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NO. 69643-2

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I
(King County Superior Court Cause No. 12-2-20677-5 JVM)

PATRICIA A GRANT,
Plaintiff-Appellant,

vs.

CLAUDIO GABRIEL ALPEROVICH, M.D.;
ST FRANCIS HOSPITAL- FRANCISCAN HEALTH SYSTEM;
VALLEY MEDICAL CENTER, TRIENT M. NGUYEN, D.O.;
MICHAEL K. HORI, M.D.; PACIFIC MEDICAL CENTER, INC.;
LISA OSWALD, M.D.; SHOBA KRISHNAMURTHY, M.D.;
MICHELE PULLING, M.D.; WM. RICHARD LUDWIG, M.D.;
U.S. FAMILY HEALTH PLAN @PACIFIC MEDICAL
CENTER INC.; VIRGINIA MASON MEDICAL CENTER; and
RICHARD C. THIRLBY, M.D.,
Defendants-Respondents.

BRIEF OF APPELLANT

PATRICIA A GRANT
PRO SE
1001 Cooper Point Rd SW., Suite 140-231
Olympia, Washington 98502
(210) 543-2331

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JULIA A. WELLS
COURT CLERK
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I. INTRODUCTION

Appellant (“Grant”) is appearing before this said court, informing governing authorities that she is operating undress. Grant has no other recourse and has notified the courts to ensure accommodations of time to ensure ADA accommodations have been established; whereas, she is not held to the same standards as the skilled Attorneys representing the Respondents. Grant recognizes the uniqueness of her health and the stigma related life circumstances, requiring her to appear before the courts unrepresented.

Grant, Pro Se litigant with certified behavioral and mental health disabilities has not located Supreme case law rulings specific to her request for less stringent readings, and pleading standards, as afforded prisoners in civil cases. Grant is not a prisoner, but request to be afforded the same Supreme court rights as granted in Puckett v. Cox that held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957) "The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the

principle that the purpose of pleading is to facilitate a proper decision on the merits". Grant respects the law. She applies and follows the proceedings to her best abilities, and ask of this said court to give her justice, according to Washington State Rule 8(f) "All pleadings shall be so construed as to do substantial justice".

June 15, 2012, Grant, Pro Se, filed her original compliant in King County Superior Court. In her original complaint **[CP 3-13]**, Grant identified herself as having a mental and emotional disability, asked the trial court to allow her time for discovery investigations and to amend her complaint accordingly. Additionally, Grant supported her complaint with genuine evidence of medical documents; her federal government DD Form 214 and Veterans Administration 100% disable rating status **[CP 14-15]**; thus establishing the prima fascia of her appearance before the courts.

Grant filed her medical neglect-malpractice complaint on the bases of Respondent's misdiagnosing, failure to treat, placation medical treatment, fraudulent representation of medication, discriminatory actions under in pursuant to RCW 4.16.350 Action for injuries resulting from health care or related services — Physicians, dentists, nurses, etc. — Hospitals, clinics, nursing homes, etc., RCW18.130.180 Unprofessional Conduct. Doing the course of pleadings, Grant was able to clarify her

June 15, 2012 claim with the citations of authorities: Health Insurance Portability and Accountability Act (“HIPAA”), American Disability Act (“ADA”) and Civil Rights Act (Profiling), Fraud, and Defamation of Character. Grant’s communication of her allegations was also an attempt to be fairly heard.

To prevail in a health care liability action, RCW 7.70 only requires a plaintiff to "establish one ... proposition "- that her “injury resulted from the failure of a health care provider to follow the accepted standard of care expected of a reasonably prudent health care provider. ... " RCW 7.70.030 and .040. A malpractice plaintiff has the burden of proving that a physician is liable below the standard of care in addition to proving that the physician failed to comply with RCW 7.70's “reasonably prudent health care provider" standard of care and burden of proof in diagnosing, treating or referring the plaintiff for further care. Wash. Super. Ct. Civ. R. 56(c). All facts and inferences are considered in the light most favorable to the nonmoving party.

King County Superior court dismissed Grant’s claims on summary judgments with prejudice: October 29, 2013- Frivolous, November 9, 2012- Untimeliness of her Expert Witness (Medical Certification), and March 23, 2013- Jurisdiction [sic] judges legal document writing is not legible.

II. ASSIGNMENT OF ERRORS

No. 1 ___ The trial court erred judge in entering the order of November 9, 2012, by ruling Grant's Expert Witness Letter as untimely with prejudice.

No. 2 ___ The trial court erred by not allowing Grant the ability counter or respond to each of the moving parties individually.

No. 3 ___ The trial court erred judge in entering the order of October 29, 2012, denying Grant a reasonable discovery of period for investigation and verification of her complaint.

No. 4 ___ The trial court erred judge in entering the order of October 29, 2012, for failing to read Grant's complaint of June 15, 2012, and her responsive pleadings.

No. 5 ___ The trial court judge erred in entering the order of October 29, 2012, ruling Grant's complaint of June 15, 2012, as Frivolous and dismissing with prejudice on a technicality, in a non-oral hearing.

No. 6 ___ The trial court judge erred in entering the order of October 29, 2012, and November 9, 2012 for failing to give any considerations to Grant as the nonmoving party.

No. 7 ___ The trial court judge erred in entering the order of November 9, 2012, dismissing Grant's medical evidence filed June 15, 2012 that was Declared as Genuine Triable errors of Fact submitted with her summary judgment responsive pleadings October 29, 2012 dismissal responses.

No. 8 ___ The trial court erred judge in entering the order of March 22, 2013, dismissing with prejudice Grant's complaint based on technicalities.

No. 9 ___ The trial court judge erred in entering the orders of October 29, 2012, November 9, 2013 and March 22, 2013, when holding Grant to the same standards of perfection as practicing Attorneys.

No. 10 ___ The trial court erred in entering the orders of October 29, 2012, November 9, 2013 and March 22, 2013, in not granting Grant the right of pleadings requiring less stringent reading than one drafted by a lawyer.

No. 11 ___ The trial court erred in entering the orders of October 29, 2012, November 9, 2013 and March 22, 2013, whereas, "Abuse of Discretion" for failing to read Grant's original complaint in conjunction with her pleadings, prior to summary judgment hearings.

No. 12 ___ The trial court judge erred on November 9, 2012 by not allowing Grant the ability to discuss and counter each counsel to address the issues that she had raised on June 15, 2012 complaint.

No. 13 ___ The trial court judge erred by establishing through his actions biasness and/or the perception of biasness on November 9, 2012.

No. 14 _ The trial court judge erred by creating an environment of hostility and intimidation, when he continued to cut Grant off, not allowing her the opportunity to fully address her complaint and respond at one time to all of the Attorneys who were allowed to address all of their issues before her.

No 15 – The trial court judge erred on November 9, 2012 by holding Grant to the same standards as the six skilled Attorneys, as he explained why she was outnumbered.

No 16 – The trial court erred when sections of the November 9, 2012 court proceedings were removed, as it address rejection of Grant's medical records as evidence, and when judge informed Grant that he was holding her to the same standards as the six attorneys that was present.

No. 17 – The trial court judge erred when he allowed the moving parties to raise new issues on the day of summary judgment.

No. 18 – The trial court judge erred by not making any rulings in favor of the nonmoving party, when genuine triable evidence of fact was presented.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERRORS

1. Was Grant entitled to have her original complaint and pleadings read, considered and applied by the trial court Judge? (Assignment of Errors 1, 5, 6, 7, 10, and 11).

2. Did the trial court judge denied Grant "Due Process of the Law; Whereas, the legal "Due Process" requiring Trial Court Judge to apply

even hand procedures protecting the human civil rights of a Pro Se litigant, according to Supreme Court rulings, to ensure Grant was not subjected to the arbitrary exercise of government power? (Assignment of Errors 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18).

3. Was Grant entitled to more than 30 days of discovery, and to have her several requests for discovery honored by the trial court Judge? (Assignment of Errors 1, 3, 5, and 6).

4. Were the actions of the trial court Judge one of Biasness or the Perception of Biasness towards, Grant, an emotional disable Pro Se litigant? (Assignment of Errors 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17 and 18).

IV. STATEMENT OF THE CASE

Overview: Respondents treated Grant's Roux-en-Y gastric bypass hernia, identified July 2009, as mental illness based on Grant's pre-existing mental health disability; thus causing her to remain ill and suffering on intravenous nourishment, until her July 2009 identified hernia, "Petersen's Hernia After Roux-en-y Gastric Bypass surgery", was corrected on February 26, 2010, by Elliot R. Goodman, M.D. ("Goodman") New York, NY.

Grant establishes the facts as set forth below in her reply to each of the summary judgment dismissal pleadings: 1) October 29, 2012 (Non-Oral Hearing), and 2) November 9, 2012 (Hearing) Grant supports these facts through her Responsive Pleadings [CP : 87-103 Vol 1; 300-309 Vol 2; 310-319 Vol 2; 320-329 Vol 2; 330-343 Vol 2) and Declarations [CP:

104-136 Vol 1; 137-173 Vol 1; 174-202 Vol 1-2; 203-217 Vol 2; 218-299 Vol 2):

June 17, 2009, Grant underwent gastric bypass surgery 2009, at St. Francis Hospital (“FHS”), performed by Defendant Claudio Gabriel Alperovich, M.D. (“Alperovich”).

June 24, 2009, she contacts his office very ill; his nurse diagnoses “Thrush” provide prescriptions. **[CP 239-242]**

On about July 13-15, 2009 Grant is still very ill, returns to Pacific Medical Center (“PacMed”) her primary healthcare organization. Grant’s primary care provider (“PCP”), Lisa Oswald M.D. (“Oswald”) re-admits her to FHS, under Alperovich’s care. Alperovich’s order examinations and identifies a gastric hernia (“hernia”), and FHS’s staff identifies three-minute swallowing delay. Alperovich informs Grant that his examinations show no problem to explain her symptoms. He mentions nothing about the gastric hernia and three-minute swallowing delays. **[CP 244-247]**

July 22-24, 2009 Grant is discharged from FHS, Alperovich continued “Thrush” diagnoses and medication prescriptions. **[CP 107]**

July 2009, after her FHS discharge, Grant still ill followed-up with Oswald, requesting her to assist with records review, because she disagreed with Alperovich’s “Thrush” diagnoses. Oswald denies Grant’s records review request.

August 1, 2009, Grant is rushed by ambulance to Valley Medical Center. Alperovich informs Cameron R Buck M.D. (“Buck”), ER treating Physician not to admit Grant. Buck overrides Alperovich’s request started treatment and assigned Grant to Alperovich’s care. **[CP 249-250, 251-252]**

August 2, 2009, Alperovich diagnoses Grant’s post-gastric bypass hernia illness, as her having a “Fixation on Thrush”, due to her disability. He implements mental health “Placation Medical Treatment”, obtaining the support of Trient M. Nguyen, D.O. (“Nguyen”) and Michael K. Hori, M.D. (“Hori”). **[CP 253-254]**

August 2, 2009, Hori through one phone conversation and a record’s review diagnoses Grant as not having the cognitive ability to understand that she does not have Thrush. **[CP 251-253]**

August 7, 2009, Nguyen, rules out Grant’s VA PTSD diagnosis of 1990, and labels her as a hypochondriac, while recommending deep cognitive therapy to get over her “Fixation with Thrush”. **[CP 255-256]**

On or about August 12, 2009, Alperovich releases intravenous nourishment. September 15-16, 2009, Grant visits Shoba Krishnamurthy M.D. (“Krishnamurthy”) PacMed’s Gastroenterologist, who informs Grant she was unable to examine her, makes a hand written note to the Veteran’s Administration (“VA”) with a vague examination request and

business card. VA informs Grant that Krishnamurthy did not make a legal medical request, inserts new intravenous feeding line, informs her of a two to three week hospital stay, infectious disease control issues, and that disenrollment from her family health plan was in order, if she wanted VA doctor's examination. **[CP 259-271]**

On or about September 21, 2009, Grant visits with Oswald who admits Grant to Virginia Mason Medical Center ("VMMC"), PacMed's network hospital on or about September 22-23, 2009.

October 2, 2009, Oswald informs Grant that Drew B. Schembre, M.D. ("Schembre"), VMMC's Gastroenterologist, recommended a double balloon enteroscopy procedure.

October 6, 2009, Grant returns to Krishnamurthy for her hospital follow-up. Michelle Pulling, M.D. ("Pulling"), not introducing herself or speaking to Grant, hands her glass of water only saying, "Drink". When Grant questions Pulling, Pulling says nothing, quickly departs the room and returns with Krishnamurthy. Krishnamurthy informs Grant that her medical records show no gastric problems, takes gastric reflux material from Grant refusing to discuss the information. Krishnamurthy tells Grant that she was cancelling Schembre's double balloon enteroscopy procedure. Both Pulling and Krishnamurthy represents Pulling's prescription as smooth throat muscle medication to take for 30 days. Pulling informs

Grant to give the medication a few weeks to start working. Grant immediately took Pulling's prescription to PacMed's pharmacist, who informed her that Pulling had prescribed anti-depressants, which had nothing to do with smooth throat muscles. **[CP 273]**

October 8-9, 2009, Grant filed a complaint WM. Richard Ludwig, M.D. ("Ludwig"), addressing Krishnamurthy and Pulling's fraudulent medication representation, cancellation of her specialized examination, Oswald's denial of her July 2009 records review of FHS's medical examinations.

October 14, 2009, Ludwig writes Grant justifying the actions of Krishnamurthy, Pulling, and Oswald, informs Grant that she would have to obtain an outside organization, if she wants someone to assist her with the review of her medical records. **[CP 277-278]**

On or about mid October 2009, Grant filed a Congressional complaint with Congressman Smith in response to Ludwig's October 14, letter.

On or about November 9, 3009, US Family Health Plan @Pacific Medical ("USFHP"), Grant's insurance providers, responded to her Congressional inquiry. USFHP informs Congressman Smith that Oswald, Krishnamurthy, and Pulling reported their actions toward Grant was due to

Grant not giving any anatomical reasons for her continued post gastric bypass surgical illness. **[CP 280-282]**

November 2, 2009, USFHP in reply to Grant's Congressional allows Schembre's double balloon enteroscopy procedure **[CP 285-286]**. December 4, 2009 Schembre's double balloon enteroscopy examination findings: "Functional small bowel obstruction, poorly motile proximal small bowel, sharp angulation of the visual small bowel", he recommended further investigation of contrast studies, and surgical exploration and lysis of adhesions. **[CP 287-288]**

December 23, 2009, Richard C. Thirlby, M.D. ("Thirlby"), VMMC, denied Schembre's December 4, 2009 recommendations, suggestion a feeding tube down Grant's nose for feeding, versus the intravenous nourishment line that Alperovich had inserted August 2009. Thirlby supports his denial of surgery, as Grant not providing anatomical reasons for the medical gastric bypass surgical correction. He supports his denial by misstating Grant's VMMC hospital examination. **[CP 289-291]**

On or about February 7, 2010, Goodman's writes a letter of "Medical Necessity" addressing the required gastric bypass standards of care that Schembre had recommended. **[CP 293]**

February 26, 2010, Goodman surgically corrects Grant's hernia that was diagnosed by Alperovich in July 2009, straightens out her

angulated and twisted intestines, removed her intravenous feeding line, and installs an intestinal feeding tube. [CP 294-296]

April 2012, Grant's intestinal feeding tubes were removed, her eating and strength returned to normal approximately one year later.

V. ARGUMENTS

Reasoning by analogy: To understand the plight of individuals with mental and behavioral health diagnoses and disabilities is comparable to the same plights of individuals with the initiation of the human immunodeficiency virus infection / acquired immunodeficiency syndrome (HIV/AIDS). This country through federal government and judicial interventions, worked to address and remove a plethora of societal, medical, and work related discrimination and medical mistreatment.

June 3, 2013, President Obama brought the need to recognize and accept whole health, the plight of the mental disable, and problems related with removing the stigma ("discrimination") associated with mental health, at a daylong White House conference on mental health. Grant's derogatory encounters epitomize the medical and societal mistreatment associated with the stigma of mental health. Her case is prime and ready for review to institute judicial change, starting with providing Grant due process of the law:

Trial Judge did not give Grant due process of the law and/or provided her consideration as the nonmoving party in Respondent's summary judgment dismissal:

1) Not allowing adequate discovery investigations complaint amendments:

a) Grant's original complaint requested discovery and amendments [CP 15].

b) Grant requested in her pleadings for discovery and amendments – prism.

c) Grant testified November 9, 2012 that she had to get information and work behind the attorney's [RP 17 1-3]. Grant had less than 30 days of discovery, Notices of October 29 & November 9, 2012 hearing filed September 12 & October 7, 2012 [CP 75-79]. Grant's first sets of Interrogatories' and Admissions, along with summary dismiss motions received or about September 30 thru October 5, 2012 [CP 298,131,133,135]. Respondent's cited law, informed Grant that if she survived summary judgment she could have the information she sought, and one stated they knew what Grant was looking for, but it was up to her to prove.

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163, 2 L.Ed. 60 (1803). The people have a right of access to courts; indeed, it is "the bedrock foundation upon which rest all the people's rights and obligations." John Doe v. Puget Sound Blood Ctr., 117 Wash.2d 772, 780, 819 P.2d 370 (1991). This right of access to courts "includes the right of discovery authorized by the civil rules." Id. As we have said before, "[i]t is common legal knowledge that extensive discovery is necessary to effectively pursue either a plaintiff's claim or a defendant's defense." Id. at 782, 819 P.2d 370.

