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THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

Docket No. 217-2020-CV-00026

DAVID MEEHAN

V.

NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.

**THIS PLEADING RELATES SOLEY TO DAVID MEEHAN'S INDIVIDUAL CASE**

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**DEFENDANT'S MOTION TO RECONSIDER "ORDER ON POST-VERDICT MOTIONS" AND INTERLOCUTORY APPEAL STATEMENT**

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The Defendants, the New Hampshire Department of Health and Human Services, by and through its counsel, the New Hampshire Department of Justice, respectfully moves to reconsider the Court's "Order on Post-Verdict Motions" (December 10, 2024) (hereinafter, "*Order – Post-Verdict*") and Order on Interlocutory Appeal (December 10, 2024). In support of its motion, DHHS states as follows:

**Introduction**

1. DHHS seeks reconsideration on three grounds.
2. First, the Court should reconsider and vacate its order granting the plaintiff a new *de novo* trial because the plaintiff is not substantively or procedurally entitled to that relief.
3. Second, if the Court declines to vacate its order granting a new *de novo* trial, then it should reconsider and vacate its decision to approve the plaintiff's interlocutory appeal statement insofar as doing so would transfer the three questions presented in that statement as part of the appeal. The effect of the Court's order granting a new *de novo* trial is to entirely wipe out the jury's verdict in the first trial. Because the plaintiff's three questions presented are all

premised on those jury findings, the questions have been rendered moot and are not appropriate for appellate review.

4. Third, the Court should reconsider its order granting an interlocutory appeal to allow DHHS to add the question of whether the Court erred in granting a new *de novo* jury trial under the circumstances of this case. Allowing that question to go up would bring with it the "single incident" question this Court would like answered.

**Discussion**

**A. The Court should reconsider and vacate its order granting the plaintiff's motion for a new *de novo* jury trial.**

5. On December 10, 2024, this Court issued an order on the plaintiff's motion for reconsideration of the court's orders of October 31, 2024, November 1, 2024, and November 3, 2024, as follows:

> The plaintiff's last minute, alternative request for a new trial *de novo* on all issues submitted to the first jury, including (a) the factual disputes relating to limitations, (b) liability, (c) damages for such particular "incidents" as liability may be found, (d) damages among possible joint tortfeasors (e.g. Debenedetto), and (f) the total number of "incidents" for which liability may be found, is GRANTED. A new trial is hereby ORDERED. All other relief requested in the motion for reconsideration is DENIED.

*See Order – Post-Verdict* at 1. As a basis therefore, the court cited to its May 22, 2024, Interim Order and "reaffirmed this ruling in all of its subsequent post-verdict motions" stating that "the jury's award of $38 million in compensatory and enhanced compensatory damages cannot be reconciled with its finding that the award is based on a single incident." *See id*. at 1-2.

6. As previously briefed, in Defendant's "Memorandum in Response to the Court's May 22, 2024 Order" (filed August 21, 2024), incorporated by reference in full, the jury's verdict was *not* conclusively against the weight of the evidence.

7. "A jury's verdict may only be set aside if it is conclusively against the weight of the evidence or if it is the result of mistake, partiality, or corruption." *N.H. Ball Bearings, Inc. v. Jackson*, 158 N.H. 421, 435 (2009). "Conclusively against the weight of the evidence means that the verdict was one no reasonable jury could return." *Id*. The "result of mistake, partiality, or corruption" must be based on grounds independent from whether the verdict was conclusively against the weight of the evidence. *See Broderick v. Watts*, 136 N.H. 153, 162-163 (1992) (citing to *Panas v. Harakis*, 129 N.H. 591, 604 (1992)). The "proper inquiry is into the conduct of the jury, separate and apart from its consideration of the weight of the evidence produced at trial." *Id*.
8. In this case, a reasonable jury could have returned a verdict finding one incident[1] based on the record evidence and jury instructions provided. A reasonable jury could have concluded that one or more instances of negligence and/or breach of fiduciary duty by DHHS in managing YDC gave rise to a single, harmful condition of confinement (an incident) to which the plaintiff was continually exposed and repeatedly injured during his detention at YDC. A reasonable jury could have viewed this incident as spanning the plaintiff's entire detention at YDC or only a significant part of his detention. Thus, the jury's verdict is not conclusively against the weight of the evidence.
9. Additionally, and as stated in its Objection to Plaintiff's Motion for Reconsideration (filed November 24, 2024), also incorporated in full by reference, it was mistake of law to grant a new trial *de novo* on Plaintiff's Motion for Reconsideration because it was a form of relief

[1] "Incident" is/was a defined term as used in this case. "Incident" was defined by this Court as a: "(a) single episode during which the plaintiff was injured; (b) for which injuries the jury has found DHHS liable in response to previous questions; (c) on claims the jury found to be timely claims in response to question 1 [of the verdict form]." *See* Verdict Form at 7. To be clear, this is the definition that is intended whenever DHHS refers to an "Incident" within this pleading.

never before requested by the Plaintiff (and was even expressly rejected by Plaintiff). *See gen.* Def.'s Obj. to Pl.'s Mot. for Reconsideration (filed November 25, 2024) (where Defendant summarizes the multiple opportunities Plaintiff had to request a new trial yet failed to do so.).

