

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

BETH RIDEOUT,

Plaintiff,

v

File No. 2013029910CD
HON. PHILIP E. RODGERS, JR.

GRAND TRAVERSE PAVILIONS, GRAND
TRAVERSE MEDICAL CARE FACILITY and
ROSE COLEMAN, COO,

Defendants.

Jay Zelenock (P58836)
Attorney for Plaintiff

Karen B. Berkery (P38698)
Attorney for Defendants

DECISION AND ORDER DENYING DEFENDANTS' MOTION FOR IN-CAMERA
REVIEW OF MEDICAL CHARTS AND PARTIAL RECONSIDERATION AND MOTION
FOR RECONSIDERATION BASED ON LEGAL ERROR IN APPLYING MRE 702 AND 703

On September 27, 2013, the Court issued a Civil Scheduling Conference Order (CSCO) in the above captioned case. The CSCO ordered that witness and exhibit lists were to be exchanged with opposing counsel and filed with the Court on or before October 28, 2013. The CSCO further ordered that discovery was to be completed on or before January 31, 2014.

On January 14, 2014, the Plaintiff filed a Motion to Strike Defendants' "In-House Experts" for Lack of Timely Disclosure of Data and Information Relied on to Support Any Alleged Opinions Pursuant to MRE 703, the Court's Scheduling Order, and MCR 2.302(E)(1)(a)(iii).¹ In their Response, filed February 7, 2014, Defendants argue that Kazim

¹ On January 6, 2014, Defendants filed a Motion for Summary Disposition. The Motion included the Affidavit of Holly Kazim f/k/a Holly Forton (hereinafter "Kazim"), a social worker at Grand Traverse Pavilions, which offered certain opinions and conclusions about the Plaintiff. Kazim audited and reviewed various documents pertaining to the Plaintiff in order to arrive at her opinions/conclusions. Plaintiff claims these documents have not been disclosed, nor was Kazim listed as a potential expert witness.

does not qualify as an expert and the information set forth in her affidavit does not constitute expert testimony.²

On February 13, 2014, the Defendants filed a Motion for In-Camera Review of Medical Charts Reviewed by Holly Kazim in Preparing Audits and Partial Reconsideration as to Holly Kazim's May 2013 Audits. In their Motion, Defendants again argue that Plaintiff was terminated based on her poor work performance and acknowledge that this defense is based on audits compiled by Kazim and reviewed by Coleman. Subsequently, on February 14, 2014, Defendants also filed a Motion for Reconsideration Based on Legal Error in Applying MRE 702 and 703 to Fact Witnesses.

This Court previously ruled that Defendants are prohibited from providing testimony regarding the audits performed by Kazim and the related medical charts she reviewed because these documents were never produced in discovery and Kazim was not disclosed as an expert.³ Defendants incorrectly suggest that the Court has rejected the physician-patient privilege established under MCL § 600.2157 and ignored the statute in reaching the decision above. In this particular situation, the testimony is not prohibited solely because the medical charts were not voluntarily produced, but instead because physician-patient privilege was never timely raised as an issue. Had Defendants raised physician-patient privilege as a concern, pursuant to MCR 2.302(C), the Court could have reviewed the relevant documents and determined whether they could have been produced subject to a protective order. However, instead of seeking guidance from the Court regarding the discoverability of said documents, the Defendants unilaterally decided to withhold the documents throughout the discovery period.⁴

Further, Defendants state that, while they do not consider Kazim to be an expert witness, their defense is premised on the results of the audits conducted and opinions and conclusions reached by Kazim. Defendants should have identified Kazim as an expert witness and provided a summary of her findings and opinions in relation to their defense that Plaintiff was terminated for cause. Additionally, the audit reports are summaries of other documents and this underlying

² However, Defendants acknowledge that: (1) Kazim was twice asked to audit Plaintiff's assessments and documentation; (2) after reviewing the audits provided by Kazim, Rose Coleman (hereinafter "Coleman") determined that Plaintiff had failed to timely complete required assessments and documents; and (3) Plaintiff was ultimately terminated for her failure to timely complete required medical documentation.

³ The Defendants claim they did not voluntarily provide the medical charts reviewed by Kazim because they believed it was prohibited under MCL § 600.2157.

⁴ Discovery in this case ended on January 31, 2014.

data must be in evidence or the Court will not allow testimony regarding the audits, pursuant to MRE 705.

Defendants substantially failed to comply with the important discovery protocols outlined at MCR 2.300 *et seq.*, thus, the prohibition of Kazim's testimony and any testimony pertaining to audits and the related medical charts is warranted. For the reasons stated herein, the Defendants' Motions for In-Camera Review of Medical Charts Reviewed by Holly Kazim in Preparing Audits and Partial Reconsideration as to Holly Kazim's May 2013 Audits and Motion for Reconsideration Based on Legal Error in Applying MRE 702 and 703 to Fact Witnesses are denied.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge