

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00404-RPM

CAROLYN K. HARNER,

Plaintiff,

v.

JAMES HIBBARD,

Defendant.

ORDER OF DISMISSAL

The claim against the defendant James Hibbard is that when he was the County Coroner for Adams County, Colorado, he intentionally caused the destruction of a section of the aorta of the body of Michael Harner, taken during an autopsy, showing a perforation and constituting crucial evidence in a wrongful death action claiming negligence in conducting a cardiac catheterization. The trial resulted in a defendant's verdict. The plaintiff contends that Hibbard should be liable in damages under 42 U.S.C. § 1983 because he violated the constitutional right of access to the court because the specimen would have enabled Ms. Harner to prove that perforation of the aorta was the cause of her husband's death.

The defendant moved to dismiss, asserting qualified immunity because there is no clearly established law of which a reasonable coroner would be aware that his conduct violated the United States Constitution. The plaintiff cites to an unpublished opinion of the Tenth Circuit Court of Appeals, *Donohue v. Hoey*, 109 Fed. Appx. 340, 357 (10th Cir. 2004). In the court's discussion of a constitutional right of access to the courts, *Wilson v. Meeks*, 52 F.3d 1547 (10th Cir. 1995) was considered instructive. In that opinion, the court reversed an order denying qualified immunity, the court accepted the limitation on liability for denial of access to the courts in *Foster v. City of Lake Jackson*, 28 F.3d, 425, 430 (5th Cir. 1994) that the protection is for the

opportunity to initiate legal action.

The plaintiff has failed to present established legal authority to support a claim that a coroner's intentional destruction of tissue taken during an autopsy that he knew would be critical to a wrongful death action is a violation of the United States Constitution.

Accordingly, it is

ORDERED, that because the defendant is entitled to qualified immunity from liability, this civil action is dismissed.

DATED: June 20th, 2013

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge