

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF IDAHO

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4 ADREE EDMO (a/k/a MASON EDMO),) CASE NO. 1:17-cv-00151-BLW
))
5 Plaintiff,) **TELEPHONIC STATUS CONFERENCE**
))
6 vs.)
))
7 IDAHO DEPARTMENT OF)
CORRECTION; HENRY ATENCIO, in)
8 his official capacity; JEFF)
ZMUDA, in his official)
9 capacity; HOWARD KEITH YORDY,)
in his official and individual)
10 capacities; CORIZON, INC.;)
SCOTT ELIASON; MURRAY YOUNG;)
11 RICHARD CRAIG; RONA SIEGERT;)
CATHERINE WHINNERY; and DOES)
12 1-15,)
))
13 Defendants.)
_____)

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16 **TRANSCRIPT OF PROCEEDINGS**
BEFORE THE HONORABLE B. LYNN WINMILL
17 **TUESDAY, MARCH 5, 2019, 3:03 P.M.**
BOISE, IDAHO

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21 Proceedings recorded by digital audio recording, transcript
22 produced by transcription.

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P R O C E E D I N G S

March 5, 2019

(Telephonic status conference.)

(Roll call.)

(IDOC counsel absent.)

THE COURT: Well, Counsel, I don't know if we can really proceed in their absence, and it's five minutes after the hour.

We issued the decision denying the defendants' request for a stay. I'm not sure there is a whole lot we can talk about beyond that. I'm assuming that either -- that the defendants will proceed to comply with the court's order in this matter until and unless the Ninth Circuit imposes a stay. And I'm assuming the defendants are seeking a stay from the Ninth Circuit.

I might note just so it's clear -- in issuing the decision which I did, I was fully aware that the Ninth Circuit had granted a stay in a similar case arising out of California. But, again, that decision by the Ninth Circuit in that case was premised upon their need -- their perceived need to have adequate time to consider the issue. By comparison, in my decision, I was concerned only about the various factors that apply in -- in deciding whether a stay should apply at the district court level. And so those are very different matters, and for that reason, I did not feel bound by the Ninth Circuit

1 prior decision.

2 Did someone from IDOC just join us?

3 (IDOC counsel present.)

4 MR. HALL: Yes, Your Honor. Brady Hall. Sorry about
5 that. We had problems getting through on our end, but --

6 THE COURT: All right. Mr. Hall, I was just
7 indicating that -- well, maybe let me just back up and start
8 over.

9 I'm not sure there is a whole lot to talk about at
10 this status conference. I will assume that the defendants are
11 proceeding to prepare to provide the surgery which the court has
12 ordered in this matter, and will continue to do so until and
13 unless the Ninth Circuit grants a stay, which I assume the
14 defendants will seek, but I don't know that. And so until
15 that's taken up, I'm not sure there is a great deal to talk
16 about.

17 I also was just offering -- because I didn't take the
18 time to explain in my decision, that I was aware in issuing that
19 decision that the Ninth Circuit in a similar case arising out of
20 California had granted a stay while the appeal was pending. I
21 did not feel that that was binding upon the court because it was
22 issued under the Ninth Circuit's concern for being able to
23 preserve -- rather have sufficient time to consider the
24 arguments of counsel on appeal before the trial court's order
25 was complied with. My concerns were very different, and they

1 focused more upon the relative impact on the parties and the
2 urgency which I think was suggested by the evidence that was
3 presented.

4 So let me just go to the plaintiffs. Is there
5 anything you want to discuss at this status conference?

6 MS. RIFKIN: Yes, Your Honor, there is.

7 THE COURT: Is this Ms. Rifkin?

8 MS. RIFKIN: Yes. I'm sorry.

9 THE COURT: Okay.

10 MS. RIFKIN: Yes. We would like to discuss
11 defendants' plans and actions to prepare to comply with the
12 court's order. We have a number of concerns based on
13 information we obtained since the defendants' last status report
14 in January as well as meet-and-confer letters that the parties
15 have now exchanged about the steps that defendants are taking to
16 comply with the court's order; and whether they are actually
17 those taking those steps, what those steps are, and unidentified
18 problems that defendants have indicated they foresee with the
19 presurgical procedures for Ms. Edmo.