2) Denial Expert Witness Letter (Certification of Merit), in accordance to RCW 7.70.150: Grant testified about her letter [RP 17 1-25] [RP 18 1-3], [RP 19 1- 10], and according to LCR 7 (4)(D)(E) she was timely, with genuine evidence, which should not have been released on a technicality, especially with the trial discovery period ending November 13, 2013, and less than 30 days of discovery. It was unfounded to dismiss Grant's compliant with prejudice forcing her an expensive Appeal.

Grant established a preponderance of facts supporting complaint:

Walter Process Equipment v. Food Machinery 382 U.S. 172 (1965) it was held that in a "motion to dismiss, the material allegations of the complaint are taken as admitted." From this vantage point, courts are reluctant to dismiss complaints unless it appears the plaintiff can prove no set of facts in support of his claim which would entitle him to relief (see Conlev vs. Gibson , 355 U.S. 41(1957).

3) Dismissing Grant's medical records as genuine triable errors of facts, erasing tape conversations Grant's objections, and judge arguing for the attorneys. Note: Medical records conversation arbitrarily starting in the middle of Grant's discussion on another topic [RP 18 4-24]. Grant declared all of her evidence in support of her pleadings, meeting the same standards as the opposing counsel's Declarations [CP: 104-136 Vol 1; 137-173 Vol 1; 174-202 Vol 1-2; 203-217 Vol 2; 218-299 Vol 2].

State v. Ziegler, 114 Wn.2d 533 (Wash. 1990). Medical Records Business, genuine trial errors of fact: 5.45.020 makes evidence that would otherwise be hearsay competent testimony. Section 5.45.020 contemplates

that business records are presumptively reliable if made in the regular course of business and there was no apparent motive to falsify. Section 5.45.020 contains five requirements for admissibility designed to ensure reliability. To be admissible in evidence a business record must (1) be in record form, (2) be of an act, condition or event, (3) be made in the regular course of business, (4) be made at or near the time of the act, condition or event, and (5) the court must be satisfied that the sources of information, method, and time of preparation justify the admittance of the evidence.

State v. Ziegler, 114 Wn.2d 533, 538, 789 P.2d 79 (1990) Under the Uniform Business Records as Evidence Act, chapter 5.45 RCW, business records are admissible as evidence of an act, condition, or event. RCW 5.45.020. "The rule was not adopted to permit evidence of the recorder's opinion, upon which other persons qualified to make the same record might have differed. Nor was it intended to admit into evidence conclusions based upon speculation or conjecture." Young v. Liddington, 50 Wn.2d 78, 83, 309 P.2d 761 (1957).

Trial judge's rulings, dismissal of Grant's civil rights action by signing counsels orders, and adhering to their request and striking her expert witness letter, which serious factual patterns and allegations of a cause of action were made, was in violation of procedural due process; and deprived Grant equal protection of the law as compared to a party who was represented by counsel:

Trinsey v Pagliaro D.C.Pa. 1964, 229 F. Supp. 647. "Statements of counsel in brief or in argument are not facts before the court and are therefore insufficient for a motion to dismiss or for summary judgment." Pro Per and pro se litigants should therefore always remember that the majority of the time, the motion to dismiss a case is only argued by the opposing attorney, who is not allowed to testify on the facts of the case, the motion to dismiss is never argued by the real party in interest.

4) Trial Court Judge did not read Grant's ordinal complaint:

- a) Discovery request [CP 15]
- b) Amendment requests [CP 15] and [RP 19 3-24] [RP 20 1-7] [RP 25 21-25], [RP 26 1]
- 5) Trial Court Judge created an environment of perceived biasness:
 - a) Cutting Grant off in testimony, not allowing her to represent her case to the best of her ability: [RP 16 1- 14], [RP 23 1-11], [RP 27 1-25] tape erasers [RP 18 4-24].

Puckett v. Cox , it was held that a pro-se complaint requires a less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA) said Justice Black in Conley v. Gibson . 355 U.S. 41 at 48(1957) "The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."

- b) Grant was held to equal standards to six skilled Attorneys (Judge allowed an Attorney whose case was dismissed on October 29,2012, to give argument). Therefore, she was denied equal access to the courts, because she could not afford or obtain representation:
- c) Grant was outnumbered by six Attorneys [RP: 5 2-7].

Trial judge's dismissal of Grant's civil rights action in which a serious factual pattern or allegation of a cause of action has been made would itself be violate of procedural due process, as it would deprive Grant equal protection of the law, as compared to a party who is represented by Counsel.

- d) Holding Grant to the same standards as the five Counsel: [RP: 20 1-7]

Pro se litigant's complaint must be held to "less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 92 S.Ct. 594 595 (1972).

Picking v. Pennsylvania Railway , (151 F2d. 240) Third Circuit Court of Appeals. In Picking, the plaintiffs civil rights claim was 150 pages and described by a federal judge as "inept." "Where a plaintiff pleads pro-se in a suit for protection of civil rights, the court should endeavor to construe plaintiffs pleading without regard to technicalities."

6) Abuse of Judicial authority:

a) Trial Judge allowed Grant one consideration: Stop and let Grant pick up her papers [RP 33 12-24].

b) Not ruling in accordance to Summary Judgment Rule CR 56(c):

"A material fact is of such a nature that it affects the outcome of the litigation." Ruff v. County of King, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). Factual issues may be decided as a matter of law when reasonable minds could reach but one conclusion or when the factual dispute is so remote it is not material. Ruffer v. St. Frances Cabrini Hosp. of Seattle, 56 Wn. App. 625, 628, 784 P.2d 1288 (1990) (quoting Trane Co. v. Brown-Johnston, Inc., 48 Wn. App. 511, 513, 739 P.2d 737 (1987).

c) Trial judge did adhere to King County LCR 7(4) (D) (E):

Grant's summary dismissal replies were due October 29, 2012. Respondent's Reply, Noon November 7, 2012 [LCR 7(4)(D)], and Grant Reply Noon November 9, 2012[LCR 7(4)(E)], unless a strick reply. Grant's hearing was November 9, 2012 9:00 am, clerk's office 9:00 am. According to the LCR 7, Grant's reply to Respondent's summary judgment dismissal reply was timely on November 9, 2012. Grant was prepared with briefs, testimony, and her expert witness letter.

d) Trial judge's ruling did not do Grant substantial justice:

Washington State Rule 8(f), which holds that all pleadings shall be construed to do substantial justice.” Trial judge’s dismissal of Grant’s civil rights action, in which a serious factual pattern or allegation of a cause of action has been made was in violation of procedural due process as it deprived a pro per or pro se litigant of equal protection of the law compared to a party who is represented by counsel” Trinsey v Pagliaro D.C.Pa. 1964, 229 F. Supp. 647.

e) Expert witness testimony meets Washington Standard of Healthcare:

Respondent argue Grant’s expert witness letter did not state that he knew Washington Standard of Care. Gastric bypass surgery is a specialized surgery, whose medical procedures are certified on a national level. Grant’s expert witness was also the surgeon, who corrected her surgery (Elliott R. Goodman). Additionally, Drew Schembre M.D. (“Schembre”) who was recommending exploratory surgery was also a State of Washington licensed doctor. Furthermore, Goodman’s letter of medical necessity February 7, 2010, also stated that he specialized in this gastric bypass surgery and performed surgery on a national level:

Testimony of a “national standard” is sufficient to satisfy the statutory requirement Washington Standard of Care:

Hill v. Sacred Heart Med. Ctr., 143 Wn. App. 438, 453, 177 P.3d 1152 (2008); Elber v. Larson, 142 Wn. App. 243, 247, 173 P.3d 990 (2007); Pon Kwock Eng v. Klein, 127 Wn. App. 171, 176-77, 110 P.3d 844 (2005). These cases are distinguishable for a number of reasons. First, the court's rulings were made in summary judgment proceedings. Hill, 143 Wn. App. at 443-45; Elber, 142 Wn. App. at 245; Eng, 127 Wn. App. at 175 . So the standard of review was de novo. Hill, 143 Wn. App. at 445; Elber, 142 Wn. App. at 246; Seybold v. Neu, 105 Wn. App. 666, 675, 19 P.3d 1068 (2001), Christiano v. Associated Orthopaedic Specialists, P.S., 2002 Wash. App. LEXIS 409 (Wash. Ct. App. Mar. 7, 2002).

7) Questions of Biasness, Exparte Communication, and Legal Misconduct?

In her November 9, 2012 hearing, Grant noted trial judge actions of giving “OK” signs, while mouthing and shaking his head in agreement on at least two occasions to a particular attorney who had his non-oral hearing, October 29, and others. Judge was purposely avoiding being picked up on tape on several occasions. Additionally at the time of ruling, Judge allowed this same attorney to entered testimony that Grant had a stay in Federal court. Judge White had not allowed Grant to speak or explain her two cases, which she was trying to let him know that her state case was medical neglect and her federal case was ADA structural civil rights violations.

Several other instances Grant noted the Judge making nonverbal gestures to other attorneys. Grant has aforementioned tape erasers that noted angry responses toward her when it seems she was speaking out of turn, or getting on the Judge’s bad side.

