

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT

GALLATIN COUNTY

* * * * *

DON DANIELS, as conservator of the)	
estate of SARAH DANIELS,)	
)	
Plaintiff,)	
)	
and)	Cause No. DV 18-17
)	
GALLATIN COUNTY, ATLANTIC)	
SPECIALTY INSURANCE COMPANY,)	
RICK BLACKWOOD and JOHN DOES I-V,)	
)	
Defendants.)	

FULL TRANSCRIPT OF PROCEEDINGS

JUDGE TRIAL

DAY 2 OF 3

NOVEMBER 17, 2020

HONORABLE RIENNE H. MCELYEA, JUDGE PRESIDING
LAW AND JUSTICE CENTER
615 SOUTH 16TH, ROOM 207
BOZEMAN, MT 59715

Tami Corner - Electronic Court Reporter/Transcriptionist

Original

APPEARANCES

MR. JONATHAN M. COK, ESQ.

MR. TRAVIS W. KINZLER, ESQ.

COK KINZLER, PLLP

35 North Bozeman

PO Box 1105

Bozeman, MT 59771-1105

Attorneys for Plaintiff Don Daniels

MS. MARTHA SHEEHY, ESQ.

SHEEHY LAW FIRM

PO Box 584

Billings, MT 59103-0584

Attorney for Plaintiff Don Daniels

MR. ROGER T. WITT, ESQ.

MR. JAMES R. ZADICK, ESQ.

UGRIN, ALEXANDER, ZADICK, PC

2 Railroad Square, Suite B

PO Box 1746

Great Falls, MT 59403

Attorneys for Defendants Gallatin County and Rick Blackwood

EXAMINATION OF / BY:**PAGE:**Kathryn Cristaldi

Ms. Martha Sheehy, Esq..... 12

Dr. Dawn Osterweil

Mr. Jonathan Cok, Esq. 30

Carol Hyland

Mr. Jonathan Cok, Esq. 83, 129

Mr. Roger Witt, Esq. 110

Sarah Daniels

Mr. Travis Kinzler, Esq..... 135

Lisa Daniels

Ms. Martha Sheehy, Esq..... 151, 204

Mr. Roger Witt, Esq. 203

Dr. James Schraa

Mr. Travis Kinzler, Esq..... 207

Mr. Roger Witt, Esq. 236

EXHIBITS ADMITTED:

PAGE:

Exhibit 13F.....	89
Exhibit 13R	32

DIRECT EXAMINATION

(VIA LIVE ZOOM AND BY TELEPHONE)

BY MR. COK:

Q. Good morning, Dr. Osterweil. Thanks for being here this morning. Would you just begin by telling the Court a little bit about your background? What do you do?

A. I am a clinical and neuropsychologist. I am a Board-certified clinical neuropsychologist. I have a background in working with people who have sustained all types of neurological injuries, but particularly my career has focused on traumatic brain injury. I have a history of working with people in the inpatient/outpatient day treatment and private practice settings.

Q. Would you tell us just a little bit about your educational background?

A. Sure. So, I earned my Bachelor's in psychology from the University of Maryland. My Master's in clinical psychology from the New School for Social Research in New York. And My Ph.D. from California School of Professional Psychology in California. As part of my educational background, particularly at the California School of Professional Psychology, I

1 friend to some young kids and some old people in
2 nursing homes. Do you believe that stuff is
3 important for her?

4 A. Absolutely it's important for her to be
5 able to feel a sense of hope, for her to be able
6 to feel a sense of connection to somebody, to
7 something bigger than herself. So, to whatever
8 extent she can be in the community, however
9 limited that's going to be, of course, that's
10 probably the (inaudible).

11 Q. And those type of activities, you know,
12 prevent her from being stuck at home and isolated
13 and lonely which contributed to, you know, all of
14 the current issues she has, right?

15 A. Yes. I know -- if I can just say
16 something. This is not a precursor to bigger and
17 better things for Sarah Daniels. Speaking with a
18 student or playing a game with a student for an
19 hour, sitting with a man, an elderly person with
20 dementia for an hour, this is not a precursor to
21 bigger and better things, to working, to being
22 gainfully employed, to more high level volunteer
23 positions. This is the outcome. This is what we
24 who have worked in neurological,
25 neuropsychological rehabilitation hope for.

1 And that is a person with a severe
2 traumatic brain injury who has a window of time
3 before they really start declining further and
4 further. That they have some feeling of success
5 with, again now, to have some independence even
6 though there's tremendous structure, they can
7 communicate with people in the community, they
8 can do a little bit of volunteer work. This is
9 what we hope for. But it is not a precursor to
10 the next step like it would be for a normal
11 person with a normal brain.

12 Q. Doctor, in conclusion, do you have kind
13 of a -- just what is your summary and prognosis
14 for what Ms. Daniels has here?

15 A. Well, as we talked about before, she
16 absolutely meets the criteria for severe
17 traumatic brain injury. She still suffers from
18 physical, cognitive, emotional and behavioral
19 problems due to her severe traumatic brain
20 injury. She's unequivocally not faking,
21 malingering, exaggerating. Her residual problems
22 are unfortunately permanent. And as I stated,
23 traumatic brain injury is a neurodegenerative
24 disorder. You will see in the short amount of
25 time her increased need for care as she ages,

1 greater decline as she ages due to her severe
2 traumatic brain injury.