20 Since the last status report in January from
21 defendants which indicated they were working with Dr. Stiller in
22 Idaho to obtain dates through their contractor, Dr. Alviso,
23 plaintiffs contacted Dr. Stiller's office in February and
24 learned that, in fact, nobody from IDOC, Corizon, or Dr. Alviso
25 had been in contact with Dr. Stiller at all to talk about his

1 (inaudible), his dates, or any of the presurgical or
2 postsurgical requirements. We notified defendants of this in a
3 letter. They replied last week that although they engaged
4 Dr. Alviso to do that, he apparently did not. We asked for
5 their contractor, Dr. Alviso, outlining what he is supposed to
6 do. They didn't give it to us. They said that Dr. Alviso has
7 concerns which they didn't identify about the presurgical
8 requirements. They said they have obtained the date from
9 Dr. Stiller for the surgery, but did not provide us with that
10 date, and again identified problems that they did
11 not -- problems with completing the requirements for the
12 surgery, but they didn't tell us what those problems are.

13 So we think it's very important that the court
14 continue to be actively involved in ensuring that defendants are
15 moving forward; and Ms. Edmo's surgery will proceed unless there
16 is a order overruling that; and we would request that the court
17 order a status report, a detailed status report from defendants
18 within two weeks, because we are very concerned based on this
19 information.

20 THE COURT: All right. Mr. Eaton or Mr. Hall, any
21 problem with filing a report in two weeks?

22 MR. HALL: Your Honor, this is Brady Hall. I don't
23 have any concerns with filing a report. I'll let Mr. Eaton
24 speak to, well, as for his client and whether or not he wanted
25 to add anything.

1 THE COURT: Okay. Mr. Eaton?

2 MR. EATON: Your Honor, I don't have a problem with
3 filing a report in two weeks. Did you want me to address
4 anything at this point?

5 THE COURT: Well, I don't know -- if you can just
6 confirm that, barring a stay from the Ninth Circuit, your
7 intention is to comply with the order and schedule the surgery
8 with all of the necessary advanced workups within the time frame
9 that the court indicated?

10 MR. EATON: Your Honor, we are working toward that. I
11 guess I do need to address some of these things that were
12 mentioned by Ms. Rifkin, if I may, and then I'm happy to follow
13 up with a report in writing as to further developments.

14 We're intending to comply with the order. We -- I
15 have talked to my client, Corizon, and they have indicated that
16 they did try to work through Dr. Alviso, their off-site
17 consultant, who primarily provides the hormone therapy and --
18 but also, you know, has some contacts with CCS surgeons and
19 actually recommended the Geoffrey Stiller surgeon in Idaho,
20 which is -- our understanding is the only one and is competent
21 and qualified to perform the surgery up in Moscow. It is my
22 understanding that Dr. Alviso had some hesitancy in finishing
23 that up, so then our client contacted Dr. Stiller's office
24 directly is my understanding, and obtained a tentative date in
25 late May of 2019. And I told Ms. Rifkin that in my letter. I

1 didn't put a specific date on there, because I wasn't sure if it
2 would be filed with the court and whatnot; and I'm hoping
3 Your Honor can appreciate that we don't provide specific dates
4 usually due to security reasons. So it's my understanding that
5 that's been tentatively scheduled.

6 There are a decent amount of requirements leading up
7 to that surgery, and some of which I understand the surgeon
8 requires a referral from the treating physician and two mental
9 health care provider referrals; and that I'm grappling with, to
10 be honest here, Your Honor, and wondering if the court has any
11 guidance for us in that regard; because the surgeon is requiring
12 referrals from the treating docs, her mental health healthcare
13 providers is my understanding, and I'm not sure how to instruct
14 my client to comply with that when they didn't feel that was
15 indicated.

16 But in any event, we're trying to work through this
17 process leading up to the surgery that we have tentatively
18 scheduled in late May.

19 MR. HALL: Your Honor, this is Brady Hall.

20 I will add that the Department of Corrections is also
21 committed to complying with the court's order as required,
22 barring a reversal on appeal or a stay; and efforts are under
23 way (inaudible) to identify that surgeon.

24 The IDOC and the State of Idaho have a great interest
25 in ensuring that this procedure occurs in the State of Idaho, if

1 possible, given transport costs and ultimate costs that will be
2 paid by the taxpayer. Trying to identify and have a surgery in
3 Idaho is top priority, not only for costs but logistical issues,
4 transport, and security concerns.

5 THE COURT: All right. Well, Ms. Rifkin, brief
6 response. Before -- Ms. Rifkin, before you comment, it does
7 strike me that there should be some interactive discussions and
8 communications here between the parties to -- since it appears
9 the defendants are in agreement to attempt to comply with the
10 court's order, and therefore, I think providing each other with
11 some input and exchanging information may be of some value.

12 I would suggest, Mr. Eaton and Mr. Hall, that perhaps
13 while preparing this report, you might sit down and have some
14 discussions with plaintiff's counsel so that we can -- and I
15 think we will need to schedule another status conference,
16 perhaps in three weeks, just to find out what the report says
17 and to hear from counsel.

18 But, Ms. Rifkin, your thoughts.

19 MS. RIFKIN: Thank you, Your Honor.

20 Yes. I think, first of all, to the degree
21 that -- these requirements are not unusual. They are WPATH
22 requirements, and so they should be well known to Corizon and
23 their providers, including Ms. Edmo's current treater.

24 To the extent that -- that Corizon is going to ever
25 raise that they cannot obtain these because her treaters do not

1 believe she qualifies, we need to know that immediately to
2 ensure that Ms. Edmo gets access to providers who are actually
3 qualified under WPATH to examine her and provide these referral
4 letters. We already had an evidentiary hearing on this matter.
5 And so -- so we need to know as soon as possible whether that's
6 going to be an argument or whether there are any barriers.

7 So I think that the status report should not only
8 confirm that surgery has definitely -- not tentatively -- been
9 scheduled and that there is a confirmed date. It doesn't have
10 to be in a public filing with the court, but we want to know
11 that there is an actual set date that is not tentative but
12 confirmed. And we also need to know the specifics that
13 defendants are taking to comply with the pre- and postsurgical
14 requirements, including if they have identified any barriers and
15 what those are and what steps need to be taken to overcome those
16 barriers, be -- sort of, there may be problems down the line.
17 You know, we're in March. It's not very much time. Presurgical
18 requirements start well ahead of time.

19 The second thing I want to say is based on the
20 information we have, we don't object to Dr. Stiller. We are
21 still trying to obtain information. That was hampered because
22 he hadn't been actually contacted by defendants. But I want to
23 be clear that from plaintiff's perspective, the priority is that
24 Ms. Edmo receive surgery from a qualified, competent surgeon,
25 wherever defendants have to go to locate that person. So we

1 don't object to it happening in the State of Idaho, certainly,
2 but that -- that's the priority, and we need to make sure that
3 this happens by somebody who is qualified and competent, which
4 is what she has a right to.

5 THE COURT: All right. Well, let me ask --

6 MR. HALL: Your Honor, I --

7 THE COURT: I'm sorry. Who is that?

8 MR. HALL: This is Brady Hall. I would like to add
9 just one more comment. The defendants are very familiar with
10 the WPATH and the requirements that surgeons review two letters
11 of referral from treating mental health clinicians. And I think
12 it's -- no one is saying that this is going to happen, that this
13 is going to be a barrier, but from day one when the court
14 entered its order, it is -- it has posed a potential catch-22
15 for the defendants that I think it is sound to bring it to the
16 court's attention. And that's that if the defendants identify a
17 surgeon who ultimately determines based on their review of
18 either the record and understanding that this is a court order
19 and that the treating physicians and providers objected to her
20 mental stability and suitability for this procedure; there is a
21 possibility that that doctor exercising his or hers ethical
22 obligations will determine that this surgery is not proper,
23 which then forces the defendants to either manufacture some
24 opinions by treating physicians that it is suitable, or
25 requiring the defendants to doctor shop.

1 Now, hopefully, these issues are never -- don't come
2 to light in that if Dr. Stiller -- that Dr. Stiller does not
3 have those issues and it's put behind us. But that is a
4 potential here, given that the record is disputed as to whether
5 or not it is --

6 THE COURT: All right. Counsel, I'm mindful of that,
7 and I think it's a legitimate concern, but I think it's one that
8 I need to address sooner rather than later. So I think for that
9 reason, I'm going to ask the parties again to sit down within a
10 week and try to work through these issues with an eye to
11 identifying who the treating physician will be, what the
12 requirements that he or she will impose for their participation
13 in the surgery, and then to -- to lay out a game plan which will
14 provide the operating physician with what it is they require,
15 and so that we can very quickly determine if this catch-22 as
16 Mr. Hall has described it is a reality or not. We have simply
17 no way of knowing until we get further down the road. But I'm
18 afraid if we approach this in a somewhat leisurely fashion, we
19 will find ourselves up against a deadline with no opportunity at
20 all of complying with the court's order.

21 So I think we're at a point where counsel is going to
22 have to move very aggressively and very cooperatively to try to
23 sort through these issues. And, of course, that will all play
24 out with the background that I'm -- you know, that the
25 defendants may be seeking a stay from the Ninth Circuit, and if

1 that stay is granted, then, of course, that stops the process in
2 its tracks. But until that stay is imposed, I'm going to expect
3 counsel to comply with this directive to work, I guess, somewhat
4 proactively and cooperatively in trying to resolve these
5 potential issues within the next few weeks so we can get this on
6 track towards a resolution which will comply with the court's
7 order.