Grant explained her observations of the Judge’s actions on November 9, 2012 to other legal authorities, when she read that his actions was outside the Washington State Code of Judicial Conduct Canons: 1.2 (A), 2.2, 2.3 (A)(B) (C), 2.4 (B), 2.5, and made an official complaint.

Grant in her briefs for her March 22, 2013 Motions she informed Judge White that she reported his actions of biases and

perception of biasness on November 9, 2012, during the hearing Grant ensure that Judge White read her motions.

Grant compiled the actions supporting her perceptions of biasness and reported the King County Presiding Superior Court Judge and MRJC Chief Judge. **MRJC Judge sent Grant an Order Sticking Motion¹. Grant contacted Presiding Judge regarding her complaint and the actions of MRJC Judge. Judge Richard F. McDermott recused himself from the case, because he has “a family member working for one of the firms representing one of... named defendants”²** in Grant’s case. As of the date of this brief, Grant has not heard from Assistant Presiding Judge Susan Craighead.

Judge White rulings Grant’s case as frivolous, October 29, 2012, his dismissal with prejudice on technicalities, all the arguments of the six opposing attorneys, whose arguments was to be determined before a jury raised serious question regarding abuse of power. **Judge White’s arbitrary dismissal of Grant’s case with prejudice November 9, 2012 and March 22, 2013, raises questions of legal misconduct. In addition to the**

¹Exhibit 1: March 29, 2013, Order Striking Motion, Judge Cheryl B. Carey.

²Exhibit 2 : June 17, 2013, Letter, Presiding Judge King County Superior Court.

interactions of the Judge as he was, waving gesturing as not to be recorded when he interacted with Attorney's on November 9, 2012, and the responses of the Presiding and Chief Judges are grounds for Grant to raise legal question of Biasness, Exparte Communications, Legal Misconduct.

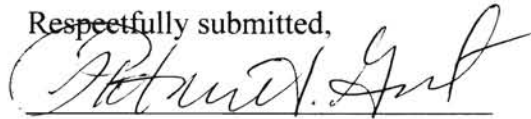
VI. CONCLUSION

Grant asks for her case to be returned to Superior court for trial preparations:

- 1) Do not marginalize this case and its importance.
- 2) Grant Plaintiff Trial De Novo.
- 3) Provide Court ADA Accommodations.
- 4) Removal of Judge John J. White as Trial Judge.
- 5) Refund of all Appeal Fees and Cost (Filing Fee, Transcriptions, Postage, Printing, etc).

August 19, 2013

Respectfully submitted,



PATRICIA A. GRANT

PRO SE

(210) 543-2331

FILED
KING COUNTY WASHINGTON

APR 01 2013

SUPERIOR COURT CLERK
BY MOLLY SIMON
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

Patricia Grant)
)
vs)
)
Claudio Alperovich, M.D., et al)
)
_____)

NO. 12-2-20677-5 KNT

ORDER STRIKING MOTION

IT IS HEREBY ORDERED that for the reasons set forth below plaintiff's motion re: Abuse of Judicial Discretion and Perception of Biasness Complaint, is stricken without prejudice to its being renoted in compliance with the applicable rules. Any documents filed, including responses, will need to be refiled, with a new note.

- Failure to include a calendar note for motion. (KCLR 7(b)(5)(A)).
- Failure to include a proposed order (KCLR 7(b)(5)(C))
- Failure to timely note the motion without oral argument (KCLR 7(b)(4)(A)).
- Failure to provide proof of notice to all parties who have appeared in the action. (CR 5)
- Failure to file the motion with the Clerk's Office.
- Failure to timely note the dispositive motion (CR 56).
- Does not comply with RCW 38.42.050(1)(a) – Service Members' Civil Relief Act.
- No cause number on calendar note
- No personal knowledge declaration (as defined in RCW 9A.72.085) to support the request for judgment.
- Failing to provide pre-addressed stamped envelopes to each party/counsel (KCLR 7(b)(5)(C))
- Failure to properly note motion to consolidate (LR 40(a)(4))
- Other: Notwithstanding the above reasons for striking the motion, this court DENIES the motion under RCW 4.12.050

DATED: March 29, 2013.


