

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

KIMBERLY DAVIS, *et al.*

Plaintiffs

v.

Civil Action No. **CAL12-13546**

SANJIV LAKHANPAL, M.D., *et al.*

Defendants

DEFENDANTS, CENTER FOR VEIN RESTORATION (MD), LLC, AND SANJIV LAKHANPAL, M.D.'S MOTION IN LIMINE TO PRECLUDE TESTIMONY AND EVIDENCE REGARDING THE DECEDENT'S STATEMENT

COME NOW the Defendants, [REDACTED], and Center for Vein Restoration (MD), LLC, by and through counsel, [REDACTED], Esquire, and the law firm of [REDACTED], CHARTERED, and pursuant to Maryland Rule of Civil Procedure 2-311, hereby file this Motion in Limine to Preclude Testimony and Evidence Regarding the Decedent's Statement. As grounds in support of the Motion, the Defendants respectfully state as follows:

1. This case includes allegations that the decedent, [REDACTED], experienced conscious pain and suffering, and emotional distress before her death, as a result of a laceration to her arterial graft on February 6, 2011. *See* Exhibit A, Plaintiff's Complaint at ¶ 11.

2. On December 19, 2012, Benjamin Holquist, N.P. testified at deposition about his recollection of the events that occurred during the few minutes following the laceration:

Q. Okay. Did something change in the blood pressure reading as the time went by?

A. Something changed in her condition.

Q. Okay. What changed in her condition?

A. She became unresponsive.

Q. Do you mean unresponsive to your questions or unresponsive in a more physical sense, such as breathing and consciousness?

A. She sat up bolt right and passed out.

- Q. Did she say anything, yell, scream, when she sat up?
A. She said, I think I'm dying.
Q. Did that cause you concern?
A. It did.
Q. Do you believe she was in acute distress at that time?
A. I did.
Q. Do you believe she was in acute discomfort and pain at that time?
A. She was in acute distress.
Q. And how about experiencing any type of pain at that time?
A. At that point, she had -- she was unresponsive.
Q. Okay. Did you know the time period that elapsed between the time you pulled the pacing wires and the chest tubes, to the time she sat up and said I think I'm dying?
A. No specifically. It was brief. It was very quick.
Q. Three minutes? Four minutes?
A. Minutes.
Q. Minutes? Okay. Did you see any blood anywhere?
A. I did.
Q. Where was the blood coming from?
A. There was bloody drainage from the chest tube sites.

See Exhibit B, December 19, 2012 deposition of Benjamin Holquist at 45:12 – 47:5.

3. Maryland's "Dead man's statute" precludes the Plaintiff from testifying regarding the decedent's statement:

A party to a proceeding by or against a personal representative, heir, devisee, distributee, or legatee as such, in which a judgment or decree may be rendered for or against them, or by or against an incompetent person, may not testify concerning any transaction with or statement made by the dead or incompetent person, personally or through an agent since dead, unless called to testify by the opposite party, or unless the testimony of the dead or incompetent person has been given already in evidence in the same proceeding concerning the same transaction or statement.

Md. Code Ann. Cts. & Jud. Proc. § 9-116 (Dead or incompetent persons); see also, *Reddy v. Mody*, 39 Md. App. 675, 388 A.2d 555 (1978), and *Schifanelli v. Wallace*, 271 Md. 177, 315 A.2d 513 (1974).

4. In addition, Mr. Holquist's testimony that M. [REDACTED] said "I feel like I'm dying," is inadmissible hearsay under Maryland law because it is a statement, other than one

made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted. *See* Maryland Rules of Evidence 5-801 and 5-802.

5. The Plaintiff will not suffer any prejudice if [REDACTED] statement is precluded, because Benjamin Holquist can still testify as to what he actually observed (i.e. "She sat up bolt right and passed out," and that he saw "bloody drainage from the chest tube sites"), and what he thought at that time (i.e. he was "concerned," and he believed that "she was in acute distress.").

6. Finally, even if the rule against hearsay and the Dead Man's Statute do not preclude admission of Ms. Richardson's statement that "I feel like I'm dying," her statement should be precluded from admission as evidence at trial based upon the grounds of prejudice and confusion, pursuant to Maryland Rule 5-403:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

7. Here, Mr. Holquist will testify that within minutes after he removed her pacing wires: (a) he observed Ms. Richardson sit "up bolt right and passed out," (b) she became "unresponsive," (c) he saw bloody drainage from her chest tube sites, (d) he was concerned, and (e) he believed Ms. Richardson was in acute distress. *See* Exhibit B.

8. [REDACTED] statement that "I feel like I'm dying" should be excluded because its probative value, in light of all the evidence, is substantially outweighed by the danger of unfair prejudice. Moreover, admission of the decedent's statement risks confusing the issues, misleading the jury, or unduly delaying, wasting time and presenting cumulative evidence.

WHEREFORE, Defendants respectfully request that the Court grant Defendants' Motion to Preclude Testimony and Evidence Regarding the Decedent's Statement, enter an Order precluding such testimony and evidence, and grant such further relief as this Court deems appropriate.

Respectfully submitted,

[REDACTED]

[Handwritten Signature]

[REDACTED]

204 Monroe Street, Suite 101
Rockville, MD 20850
(301) 251-0440

[REDACTED]

REQUEST FOR A HEARING

The Defendants respectfully request a hearing on the foregoing motion.

[Handwritten Signature]

[REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion in Limine was mailed, postage prepaid, this 3rd day of July, 2013 to:

Rodney Gaston, Esquire
Miller & Zois
7310 Ritchie Highway, Suite 1001
Glen Burnie, MD 21061

[Handwritten Signature]

[REDACTED]

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ORDER

UPON CONSIDERATION of the Defendants' Motion in Limine to Preclude Hearsay Testimony and Evidence Regarding the Decedent's Alleged Conscious Pain and Suffering, it is this _____ day of _____, 2013,

ORDERED, that the Defendants' Motion be, and the same hereby is, **GRANTED**, and it is further,

ORDERED, that testimony and evidence regarding the statement of Decedent, Velda Fay Richardson on February 6, 2011 that she felt like she was dying shall be **PRECLUDED** from admission as evidence at trial.

JUDGE, Circuit Court for Prince George's
County, Maryland

Copies to:

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