8 So I guess what I'm proposing is you spend the next
9 week in some serious discussions going over all the details and
10 then include -- perhaps both parties submit a report to the
11 court in two weeks. If you can't agree on what that report
12 should say, then you can each file your own report commenting on
13 the status of where we are, where we need to be, and then I'll
14 address it at that time. In the meantime, we will wait to see
15 if the defendants seek a stay from the Ninth Circuit and whether
16 the Ninth Circuit grants that stay.

17 Ms. Rifkin, are you content with that?

18 MS. RIFKIN: Yes, Your Honor.

19 My only hesitation is I think that works to the extent
20 that Mr. Brady is raising this concern, as I think Your Honor
21 knows, we contend that the treaters that Ms. Edmo sees currently
22 are not qualified or competent to assess whether she meets the
23 requirements for gender confirmation surgery. And so if the
24 outcome is that we're going to have to make a motion to the
25 court to order defendants to provide her access to outside

1 treaters who actually meet the WPATH requirements, there is
2 going to have to be motion practice for some kind of -- for that
3 kind of thing, I want to make sure that there is enough time.

4 THE COURT: Now, Ms. Rifkin, that's why -- you know, I
5 totally agree that if you can't reach an agreement, then I think
6 there will be further motions, and that's why I'm asking you to
7 act within the next week to try to sort through this; and it may
8 be just from sitting down and conferring, it's going to be clear
9 to one party or the other that some motions need to be filed
10 immediately and brought before the court for a formal hearing.
11 But I don't know what more I can do than ask you to sit down and
12 try to work out these problems as best you can over the next
13 week. Hopefully, file a joint report that is -- which shows a
14 way forward, and if not, file separate reports probably coupled
15 with motions that may be necessary to move the case forward.

16 MS. RIFKIN: I appreciate that, Your Honor. And that
17 makes sense. I guess what I would request is that during the
18 discussions that we have in the next week that -- that
19 defendants obtain the information from Ms. Edmo's providers as
20 to actually -- to be prepared to actually say whether they will
21 provide these referrals or not and to engage in that process
22 with Dr. Stiller so that in a week we are not operating with
23 still unknown information.

24 THE COURT: Well, that's why I'm asking you to work
25 cooperatively and make -- kind of put your cards on the table

1 and see where we are so that we're not just churning, just
2 talking a lot with nothing actually being done to resolve
3 whatever disputes there may be between the parties.

4 Mr. Eaton, are you on board with that?

5 MR. EATON: Yeah. I understand, Your Honor. Yes.

6 THE COURT: Okay. And Mr. Hall?

7 MR. HALL: Yes, Your Honor. Sounds like a good plan.

8 THE COURT: All right. Well, Counsel, again, I -- I
9 apologize. I intended to get our -- the decision on the motion
10 to stay out sooner, but we were -- I have been in trials, and
11 it's been a rather hectic few weeks. But, you know, again, we
12 didn't wait a long time, but I wish we would have had it out
13 sooner. I would, I guess, suggest to the defendants if you are
14 going to seek a stay from the Ninth Circuit that you move
15 quickly on that, simply because that is obviously the unknown
16 that may affect all of this planning; and then we will see how
17 that plays out as well, because that, as I said, will clearly
18 affect where we end up.

19 All right. Anything else from the plaintiffs we need
20 to discuss?

21 MS. RIFKIN: No. I appreciate it, Your Honor.

22 THE COURT: All right. From Corizon, Mr. Eaton?

23 MR. EATON: Nothing further at this time, Your Honor.

24 THE COURT: From IDOC, Mr. Hall?

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

1 THE COURT: Great. Thank you, Counsel.

2 And I'll have -- Mr. Cole, I assume you're on the
3 phone. If you are, then --

4 LAW CLERK COLE: Yes, Judge.

5 THE COURT: Okay. Then I'll assume you will work with
6 Ms. Bracke and find a time, perhaps two weeks from now, when we
7 can have another status conference -- not two weeks. It will
8 be, say, two-and-a-half weeks or three weeks from now when we
9 can have another status conference. We will put that as a
10 placeholder, but it could be that the interaction of counsel as
11 I'm directing it may make that unnecessary, or it may need to be
12 replaced with some kind of a briefing schedule on an expedited
13 basis to take up any motions that are generated by the
14 discussions of counsel.

15 All right. Thank you, Counsel.

16 MS. RIFKIN: Thank you, Your Honor.

17 MR. HALL: Thank you, Your Honor.

18 (Proceedings concluded.)

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CERTIFICATE OF TRANSCRIPTION

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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 3rd day of June, 2019.

/S/ TAMARA I. HOHENLEITNER

TAMARA I. HOHENLEITNER