

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

DREW ADAMS, a minor, by and through
his next friend and mother, ERICA
ADAMS KASPER,

Plaintiff,

v.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,

Defendant.

Case No. 3:17-cv-00739-TJC-JBT

**PLAINTIFF'S MOTION *IN LIMINE* TO EXCLUDE EVIDENCE PURPORTING
TO DISPUTE PLAINTIFF'S DIAGNOSIS OF GENDER DYSPHORIA AND
SUPPORTING MEMORANDUM OF LAW**

Pursuant to Federal Rules of Evidence 403, 701, and 702, Plaintiff Drew Adams (“Drew”), a minor, by and through his next friend and mother, Erica Adams Kasper (collectively, “Plaintiff”), and by and through their undersigned counsel, respectfully moves this Court to exclude any evidence, argument, or opinion offered by Defendant The School Board of St. Johns County, Florida (“Defendant” or the “School Board”) to dispute Plaintiff’s diagnosis of gender dysphoria. Pursuant to Rules 701 and 702 of the Federal Rules of Evidence, Defendant can only challenge Plaintiff’s gender dysphoria diagnosis through expert medical testimony and both of Defendant’s experts here have testified under oath that they have no basis to question Drew’s diagnosis with gender dysphoria. Having failed to proffer an expert to dispute Drew’s diagnosis, any attempt to dispute or contradict Drew’s diagnosis of gender dysphoria at trial should be excluded as unsupported, inadmissible and prejudicial.

Moreover, it is not the role of a school board to question their students' medical diagnoses or argue that the prescribed treatment – including social transition and access to restrooms corresponding to one's gender identity – are inappropriate. As such, it is beyond the pale that cognizant of their role as a school board, as well as the fact that neither of their experts dispute Drew's gender dysphoria diagnosis, that Defendant would seek to dispute the medical diagnosis for one of its students.

BACKGROUND

On June 28, 2017, Plaintiff filed a complaint alleging that the School Board's policy preventing him from using the bathroom that corresponds to his gender identity constitutes impermissible discrimination under the Equal Protection Clause of the Fourteenth Amendment based on sex and transgender status, and unlawful sex discrimination under Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq. ("Title IX"). Plaintiff's complaint asserts that Plaintiff is a boy, who is transgender, and who has been diagnosed with gender dysphoria. By his complaint, Plaintiff seeks declaratory and injunctive relief as well as compensatory and non-economic garden-variety damages.

There is no dispute that Drew is transgender and has been diagnosed with gender dysphoria. Indeed, both of Defendant's experts have testified under oath that they do not dispute that Drew was diagnosed with gender dysphoria. Indeed, in the deposition for Defendant's expert, Dr. Paul Hruz, Dr. Hruz testified:

- Q. Would you agree that Drew's treating physicians have diagnosed him with gender dysphoria?
- A. I would agree, yes.

Q. Would you agree that Drew Adams suffers from gender dysphoria?

A. Based on the information presented to me, I would accept that. I have nothing to dispute that.

Hruz Depo. Tr. 25:24-26:5 (the relevant excerpts of Dr. Hruz's deposition transcript are attached hereto as Exhibit "A"). In fact, Dr. Hruz has never even treated a patient for gender dysphoria, so clearly would not be a position to diagnosis the condition in any event. Hruz Depo. Tr. 25:20-25:23 ("Q. Okay. And based on your testimony, would you agree that you have not treated any transgender patients for gender dysphoria? A. Yes, I would agree."). And Dr. Hruz is likewise not offering a specific opinion on whether Drew is transgender, he agrees that Drew is a transgender male. Hruz Depo. Tr. 16:10-16:14; *id.* at 23:4-23:8 ("Is Drew a transgender boy? A. Again, you have to be very careful when you make the designation. The -- the terminology that is often used right now would classify him as a transgendered male.").

Similarly, Defendant's second purported expert, Dr. Allan Josephson,¹ has specifically testified that he is *not* an expert in gender dysphoria and has no opinions to offer as to—let alone dispute—Plaintiff's gender dysphoria diagnosis. Josephson Depo. Tr. 21:1-21:7; *id.* at 102:7-102:12 ("Let me just step back to the earlier line of questions just for a second. Can you identify for the record what specific qualifications you have to hold yourself out as an expert in gender dysphoria? . . . A. I haven't held myself out as an expert.") (the relevant excerpts of a rough draft of Dr. Josephson's deposition transcript are attached hereto as Exhibit "B").

¹ Because Dr. Josephson was deposed just yesterday, November 28, 2017, Plaintiff only has access to a rough draft of the deposition transcript at this time, of which excerpts are included with this motion.

Indeed, Dr. Josephson agrees that Drew has been diagnosed with gender dysphoria and has stated he is not offering an opinion on whether Drew's gender dysphoria has or will persist. Josephson Depo. Tr. 20:3-20:5 ("Q. Do you agree that Drew Adams was diagnosed with gender dysphoria by his medical providers? A. Yes"); *id.* at 19:2-19:5 ("Q. Are you rendering an opinion as to whether Drew Adams suffers from gender dysphoria? A. No, because I haven't examined him."); *id.* at 20:15-20:22 ("Q. So then are you offering any opinions on whether Drew Adams [sic] gender dysphoria has or will persist? A. I'm not offering an opinion on that. I mean I could be asked one and would probably, I think it would be fairly accurate. But I'm not offering it in this case."). And like Dr. Hruz, Dr. Josephson is not offering a specific opinion on whether Drew is transgender and does not dispute that Drew has a male gender identity. Josephson Depo. Tr. 20:23-20:25 ("Q. Okay. Are you offering any opinion on whether Drew Adams will seek to identify as being transgender? A. No."); *id.* at 18:16-18-18 ("Q. Okay. Do you have any reason to doubt that Drew identifies as male? A. No.").

