

LINDA L. DRUM, Individually and As	:	IN THE COURT OF COMMON PLEAS OF
Administrator of the Estate of	:	LYCOMING COUNTY, PENNSYLVANIA
SHANNON RAE DRUM,	:	
Plaintiff	:	JURY TRIAL DEMANDED
	:	
vs.	:	NO. 00-01,580
	:	
DIVINE PROVIDENCE HOSPITAL OF	:	CIVIL ACTION
THE SISTERS OF CHRISTIAN CHARITY:	:	
a/k/a DIVINE PROVIDENCE HOSPITAL,	:	MOTION IN LIMINE OF DEFENDANTS
COMMUNITY HEALTH CENTER,	:	TO PRECLUDE EXPERT TESTIMONY OF
KAREN PETERMAN, CRNP,	:	VERZILLI & VERZILLI ON DAMAGES AS
	:	SET FORTH IN JANUARY 2, 2003
Defendants	:	SUPPLEMENTAL REPORT

Date: January 14, 2003

MEMORANDUM OPINION and ORDER

Defendants have filed a Motion in Limine on January 2, 2003, objecting to an additional Plaintiff's damages expert report that was received by Defendants on Sunday, January 5, 2003. This report provides additional estimates of the deceased's, Shannon Drum, potential earning capacity. Specifically, it makes reference to receipt of S.S.I. income and values household services that the deceased would have been expected to provide to benefit her parents by moving in with them and providing care for her father who, subsequent to the death of Shannon Drum, has been diagnosed with cancer.

The basis of the objection is the lateness of the report and prejudice resulting to Defendants. The expert report deadline was set at October 15, 2002 by Order of June 12, 2002 and in fact the expert reports of Plaintiff were due August 31, 2003. There was no objection concerning the filing of the original Plaintiff's experts' reports on damages. The defense expert on damages was furnished on October 16, 2002, again without complaint. At the pretrial conference held December 12, 2002, the only discovery noted as being outstanding dealt with

Plaintiff's expert reviewing slides from an autopsy and a possible supplemental report concerning those slides. Nothing was stated concerning additional discovery in the field of damages.

This Court believes that the motion of Defendants must be denied in part and granted in part. This Court notes that the expert report furnished by Defendants, that of James D. Rodgers, specifically refers to whether SSI payments should be included or not included in income and also as to their impact upon the allowance for personal maintenance expenses in calculating the net economic loss. To the extent that Plaintiff's supplemental report also addresses the impact of SSI payment on the net economic loss, this Court believes the report can be construed as a rebuttal-type of report and/or a report that appropriately reflects the handling of SSI issues in view of the fact that Defendants' expert intends to address those matters in his testimony in accordance with the report.

The fact that different conclusions are reached as to the impact of the SSI payments does not affect Plaintiff's right to introduce evidence concerning the SSI payments. At the same time, it is clear that defense is not prejudiced concerning testimony regarding the SSI payments, since they are fully aware of them and their report addresses them. If necessary at trial, this Court would allow further explanation from defense expert to counter any specific reference in Plaintiff's new expert report concerning the impact of the SSI payments upon the net economic loss.

However, the issue of attributing a specific amount of a monetary equivalent of the value of the deceased's household services to the family was never raised in Plaintiff's experts' reports filed prior to pretrial. As a matter of fact Plaintiff's expert report furnished and

attached to the pretrial memorandum specifically states that the value of the household services of the deceased would most likely have been provided to benefit members of the family is not reflected in the summary of economic loss. Therefore, the value of such services was being left to non-expert testimony.

The value of the services was not the subject of any discovery, and more likely than not the target of investigation by the Defense in preparation of trial. For this matter to be raised at this time is untimely and works an unfair prejudice. Given the state of trial preparation, it is not appropriate that this matter would be now brought into the trial of the case. Also, it is not one that would be worthy of giving consideration to a continuance of the trial given the difficulties of scheduling medical malpractice cases, the long outstanding scheduling order directing that this case would be tried in January, and the fact that three specific days have been set aside for trial. The Court also notes that this expert report was provided by FAX on the day before jury selection.

The other problem of allowing this report to come in is that it is based upon events that occurred after the decedent's death concerning the cancer diagnosis of the deceased's father. The assumption of the economic report is that father, Mr. Drum, will require personal care that could be rendered by the deceased and that there is a specific hourly-dollar value that can be assigned to that service. On the basis of that dollar amount and a particular number of hours per week, the report determined an economic value for those services. This Court does not believe that it is proper to use the post-death events concerning the onset of a specific need that the deceased can serve as a proper basis for determining the economic loss.

Accordingly, the following Order is entered.

ORDER

It is ORDERED and DIRECTED that the Motion in Limine of Defendants to Preclude Expert Testimony of Verzilli & Verzilli on Damages as Set Forth in January 2, 2003 Supplemental Report is DENIED as would relate to testimony concerning the impact of SSI income upon economic net loss. That is, Plaintiff's expert may testify to things set forth on Page 1 of the January 2, 2003 report. Otherwise, the Motion in Limine is GRANTED as would relate to testimony concerning the economic value of household services, which is the information set forth on Page 2 of the report, and Plaintiff is excluded from having the expert present this testimony as set forth on Page 2 of that report.

BY THE COURT:

William S. Kieser, Judge

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