

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

THOMAS HAYDEN BARNES,

Plaintiff

v.

RONALD ZACCARI,

Defendant.

Civil Action 7:12-cv-89 (HL)

ORDER

On January 15, 2013 the Court held a pretrial conference in Valdosta, Georgia. At the hearing, the parties discussed, among other things, pending motions in limine and the schedule for the trial of this case. This Order summarizes some of the findings made at the hearing.

First, as to Plaintiff's Motion in Limine to limit Defendant's use of privileged and unfairly prejudicial evidence (Doc. 290), the Court prefers to wait until trial to resolve any issues about evidence which Plaintiff argues is irrelevant and prejudicial. This includes evidence of Plaintiff's religion, political beliefs, reading habits, academic background, personal relationships, sexual practices, past drug use, employment history, prescription drug history, and anything else that may be objectionable to Plaintiff. The Court noted during the pretrial conference that information that was known to Defendant at the time he made the decision to withdraw Plaintiff may be relevant for purposes of qualified immunity. However,

information that was unknown to Defendant may not be pertinent to the issues in this case. The parties shall make specific objections during trial and the Court will decide at that time whether the evidence is admissible.

Next, as to the Motion in Limine regarding the term “administrative withdrawal” (Doc. 291), the Motion is granted. The terms administrative withdrawal and expulsion may be used interchangeably.

The third Motion in Limine is Plaintiff’s Motion to Set Trial Protocol for Plaintiff’s Use of Former Defendants as Witnesses (Doc. 292). Plaintiff’s counsel shall treat these witnesses as non-hostile until there is some manifestation of hostility that justifies the use of leading questions. Counsel may request the Court’s permission to use leading questions.

The Court has requested a summary of Dr. Norman’s testimony before ruling on the Motion in Limine regarding his report (Doc. 293). Defendant shall submit a report summarizing Dr. Norman’s testimony by Friday, January 18, 2013 at 5:00pm. Plaintiff shall submit a similar report for Professor Robert O’Neil at the same time. The reports summarizing the testimony of Dr. Norman and Prof. O’Neil will be reviewed and a decision on the Motions in Limine will be made before trial begins.

Plaintiff’s Motion in Limine to Adopt the Court’s Findings as Undisputed Facts (Doc. 294) is denied. If the parties are able to agree on a statement of facts, that statement will be read to the jury at the beginning of the trial. If no

agreement can be reached, no stipulation of facts will be read and the parties must present evidence on each element of the case.

Defendant's Motion in Limine (Doc. 308) is granted in part and denied in part. The first part, Subjects 1-3, deals with several newspaper articles including "The Unofficial Biography of Robert Carlos Cortez Zaccari" from *The Spectator*, the Valdosta State University student newspaper, "Paving Paradise" from *The Chronicles of Higher Education*, and "Laws Limit Options when a Student is Mentally Ill" from *The New York Times*. A ruling on the admissibility of these three articles and any evidence relating to these articles will be reserved until trial.

The second part of Defendant's Motion in Limine addressed Subjects 4-8, all of which pertained to past claims or allegations in this case that have been dismissed. The Motion in Limine pertaining to Subjects 4-8 is granted.

The next part of Defendant's Motion in Limine is Subject 9, which asked the Court to exclude all evidence of damages that is not directly relevant to the procedural due process violation. The Court grants Defendant's Motion to limit the evidence of damages to only those damages relevant to the procedural due process violation; however, the Court does not adopt defense counsel's interpretation of these damages as being so narrow that they do not include out-of-pocket expenses.

Finally, Subject 10 of Defendant's Motion in Limine was argued at the pretrial conference. The Court finds that a determination of whether punitive

damages are warranted is a jury question. Defendant's Motion in regards to punitive damages is denied. Evidence of punitive damages will be admissible at trial.

Plaintiff objects to certain defense witnesses and testimony in his Motion to Strike (Doc. 320). Plaintiff objects to six of Defendant's witnesses on the grounds that they were improperly revealed and their testimony is irrelevant. During the pretrial hearing, the Court learned that only two of the six witnesses – Mr. Tom Hardy and Mr. John Eunice – were improperly revealed. These two witnesses will not be allowed to testify on the basis of Defendant's failure to properly identify them to Plaintiff. The remaining four witnesses – Mr. Jonathan Strobel, Mr. Jimmy Fields, Ms. Melinda Cutcheons, and Mr. Jim Black – were properly identified. However, after review, the Court finds that their testimony is not relevant for purposes of this trial. Therefore, these witnesses shall be excluded. Plaintiff also made additional specific objections to the testimony of several witnesses including Elizabeth Neely, Leah McMillan, Ann Farmer, Russ Mast, Richard Lee, Thressa Boyd, and Kimberly Tanner. The Court reserves these objections to trial.

