

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

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ADREE EDMO (a/k/a MASON EDMO),)	CASE NO. 1:17-cv-00151-BLW
)	
Plaintiff,)	TELEPHONIC STATUS CONFERENCE
)	
vs.)	
)	
IDAHO DEPARTMENT OF)	
CORRECTION; HENRY ATENCIO, in)	
his official capacity; JEFF)	
ZMUDA, in his official)	
capacity; HOWARD KEITH YORDY,)	
in his official and individual)	
capacities; CORIZON, INC.;)	
SCOTT ELIASON; MURRAY YOUNG;)	
RICHARD CRAIG; RONA SIEGERT;)	
CATHERINE WHINNERY; and DOES)	
1-15,)	
)	
Defendants.)	
_____)	

**TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE B. LYNN WINMILL
TUESDAY, JUNE 12, 2018, 11:30 A.M.
BOISE, IDAHO**

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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P R O C E E D I N G S

January 17, 2019

(Telephonic status conference.)

THE COURT: Counsel, this is Judge Winmill. I want to make sure I have the parties, and I think I caught everyone.

Who is on the phone on behalf of the plaintiff?

MS. RIFKIN: Lori Rifkin, Your Honor. And -- go ahead. Sorry.

MS. FERGUSON: Deborah Ferguson and Craig Durham.

MS. WILENSKY: And also Julie Wilensky from the National Center for Lesbian Rights.

THE COURT: I missed the name. Could you say it again a little more slowly.

MS. WILENSKY: Yes, Your Honor. Julie Wilensky from the National Center for Lesbian Rights also on behalf of plaintiff.

THE COURT: All right. And then on behalf of Corizon?

MR. WEST: This is Kevin West.

MR. EATON: And Dylan Eaton.

THE COURT: And on behalf of the attorney general or the State of Idaho?

MR. HALL: Brady Hall, Your Honor, and I have Marisa Crecelius here as well.

THE COURT: All right. I think that's everyone.

Counsel, let me give you some of my thoughts. I have

1 looked over the briefing that was filed on the defendant's
2 motion to extend the time for six months to respond to the
3 motion for preliminary injunction.

4 Two thoughts. One is, a party is entitled to seek
5 preliminary relief or injunctive relief. Of course, they have
6 to show irreparable injury, likelihood of success on the merits,
7 et cetera. But they clearly have that right. And I don't think
8 that the court can reasonably say, no, it's not an emergency; we
9 can wait six months. I think we have to take serious
10 allegations that there is irreparable injury and at least
11 address the issue.

12 Having said that, I'm also mindful that the relief
13 requested by way of injunctive relief probably is the final
14 relief that would end the case. And so to resolve the case on
15 almost a TRO-type expedited process, it may be a bit unfair to
16 the defendants since, if they lose that battle, they lose the
17 entire case.

18 And so it's trying to find and balance out those two, I
19 guess, kind of competing considerations. So what I -- I guess
20 what I have in mind is, what would seem most appropriate is to
21 put this case on a very much expedited process with the idea
22 that we might try to wrap up discovery at least on the
23 preliminary injunction within 60 days; and schedule now a
24 hearing for roughly 90 days out on the request for injunctive
25 relief with the idea that unless something goes haywire in that

1 expedited discovery, that may end up being the end of the case.
2 Because, obviously, if I order the Department of Corrections or
3 Corizon to provide sex reassignment surgery, that pretty much
4 ends the case.

5 But I have no idea what I would actually do. I have
6 no -- I clearly have not made up my mind whether it truly is an
7 emergency situation or not. I just can't make that decision
8 without a hearing.

9 So that's kind of what I was thinking. And part of what
10 drove those dates was that the defendants have access to all of
11 the medical records, all of the conduct records of Ms. Edmo for
12 the period of time that she has been incarcerated.

13 So -- and, certainly, that would include all the medical
14 records through that period of time. They also have, obviously,
15 the plaintiff's expert declarations. They also had to know from
16 the very beginning of this lawsuit that this was going to be an
17 issue, so I'm assuming they have already been looking at and
18 talking to experts; and if they haven't, they should have been.
19 And certainly after -- I think, the motion was filed on June
20 1st -- there should have been an urgent attempt to do that.

21 And it seems to me, for that reason, that 60 days to get
22 the expert -- if they aren't already on board, have them review
23 the medical records that are available, offer a report.

24 And I know it's expedited, but I think it's not
25 unreasonable to impose those kind of deadlines given the nature

1 of the claim and the suggestion that it is causing potentially
2 catastrophic consequences for Ms. Edmo.

3 I think the only other piece of the puzzle that the
4 defendant does not have access to would be records and evidence
5 related to Ms. Edmo's predetention conduct. It seems to me that
6 can't be that hard to obtain. A deposition of Ms. Edmo would
7 probably give you about 90 percent of what you need; and then,
8 from that, some additional follow-up may provide you with what
9 you need in that regard.

10 And I would assume the plaintiff, to support an expedited
11 process like that, would be willing to just turn over everything
12 they have and make -- and have Ms. Edmo prepared for a
13 deposition, you know, within the next few weeks if necessary.

14 So that's my thought. I'm willing to hear both sides. I,
15 frankly, think it's a reasonable approach; and it will, quite
16 likely, end the case. Because it could be that if we can
17 expedite it and have everyone working hard at being ready for a
18 hearing -- and I might give you a little more time because I
19 have actually looked at my calendar, and I am not available
20 until late September or early October.

21 So we might give you 75 days to complete discovery and
22 respond to the -- for the defendants to file a response to the
23 plaintiff's motion for injunctive relief and then a short time
24 for reply briefs and then be ready for a hearing, evidentiary
25 hearing, before the court during that time frame.

1 So let me hear first from the plaintiffs. I know it's not
2 what you wanted; but on the other hand, I'm not sure it's
3 altogether fair to drop two expert affidavits, declarations on
4 the defendant and expect them to be able to respond in what is
5 undoubtedly going to be an expert-driven determination in 20
6 days or whatever the time period is.

7 So I think they are certainly entitled to some opportunity,
8 but it seems to me this might be a good balancing of those
9 competing considerations.

10 So, from the plaintiffs? I don't know who is speaking,
11 whether it's Ms. Ferguson, Ms. Rifkin, or Ms. Wilensky.

12 MS. RIFKIN: Your Honor, this is Lori Rifkin. Thank
13 you, Your Honor.

14 We don't object to this kind of approach. We are fine with
15 an expedited discovery process, and we'll certainly do as you
16 suggested and make plaintiff available for deposition as well as
17 any materials we have and would expect that defendants would do
18 the same.

19 The 60 days and 90 days I think we can work with,
20 Your Honor. Extending it beyond 90 days, I think, gets into
21 more difficult territory for us given our experts' evaluation of
22 the plaintiff and the specific assessment that she should have
23 surgery in no more than six months. So when thinking about the
24 hearing, a decision, actually obtaining a provider for her, all
25 of that.

1 So we would be reticent about pushing it beyond the 60- and
2 90-day time frame Your Honor suggested, but I think we can work
3 with that.

4 THE COURT: Okay. From Corizon, Mr. Eaton or
5 Mr. West?

6 MR. WEST: This is Kevin West, Your Honor. And we
7 appreciate your efforts to thread the needle here, and I know
8 it's a different balancing situation.

9 Given what the court said that it's not available for a
10 hearing until late September/early October, I would hope we
11 could track the deadlines back from those dates and have the 75
12 days for discovery and 100 to 120 days for the hearing. I think
13 this is going to be very difficult to do even with those
14 deadlines, but if we could at least have that consideration,
15 that would be helpful.

16 THE COURT: Well, let me give you -- Mr. West, let me
17 give you the dates. Actually, one date, it's -- Ms. Bracke,
18 it's September 28th or October -- the week of October 8th.

19 I have a trial that week in September. It's actually a
20 prisoner pro se case, so some of you might be knowledgeable or
21 know of that case, but it's a trial set starting the Monday of
22 that week, which would be about the 23rd. And I'm just assuming
23 it won't take all week.

24 But I can't -- so it may be just shooting for that week of
25 October 8th, and then have you all get together and work

1 backwards from there in terms of putting together kind of a
2 discovery plan to accomplish that. That would give you a little
3 more time. And then we'll, of course, try to be prepared
4 to -- I don't know if we can rule from the bench, but we may at
5 least try to -- if the briefing is in advance, we may try to
6 rule from the bench, which I'm trying to do more and more these
7 days, just to get the cases decided which requires some advance
8 work on our part. But I think it might be something we could do
9 which would then be of assistance to everyone.

10 So I assume that's something, Mr. West, you would feel
11 better about, rather than just arbitrarily saying 60 days of
12 discovery, just have you work backwards from that October 8th,
13 week of October 8th. And we'll set aside two or three days for
14 a hearing, if need be. But then work backwards and figure out
15 both a discovery plan and a briefing on the motion.

16 Is that agreeable, Mr. West?

17 MR. WEST: Yes. Yes. Thank you.

18 THE COURT: Okay. Mr. Hall?

19 MR. HALL: Yes, Your Honor. Thank you. I think that
20 the court's approach is a good compromise recognizing the
21 interests of the defendants and the plaintiffs on this one, and
22 I'm fully supportive of that.

23 THE COURT: Okay. Well, Counsel, that may take care
24 of what we need to. I think what I'll do is we'll issue an
25 order essentially granting in part the request for an extension

1 of the deadlines but saying -- but then directing the parties to
2 meet and confer this week and develop a discovery and briefing
3 schedule that will complete what you think needs to be done, set
4 forth time frames for it to occur with the idea that everything
5 will be ready for a trial that week of October 8th, including
6 all briefing and all discovery, including exchanging expert
7 reports, things of that sort.

8 Yes, Ms. Rifkin?

9 MS. RIFKIN: Sorry, Your Honor. Yes.

10 I just wanted -- and I appreciate that in doing the
11 meet-and-confer, can you provide us guidance on when you would
12 want the last brief in in order to provide the court an adequate
13 chance to review and potentially rule from the bench as you
14 suggested?

15 I think if you can provide us sort of a last date for the
16 briefs to be turned in, that would help us in setting the
17 schedule.

18 THE COURT: If I could have it a week before the
19 trial, that would be very helpful. As I said, I will be in
20 trial the week before on another prisoner civil-rights-type case
21 that I'm certain is going to go, because we had it set for trial
22 and had to bump it because of a criminal trial a few months ago.
23 So I'm going to be pretty tied up with that.

24 But if you can give it to us a week in advance, I think
25 that probably would be sufficient.

1 In fact, it's a good question. I, frankly, assumed this
2 might be an evidentiary hearing. But it may be that you want to
3 just rely upon affidavits submitted by the experts. If we have
4 an evidentiary hearing, I think that increases the likelihood it
5 may be the final resolution of the case.

6 But let me just hear -- would you anticipate wanting to
7 have a one-, two-, or three-day evidentiary hearing or just
8 simply oral argument based upon written submissions?

9 MS. RIFKIN: From the plaintiff's side, Your Honor, I
10 think that we would prefer an evidentiary hearing so that --
11 given, as Your Honor has observed, the injunctive relief
12 requested, we think it would be to the court's benefit to be
13 able to have the experts at the hearing to address any questions
14 the court has, as well as to, you know, allow the opportunity
15 for cross-examination.

16 THE COURT: Well, that's somewhat -- that was kind of
17 my assumption simply because I think the expert testimony may be
18 pretty critical and how they hold up on cross-examination.
19 These are some challenging areas and something, frankly, I know
20 almost nothing about, and so that would be helpful from that
21 point of view.

22 Do either of the defendants feel strongly that it should
23 not be an evidentiary hearing?

24 MR. HALL: Brady Hall, Your Honor, for IDOC Defendant.
25 Absolutely not. We, frankly, support an evidentiary

1 hearing. We think it's going to be critical to the court's view
2 to see live testimony, cross-examination for purposes of
3 weighing the credibility of the witnesses, including the
4 plaintiff.

5 THE COURT: All right. Mr. West?

6 MR. WEST: Yeah, I would agree with that.

7 THE COURT: Okay. Well, I think what we'll do -- I'm
8 going to assume that it might be two or three days, so we'll try
9 to block out that much time.

10 We'll probably start -- I may do this like we do jury
11 trials, 8:30 to 2:30, straight through with just two breaks
12 starting Monday morning. And then we'll try to have it wrapped
13 up -- and then that leaves my afternoons free so Ms. Bracke can
14 still schedule -- all right.

15 We'll start on Tuesday, October 9th, because the 8th is
16 apparently Columbus Day.

17 MR. EATON: Would it be possible to start on the 10th,
18 Your Honor -- this is Mr. Eaton -- rather than the 9th? Both
19 Mr. West and I have a conflict that would be difficult to get
20 out of on the 9th.

21 THE COURT: Well, does anyone have a conflict with the
22 10th, 11th, and 12th?

23 MS. RIFKIN: I don't, Your Honor. I know the rest of
24 plaintiff's counsel are on the phone, so I can't speak for them.

25 MS. FERGUSON: No. That's fine with us as well.

1 MS. WILENSKY: Us as well. Thank you.

2 MR. HALL: The IDOC defendants do not have a conflict
3 with the 10th, 11th, and 12th.

4 THE COURT: Okay. I think everyone -- Ms. Rifkin
5 originally said there was no conflict with them, then I think
6 Ms. Ferguson and then I think Mr. Hall and Mr. Eaton. So I
7 think everyone is in agreement.

8 MS. RIFKIN: Sounds that way, Your Honor.

9 THE COURT: Counsel, I apologize. Who was that that
10 just spoke?

11 MS. RIFKIN: Lori Rifkin.

12 THE COURT: Okay. I apologize. This is -- we're
13 recording this because our court reporter is assisting another
14 judge in trial, and Ms. Bracke is trying to keep a record of who
15 is saying what. And I should have had you all identify
16 yourself. So, hopefully, we have that all straightened away.

17 Okay. So anything else that you need to take up, from the
18 plaintiffs?

19 MS. RIFKIN: I don't think so at this time,
20 Your Honor. We appreciate you getting us together for this
21 conference.

22 THE COURT: Okay. Mr. West or Mr. Eaton?

23 MR. WEST: No. Thank you, Your Honor. I think that's
24 all.

25 THE COURT: Mr. Hall?

1 MR. HALL: No, Your Honor. Thank you.

2 THE COURT: Okay. All right. Well, Counsel, we'll
3 issue a brief order just indicating how we're going to resolve
4 and address the motion that was filed to extend the time and
5 then directing you by the end of this week to submit to the
6 court a, hopefully, agreed-upon discovery plan and scheduling
7 plan. And then if you can't, then we will be back with you on
8 the phone later in the week or early next week to resolve any
9 disputes. Okay?

10 All right. Thank you, Counsel.

11 (Proceedings concluded at 11:51 a.m.)

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CERTIFICATE OF TRANSCRIPTION

I, Tamara Hohenleitner, do hereby certify that the foregoing was transcribed by me and is a true and correct transcript of the electronically recorded proceedings held in the above-entitled matter.

Dated this 18th day of January, 2019.

/S/ TAMARA I. HOHENLEITNER

TAMARA I. HOHENLEITNER

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