

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

BRENDA MOMBOURQUETTE,
by her guardian, TAMMY MOMBOURQUETTE,
E.S. (a minor) and C.S. (a minor),
WISCONSIN DEPARTMENT OF HEALTH
FAMILY SERVICES,

Plaintiffs,

v.

CHARLES AMUNDSON, Individually
in his supervisory capacity, JEANNE REINART,
Individually, CANDACE WARNER, Individually,
DAVID SCHALDACH, Individually, SANDIE
WEGNER, Individually, ANNA JANUSHESKE,
Individually, MIKE WILDES, Individually,
JANITA LEIS, Individually, SUE WIEMAN,
Individually, and PATRICIA FISH, Individually,

Defendants.

ORDER

05-C-0748-C

A final pretrial conference was held in this case on February 1, 2007, before United States District Judge Barbara B. Crabb. Plaintiffs appeared by Michael Devanie and Keith Belzer. Defendant Jeanne Reinart appeared by Martin J. DeVries; defendant David Schaldach appeared by Daniel G. Jardine and Jessica Baumgartner; and the remaining

defendants appeared by Charles Bohl and Andrew Jones. (At trial, Mr. Bohl will represent Amundson and Mr. Jones will represent the remaining defendants.)

Counsel predicted that the case would take at least 9 days to try. It will not start before 12:30 p.m. They understand that trial days will begin at 9:00 and will run until 5:30, (except on Friday, February 16, when the trial day will end at 2:00), with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed that the witnesses would be sequestered. They are either familiar with the court's visual presentation system or will make arrangements with the clerk for some instruction on the system.

No later than noon on Friday, February 9, 2007, plaintiffs' counsel will advise defendants' counsel of the witnesses plaintiffs will be calling on Monday and the order in which they will be called. Counsel should give similar advice at the end of each trial day; defendants' counsel shall have the same responsibility in advance of defendants' case. Also, no later than noon on Friday, February 9, counsel shall meet to agree on any exhibits that any party wishes to use in opening statements. Any disputes over the use of exhibits are to be raised with the court before the start of opening statements.

Counsel should use the microphones at all times and address the bench with all objections. If counsel need to consult with one another, they should ask for permission to do so. Only the lawyer questioning a particular witness may raise objections to questions

put to the witness by the opposing party and argue the objection at any bench conference.

Counsel are to provide the court with copies of documentary evidence before the start of the first day of trial.

The parties took up the issue of the questionnaire as constructed by the court and agreed to the suggested form. The questionnaires will be mailed out Friday, February 2, together with a letter from the court, directing prospective jurors to complete them as quickly as possible and return them to the court. As soon as questionnaires are received at the courthouse, the clerk will advise counsel that they come to the courthouse to review them. If counsel cannot get to the courthouse before February 12, the questionnaires will be available for review at 8:00 that morning.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. Because of the possibility that the trial will not be completed before mid-March, the jury will consist of ten jurors to be selected from a qualified panel of twenty. Defendants will have a total of six peremptory challenges, which they may exercise as a team or separately. Plaintiffs will have four peremptory challenges.

Before counsel give their opening statements, the court will give the jury the introductory instructions on the way in which the trial will proceed and the juror's responsibilities during the trial.

Counsel discussed the form of the verdict and the instructions on liability. Final

decisions on the instructions and form of verdict will be made at the instruction conference once all the evidence on liability is in.

The following rulings were made on the parties' motions in limine.

Plaintiffs' motions:

1. Motion to exclude testimony of Dr. Kenneth Robbins. GRANTED,
2. Motion to exclude testimony of Daniel Kennedy. GRANTED with respects to the following subjects:

- a. That defendants did not draw the inference that plaintiff was at risk.
- b. That defendants could not have been aware of the risk because others weren't.
- c. That other reasons suggested that no risk was apparent. The question is not what defendants *should* have known but what they *did* know.

The motion is DENIED with respect to testimony about the reasonableness of the defendants' reaction to the risk of which they were aware.

3. Motion to exclude testimony of Kim Buchanan. GRANTED. However, defendants who saw Buchanan can testify that she did not say anything to them about any potential risk of suicide and defendant may put in evidence of when she saw plaintiff and for how long.
4. Motion to exclude testimony of Dr. Louis Noltimier. GRANTED.
5. Motion to exclude testimony of Peter Quirin. GRANTED because his testimony goes to the feasibility of structural changes in the jail and plaintiffs are not arguing that structural

deficits contributed to defendants' failure to prevent plaintiff's suicide.

6. Motion regarding past Medicaid payments and sufficiency of present care as limitation on future care entitlement. GRANTED IN PART. Plaintiff is not limited to showing that the amounts actually paid by Medicaid are the only amounts to which she is entitled for reimbursement. As to the question of the sufficiency of plaintiff's present as a limitation on plaintiff's future needs, a ruling is deferred until the damages phase of trial.

7. Motion to exclude evidence about the Laar house fire. GRANTED.

8. Motion to exclude Brophy from testifying. GRANTED as to her comments about the filming of the Day in the Life video.

9. Motion to admit Day in the Life video. Plaintiffs are to pare down the video to no more than 10 minutes and re-submit for viewing by the court and defendants' counsel.

10. Motion to exclude Reinart's testimony that she made a medical judgment that plaintiff was not a suicide risk. DENIED. However, Reinart may not supplement her testimony at trial with anything not covered in discovery.

11. Motion to exclude testimony that plaintiff was manipulative. GRANTED with respect to the testimony of experts; DENIED with respect to the testimony of non-expert witnesses.

12. Motion to exclude evidence that plaintiff had antisocial personality disorder. GRANTED.

13. Motion to admit evidence of Lawson v. Trowbridge. DENIED.

Defendants' Motions

1. Motion to exclude testimony of Lindsay Hayes. DENIED with respect to how defendants should have responded to risk; GRANTED in all other respects.
2. Motion to exclude testimony of Kevin Schutz. A ruling is deferred to the damages phase of trial.
3. Motion to exclude evidence of Schaldach's sexual misconduct. DENIED except as to plaintiff's complaint about Schaldach's conduct and Amundson's disregard of reports from multiple jail employees. Plaintiffs may not put in evidence of Schaldach's conversation with plaintiff in empty cell.
4. Motion to exclude evidence of Lawson. GRANTED.
5. Motion to exclude or limit Day in the Life video. GRANTED, except as explained above.
6. Motion to dismiss claim for damages of plaintiff's children. GRANTED. The children will be dismissed from the case and their initials removed from the caption.
7. Motion to exclude some of Pressler's complaints. GRANTED as to any complaints that were corrected and as to personnel problems unrelated to inmate health and safety.
8. Motion to exclude insurance comment by Amundson. GRANTED unless Pressler can show that the comment was made in response to any complaint involving inmate health and safety.
9. Motion to limit number of family pictures. GRANTED. Plaintiffs may introduce no

more than 10 pictures.

10. Motion to exclude evidence that defendants have insurance. GRANTED.

11. Motion to limit evidence of jail inspector's criticisms in 2001 and 2002. GRANTED as to any that do not relate to inmate health and safety.

12. Motion to exclude evidence of subsequent remedial measures. GRANTED.

13. Motion for separate trial. DENIED.

Defendant Schaldach's Motions

1. Motion to exclude evidence of Schaldach's sexual harassment of co-workers. GRANTED.

2. Motion to exclude evidence that Schaldach was Amundson's son-in-law. GRANTED.

3. Motion to exclude evidence that Schaldach's sexual misconduct was crime. GRANTED unless Pressler or someone else told Amundson that the conduct was criminal when reporting it to him.

Entered this 2d day of February, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge