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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

RIKKI HELD, et al., Plaintiffs, v. STATE OF MONTANA, et al., Defendants.	Cause No. CDV-2020-307 Hon. Kathy Seeley PLAINTIFFS' MOTION IN LIMINE NO. 4: REPLY BRIEF IN SUPPORT OF MOTION RE: DR. DEBRA SHEPPARD'S EXPERT TESTIMONY
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I. INTRODUCTION

Contrary to the assertion in Defendants' Opposition that "the entire premise" of Motion *in Limine* No. 4 "is the alleged lack of experience on the part of Dr. Sheppard 'on climate change and its impacts on the mental health of children'", Doc. 291 at 9-10, Plaintiffs' Motion seeks to address the following aspects of the anticipated expert testimony of Dr. Sheppard before Dr. Sheppard takes the witness stand: (a) whether Dr. Sheppard has the necessary expertise to testify as to the methodology employed by Dr. Van Susteren to determine if Plaintiffs' mental health has been negatively impacted due to climate change and Defendants' conduct that promotes fossil fuels; (b) whether Dr. Sheppard can testify beyond describing methodology practices she has experience utilizing in her field as a neuropsychologist; (c) whether Dr. Sheppard can offer any opinions at trial as to whether Plaintiffs have experienced mental health impacts, including any opinions regarding the reliability or credibility of any of the statements from Plaintiffs; and (d) whether Dr. Sheppard's generalized testimony is relevant in this case where Dr. Sheppard lacks any expertise in the specialized field of climate and mental health. The core issue is whether Dr. Sheppard "qualifies as an expert *in the particular area on which the witness intends to testify.*" *State v. Harris*, 2008 MT 213, ¶ 8, 344 Mont. 208, 186 P.3d 1263 (emphasis added).

II. ARGUMENT

A. **Dr. Sheppard does not have the necessary expertise.**

Dr. Sheppard lacks the necessary expertise to testify as to the methodology employed by Dr. Van Susteren to determine if Plaintiffs' mental health has been negatively impacted due to climate change and Defendants' conduct that promotes fossil fuels. One need only review Dr. Sheppard's rebuttal report and deposition to see that her opinions (and, therefore, her testimony at trial) are limited to critiquing the methodology used by Dr. Van Susteren. As Dr. Sheppard

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testified: “I was asked to review Dr. Van Susteren’s report and critique the methodology used in her formulations.”; and her sole objective in preparing her rebuttal report was to “critique the methodology of the information gathering.” Sheppard Dep. 25:21-26:5; 34:5-10; 66:4-10. Given that critiquing Dr. Van Susteren’s methodology is what Dr. Sheppard said was her sole objective, critiquing Dr. Van Susteren’s methodology should be the sole area covered by her trial testimony.

B. Dr. Sheppard cannot testify as to methodologies she has no experience utilizing.

Dr. Sheppard cannot testify beyond describing methodology practices she utilizes in her field as a neuropsychologist. While Defendants assert “Dr. Sheppard is qualified as an expert witness on the subject of neuropsychology, psychological compromise or impairment, mental illness, psychological functioning, etc.”, Doc. 291 at 10, Defendants’ opposition fails to tie those areas into the areas covered by Dr. Van Susteren’s expert testimony. It is hornbook law that “a rebuttal report shall be limited to rebuttal of matters set forth in a respondent’s expert reports.”¹ By her own admission, Dr. Sheppard has no knowledge, skill, experience, training, or education on climate change and its impacts on the mental health of children and, therefore, lacks the requisite qualifications to respond to Dr. Van Susteren’s expert opinions regarding how Plaintiffs are being injured due to climate change, and whether those injuries are consistent with the scientific literature.

Defendants assert Plaintiffs seek to exclude Dr. Sheppard because she “is not an expert on climate change.” *Id.* That is not the point of Plaintiffs’ Motion. Even though she professes expertise on “methodology,” Dr. Sheppard has never evaluated anyone as to the impacts of climate change on their mental health, including the impacts on the mental health of children. As documented in

¹ 16 C.F.R. § 3.31A (Expert discovery): <https://www.law.cornell.edu/cfr/text/16/3.31A>.

Plaintiffs' opening brief, Dr. Sheppard readily acknowledges she lacks knowledge of and familiarity with the medical and psychological literature on how climate change impacts mental health and Dr. Sheppard has never researched or studied the mental health impacts of climate change. Nor did Dr. Sheppard take the time to familiarize herself with peer-reviewed scientific literature on the mental health impacts of climate change. Nor is Dr. Sheppard familiar with the work of the American Psychological Association ("APA"), which Dr. Sheppard recognizes as a reputable organization, on the role of psychologists in addressing global climate change. Nor does Dr. Sheppard have any involvement in research, education, or interventions on the impacts and psychological contributions to mitigation and adaptation efforts that address both environmental and human, including psychological, impacts of global climate change.

C. Dr. Sheppard lacks opinions on Plaintiffs' mental health impacts.

Dr. Sheppard testified she has no opinions as to whether Plaintiffs have experienced mental health impacts, including any opinions regarding the reliability or credibility of any of the statements from Plaintiffs. Therefore, Dr. Sheppard should be precluded from testifying in this area.

D. Dr. Sheppard lacks expertise on climate and mental health.

Dr. Sheppard's generalized testimony is irrelevant in this case where Dr. Sheppard lacks any expertise in the specialized field of climate and mental health. Returning to the test in *State v. Harris*, the question for this Court is in what respect does Dr. Sheppard qualify as an expert? What is "the particular area on which the witness intends to testify"? *State v. Harris*, 2008 MT 213, ¶ 8, 344 Mont. 208, 186 P.3d 1263. To this question, Defendants offer no answer. Defendants point to "Dr. Sheppard's extensive resume as an expert neuropsychologist" without identifying how Dr. Sheppard's testimony as a neuropsychologist will contribute to this case. To reiterate, she has no

knowledge whatsoever about climate change or its impacts to mental health: “I do not claim expertise in climate change issues.” Sheppard Rebuttal Report, Doc. 266.5, Ex. 4 at 1. Dr. Sheppard has no expertise in how climate change affects children’s mental health; she is not familiar with any of the medical literature about how climate change can affect mental health of children; and she has not ever spoken in a professional capacity to any of her clients about climate change.

III. CONCLUSION

At trial, Dr. Sheppard should not be allowed to rebut Dr. Van Susteren on the issues of how climate change impacts the mental health of children, when Dr. Sheppard readily admits she has neither first-hand experience with children experiencing impacts due to climate change, nor any knowledge of the professional literature on how climate change impacts the mental health of children. Accordingly, Plaintiffs respectfully request this Court enter an order *in limine* limiting Dr. Sheppard’s testimony solely to rebutting Dr. Van Susteren’s testimony by Dr. Sheppard describing methodology practices Dr. Sheppard utilizes in her field as a neuropsychologist.

DATED this 28th day of February, 2023.

/s/ Barbara Chillcott

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CERTIFICATE OF SERVICE

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