3 Q. And Doctor, in your opinion are all of
4 these current problems caused from the 1/12/17
5 wreck?

6 A. Yes.

7 MR. COK: Thank you, Doctor. Those are all
8 the questions I have for you. Mr. Witt may have
9 a few.

10 THE WITNESS: Okay.

11 THE COURT: Cross examination.

12 MR. WITT: Might I have a few minutes? It may
13 shorten up the need for cross examination?

14 THE COURT: Certainly. How much time do you
15 want?

16 MR. WITT: Ten minutes.

17 THE COURT: That's works for the Court. We'll
18 be in recess til 10 after the hour.

19 (Whereupon, a break was taken.)

20 THE COURT: Please be seated. Back on the
21 record, DV 18-17. All parties and counsel are
22 present. We were ready for cross examination,
23 Mr. Witt.

24 MR. WITT: Your Honor, the Gallatin County
25 appreciates the thorough analysis and opinions of

1 VIDEOGRAPHER: The Court Reporter will now
2 administer the oath.

3 DR. JAMES SCHRAA,
4 called as a witness herein, after having been
5 duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. KINZLER:

9 Q. Good morning, Doctor. Thank you very
10 much for agreeing to accommodate us for this Zoom
11 deposition. Could you please start off by
12 stating your name for the record?

13 A. James Schraa.

14 Q. And what is your occupation?

15 A. I'm employed by Craig Hospital as a
16 neuropsychologist. I also have a private
17 practice in neuropsychology.

18 Q. And would you please describe for the
19 Judge your educational background?

20 A. I have a Bachelor's degree in psychology
21 from a place called Pomona College in California.
22 I've got a Doctor of Psychology degree from the
23 University of Denver. My internship was at the
24 University of Minnesota Health Sciences Center.
25 And I think that's my educational background.

1 associated with aging and Alzheimer's disease.

2 Q. Could you describe that risk for us a
3 little bit?

4 A. Well, again, she's got all these problems
5 now as a relatively young lady. And then as she
6 ages, you know, that over time issues like memory
7 tend to get worse. You know, retaining new
8 information becomes more challenging without the
9 brain injury. And so, you have a person whose
10 brain becomes increasingly compromised just
11 because of the aging on top of that. And that in
12 the literature, there's a growing literature that
13 Alzheimer's disease or cognitive falloff
14 associated with aging results in increased
15 incidents of the dementing-type process.

16 Q. Based upon -- you've been doing this for
17 over 30-some years. And the research I reviewed,
18 when would you expect this to start hitting
19 Sarah, if you would?

20 A. Yeah. I don't know that there's a simple
21 statistical way to look at it, but I think when
22 she gets to be age 60, she's really in a
23 difficult spot. And the other thing I believe is
24 that Sarah is very vulnerable to changes in her
25 own abilities cuz her family provides so much

1 support for her. And that as her family ages and
2 their ability to contribute to her care fails,
3 you know, she'll be thrown more and more for a
4 loop, so to speak.

5 Q. And do patients with this type of severe
6 brain injury, they do better with the better care
7 they are provided, I would assume?

8 A. Well, you know, I mean I would -- I have
9 the advantage of working in a very good system of
10 care. Workers' comp companies, reinsurance
11 companies tend to send patients here to maximize
12 their recoveries. And so, I think money talks.
13 It's a good outcome statistic. But, you know,
14 these problems are the same for all the patients
15 as they age and that they may need increased
16 support to either, first, stay in the community
17 or them to be safe when they can no longer be
18 dependent upon to make those decisions in the
19 community.

20 I'll give you another example. Sarah's
21 case, she has this problem attending to left side
22 of space. Well, as she ages, she becomes less
23 attentive to the left side of space. She becomes
24 more of a danger to herself in the sense of not
25 seeing cars that are coming, more likely to step

1 off a curb and wrench an ankle. All those kinds
2 of things happen.

3 Q. You said that you had talked to Sarah's
4 mom, Lisa. I assume you got to know her family a
5 little bit?

6 A. Mainly her mom. And, you know, Robert
7 was around then, too, so I got to know him some.

8 Q. Could you describe for us a little bit,
9 Doctor, that stress that that family goes through
10 when an injury like this happens?

11 A. Well --

12 MR. WITT: Doctor, hang on a second. Travis,
13 I'm just going to interpose an objection that
14 that is not a claim in this case. So, I'll
15 object to this line of questioning.

16 BY MR. KINZLER:

17 Q. Okay. We'll just go on to the next one.
18 VIDEO STOPS FOR A MOMENT.

19 THE COURT: Do you want me to rule on that?

20 MR. KINZLER: Too late, Your Honor.

21 VIDEO BEGINS AGAIN.

22 BY MR. KINZLER:

23 Q. You watched Sarah throughout the course
24 of her stay at Craig, Correct?

25 A. That's correct.

1 Q. Did she work hard?

2 A. I think she worked as hard as her brain
3 would let her.

4 Q. And, Doctor, we sent you a couple of
5 documents to review in this case. You looked at
6 the Lifecare Plan in this case; is that correct?

7 A. Yes, sir.

8 Q. Okay. Are you in agreement with what was
9 stated in that Plan?

10 A. Well, again, I guess the one comment I'd
11 have is that this issue of caring for her when
12 she ages, I think is a significant issue. So,
13 you know, I think there might need to be
14 something written into it about providing for,
15 you know, assistive living or institutional type
16 placement as she ages. I think that is a
17 realistic concern.

18 The other issue minor is that I think
19 that she had been seeing a psychotherapist I
20 believe twice a week, according to the records I
21 looked at. And then there was a
22 neuropsychological report where they talk about
23 neuropsychological therapy. So, you have people
24 sort of talking about things in the same
25 ballpark with perhaps a little different