In sum, neither of Defendant's experts spoke with, met, interviewed, evaluated or treated Plaintiff and, thus, cannot proffer any opinions directed to his medical diagnosis, prognosis or treatment. *See* Hruz Depo. Tr. 17:9-18:2; *id.* at 46:23-47:22; Josephson Depo. Tr. 9:24-10:7; *id.* at 20:3-20:5; *id.* at 20:15-20:22. There is likewise no dispute that Drew has already taken steps to socially and medically transition, a fact likewise conceded by Dr. Josephson. Josephson Depo. Tr. 14:9-14:22.

Given that neither of Defendant's experts are offering any opinions regarding Plaintiff's diagnosis of gender dysphoria, the cause of his gender dysphoria, whether his gender dysphoria will persist, or the propriety of his medical treatment related to gender dysphoria,

there is no credible basis to allow Defendant to try to call into question that diagnosis or the impact of the same. Plaintiff's medical diagnosis of gender dysphoria – a diagnosis made using the criteria set forth in the DSM-5 and made by Plaintiff's treating medical providers can, therefore, not be called into question at trial. Fed. R. Evid. 701-702.

Notwithstanding the lack of foundation or any viable witness to opine on Plaintiff's medical diagnosis, Defendant has represented that it intends to dispute Drew's medical diagnosis of gender dysphoria and potentially question whether his condition was exacerbated by the Defendant's discriminatory policy. The position is at odds with the fact that neither of Defendant's experts have any expertise in this area and have acknowledged as much under oath. Because gender dysphoria is a complicated medical diagnosis that is outside the scope of lay opinion testimony, and because none of Defendant's experts have disputed Drew's diagnosis or otherwise testified that they have any expertise in this area, all evidence, argument, or opinion offered by Defendant to dispute Drew's gender dysphoria diagnosis should be excluded.

Put simply, it is not the role of the School Board to question their students' medical diagnoses or argue that the prescribed treatment – including social transition and access to restrooms corresponding to one's gender identity – are inappropriate.

ARGUMENT

Federal district courts have authority to make *in limine* rulings pursuant to their authority to manage trials. *Luce v. United States*, 469 U.S. 38, 41 (1984); *see also Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1503 (11th Cir. 1985) (stating that consideration of a motion *in limine* is a matter within the discretion of the District Court); *Arnold v. Nobartis*

Pharm. Corp., 28 F. Supp. 3d 1268 (M.D. Fla. 2014) (ruling on an “omnibus motion *in limine*” and granting a series of evidentiary exclusions). The purpose of a motion *in limine* is “to exclude anticipated prejudicial evidence before the evidence is actually offered.” *Luce*, 469 U.S. at 40 n. 2 (1984).

A lay witness may not offer opinion testimony that is “based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701(c). Courts have routinely held that testimony as to complex medical diagnoses are outside the scope of permissible lay opinion testimony. *See, e.g. Parillo v. Lowe’s Home Centers, LLC*, Case No. 3:14-cv-369, 2017 WL 4124585, at *1 (S.D. Ohio Sept. 18, 2017) (“lay witness opinions regarding the cause of complex medical conditions are . . . prohibited under Rule 701”); *Montoya v. Sheldon*, 286 F.R.D. 602, 614 (D.N.M. 2012) (“Diagnosing that a patient suffers from a complicated medical condition is expert testimony”); *Ferris v. Pennsylvania Fed’n Broth. of Maint. Way Emps.*, 153 F. Supp. 2d 736, 746 (E.D. Pa. 2001) (holding that a lay person could not “testify regarding any specific medical diagnosis of [the plaintiff’s] mental ailments as the conditions from which he suffers . . . are complex injuries beyond the knowledge of a layperson”).

Courts have also held that a party cannot dispute a medical determination as to whether an individual has gender dysphoria absent qualified expert testimony refuting the prior medical determination. *See Maggert v. Hanks*, 131 F.3d 670, 671 (7th Cir. 1997) (holding that there was no “genuine issue of material fact” where defendant had failed to provide expert testimony to refute psychiatrist’s determination that the plaintiff did not have gender dysphoria); *Sundstorm v. Frank*, 630 F. Supp. 2d 974, 987 (E.D. Wis. 2007) (granting plaintiff’s motion *in*

limine to exclude a corrections expert’s proffered testimony regarding gender identity disorder because he had no psychological or medical “knowledge, skill, experience, training, or education” as required by Federal Rule of Evidence 702).

In this case, the Defendant has not and cannot proffer any expert or layperson testimony that disputes or contradicts Drew’s diagnosis of gender dysphoria, a diagnosis made by several of Drew’s treating physicians. The deadline for expert discovery and submission of expert reports has long-since passed, and the two experts that Defendant has disclosed have made clear that they do not contest or otherwise dispute the diagnosis, and in any event, neither has expertise in this area. A lay witness would not be competent to testify regarding the veracity of a complex medical diagnosis such as gender dysphoria. *See, e.g. Sundstorm*, 630 F. Supp. 2d at 987; *Ferris*, 153 F. Supp. 2d at 746; *see also* Fed. R. Evid. 701(c). In light of the above and the record evidence, the Court should exclude any argument, evidence, or opinion offered by Defendant attempting to dispute Drew’s medical diagnosis of gender dysphoria.

CONCLUSION

WHEREFORE, based on the foregoing, Plaintiff respectfully requests that the Court grant the instant motion *in limine* in full and preclude Defendant from offering any evidence, argument, or opinion disputing Plaintiff’s diagnosis of gender dysphoria.

CERTIFICATE OF CONFERENCE PURSUANT TO LOCAL RULE 3.01(g)

Pursuant to 3.01(g) of the Local Rules of the Middle District of Florida, the undersigned certifies that he has conferred with the attorneys representing Defendant regarding the relief requested in the motion. The parties were unable to reach a resolution and Defendant’s counsel does not consent to the relief requested.

Dated this 29th of November, 2017

Respectfully submitted,

/s/ Omar Gonzalez-Pagan

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2017, the foregoing motion was filed electronically using the Court's ECF system, which will provide electronic notice to all counsel of record, including:

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EXHIBIT A

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UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF FLORIDA

DREW ADAMS, a minor,)
)
Plaintiff,)
)
vs.) Civil Action
) No.3:17-cv-00739-TJC-JBT
THE SCHOOL BOARD OF ST.)
JOHNS COUNTY, FLORIDA,)
)
Defendant.)

VIDEOTAPED DEPOSITION OF PAUL W. HRUZ, M.D., Ph.D
Taken on behalf of Plaintiff
November 20, 2017
(Starting time of the deposition: 8:58 a.m.)

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(The original exhibits were retained by the court reporter, to be attached to Mr. Gonzalez-Pagan's transcript.)

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UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF FLORIDA

DREW ADAMS, a minor,)
)
Plaintiff,)
)
vs.) Civil Action
) No.3:17-cv-00739-TJC-JBT
THE SCHOOL BOARD OF ST.)
JOHNS COUNTY, FLORIDA,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF WITNESS, PAUL W.
HRUZ, M.D., Ph.D., produced, sworn, and examined on
the 20th day of November, 2017, between the hours of
nine o'clock in the forenoon and six o'clock in the
evening of that day, at the offices of Veritext Legal
Solutions, 515 Olive Street, Suite 300, St. Louis,
Missouri before BRENDA ORSBORN, a Certified Court
Reporter within and for the State of Missouri, in a
certain cause now pending in the United States
District Court for the Middle District of Florida,
wherein Drew Adams, a minor, is the Plaintiff and The
School Board of St. Johns County, Florida is the
Defendant.

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The Videographer: Ms. Kimberlee Lauer

1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for Plaintiffs and counsel for
3 Defendants that the VIDEOTAPED DEPOSITION OF PAUL W.
4 HRUZ, M.D., Ph.D., may be taken in shorthand by Brenda
5 Orsborn, a Certified Court Reporter, and afterwards
6 transcribed into typewriting; and the signature of the
7 witness is expressly not waived.

8 * * * * *

9 VIDEOGRAPHER: Good morning. We're going on
10 the record at 8:58 a.m. on Monday, November 20th,
11 2017. Please note that the microphones are sensitive
12 and may pick up whispering and private conversations
13 and cellular interference. Please turn off all cell
14 phones or place them away from the microphones as they
15 can interfere with the deposition audio. Audio and
16 video recording will continue to take place unless all
17 parties agree to go off the record.

18 This is Media Unit No. 1 of the video
19 recorded deposition of Dr. Paul Hruz, taken by counsel
20 for the Plaintiffs in the matter of Drew Adams versus
21 the School Board of St. Johns County, Florida, filed
22 in the United States District Court for the Middle
23 District of Florida. This deposition is being held at
24 Veritext Legal Solutions, located at 515 Olive Street
25 in St. Louis, Missouri.

1 My name is Kimberlee Lauer from Veritext,
2 and I'm the videographer. Our court reporter is
3 Brenda Orsborn, also from Veritext. I am not
4 authorized to administer an oath. I am not related to
5 any party in this action. Nor am I financially
6 interested in the outcome.

7 Counsel and all present in the room and
8 everyone attending remotely will now please state your
9 appearances and affiliations for the record, and if
10 there are any objections to proceeding, please state
11 them at the time of your appearance beginning, please,
12 with the noticing attorney.

13 MR. GONZALEZ-PAGAN: Thank you. Omar
14 Gonzalez-Pagan of Lambda Legal for the Plaintiff.

15 MS. RIVAUX: Good morning. Shani Rivaux
16 with Pillsbury Winthrop Shaw Pittman, on behalf of the
17 Plaintiff.

18 MR. KOSTELNIK: Good morning, Kevin
19 Kostelnik of Sniffen & Spellman on behalf of the
20 Defendant.

21 THE WITNESS: Paul Hruz --

22 MR. HARMON: And this is Terry Harmon on the
23 phone, as well, for the Defendant.

24 THE WITNESS: And Paul Hruz, pediatric
25 endocrinologist, witness for the defense.

1 DR. PAUL HRUZ,
2 of lawful age, being produced, sworn and examined on
3 behalf of the Plaintiff, deposes and says:

4 EXAMINATION

5 QUESTIONS BY MR. GONZALEZ-PAGAN:

6 Q. All right. Dr. Hruz, thank you for being
7 here today. I know you're a busy man. As you're
8 aware, I represent Drew Adams, the Plaintiff in this
9 litigation, and I'll be asking some questions about
10 your opinions in this case today. I just want to go
11 over some ground rules just to get started. First, do
12 you understand that you're under oath today?

13 A. Yes, I do.

14 Q. And that -- that this requires to testify
15 truthfully?

16 A. Yes, I do.

17 Q. We cannot be speaking at the same time. It
18 will be annoying to the court reporter. It will make
19 it difficult for you to hear me, me to hear you. So
20 please let me finish a question before you start
21 answering it, and I'll strive to do the same as well,
22 and let you finish answering before I go into another
23 question. Is that agreed?

24 A. Very good. Yes.

25 Q. If you don't understand something I ask,

1 and again --

2 Q. Okay. So knowing that those are the
3 general, is there anything else that you would like to
4 add to that?

5 A. Again, my opinions, and I -- I -- I prepared
6 my expert declaration based upon a consideration of
7 all of the information I had available to me, and I
8 tried to include everything that was pertinent in that
9 statement.

10 Q. Okay. So now that you've given us your
11 general opinions on this, are you offering an opinion
12 on whether Drew Adams is transgender?

13 A. I am not.

14 Q. Would you agree with me that there are
15 transgender people?

16 A. I would agree with that there are people
17 that fulfill the criteria of gender dysphoria as
18 delineated in the DSM-5.

