. Stevenson has mentioned she has not traveled the entire -- she has not driven while this entire case has been pending and to expect her to drive two hours because Mr. Stevenson can't do it on a highway when she's got parathesis and neuropathy is very dangerous, Your Honor.

THE COURT: All right. And I just wanted to note one thing, when we're talking about the scheduling order. I actually just signed the stipulated order that was presented by the attorneys, so if there was confusion about what those meant it's -- it wasn't an Otter Tail Count standard order. I just happened to just take a look and it looks like counsel had signed off on that. So.

All right. I'm going to take this under advisement. I'll try to get this order out rather quickly. Obviously, there's a lot of things pending that need to be resolved including that IME, so this case can continue to move forward.

So, I will put a rush on it. Obviously, everybody knows I have 90 days. I am not going to take that in

this, but I've got to kind of reconcile all the documents that I've got and we'll get an order out as soon as possible.

MR. TENTENGER: Thank you, Your Honor.

THE COURT: All right. Thank you.

MS. WOLFGRAM: Thank you, Your Honor.

THE COURT: That will conclude this hearing, everybody have a good weekend.

MR. COUILLARD: Thank you.

(Proceedings concluded.)

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STATE OF MINNESOTA IN THE DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

- -

Craig Stevenson, Marie Stevenson,

Plaintiffs, File No. 56-CV-20-2928

vs. REPORTER'S CERTIFICATE

Sean Stevenson, Renee Stevenson,

Lisa Stevenson-Allen, Ashley Anderson

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I, Dana Eifert, hereby certify that I am an official court reporter in the Seventh Judicial District of the State of Minnesota; that as such reporter I digitally recorded the proceedings in the above-entitled action; that I thereafter transcribed to typewriting the foregoing transcript from the digital recordings taken in Otter Tail County, Minnesota on March 25, 2022; and that the foregoing transcript consisting of 21 pages, constitutes a full, true, and accurate transcription of said proceeding.

Dated: June 29, 2022

/s/ Dana Eifert
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