

**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 AND/OR
ARGUMENT REGARDING PLAINTIFF’S MEDICAL RECORDS AND
SUPPORTING MEMORANDUM OF LAW**

Pursuant to Federal Rules of Evidence 401, 402, 403, and 611, Plaintiff, Drew Adams, a minor, by and through his next friend and mother, Erica Adams Kasper (“Plaintiff”), and by and through their undersigned counsel, respectfully moves the Court to exclude evidence and argument related to Plaintiff’s medical records. While discussion of how Defendant’s discriminatory may affect Plaintiff’s gender dysphoria may be relevant, the medical records in this case have no probative value regarding that question and any discussion of Plaintiff’s medical records should thus be excluded as prejudicial, a waste of time and resources, and wholly irrelevant to the ultimate issues of the case. Put simply, this is a case about unlawful discrimination based on Plaintiff’s transgender status and sex, not a case about the propriety of the medical treatment Plaintiff has received. Accordingly, because any evidence and argument related to Plaintiff’s medical treatment and medical records is irrelevant to Plaintiffs’

claims, wasteful of the Court's resources, and unfairly prejudicial, such evidence should be excluded.

INTRODUCTION

The issue in this case is narrow, limited solely to whether Defendant's policy prohibiting transgender students—in this case a transgender boy—from using the restroom consistent with their gender identity is discriminatory and violates Title IX and Title XIV of the US Constitution. There is no dispute that Drew is transgender and Defendant certainly has not and cannot introduce evidence to dispute this fact. Indeed, neither of Defendant's experts or other witnesses has disputed this fact. There is likewise no dispute that Drew has taken steps to socially and medically the transition. For this reason alone there is no basis to refer to or use Drew's medical records in this short three-day trial.

The fact that Drew is seeking garden-variety damages does not change the analysis. There is legion of legal authority for the position that such records are irrelevant where, as here, a party is seeking only general, garden variety damages.¹

¹ “[W]here a plaintiff has put his medical condition at issue, discovery of relevant medical records may be warranted. *Griggs v. Weiner*, CV-13-3885 (JFB) (AYS), 2015 WL 6455298, at *3 (E.D.N.Y. Oct. 26, 2015); *Vasquez v. Suffolk Cty. Gov't*, CV 13-4188 (LDW) (AYS), 2015 WL 1781531, at *1 (E.D.N.Y. Apr. 20, 2015); *Magee v. Paul Revere Life Ins. Co.*, 172 F.R.D. 627, 635 (E.D.N.Y. 1997). However, in the emotional distress context, a claim limited to “garden variety” damages will not generally operate to require production of medical records. *Griggs*, 2015 WL 6455298, at *3 (denying access to medical records); *Sobel v. Cmty. Access, Inc.*, No. 03 Civ. 5642 (LHK) (MHD), 2007 WL 2076977, at *1 (S.D.N.Y. July 18, 2007).” *Kelly v. Times/review Newspapers Corp.*, CV142995JMASIL, 2016 WL 2901744, at *1 (E.D.N.Y. May 18, 2016). Clearly, if a party may not even obtain such information through discovery in such cases then these materials would likewise be inadmissible where garden variety damages are sought.

Given the limited issues to be tried and the fact that there is no credible dispute that Drew is transgender or that he has been diagnosed with gender dysphoria, his medical records are entirely irrelevant. To the extent they bear any relevance to any issue this case, any relevant is substantially outweighed by the prejudice and waste of time.

ARGUMENT

I. THE COURT HAS DISCRETION TO EXCLUDE IRRELEVANT AND PREJUDICIAL EVIDENCE IN ADVANCE OF TRIAL.

The purpose of a motion *in limine* is “to exclude anticipated prejudicial evidence before the evidence is actually offered.” *Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984). In doing so, it “narrow[s] the evidentiary issues for trial and . . . eliminate[s] unnecessary trial interruptions.” *Bradley v. Pittsburgh Board of Education*, 913 F. 2d 1064, 1069 (3d Cir. 1990). All evidence must be relevant to be admissible. Evidence is relevant if it “has any tendency to make a fact more or less probable than it would be without the evidence,” and that fact “is of consequence in determining the action.” Fed. R. Evid. 401. In other words, “[t]he evidence must be probative of the proposition it is offered to prove, and the proposition must be one that is of consequence to the determination of the action.” *United States v. Troya*, 733 F. 3d 1125, 1131 (11th Cir. 2013) (quoting *United States v. Glasser*, 773 F. 2d 1553, 1559 n. 4 (11th Cir. 1985)). Evidence which is not relevant is inadmissible. Fed. R. Evid. 402. “[T]he party introducing evidence carries the burden of demonstrating the evidence’s relevance.” *Dowling v. United States*, 493 U.S. 342, 351 n. 3 (1990). Relevant evidence should nevertheless be

While Plaintiff produced his medical records to avoid a protracted discovery dispute (and prior to Defendant even issuing its document requests), Plaintiff has maintained from the outset that such materials are irrelevant to the claims and issues in this case.

excluded if its introduction will result in “unfair prejudice, confus[ion of] the issues, [or] misleading the jury.” Fed. R. Evid. 403.

This includes prohibiting irrelevant and prejudicial arguments or references at trial. Fed. R. Evid. 403. It cannot be questioned that this Court has the authority to exclude evidence and, for the reasons discussed below, should exercise that discretion to do so here as the medical records at issue have no relationship to the merits of this case as there is no dispute in this case that Drew is a transgender boy or that he was diagnosed with gender dysphoria. As a result, these records have no place in this case and will only serve to waste the limited time that has been set aside for this three-day bench trial on extraneous information.

II. THE COURT SHOULD EXCLUDE PLAINTIFF’S MEDICAL RECORDS PURSUANT TO FEDERAL RULES OF EVIDENCE 401, 402 AND 403.

Drew is a transgender boy, which means that his sex assigned at birth was female, but his gender identity is male. These facts are not in dispute. Drew was also diagnosed with gender dysphoria by several different physicians who examined him, another fact that cannot be disputed.² *See, e.g.*, Hruz Depo. Tr. 26:2-26:5 (“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.”). Given that there is no credible basis to question these

² Defendant’s experts did not seek to take an IME of Drew, nor did they examine or otherwise evaluate Drew. *See* Hruz Depo Tr. 18:3-18:5 (“Did you ask for an independent medical examination? A. I did not.”) (the relevant excerpts of Dr. Hruz’s deposition transcript are attached hereto as “Exhibit A”); *id.* at 17:16-17:21 (“Q. Have you evaluated Drew Adams? . . . A. So I have not participated in the medical care of Drew Adams.”); Josephson Depo. Tr. 9:24-10:10 (the relevant excerpts of a rough draft of Dr. Josephson’s deposition transcript are attached hereto as “Exhibit B”). As such, they cannot diagnose Drew or opine on his medical condition. Even if they had examined him, however, Defendant’s experts could not dispute that *Drew’s treating physicians* diagnosed him with gender dysphoria and this whether he was diagnosed with gender dysphoria should not be an issue in this case.

facts, the Court and the parties should not expend valuable trial time on irrelevant issues relating to Plaintiff's medical records, which would only waste time and resources.

The exclusion of the medical records and information becomes even more obvious given that Drew is only seeking nominal, garden variety emotional distress damages, and declaratory relief due to his exclusion from the boys' restroom by Defendant, which Plaintiff contends violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Title IX. *See Wineberger v. Racetrac Petroleum, Inc.*, No. 5:14-CV-653-OC-30PRL, 2015 WL 225760, at *4 (M.D. Fla. Jan. 16, 2015); *Stone v. GEICO Gen. Ins. Co.*, No. 8:05-CV-636-T-30TBM, 2009 WL 3720954, at *6 (M.D. Fla. Nov. 5, 2009); *City of Hollywood v. Hogan*, 986 So. 2d 634, 649 (Fla. Dist. Ct. App. 2008). Plaintiff can support such damages with his own testimony as well as the testimony of other witnesses to be introduced by him at trial. *Myers v. Cent. Florida Investments, Inc.*, No. 604-CV1542-ORL-28DAB, 2008 WL 4710898, at *14 (M.D. Fla. Oct. 23, 2008) (collecting authorities upholding awards in the \$100,000 range based solely on plaintiff's testimony).

Plaintiff here is not seeking the type of damages that would put his mental condition at issue, or that would require expert or other testimony. *See Laboy v. Emeritus Corp.* No. 5:13-CV-582, 2014 WL 1293440, at *1 (M.D. Fla. Mar. 28, 2014); *Ortiz-Carballo v. Ellspermann*, No. 5:08-CV-165-OC-10GRJ, 2009 WL 961131 at *2 (M.D. Fla. Apr. 7, 2009); *Robinson v. Jacksonville Shipyards*, 118 F.R.D. 525 (M.D. Fla. 1988). Given the limited monetary relief sought by Plaintiff, his medical records are irrelevant.

Despite the fact that Drew is seeking garden variety damages due to the emotional and dignitary harms he suffered as a result of Defendant's implementation of its discriminatory

restroom policy, Plaintiff anticipates that Defendants will attempt to adduce evidence and argument regarding Drew's medical history and medical records. While Plaintiff cannot discern the real motivation behind this effort, Defendant has made clear that it will not agree to the relief sought by this motion thereby necessitating the motion. This, despite the fact that Defendant has not and cannot dispute Drew's transgender status or his diagnosis with gender dysphoria. Drew's medical records are not probative of any fact at issue in this case, and any evidence or argument relating to Plaintiff's medical history and medical records—should be excluded under Federal Rules of Evidence 401, 402, and 403, as well as this Court's decisions in *Laboy*, 2014 WL 1293440, at *1; *Ortiz-Carballo*, 2009 WL 961131 at *2; and *Robinson*, 118 F.R.D. 525.

Further, even if such medical records are somehow relevant, its probative value does not outweigh the potential for unfair prejudice. Fed. R. Evid. 403; *see Celmer*, 2004 WL 1964894, at *1. At best the only reason Defendant seeks to introduce these medical records are to embarrass Plaintiff. Because there is no question for the Court to determine regarding Plaintiff's diagnosis as transgender or the care he has been given by his physicians, such evidence can only be used to confuse the actual issues in this case. The medical records could conceivably waste significant trial time unnecessarily without a dint of evidence to dispute Drew's transgender status. Indeed, it is undisputed that the District recognizes Drew's transgender status by using male pronouns when identifying him, and generally treating him as male in every respect except one: when Drew wants to use the restroom consistent with his male identity. Reference to or discussion of Plaintiff's medical records shifts the focus of this trial away from the only issues before the Court – whether the policy prohibiting Drew from

using the boys' restroom is discriminatory. Instead the introducing of this irrelevant evidence will result in a waste of time, and will be equally gratuitous and embarrassing to Plaintiff, requiring him to discuss highly personal, at times painful, and irrelevant information regarding his diagnosis and treatment. Thus, Defendants should be barred from inquiring into, discussing, or presenting evidence or testimony about Plaintiff's medical records.

III. THE COURT SHOULD PRECLUDE ANY INQUIRY REFERENCE TO PLAINTIFF'S MEDICAL RECORDS FEDERAL RULE OF EVIDENCE 611.

The purpose of a Motion *in Limine* is to provide the Court notice of the movant's position to avoid damaging evidence, "which may irretrievably affect the fairness of the trial. *Stewart v. Hooters of Am., Inc.*, 8:04-CV-40-T-17-MAP, 2007 WL 1752873, at *1 (M.D. Fla. June 18, 2007). And, as previously noted, "unfair prejudice" within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403, Advisory Committee Note. "In balancing the probative value against unfair prejudice required by Rule 403, the trial judge has wide discretion." *United States v. Dwyer*, 539 F.2d 924, 927 (2d Cir. 1976).

Here, the Court should exclude such evidence or testimony under the Court's authority to control the mode and order of examining witnesses prescribed in Rule 611. Fed. R. Evid. 611. To the extent that Plaintiff's medical records contain highly private issues, diagnoses, or concerns that are or could be embarrassing, evidence regarding the same will subject Plaintiff to undue harassment and embarrassment. *See* Fed. R. Evid. 611(a)(3). While Plaintiff is cognizant of the fact that he brought these claims and has been forced to lay himself bare through the discovery process—which he has done—the scope of the trial is narrow and the

Court should not allow Defendant to use this forum to further oppress or harass the Plaintiff, particularly given that there is no dispute that Drew is not transgender or that he was diagnosed with gender dysphoria. These are issues and information that were meted out during discovery and despite ample opportunity, Defendant has no basis to dispute these facts. Accordingly, the presentation of such testimony will also evoke or require responsive testimony or evidence – all of would be is a waste of time. *See* Fed. R. Evid. 611(a)(2); *see also* Fed. R. Evid. 403. The Court should exercise its power to control the structure of the trial and exclude any testimony, evidence, mention, or discussion of Plaintiff’s medical records.

CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff’s motion *in limine* and preclude Defendant from offering any evidence, argument, or opinion regarding Plaintiff’s medical records.

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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I N D E X O F E X A M I N A T I O N

	Page
Questions by Mr. Gonzalez-Pagan	7
Questions by Mr. Kostelnik	286
Further Questions by Mr. Gonzalez-Pagan	292

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
For the Plaintiff:		
Exhibit 1	Subpoena	11
Exhibit 2	Expert Declaration	29
Exhibit 3	Growing Pains Article	29
Exhibit 4	Letter	68
Exhibit 5	Article	163
Exhibit 6	Article	231
Exhibit 7	Article	246
Exhibit 8	Article	249

(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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A P P E A R A N C E S

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Missouri CCR No. 914

Illinois CSR No. 084-003460

Veritext Legal Solutions

515 Olive Street, Suite 300

St. Louis, Missouri 63101

(888) 391-3376

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 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 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

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



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☎ 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

2

3 ON BEHALF OF THE PLAINTIFFS, DREW ADAMS, ET AL.:

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21 ON BEHALF OF THE DEFENDANT, THE SCHOOL BOARD OF ST. JOHNS

22 COUNTY, FLORIDA:

23 KEVIN KOSTELNIK

24 TERRY HARMON

25 SNIFFEN & SPELLMAN, P.A.

Page 4

1 EXHIBITS

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3 1 POWERPOINT

4 2 EXPERT DISCLOSURE

5 3 ARTICLE

6 4 POWERPOINT

7 5 ARTICLE

8 6 ARTICLE

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1 STIPULATION

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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.

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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 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 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 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.