JUDGE CHERYL B. CAREY

ORDER STRIKING MOTION

Forms and court rules are available online at <http://www.kingcounty.gov/courts/Clerk.aspx>

12-2-20677-1

**Superior Court of the State of Washington
for the County of King**

Richard F. McDermott
Presiding Judge

King County Courthouse
516 Third Avenue, C-203
Seattle, Washington 98104-2381

June 17, 2013

Patricia A. Grant
1001 Cooper Point Road Southwest, #140-231
Olympia, Washington 98502

Re: Patricia A. Grant vs. Claudio Gabriel Alpervoich, M.D., et al
#12-2-20677-5 KNT

Ms. Grant:

Thank you for your letter dated June 9, 2013 regarding the above referenced King County Superior Court case. Your initial letter of March 9, 2013 was forwarded to Judge Cheryl Carey as the Chief Judge of the Maleng Regional Justice Center for review and any action she deemed appropriate. I have not looked into this case until receiving your follow-up letter today.

Please be advised that I am recusing myself from this matter. Upon review of the file, I have a family member who works for one of the firms representing one of your named defendants. Therefore, I am forwarding your correspondence to our Assistant Presiding Judge, Judge Susan Craighead, for review and any action she deems appropriate.

Very truly yours,



Richard F. McDermott
Presiding Judge, King County Superior Court

RFM:nr

cc: King County Superior Court File #12-2-20677-5 KNT
The Honorable Susan Craighead, Assistant Presiding Judge, King County Superior Court
The Honorable Cheryl Carey, MRJC Chief Judge, King County Superior Court

[Faint handwritten mark]

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington that the following is true and correct: That on the date indicated below, I have hand carried Appellant's Correct Appeal Brief and Motion for Appeal the following:

**The Court of Appeals of the State of Washington
Division I**
One Union Square
600 University Street
Seattle, WA 98101-4170
Certified Return Receipt #7009 1410 0000 4248 2611

Attorney for Defendant: Michael K. Hori, MD
Timothy E. Allen, WSBA #35337
Bennett Bigelow & Leedom, P.S.
601 Union Street, Suite 1500
Seattle, Washington 98101-1363
Sent First Class U. S. Mail

**Attorneys for Defendants: Virginia Mason Health System
and Richard C. Thirlby:**
David J. Corey, WSBA #26882
Floyd, Pflueger & Ringer P. S.
200 West Thomas Street, Suite 500
Seattle, WA 98119
Sent First Class U. S. Mail

Attorney for Defendant: Claudio Gabriel Alperovich
Scott M. O'Halloran, WSBA #25236
Michelle M. Garzon, WSBA# 31558
Timothy Lee Ashcraft
Williams, Kastner & Gibbs PLLC
1301 A Street, Suite 900
Tacoma, WA 98402-4200
Sent First Class U. S. Mail

**Attorneys for Defendant: Franciscan Health System,
St. Francis Hospital**
Philip J. VanDerhoef, WSBA#14565
Susan E. Wassell, WSBA #44783
FAIN ANDERSON VANDERHOEF, PLLC
701 Fifth Avenue, Suite 4650
Seattle, WA 98104
Sent First Class U. S. Mail

**Attorney for U.S. Family Health Plan@ Pacific Medical
Center, Inc.,
Pacific Medical Center, Inc.,
Lisa Oswald, Shoba Krishnamurthy, and Wm. Richard
Ludwig:**
Nancy Elliott, WSBA #11411
Merrick, Hofstedt & Lindsey, P.S. Attorney At Law
3101 Western Avenue, Suite 200
Seattle, WA 98121
Sent First Class U. S. Mail

Attorney for Michele Pulling
D.K. Yoshida WSB #17365
Ogden Murphy Wallace, PLLC
901 Fifth Ave., Suite 3500
Seattle, WA 98164
Sent First Class U. S. Mail

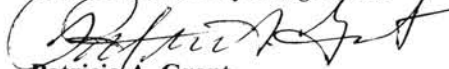
Associated Attorney for Michele Pulling
Howard M. Goodfriend WSBA #14355
Smith Goodfriend P.S.
1109 First Avenue, Suite 500
Seattle, WA 98101-2988
Sent First Class U. S. Mail

**Attorneys for Defendants: King Co. Public Hospital District #1
and Triet M. Nguyen:**
Donna M. Moniz, WSBA #12762
Johnson, Graffe, Keay, Moniz & Wick
925 Fourth Ave., Suite 2300
Seattle, WA 98104
Sent First Class U.S. Mail

**Note: This Attorney is an error of the Appellant Court Clerk
He is not representative for any Respondent in Appellant's
Case.**

Bradley S. Miller
101 SW Main St
Ste 1100
Portland, OR 97204-3219

DATED: This 19th day of August, 2013



**Patricia A. Grant
Pro Se Appellant
1001 Cooper Point Rd, SW #140-231
Olympia, WA 98502**