

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**JENNIFER and WAYNE STOGSDILL, Individually,
and as Parents, Next Friends, and Natural Guardians
of TAYLOR STOGSDILL, a Minor**

PLAINTIFFS

V.

4:08CV00207 JMM

**JOHN S. ELKINS, M.D.,
ARKADELPHIA WOMEN'S CLINIC, P.A.,
And JUAN J. ROMAN, M.D.**

DEFENDANTS

ORDER

Pending are the Plaintiffs' motions in limine regarding collateral sources (Docket # 48), scope of voir dire (Docket # 55), evidence of non-suit (Docket # 59), and the phrase "guilty of malpractice" (Docket # 69). Also pending are the motions of Dr. Elkins and the Arkadelphia Women's Clinic ("AWC") regarding general issues (Docket # 77) and joinder (Docket # 102) and the motions of Dr. Roman regarding general issues (Docket # 85) and joinder (Docket # 100). The Court will address Plaintiffs' motions in limine regarding Defendants' counter-designation (Docket # 63) and the out-of-court statement attributable to Dr. Roman (Docket # 67), the Defendants' motion regarding Plaintiffs' claimed damages (Docket # 81 and # 86), and Dr. Roman's motion regarding Dr. Andrew Melnyk (Docket # 82) by separate order.

1. Collateral Sources

The Court will reserve ruling on the motion in limine regarding collateral sources (Docket # 48) until trial.

2. Scope of Voir Dire

Plaintiffs' motion regarding the scope of voir dire (Docket # 55) is DENIED. The parties should not voir dire the jury regarding any potential connections with liability insurers or their

beliefs about malpractice verdicts and their effect on insurance rates and health care costs.

3. Non-Suit

Plaintiffs' motion in limine regarding any evidence of or reference to the claim that was brought and non-suited by Plaintiffs against Dr. Dodd, Radiology Consultants of Little Rock, P.A., and Baptist Health (Docket # 58) is GRANTED. The parties should not refer to previous filings of this case during any part of the trial proceedings. Dr. Roman's motion to adopt and join in Defendant Elkins and AWC's response in opposition to Plaintiffs' motion (Docket # 100) is GRANTED.

4. "Guilty of Malpractice"

Plaintiffs' motion in limine regarding the phrase "guilty of malpractice" (Docket # 69) is DENIED. The phrase may be used at trial. Elkins and AWC's motion to adopt and join in Dr. Roman's response in opposition to Plaintiffs' motion (Docket # 102) is GRANTED.

5. Motion of Dr. Elkins and the Awc Regarding General Issues

The Defendants' motion regarding pretrial issues, experts' prior lawsuits, defense experts' liability insurance, speculative evidence from an expert or any witness, unqualified expert opinions, inadmissible hearsay, and speeches by counsel in front of the jury (Docket # 77) is GRANTED. The Court will instruct the jury during opening instructions as to what constitutes evidence in the case. Dr. Elkins should not be asked to provide expert testimony against himself. *See* Ark. Code Ann. § 16-114-207(3).

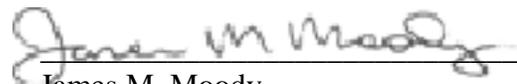
6. Dr. Roman's Motion on General Issues

Dr. Roman's motion in limine regarding a "conspiracy of silence" or the fact that Arkansas doctors will not testify against one another, hearsay statements by physicians, nurses,

technicians or healthcare providers, any reference to defense attorneys or firms that “specialize” in defending medical malpractice lawsuits, professional liability insurance, any pretrial motions, any privileged matters, unqualified expert opinions, diagnosis and medical opinion testimony from the Plaintiffs (Docket # 85) is GRANTED. The parties should not discuss a “national” standard of care because such statement is contrary to Arkansas law. The parties should not argue or infer to the jury that a verdict for the Plaintiffs would have no adverse effect on Dr. Roman’s practice of medicine. Dr. Roman should not be asked to provide expert testimony against himself. *See* Ark. Code Ann. § 16-114-207(3).

In conclusion, Plaintiffs’ motions in limine regarding collateral sources (Docket # 48) is held in abeyance, scope of voir dire (Docket # 55) is DENIED, evidence of non-suit (Docket # 59) is GRANTED, and the phrase “guilty of malpractice” (Docket # 69) is DENIED. The motions of Dr. Elkins and the AWC regarding general issues (Docket # 77) and joinder (Docket # 102) are GRANTED. The motions of Dr. Roman regarding general issues (Docket # 85) and joinder (Docket # 100) are GRANTED.

IT IS SO ORDERED this 14th day of October, 2009.



James M. Moody
United States District Judge