19 Q. What do you understand transgender to mean?

20 A. Are you speaking of -- just to clarify, are
21 you speaking about gender dysphoria or the general
22 term of transgender --

23 Q. The term transgender.

24 A. Transgender are -- is the condition in which
25 individuals have an identity -- a sexual -- or an

1 identity, a gender identity, that does not correspond
2 with their sex.

3 Q. Okay. So now understanding that term, I ask
4 you, would you agree with me that there are
5 transgender people?

6 A. I would agree that there are individuals
7 that have a gender identity that does not match their
8 sex.

9 Q. Okay. Have you met with Drew Adams?

10 A. I have not.

11 Q. Did you request to meet with Drew Adams?

12 A. I did not.

13 Q. Did anyone tell you you could not meet with
14 Drew Adams?

15 A. No.

16 Q. Have you evaluated Drew Adams?

17 A. Clarify what you mean by "evaluate."

18 Q. As a doctor, you conduct evaluations of your
19 patients.

20 A. So I have not participated in the medical
21 care of Drew Adams.

22 Q. Okay. So you have not treated Drew Adams
23 either?

24 A. That is correct.

25 Q. And you haven't examined him, medically

1 examined Drew Adams either?

2 A. I have never met him.

3 Q. Did you ask for an independent medical
4 examination?

5 A. I did not.

6 Q. Have you ever met with either of Drew Adams'
7 parents?

8 A. I have not.

9 Q. Have you spoken with any of Drew Adams'
10 treating physicians?

11 A. I'm -- I'm just trying to see if -- if the
12 ones that were listed, if I've ever met them at a
13 meeting. I've never spoke with them directly related
14 to this case, no.

15 Q. So if you've spoken to any of the doctors,
16 okay, you have never spoken with them about Drew
17 Adams?

18 MR. KOSTELNIK: Form.

19 A. That is correct.

20 Q. (By Mr. Gonzalez-Pagan) Did anyone advise
21 you that you could not speak to Drew Adams' treating
22 physicians?

23 A. No.

24 Q. Do you believe that speaking with Drew
25 Adams' treating physicians would have enabled you to

1 A. I -- as I said earlier, he is a biological
2 female that identifies as a male. By that definition,
3 he would qualified as a transgender individual.

4 Q. Is Drew a transgender boy?

5 A. Again, you have to be very careful when you
6 make the designation. The -- the terminology that is
7 often used right now would classify him as a
8 transgendered male.

9 Q. If Drew told you he was a boy, would you
10 accept that?

11 MR. KOSTELNIK: Form.

12 A. It would depend on what he was asking in
13 terms of that, if he was asking about his gender
14 identity or his biology. If he was asking about
15 whether he was biologically male or female, I would
16 say that he's biologically female.

17 Q. (By Mr. Gonzalez-Pagan) And if he told you
18 that his gender identity was male?

19 A. I would take him at his word.

20 Q. If Drew told you he uses male pronouns,
21 would you use male pronouns?

22 A. My practice is to use as much respect as I
23 can and within the confines of scientific and
24 biological reality, I would not have [sic] not an
25 objection to be able to identify him as he wished.

1 A. Well, again, if you would -- yeah, that is
2 true for -- for the -- the patient -- somebody like
3 Drew Adams that was biologically normal. I have
4 certainly cared for hundreds of patients that have
5 disorders of sexual development. Many practitioners
6 will include those in that designation. I believe
7 that they are a completely different patient
8 population than Drew Adams.

9 Q. (By Mr. Gonzalez-Pagan) What is gender
10 dysphoria?

11 A. Gender dysphoria is the discomfort that one
12 experiences related to gender identity that does not
13 conform with one's biological sex.

14 Q. Is that the definition in the DSM?

15 A. Yes.

16 Q. It uses the word "discomfort"?

17 A. I'd have to go look back at the exact
18 wording of that. It's the difficulty that they
19 experience, psychological difficulty with that, yes.

20 Q. Okay. And based on your testimony, would
21 you agree that you have not treated any transgender
22 patients for gender dysphoria?

23 A. Yes, I would agree.

24 Q. Would you agree that Drew's treating
25 physicians have diagnosed him with gender dysphoria?

1 A. I would agree, yes.

2 Q. Would you agree that Drew Adams suffers from
3 gender dysphoria?

4 A. Based on the information presented to me, I
5 would accept that. I have nothing to dispute that.

6 Q. What do you understand gender-affirming
7 treatment to mean?

8 MR. KOSTELNIK: Form.

9 A. So gender-affirming treatment?

10 Q. (By Mr. Gonzalez-Pagan) Yes.

11 A. That is the treatment paradigm that rather
12 than challenging the discrepancy between biological
13 sex and gender identity, it is affirmed and validated
14 in the individual, his -- encouraged in that
15 transgendered identity.

16 Q. So I just want to clarify a little bit,
17 because you used different words there for what's
18 being -- you said not challenge, correct?

19 A. That is correct.

20 Q. You said that it's accepted, that they
21 accept the gender identity of the --

22 A. And -- and I would say even encourage.

23 Q. So that's where I was going.

24 A. Yes.

25 Q. So you think not challenging is the same as

1 not -- not proven.

2 Q. Do you have any basis to dispute the claim?

3 A. No.

4 Q. Having never met, evaluated, examined or
5 treated Drew Adams, can you offer an opinion regarding
6 Drew Adams specifically?

7 MR. KOSTELNIK: Form.

8 A. My opinions in this case are based upon a
9 review of the medical literature and in the condition
10 itself, and that is what I am offering to the court in
11 my serving as an expert witness.

12 Q. (By Mr. Gonzalez-Pagan) Okay. Can you point
13 me to where you have specific opinions with regards to
14 Drew Adams in your report?

