

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GEORGIA ERICKSON,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF CORRECTIONS,

Defendant.

FINAL PRETRIAL
CONFERENCE ORDER

04-C-265-C

A final pretrial was held in this case on March 31, 2005, before United States District Judge Barbara B. Crabb. Plaintiff was represented by Houston Parrish. Defendant was represented by Richard Moriarty and John Brown.

Counsel agreed to the proposed voir dire questions with the exception of Question 10(q), which I have deleted.

Counsel were informed that trial days would run from 9:00 a.m. to 5:30 p.m. with an hour for lunch, that there would be eight jurors selected from a qualified panel of fourteen and that each side would exercise three peremptory challenges. Counsel are to have their exhibit lists and copies of documentary exhibits on the bench before the start of trial on

Monday, April 4, 2005. Counsel expect the case to last no more than five days.

Counsel are to advise each other of the witnesses they will be calling and in the order they will be calling them. Plaintiff is to advise defendant's counsel of the witnesses he will be calling on Monday and to do so no later than 4:00 p.m. on Friday, April 1, 2005.

Counsel asked for a sequestration order. The request was GRANTED. It does not cover plaintiff or the parties' expert witnesses.

I made the following rulings on the parties' motions in limine.

1. Defendant's motion to exclude evidence about dismissed charges against inmate John Spicer at the Racine Correctional Institution is GRANTED because the employees who made the decisions about plaintiff were not aware of this incident.

2. Defendant's motion exclude evidence about an alleged incident involving John Spicer and a wastebasket under a desk is GRANTED. Plaintiff's counsel says that he does not intend to introduce this evidence at trial.

3. Defendant's motion to exclude evidence about the propriety of further inquiry after plaintiff made statements about Spicer on December 20, 2001, is DENIED.

4. Defendant's motion to exclude evidence about subsequent remedial measures and about steps that might have prevented the sexual assault is GRANTED insofar as it relates to policies and not to how defendant responded to plaintiff's complaint.

5. Defendant's motion to exclude evidence of the sexual assault and other

activities of Spicer on December 28, 2001, is GRANTED. However, plaintiff may testify to the fact that she was raped. If the parties are able to reach a stipulation about the rape, that will suffice. Plaintiff is not to go into details of the manner in which she was raped or weapons that inmate Spicer may have used during the liability phase of the trial. In the damages phase, all of these matters can be explored at length.

6. Defendant's motion to prevent plaintiff from introducing documents produced by defendant during discovery without proper authentication is DENIED.

7. Defendant's motion to exclude opinion evidence offered by any witness except Percy Pitzer in the liability phase and Linda Wilhelmi in the damages phase is GRANTED only to the extent that plaintiff is not allowed to attempt to elicit expert opinions from these persons.

8. Defendant's motion to exclude or restrict opinion evidence offered by Percy Pitzer is GRANTED. I am not persuaded that Mr. Pitzer qualifies as an expert simply by virtue of his experience in the field. In that connection, plaintiff wants to call defendant's expert, Cindy O'Donnell as an expert for its case in chief. Defendant objects. Plaintiff is to file a short brief if he believes that he has law to show that it is permissible to call an adversary expert witness as one's own expert.

9. Defendant's motion to exclude or restrict opinion evidence offered by Linda Wilhelmi at the damages phase is DENIED.

10. Defendant's motion to bar plaintiff from using deposition testimony for impeachment purposes if the testimony was the subject of objections at the time of the deposition before plaintiff has obtained a ruling by the court on the admissibility of the testimony is GRANTED.

11. Plaintiff's request to exclude evidence of plaintiff's worker's compensation claim and evidence that plaintiff's medical bills have been covered by worker's compensation or other insurance is GRANTED. The parties reached a settlement of the worker's compensation claim on the basis that no further reference would be made to this claim. They are bound by that settlement agreement.

12. Plaintiff's motion to exclude evidence of the Department of Corrections' rules regarding inmate conduct is GRANTED.

13. Plaintiff's motion to exclude evidence that the reason plaintiff was working late on the day she was assaulted was because she was making up time to go to court-ordered counseling stemming from a driving while intoxicated charge is GRANTED. It is not necessary for the jury to know why plaintiff was working late. Plaintiff's counsel may ask plaintiff whether it was unusual for her to work late at night but not go into what her reasons for doing so might have been.

14. Plaintiff's motion to exclude evidence that plaintiff applied for and was denied disability benefits is GRANTED. Defendant does not intend to introduce any such

evidence.

15. Plaintiff's motion to exclude evidence that Marc McCrory ever suggested to plaintiff that she not seek treatment because of the pending litigation is GRANTED insofar as it relates to Dr. Lynch but DENIED as other witnesses who are in a position to testify from personal knowledge about plaintiff's reasons for declining to participate in certain therapy.

16. Plaintiff's motion to keep Dr. Lynch's report from the jury is GRANTED. It is likely that the report will not be referred to at all because it relates to the worker's compensation claim which cannot be discussed at trial.

Entered this 1st day of April, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge