

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

CAROL A. THEISEN and
JOSEPH M. THEISEN,

Plaintiff,

FINAL PRETRIAL
CONFERENCE ORDER

09-cv-359-bbc

v.

BRIAN CARTER,

Defendant.

A final pretrial conference was held in this case on August 6, 2010 before United States District Judge Barbara B. Crabb. Plaintiffs appeared by John Stuber. Defendant appeared by Gesina Seiler.

Counsel predicted that the case would take 3 days to try. They understand that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed that with the exception of experts, all witnesses would be sequestered. Counsel are either familiar with the court's visual presentation system or will make arrangements with the clerk for instruction on the system.

No later than 4:00 p.m. on August 6, plaintiffs' counsel will advise defendant's 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; defendant's counsel shall have the same responsibility in advance of defendant's case. Also, no later than 4:00 p.m. on August 6, counsel shall meet to agree on any exhibits that either side 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.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. The jury will consist of eight jurors to be selected from a qualified panel of fourteen. Each side will exercise three peremptory challenges against the panel. 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 their 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.

Defendant's Motions

_____ 1. Motion to take judicial notice of circuit court's finding of probable cause to arrest plaintiff. GRANTED as unopposed.

2. Motion to exclude evidence or argument about events occurring after the use of taser. GRANTED.

3. Motion to preclude testimony of expert Robert Willis. GRANTED.

4. Motion to exclude defendant's previous use of tasers. GRANTED as unopposed.

5. Motion to exclude evidence of attorney fees incurred during criminal proceedings. Granted as unopposed.

6. Motion to exclude evidence of Kevin Kenyon's prior conviction. DENIED.

7. Motion to preclude Dr. Matey-Romeyn from testifying. GRANTED as unopposed.

8. Motion to preclude evidence of plaintiff's mental condition after July 21, 2008. GRANTED as unopposed with respect to her need for treatment; DENIED as to plaintiff's

own testimony about her emotional state, but not about her medical condition.

9. Motion to exclude testimony of Drs. Hutter and Varichak and of Sarah Winters, P.A. GRANTED as unopposed.

10. Motion to exclude evidence that plaintiff was tasered more than once. GRANTED as unopposed.

11. Motion to exclude plaintiff's written statement. GRANTED.

12. Motion to admit defendant's police report. DENIED.

13. Motion to use 2007 testimony of Mary Ann McCall. GRANTED.

14. Motion to preclude plaintiff's counsel from using leading questions. DENIED, insofar as counsel is questioning a witness adverse to plaintiff; otherwise GRANTED.

Entered this 9th day of August, 2010.

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