15 A. I specifically cover the medical
16 information. I do have a paragraph in there where
17 I -- I go through the details of what the allegations
18 are, and --

19 Q. Is that Paragraph 12?

20 A. I -- yes, that is correct.

21 Q. Is that a description of the case details?

22 A. That is correct.

23 Q. Is there any opinion specific as to Drew
24 Adams in Paragraph 12?

25 A. No.

1 Q. Is there any opinion specific as to Drew
2 Adams anywhere else in the report?

3 A. No. My opinions are based on -- near the
4 end of my declaration, I specifically state the
5 concerns in a -- in a general sense of all patients
6 that are -- are faced with this particular condition.
7 And I think that that certainly is pertinent to Drew
8 Adams in addition to the many other individuals that
9 are suffering from this condition.

10 Q. Okay. But none of those opinions are
11 specific to Drew Adams?

12 A. They are applicable to all individuals that
13 present as Drew Adams does.

14 MR. GONZALEZ-PAGAN: Move to strike as
15 nonresponsive.

16 Q. (By Mr. Gonzalez-Pagan) Are they specific to
17 Drew Adams?

18 A. They include Drew Adams. They are not
19 limited to Drew Adams.

20 Q. Would you agree that those opinions are
21 general in nature and not specific to Drew Adams?

22 A. Yes.

23 Q. Having never met, evaluated, examined or
24 treated Drew Adams, can you make an assessment as to
25 whether Drew Adams suffers from gender dysphoria?

EXHIBIT B



KENTUCKIANA
— COURT REPORTERS —

NO. 3:17-CV-00739-TJC-JBT

DREW ADAMS, ET AL.

v.

THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA

DEPONENT:

ALLAN JOSEPHSON, M.D.

DATE:

November 28, 2017



✉ schedule@kentuckianareporters.com

☎ 877.808.5856 | 502.589.2273

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF FLORIDA
3 JACKSONVILLE DIVISION
4 NO. 3:17-CV-00739-TJC-JBT

5
6 DREW ADAMS, ET AL.,
7 PLAINTIFFS

8
9 VS.

10
11 THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA,
12 DEFENDANT

13
14 **ROUGH DRAFT**

15
16 DEPONENT: DR. ALLAN JOSEPHSON, M.D.

17 DATE: NOVEMBER 28, 2017

18 REPORTER: MEGAN BROWN
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Page 2

1 APPEARANCES

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23 KEVIN KOSTELNIK

24 TERRY HARMON

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Page 4

1 EXHIBITS

2

3 1 POWERPOINT

4 2 EXPERT DISCLOSURE

5 3 ARTICLE

6 4 POWERPOINT

7 5 ARTICLE

8 6 ARTICLE

9

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Page 5

1 STIPULATION

2

3 The VIDEO deposition of DR. ALLAN JOSEPHSON taken at

4 KENTUCKIANA COURT REPORTERS, 730 WEST MAIN STREET,

5 SUITE 100, LOUISVILLE, KENTUCKY 40202 on TUESDAY, the

6 28TH day of NOVEMBER, 2017 at approximately 9:01 A.M.;

7 Said deposition was taken pursuant to the FEDERAL Rules

8 of Civil Procedure. It is agreed that MEGAN BROWN,

9 being a Notary Public and Court Reporter for the State

10 of Kentucky, may swear the witness.

11

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DRAFT

Page 6

1 PROCEEDINGS

2 VIDEOGRAPHER: Okay. We are now on record. My

3 name is Alex Glasnovic. I'm the video technician

4 today, and Megan Brown is the court reporter. Today

5 is the 28th day of November, 2017. The time is 9:01

6 a.m. We are at the offices of the Kentuckiana Court

7 Reporters located in Louisville Kentucky to take the

8 deposition of Allan Josephson, M.D. in the matter of

9 Drew Adams, et al. v. the School Board of St. Johns

10 County, Florida, pending in the United States

11 District Court for the Middle District of Florida,

12 Jacksonville Division, Number 3:17-CV-00739-TJC-JBT.

13 Will Counsel please identify themselves for the

14 record?

15 MS. NARDECCHIA: Good morning. Natalie

16 Nardecchia for the plaintiff.

17 MR. KOSTELNIK: Good morning. Kevin Kostelnik

18 for the defendant.

19 MS. ALTMAN: Jennifer Altman from Pillsbury

20 Winthrop Shaw Pittman for the plaintiff.

21 MR. PINGERRA: Anthony Pingerra for the

22 plaintiff.

23 VIDEOGRAPHER: Thank you. Dr. Josephson, will

24 you please raise your right hand to be sworn in by

25 the reporter?

Page 8

1 before, correct?

2 A Yes.

3 Q How many times?

4 A Oh, boy. Maybe ten. Testing my memory. I'm

5 just estimating ten.

6 Q Okay. So I'll just be quick then in going

7 over the deposition ground rules. So everything that's

8 being said in the room today is being transcribed by the

9 court reporter. So please speak clearly, audibly so

10 that she can take down everything that's being said.

11 Please give a verbal response such as "yes" instead of

12 "uh-huh" or nodding. And please also wait for me to

13 finish asking my question even though you may know what

14 I'm going to ask. And sometimes I take a minute to

15 finish my question. Just let me finish before you

16 respond and I will wait for you to answer before I ask

17 you another question, okay?

18 A (NO VERBAL RESPONSE.)

19 Q Yes?

20 A Yes.

21 Q Okay. I will take it that you understand my

22 question if you respond to it. So if you don't

23 understand my question let me know.

24 A Okay.

25 Q Okay. And if I've asked you a question I'd

Page 7

1 COURT REPORTER: Do you solemnly swear or

2 affirm that the testimony you're about to give will

3 be the truth, the whole truth and nothing but the

4 truth?

5 THE WITNESS: I do.

6 COURT REPORTER: Thank you.

7 MR. KOSTELNIK: Natalie, are you okay with just

8 saying "form" for any objections rather than "object

9 to form"?

10 MS. NARDECCHIA: Sure.

11 MR. KOSTELNIK: Just to speed things up.

12 MS. NARDECCHIA: That's fine.

13 MR. KOSTELNIK: Okay.

14 DIRECT EXAMINATION

15 BY MS. NARDECCHIA:

16 Q Okay. Good morning, Dr. Josephson. Could you

17 please state and spell your full name for the record?

18 A Allan Mark Josephson. A-L-L-A-N, M-A-R-K, J-

19 O-S-E-P-H-S-O-N.

20 Q Now, the oath that you've just taken is the

21 same that you would take as if you were in the court of

22 law. Do you understand that you're testifying under

23 penalty of perjury?

24 A Yes.

25 Q Okay. You've had your deposition taken

Page 9

1 prefer that you answer my question before you take a

2 break if you need to take one, okay?

3 A Okay.

4 Q Is there any reason, either your own physical

5 health or any medications you may be under, that would

6 prevent you from giving your best testimony today?

7 A No.

8 Q Okay. Can you please start off by telling me

9 all the opinions you intend to offer in this case?

10 A That's a broad question. Could you focus that

11 a little more? I mean?

12 Q Not really.

13 A Well, I'm here to provide information related

14 to the diagnosis of gender dysphoria, how it might

15 develop, how I as a physician and psychiatrist go about

16 identifying these problems, helping youth and their

17 families with these problems. And that would be the

18 main thing. The nature of the condition and how it's

19 treated and how that information might be relevant to

20 the attorneys working on this case.

21 Q Okay. You mentioned the nature of the

22 condition. Which condition are you referring to?

23 A Gender dysphoria.

24 Q Have you ever spoken to the Plaintiff in this

25 case, Drew Adams?

1 A I have not.

2 Q You never examined him?

3 A I have not examined him.

4 Q You've never evaluated him?

5 A No.

6 Q Never treated him?

7 A No.

8 Q Have you asked for an independent medical exam
9 of Drew Adams?

10 A No.

11 Q Do you believe that speaking to Drew Adams
12 would have enabled you to provide more accurate opinions
13 in this case?

14 A The information that I've had has been very
15 useful and helpful. Speaking to a patient always
16 clarifies things. But I'm more than able to offer an
17 opinion on this case.

18 Q Did you request of counsel for the school
19 board to interview or meet with Drew?

20 A No.

21 Q Okay. Did anyone tell you you could not meet
22 or evaluate Drew Adams?

23 A No.

24 Q And --

25 A It's my understanding if, you know, I don't

1 have a license in the state of Florida and that
2 precludes doing any clinical practice in the state of
3 Florida. If someone was going to fly him up here that
4 would have been a different issue. But it never came
5 up.

6 Q So your understanding is that since you don't
7 have a license in Florida you're precluded from doing
8 what in the state of Florida?

9 A Practicing medicine in any way. In other
10 words, treating a patient, assessing a patient, that
11 kind of thing.

12 Q What precludes you?

13 A Usually state law.

14 Q Which law?

15 A Laws that have to do with practicing medicine.
16 I don't have a license to practice medicine in Florida.

17 Q You could have spoken to Drew Adams, though,
18 right?

19 A Well, it would have been an interesting
20 question. I suppose I could have but what would the
21 nature of that been would be the question. I, as a
22 psychiatrist, why would I speak to him unless it was in
23 a doctor-patient relationship. I'm not an attorney. Put
24 it that way.

25 Q What date did you submit your -- well, let me

1 strike that. You submitted your expert report in this
2 case on October 2, 2017; is that right?

3 MR. KOSTELNIK: Form.

4 A That's correct.

5 Q All right. And when you submitted your expert
6 report had you reviewed any of Drew's medical records?

7 A Yes, I had seen some of them at that point.

8 Q Are you sure?

9 A I'm trying to think. October 2nd. I may not
10 have. I may not have. That report was quite general in
11 nature regarding gender dysphoria and I had seen records
12 on the case about the school district's policies and so
13 forth. But I don't think at that point I had seen his
14 medical records.

15 Q Did you speak with any of Drew's treating
16 physicians at any point?

17 A No.

18 Q Did anyone advise you you could not speak to
19 his treating physicians?

20 A No.

21 Q Do you believe speaking to his treating
22 physicians would have enabled you to provide more
23 accurate opinions in this case?

24 A Perhaps. The materials that I saw and that
25 I've seen subsequently, I've seen the patient himself on

1 self-produced videos and so forth. So I've got a lot of
2 information. If you talk with a physician who treated
3 him it might have given more information.

4 Q Which videos have you seen of Drew Adams?

5 A Four or five of them that he produced. I
6 think he was talking about various aspects of his gender
7 dysphoria, his activism, these types of things.

8 Q Okay. But you hadn't seen those videos prior
9 to submitting your report in this case?

10 A No.

11 Q Have you ever spoken to Drew's mother?

12 A No.

13 Q His father?

14 A No.

15 Q Have you ever evaluated them?

16 A No.

17 Q Do you know if Drew has any siblings?

18 A I believe he does. But I'd have to check
19 that. I'm not sure.

20 Q You can't say for the record as you sit here
21 today if he has a brother or sister or how many?

22 A Not with certainty, no.

23 Q Are you offering an opinion in this case on
24 whether Drew Adams is transgender?

25 A No.

Page 14

1 Q Would you agree with me that Drew Adams is a
 2 boy?
 3 A Depends on how you define boy.
 4 Q Is there any definition of boy that you would
 5 agree -- sorry -- that you would agree Drew Adams is?
 6 MR. KOSTELNIK: Form.
 7 A Drew Adams is a genetic born natal female. At
 8 this point in his life he believes he is male.
 9 Q And his doctors also say that he is male,
 10 correct?
 11 MR. KOSTELNIK: Form.
 12 A Well, he's had a number of different doctors.
 13 I think some have been involved with hormone treatments,
 14 that kind of thing. And they are helping him transition
 15 to be male. But he is a genetic natal female.
 16 Q Do you know where Drew is in his transition?
 17 A He certainly had hormones. I think he has
 18 been, from what he said, he's been desiring that he has
 19 more male characteristics develop, i.e., facial hair and
 20 so forth. So the hormonal treatments are going on. And
 21 I'm not exactly sure where the rest of the transitioning
 22 treatments are.
 23 Q Okay. So you don't know whether or not he's
 24 had any surgeries?
 25 A I'm not sure the extent of that, no.

Page 15

1 Q Okay. So you said Drew believed he is male.
 2 So I take it you do not believe he is male?
 3 A He is a genetic female who feels that he is
 4 male.
 5 Q Do you accept that when people transition at
 6 some point they are the other gender?
 7 MR. KOSTELNIK: Form.
 8 A They believe they're the other gender. But
 9 they're not the other sex.
 10 Q Even if they have legal documents saying that
 11 they were now transitioned to a different gender?
 12 MR. KOSTELNIK: Form.
 13 A Well, the and I'm not sure where that process
 14 is at, either. But once that legal process took place,
 15 then he could be called a male.
 16 Q As you sit here today do you know whether or
 17 not Drew Adams has legal documents identifying him as
 18 male?
 19 A I think he has. He's under 18, which would be
 20 a little unusual in some states. But I think there have
 21 been moves toward that, from what I've seen or heard him
 22 say on the video.
 23 Q Do you know for --
 24 A But that would make -- legally then that would
 25 make him had a male, yes.

Page 16

1 Q Okay. So do you know whether his driver's
 2 license says he's male?
 3 A I don't know.
 4 Q Or his birth certificate?
 5 A I think the birth certificate may have been
 6 changed.
 7 Q Okay.
 8 A And that would allow him to say then that he -
 9 - he is male.
 10 Q And you would accept that?
 11 A Yes. Although I would say that the discussion
 12 we're having is going from fact to a feeling. The fact
 13 of sex, the fact of his male female is a fact and that
 14 cannot change. And that will remain. Now he has felt
 15 that he's female. He is now a legal -- moves to be
 16 female -- I'm sorry -- to be male and those should be
 17 respected and accepted. And where he's actually at on
 18 that journey I'm not sure I have the full information.
 19 Q You say it should be respected and accepted
 20 that he's male if he's transitioned?
 21 A Well, once he goes through the legal
 22 procedures and made that statement how he presents
 23 himself legally to society, yes.
 24 Q Okay.
 25 A Then he would be male.

Page 17

1 Q And you said the fact is he's natal sex. By
 2 that do you mean that his sex when he was born was --
 3 A XX, female.
 4 Q Female. Okay. And he was identified as being
 5 female?
 6 A Yes.
 7 Q Okay. Did you ever do a chromosome test on
 8 Drew Adams?
 9 A No. That is usually not indicated and has
 10 been for hundreds of years, visual inspection is enough
 11 for most people. It is not done in medicine at all
 12 unless there's a disorder of sexual differentiation,
 13 that kind of thing.
 14 Q You said "visual inspection", you meant of the
 15 external genitalia?
 16 A Physical examination, yeah.
 17 Q I'm sorry, of the external genitalia, correct?
 18 A That's typically the most standard way of
 19 doing it. There may be other things pediatricians do,
 20 but a physical exam, yeah.
 21 Q The reason I asked if you'd done a chromosome
 22 test because as you mentioned XY, which is you're
 23 referring to chromosomes, correct?
 24 A Right. Yeah. And so that being natal female,
 25 he would have XX and then XY is the male pattern, yes.

1 Q But I mean you didn't test to know?

2 A No, no, I did not.

3 Q So it sounds like you agree with me that if

4 someone says that they're male you use male pronouns; is

5 that right?

6 A That's kind of by convention. It's out of

7 respect for the person. But it doesn't change the

8 biological nature of the individual.

9 Q Okay.

10 A It's what they want to be called and that's

11 what they feel they should be called. And so I will

12 usually respect that, yeah.

13 Q By "biological nature" again you're referring

14 to natal sex, right?

15 A That's correct.

16 Q Okay. Do you have any reason to doubt that

17 Drew identifies as male?

18 A No.

19 Q Do you have any reason to doubt his medical

20 providers attesting that he is male?

21 A No. I believe they've probably done that,

22 yeah.

23 Q But you don't know?

24 A I'm not sure. I mean the records I -- I think

25 I've seen a couple of attestations they attest that he

1 is now male.

2 Q Are you rendering an opinion as to whether

3 Drew Adams suffers from gender dysphoria?

4 A No, because I haven't examined him.

5 Q Do you agree, then, that it would be improper

6 to offer a diagnosis about a patient that you've never

7 examined?

8 MR. KOSTELNIK: Object to form.

9 A Well, it depends on the context. I think when

10 you take a psychiatrist, for example, in this case me,

11 who has 45 years of experience, has seen thousands of

12 patients, has seen thousands of records and has a broad

13 base in psychopathology, in other words, how to diagnose

14 and treat the problems of youth, and then given the

15 history and given the story and let them look at the

16 records, that's a pretty significant thing. And

17 depending on the accuracy of the records, I would feel

18 comfortable in saying this appears to be that type of

19 patient, but I stop short of saying I know the diagnosis

20 because, of course, I would not have seen him.

21 Q Okay. And just so I'm clear, when you said

22 the kind -- you said one of the things you'd want to

23 look at are the records. You're referring to the

24 person's medical records?

25 A Well, any records. School, medical, that

1 reflect his experience, his statements, the way he

2 presents himself, that kind of thing.

3 Q Do you agree that Drew Adams was diagnosed

4 with gender dysphoria by his medical providers?

