

IN THE CIRCUIT COURT OF ASHLEY COUNTY, ARKANSAS

BROWN, ET AL

PLAINTIFFS

VS.

CIV 2002-166-1

ST. PAUL MERCURY, ET AL

DEFENDANTS

PRE-TRIAL MOTIONS ORDER

This matter is set for trial to begin on August 19, 2003. There are presently pending various undecided pre-trial motions. The judge in this case did on the 1st day of August conclude two full weeks in which he was in the courtroom all day, every day, with the exception of the afternoon of August 1, when this matter is being addressed. He has scheduled a vacation for the weeks of August 4-15, and will be out of state during most of that period. In order to allow counsel adequate opportunity to prepare for trial, and an adversary hearing being impossible to schedule, the Court finds as follows on the pending pre-trial motions: (filing dates are listed in parenthesis)

- 1 Plaintiff's First Motion in Limine (7-9-03); Saint Paul's Response (7-16-03); Short's Response (7-21-03); Plaintiff's Reply to Saint Paul's Response (7-25-03); Plaintiff's Reply to Short's Response (7-25-03).
 - a. Should evidence of cannabinoid finding in autopsy toxicology be excluded under Rule 402 as irrelevant or under Rule 403 as unduly prejudicial? The court didn't fall off of the turnip truck yesterday. All Dr. Perreti can say about this finding is that it was a finding. Based on what this court knows from other cases, he can't say when, how, and how much marijuana was ingested to produce this finding. Unless defense counsel can sharpen with evidence, not just argument, the conclusions they attempt, this request is granted. The Court doesn't see anything particularly harmful about allowing Dr. Peretti (if he is called) to testify about his findings, or in allowing him to testify that he can't really draw any firm conclusions from them. However to allow the type of argumentative conclusions from defense that are set forth in the responses is wildly speculative, and would be overly prejudicial.
 - b. Surviving Child's Social Security Benefits as Collateral Source. Neither defendant state's this is relevant to any foreseeable issue. This is granted subject to Plaintiff opening the door in some way on relevance.
 - c. Miscellaneous matters: prior personal injuries; workers compensation; insurance claims; misdemeanor charges/convictions of decedent's brother; no liability insurance ticket; Medicaid paying for birth of decedent's child. The plaintiff has not shown they are entitled to this. Some of these may or may not be relevant. It depends on how the proof develops at trial. As a general proposition, most appear to be irrelevant to the Court on proper objection.

2. Defendant Short' Motion in Limine w/ Authorities (7-9-03); Plaintiff's Response (7-25-03); Short's Reply (8-1-03).

- a. Malpractice insurance – granted
- b. Questions to medical care provider defendants about their standard of care – granted, unless they open the door by giving their opinions on the same.
- c. Questions about standard of care of another defendant, granted unless they express any opinion of this issue – it would be beyond the scope of direct examination if they only testify about factual background.
- d. Peer review – since there wasn't any, granted unless there is proof there was, in which case it would go to credibility of the witness who said there wasn't.
- e. This is simply too vague to grant. Movant has not shown they are entitled to it.
- f. Non-Daubert qualifying opinions – same as e, above.
- g. Hearsay – denied, make objection if it is hearsay at trial. Movant has not shown entitlement.
- h. Offer as expert – direct counsel to ask qualifying questions, then ask court's permission of witness to give his opinions in his field, will be granted if qualified, and court will not have to "recognize" anyone as an expert in front of the jury. If there are objections, court will hear at bench.
- i. Beyond scope of direct – denied. Make objections at trial as needed.

3. Defendant Saint Paul Mercury's Motion in Limine and Brief (7-14-03).
Plaintiff's Response listed in 7, below.

This motion seeks to exclude Michael L. Brookshire's testimony as to economic value of the loss of life of decedent. Plaintiff's response and brief are extensive and thorough. The Court has reviewed them. Defendant's Motion and Brief cites cases, but doesn't contain any materials such as Plaintiff's Response does, which would support findings. Defendant's position is basically argumentative. This court has previously ruled on the issue of admissibility of testimony much like Dr. Brookshire's, as well as the issue of retroactive application of Ark. Code Ann. 16-62-101. See Ashley Circuit Civ. 2001-109-1, Edwards, et al vs. Harper, et al, and adopts the rulings in that case on these issues as its rulings in this case. The Motion is denied.

4. Plaintiff's Second Motion in Limine (7-15-03); Short's Response (7-21-03).

This motion is denied. A review of the complained of questions show they go to bias and credibility, insofar as they are relevant to prior relationships of the witness and plaintiff's counsel or other members of his firm. The Court is not interested, nor does it believe the jury would be either, in an extensive relation of this witness' marital history, but insofar as some of these questions appear to go to show the nature of the relationship between plaintiff's counsel and the witness, again they are relevant.

5. Motion to Quash Subpoena of Jennifer Hudson (7-18-03)

There is no objection, and the motion shows that the witness health could be affected by appearance. Depositions are also apparently available. Granted.

6. Defendant Short's Second Motion in Limine w/ Authorities (7-18-03); Plaintiff's Response (7-25-03); Short's Reply (7-31-03); Plaintiff's Reply to Short's Response (7-25-03)

- a. This is granted. Dr. Mitchell should not give her opinion that Dr. Short's conduct fell short of the standard of care for doctors. She may give her opinion on issues of nurse's standard of care, if otherwise qualified, and this order does not preclude her from saying that sometimes nurses shouldn't blindly follow doctor's orders if that is in fact her opinion. Counsel and the Court have discussed this issue in a phone conference on 8-1-03, and the Court feels Counsel are aware of and will follow the Court's instructions in that conference. If there is need for further clarification, bring this up before trial begins.
- b. This is granted. She is not qualified to give opinions on cause of death.
- c. This is denied. See 3 above.

7. Plaintiff's Response and Brief to Defendant's Motion to Exclude Dr. Brookshire's Testimony (7-22-03). See 3 above.

So found and ordered.



Circuit Judge