

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

KAYLA MOSS and MICHAEL MOSS,
Individually, and as next friend of
A.M., an infant,

Plaintiffs,

v.

**CIVIL ACTION No.: 3:19-CV-187
(GROH)**

**CITY HOSPITAL, INC., THERESA TRIGGS,
and THE UNITED STATES OF AMERICA,**

Defendants.

MEMORANDUM OPINION AND CERTIFICATION ORDER

Now before the Court is “Plaintiffs’ Motion for Summary Judgment as the [sic] Constitutionality of West Virginia Code §55-7B-9a, [sic] and §55-7B-9d.” ECF No. 87. Therein, Plaintiffs argue that these code sections are unconstitutional under the West Virginia separations of power clause and West Virginia’s equal protection clause. Plaintiffs further aver, and this Court agrees, that the legal issues presented do not rely upon any facts presented in this case; instead, the issues presented are strictly questions of law concerning West Virginia’s constitution.

This Court, having thoroughly reviewed the Motion, finds that the answers may be determinative of an issue pending, and no controlling decision currently exists. See W. Va. Code § 51-1A-3. The questions of law to be answered are as follows:

1) Does West Virginia Code § 55-7B-9a or § 55-7B-9d violate Article V, § 1 of the West Virginia Constitution because the Rulemaking clause of Article VIII, § 3 provides the Supreme Court of Appeals of West Virginia solely possesses authority to promulgate rules of evidence and procedure?

2) Does West Virginia Code § 55-7B-9a or § 55-7B-9d violate West Virginia's Equal Protection Clause because all medical malpractice claimants are not treated equally under its provisions?

Although the questions presented to the Court are purely questions of law, which should not require any of the facts of this case, this Court nonetheless provides a brief outline of the allegations in Plaintiffs' Complaint to fully show the nature of the controversy out of which the questions arose. See W. Va. Code § 51-1A-6.

Plaintiffs brought this Civil Action alleging negligence and related theories against the Defendants as a result of a stroke Kayla Moss ("Ms. Moss") suffered while under Defendants' care. Ms. Moss's claims are subject to West Virginia's Medical Professional Liability Act ("MPLA"). See W. Va. §§ 55-7B-1 et seq. Plaintiffs further allege that Ms. Moss has suffered "multiple millions of dollars" worth of damages as a result of a massive brain stem stroke, which has left her partially paralyzed. Moreover, Plaintiffs' contend that Defendants' negligence and/or breaches of the standard of care proximately caused Ms. Moss's catastrophic injuries.

This Court also acknowledges that the Supreme Court of Appeals of West Virginia may reformulate the questions presented and provides the names and addresses of counsel of record infra.

Further, the Court finds it prudent to vacate certain deadlines and hearings within the Court's Scheduling Order. Therefore, the following deadlines and hearings in the Court's Scheduling Order are hereby **VACATED**:

- 1. Intermediate Pretrial Conference on December 16, 2020;**
- 2. Federal Rule 26(a)(3) Disclosures;**
- 3. Voir Dire, Jury Instructions, and Verdict Form;**
- 4. Joint Pretrial Order;**


5. Final Pretrial Conference; and

6. Trial.

However, the parties are strongly encouraged to continue working toward a resolution in this matter in accordance with Rule 1 of the Federal Rules of Civil Procedure. The parties are hereby **ORDERED** to comply with all remaining deadlines and to notify the Court within seven days of the Supreme Court of Appeals of West Virginia's opinion. Finally, the Plaintiff's Motion for Summary Judgment as to the Constitutionality of W.Va. Code §§ 55-7B-9a & 9d is **DENIED WITHOUT PREJUDICE**.

The Clerk of Court is **DIRECTED** to transmit copies of this Order to all counsel of record herein and to the Clerk for the Supreme Court of Appeals of West Virginia.

DATED: December 1, 2020



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE

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