5 A Yes.

6 Q Okay. And I noticed -- well, I think based on

7 your own testimony you described your expert report as

8 being general in nature with regard to gender dysphoria.

9 Is that accurate?

10 A Right. It was a broad, broad report about

11 these -- these issues and the particular case as it was

12 presented to me and the documents that I read regarding

13 the complaint, the school's position, the policies and

14 so forth.

15 Q So then are you not offering -- sorry. Let me

16 start over so it's a clear question. So then are you

17 offering any opinions on whether Drew Adams gender

18 dysphoria has or will persist?

19 A I'm not offering an opinion on that. I mean I

20 could be asked one and would probably, I think it would

21 be fairly accurate. But I'm not offering it in this

22 case.

23 Q Okay. Are you offering any opinion on whether

24 Drew Adams will seek to identify as being transgender?

25 A No.

1 Q And you're not offering any opinion on the

2 causes of Drew's gender dysphoria; is that also correct?

3 A No. I mean that is correct.

4 Q Yes. Thank you. Are you offering any

5 opinions about the propriety of Drew's transition-

6 related medical care he's received?

7 A No.

8 Q Are you offering any opinions about Drew's

9 home life or anything about his relationship with his

10 family?

11 A No.

12 Q Are you offering any opinions that are

13 specific to the facts of this case?

14 A Yeah. I would be offering the opinion that

15 the school district's policy appears to have responded

16 to his needs. And I have the opinion that, you know,

17 they're not forcing him to go to a female restroom.

18 They're giving him close proximity to a gender-neutral

19 restroom. And that any statements that he is going

20 through significant stress, harm, irreparable harm,

21 these kinds of terms, I'm not supporting that by my

22 opinion.

23 Q Okay.

24 A He seems to be quite comfortable in his

25 current status.

1 she's an independent practitioner. She doesn't have a
2 supervisor.

3 Q And she works with Dr. Kingery, the pediatric
4 endocrinologist; is that right?

5 A Yeah. That's their -- part of their team over
6 there. That's correct.

7 Q Let me just step back to the earlier line of
8 questions just for a second. Can you identify for the
9 record what specific qualifications you have to hold
10 yourself out as an expert in gender dysphoria?

11 MR. KOSTELNIK: Objection. Form.

12 A I haven't held myself out as an expert.

13 Q Okay.

14 A I'm an expert in child and adolescent
15 psychiatry, family psychiatry, developmental
16 psychopathology, and that's what I do. Yeah.

17 Q Okay. Are you holding yourself out in this
18 case as an expert in issues relating -- I'm sorry. Let
19 me strike that. Are you holding yourself out in this
20 case as an expert regarding transgender healthcare?

21 A I feel -- feel I am qualified and fully
22 conversed in the issues about transgender healthcare
23 and, over the last several years, have dramatically
24 increased my involvement with these patients and seeing
25 kind of how it fits or doesn't fit with development

1 looks like a nail." I mean, to -- to take these -- in
2 fact, I have said this publicly recently that this is
3 becoming the only disorder in medicine that it appears
4 in some cases, we make the diagnosis based on what the
5 patient tells us. In other words, they have it, so
6 that's what we do. And it's -- you need to approach it
7 in a different way.

8 Q At the gender clinic, does Dr. Brady approach
9 it that way? If some -- a patient comes in a tells --

10 A I'm not sure --

11 Q Excuse me. Just let me finish.

12 A Okay.

13 Q If the patient comes in and just says, "This
14 is who I am," then they just accept that?

15 MR. KOSTELNIK: Form.

16 A I -- I doubt that she does that. There's a
17 range of responses, and you'd have to ask her. I don't
18 know.

19 Q Okay.

20 A She kind of --

21 Q Do you know of any --

22 A -- practice.

23 Q -- gender clinics where they just -- the
24 patient comes in and just says, "This is what I need,"
25 and they just rubber stamp it and do what the patient

1 psychopathology and family psychopathology, other
2 problems. But when you say holding yourself out, I --
3 it's kind of an interesting term I'm not sure how to
4 interpret.

5 Q Any other qualifications that you would say
6 make you an expert in transgender healthcare or -- well,
7 let me strike that. So are you saying you are an expert
8 in transgender healthcare or not?

9 MR. KOSTELNIK: Form.

10 A I don't know what definition of "expert"
11 you're using.

12 Q Well, you're identified as an expert witness -
13 -

14 A Well, an expert --

15 Q -- in this case, right?

16 A I -- I would say yes in the sense of that I
17 know a great deal about adolescent psychopathology, how
18 kids develop problems, all the psychiatric disorders
19 that many transgender kids have, and am quite adept at
20 sorting out what's cause and effect; in other words,
21 what -- what issues do the transgender experience cause
22 or what predisposing factors kind of lead to transgender
23 issues, all of that kind of -- kind of thing. I'm very
24 expert, and maybe more expert than some who -- to use
25 the phrase, "If all you have is a hammer, everything

1 wants, not evaluating them?

2 A Nobody would tell you that, but I talked with
3 individuals who say that's basically what happens.

4 Q Who -- which --

5 A In other words --

6 Q Which individuals --

7 A In other words --

8 Q -- say that?

9 A In other words, people -- once they come in,
10 they're rarely turned around, and the level of
11 psychological evaluation is questionable. Now, in the
12 standards of care and so forth, it's certainly demanded
13 and expected. My point is: You need to take time and
14 give some time to sort through these issues. But -- but
15 there are clinics where it's -- the -- the affirmation
16 of the patient is confused with affirmation of the
17 diagnosis. Every patient should be affirmed, cared for
18 --

19 Q Okay. But my question was: Which specific
20 individuals say that's what happens, that a patient
21 comes in and demands something and that's rubber
22 stamped?

23 A I -- this is my impression. I -- this is a
24 very specific question, but Dr. Ruse would be one
25 individual who's had experience with -- see, these