

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

KANAUTICA ZAYRE-BROWN,

Plaintiff,

v.

NORTH CAROLINA DEPARTMENT
OF ADULT CORRECTION, et al.,

Defendants.

No. 3:22-CV-191

**PLAINTIFF'S CONSENT MOTION TO ALLOW EXPERT WITNESS TO
APPEAR REMOTELY VIA CONTEMPORANEOUS VIDEO CONFERENCE
TECHNOLOGY**

Pursuant to Federal Rule 43(a) of the Federal Rules of Civil Procedure and Local Rule 7.1, Plaintiff respectfully moves the Court to allow Plaintiff's expert witness Dr. Randi Ettner to appear remotely via contemporaneous video conference technology for the evidentiary hearing in this matter scheduled for February 20, 2024. (Doc. 92).

1. The Federal Rules of Civil Procedure permit remote testimony when there is good cause in compelling circumstances and appropriate safeguards. Fed. R. Civ. P. 43(a).

2. Due to medical circumstances set forth more fully in the accompanying Declaration of Randi C. Ettner, Ph.D., attached as Exhibit A hereto, and in Plaintiff's memorandum in support of this motion, Dr. Ettner is unable to travel to North

Carolina to appear in person at the February 20 evidentiary hearing without jeopardizing her health.

3. Dr. Ettner's expert testimony is material to the questions presented for resolution by the Court's February 2, 2024 Order and essential to Plaintiff's presentation of evidence at the February 20, 2024 evidentiary hearing.

4. Dr. Ettner can be driven to a site anywhere in Chicago or any place that does not require traveling at elevation to testify remotely via video conference.

5. This Court has previously permitted remote testimony of witnesses by live video conference technology.

6. The Western District of North Carolina has video conferencing systems available for use in all courtrooms.

7. Counsel for Plaintiff has conferred with counsel for Defendants in this matter, and Defendants consent to this motion.

WHEREFORE, Plaintiff, through counsel, moves this Court to permit the testimony of Dr. Randi C. Ettner via contemporaneous video conference technology and for such other and further relief as the Court may deem just and proper.

Respectfully submitted this the 8th day of February, 2024.

/s/ Jaclyn A. Maffetore
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that on February 8, 2024, I electronically filed the foregoing document using the ECF system, which will send notification of such filing to all counsel of record.

/s/ Jaclyn A. Maffetore
Jaclyn A. Maffetore
Counsel for Plaintiff

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

KANAUTICA ZAYRE-BROWN,

Plaintiff,

v.

THE NORTH CAROLINA
DEPARTMENT OF ADULT
CORRECTION, *et al.*,

Defendants.

No. 3:22-cv-191-MOC-DCK

DECLARATION OF RANDI C. ETTNER, PH.D.

I, Dr. Randi Ettner, Ph.D., hereby declare as follows:

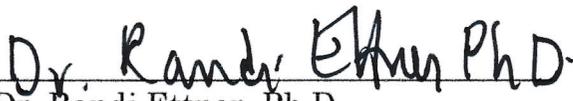
1. I have been retained as an expert witness for the Plaintiff, Kanautica Zayre-Brown, in the above-captioned action.
2. Counsel for Plaintiff has informed me that an evidentiary hearing in this action has been set for February 20, 2024, at 2:00pm Eastern Standard Time and that Plaintiff's counsel needs me to testify at that hearing.
3. Unfortunately, I am not able to travel to North Carolina from my home in Chicago to testify in person at that hearing, although I could testify remotely by video. On December 22, 2023, I suffered a detached retina in one of my eyes. The next day, I underwent vitrectomy with insertion of a gas bubble. This is a surgical procedure to treat problems with the retina. The gas bubble serves to press the retina

back into its normal position and hold it there until the bubble dissipates and the fluid in the eye takes its place, healing the detached retina.

4, On January 22, 2024, I last saw Dr. Aaron B. Weinberg, the surgeon who performed the vitrectomy with insertion of a gas bubble procedure on me. At that visit, Dr. Weinberg warned me that I cannot safely travel until the gas bubble in my eye dissipates if such travel would involve changes in elevation. Such travel includes not only flying but also land travel to or through places with a higher elevation than my home in Chicago. Dr. Weinberg told me that doing so prior to the dissipation of the bubble in my eye risks causing the bubble to explode and loss of my vision. Dr. Weinberg told me that he does not expect the bubble to dissipate prior to the February 20, 2024 evidentiary hearing. Dr. Weinberg also said that, if the Court needs information beyond my sworn testimony contained in this declaration, he would be willing to provide a letter to the Court.

Pursuant to 28 U.S.C. § 1746, I declare that the foregoing is true and correct.

Dated: February 9, 2024


Dr. Randi Ettner, Ph.D.