Additionally, Plaintiff has filed two Motions to Strike (Docs. 330 and 333). The parties agreed at the pretrial conference that these Motions are moot.

Finally, there are objections to the deposition of Dr. Kurt Keppler (Doc. 337) that are still pending in this case. The Court will review these objections and the deposition testimony and will rule on these objections before trial begins.

Also addressed at the pretrial conference was the Court's decision to trifurcate this trial based on the belief that dividing the trial into three parts will be more manageable for the jury and avoid any prejudice. Phase One of the trial will focus on the issue of damages. As stated by the Court at the pretrial hearing, the issue of liability is no longer in this case. Liability shall not be argued in Phase One or any of the other phases. In Phase One, the parties will be allowed a brief opening statement lasting fifteen or twenty minutes. Following the opening statements, the parties will present evidence on the issue of damages. After the presentation of evidence, both parties will be given an opportunity to make a closing argument. The Court will then instruct the jury and the jury will go out to deliberate. A verdict form for Phase One will be prepared by the Court that includes the question of whether punitive damages are warranted in this case.

If the jury comes back with an award of damages and an affirmative answer to the question of whether punitive damages are appropriate, then the case will move into Phase Two. In Phase Two, attorneys for both parties will give opening statements, present evidence on the issue of punitive damages, and then give closing arguments. The evidence in this Phase will include evidence of Defendant Zaccari's financial situation. After the closing arguments, the jury will be instructed by the Court as to punitive damages and will be sent out to deliberate. The verdict form that is sent with the jury will be prepared by the Court and approved by the parties.

At the end of Phase Two, the Court will ask the parties to articulate any specific factual disputes that are left unresolved. To reassert qualified immunity there must be some unresolved factual question. See Barnes v. Zaccari, 669 F.3d 1295, 1308 (11th Cir. 2012) (stating that “the district court can use a special verdict or written interrogatories to determine any disputed facts and the reasonable inferences drawn from those facts”); Childs v. Dekalb County, GA, 416 Fed. Appx. 829, 832 n. 2 (11th Cir. 2011); Chaney v. City of Orlando, 291 Fed. Appx. 238, 241 (11th Cir. 2008). The parties must articulate what evidentiary disputes remain to justify moving into Phase Three.

If the Court finds that Phase Three is appropriate, the case will move into the issue of qualified immunity. As in the previous two Phases, the parties will be given an opportunity for opening arguments. Then the parties may present evidence on the issues identified. To clarify, the Court does not interpret the question of qualified immunity to involve the issue of whether Defendant acted reasonably, which is a question that addresses liability and has already been decided. The Court anticipates that any evidence relating to whether Defendant believed that an emergency existed may be appropriate for presentation during Phase Three. At the close of evidence, the parties will be able to give a closing argument. The jury will then be asked to answer special interrogatories that have been prepared by the Court.

If there are any questions about the Phases of the trial, the parties are encouraged to contact the Court directly. Jury selection will take place on January 28, 2013, and the trial will start that same day.

In sum, the following actions have been taken in regards to the Motions in Limine:

- Plaintiff's Motion in Limine regarding Defendant's use of privileged evidence (Doc. 290) is reserved until trial;
- Plaintiff's Motion in Limine regarding "administrative withdrawal" (Doc. 291) is GRANTED;
- Plaintiff's Motion in Limine regarding setting trial protocol for witnesses (Doc. 292) is GRANTED in part and DENIED in part;
- Plaintiff's Motion in Limine regarding Dr. Norman (Doc. 293) is reserved until after Defendant's submission of a summary of his testimony on Tuesday, January 22, 2013;
- Plaintiff's Motion in Limine regarding Professor O'Neil (Doc. 295) is reserved until after Plaintiff submits a summary of O'Neil's testimony on Tuesday, January 22, 2013;
- Plaintiff's Motion in Limine regarding a statement of facts (Doc. 294) is DENIED;
- Defendant's Motion in Limine (Doc. 308) is GRANTED in part and DENIED in part;

- Plaintiff's Motion to Strike Proffered Testimony (Doc. 320) of six witnesses is GRANTED in part and DENIED in part;
- Plaintiff's Motion to Strike Defendant's Reply (Doc. 330) and Plaintiff's Motion to Strike Defendant's Response (Doc. 333) are deemed moot, and
- The objections to the deposition of Dr. Kurt Keppler have been received by the Court and will be ruled on before the beginning of trial.

SO ORDERED, this 16th day of January, 2013.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

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