10. The New Hampshire Superior Court Civil Rules do not permit a party to introduce entirely new forms of relief in a motion for reconsideration. *See Mt. Valley Mall Assocs. v. Municipality of Conway*, 144 N.H. 642, 654-55 (2000) (party cannot raise an issue for the first time in motion for reconsideration when the issue was readily apparent at the time the party initially filed for relief); *Sklar Realty v. Town of Merrimack*, 125 N.H. 321, 328 (a party may not be entitled to judicial review of matters not raised at the earliest possible time). The purpose of a motion for reconsideration is to correct manifest errors of law or fact, not to introduce new claims or requests that could have been raised earlier. *See* N.H. Super. Ct. R. 12(e).
11. The New Hampshire Superior Court Civil Rules apply to this plaintiff just as they do to any other. Good cause has never been established to waive them for the Plaintiff, N.H. Super. Ct. Civ. R. 1(c), nor could they be given how many opportunities the Plaintiff has had to seek a new trial *de novo*. Granting the Plaintiff's motion was therefore an abuse of discretion.
12. The Court should therefore vacate its *Order – Post-Verdict to t*he extent that order grants the plaintiff a new *de novo* jury trial and enter judgment consistent with the statutory damages cap. The plaintiff can then file a direct appeal from that decision.

**B. To the extent the Court does not reconsider its order granting a new *de novo* jury trial, it should vacate its December 10 orders to the extent those orders authorize an interlocutory appeal of the questions presented in the Plaintiff's interlocutory appeal statement.**

13. DHHS agrees that the legal question of what constitutes a "single incident" under RSA 541-B:14, I, is an important question that the Supreme Court should weigh in on sooner rather than later. DHHS believes that the proper vehicle to present that question would be through a direct appeal after judgment entered in accordance with the cap. *See Def.'s Obj. to Pl.'s Mot. to Stay Pending Int. Appeal* (filed November 24, 2024); *Def.'s Obj. to Pl.'s Mot. for Int. Appeal* (filed November 24, 2024). But if the Court is not willing to reconsider its order granting a new *de novo* jury trial, then DHHS does not oppose that specific question going to the Supreme Court through an interlocutory appeal, as contemplated in the Court's *Order – Post-Verdict*.

14. DHHS respectfully disagrees, however, that the three questions proposed in the Plaintiff's interlocutory appeal statement necessarily turn on the legal question of what constitutes a "single incident" under RSA 541-B:14, I. *See Order – Post-Verdict* at 2.

15. Rather, each of the questions is premised upon things that the plaintiff contends occurred during the first trial in this case, including the jury's factual findings in the special verdict form.

16. For instance, the first question Plaintiff presented is an as-applied constitutional challenge to the statutory cap specifically premised on the jury's finding that DHHS's "conduct toward the plaintiff was wanton, malicious, or oppressive." Pls.' Interlocutory Appeal Statement at 13.

17. The second question presented is likewise specifically premised on the jury's findings in its special verdict form. *Id.* Additionally, it is premised on the notion that one of those findings "is obviously the product of juror error." *Id.*
18. The third question is specifically premised on the proposition that "the jury's findings of liability, and the jury's award of damages, are supported by the trial record but its finding regarding the number of 'incident[s]' is not." *Id.*
19. It has been long established that the "effect" of an "award of a new trial" is that "the previous verdict is entirely set aside, and the case is to be heard anew like an original action and as if no judgment had been rendered in the court below." *Bickford v. Franconia*, 73 N.H. 194, 195 (1905); *see* RSA 526:5 ("Whenever a new trial is granted the action shall be brought forward on the docket of the court, and shall be tried as if no judgment had been rendered therein.").
20. This Court specifically granted the plaintiff's request for a new *de novo* trial in its *Order – Post-Verdict*.
21. The legal effect of that ruling is to entirely wipe out the jury's prior verdict. *See* RSA 526:5.
22. Because all three of the plaintiff's proposed questions presented ask the Supreme Court to issue an opinion based on a verdict that "is entirely set aside," *id.*, any opinion would be purely advisory.
23. "Part II, Article 74 does not authorize [the Supreme Court] to render advisory opinions to private individuals." *Duncan v. State*, 166 N.H. 630, 640 (2014) (citations omitted).
24. This is true "no matter how high the stakes or how important the question." *Id.* at 641 (citations and quotation marks omitted).
25. Additionally, one of the proposed questions is specifically premised on the notion that the jury's finding of one "incident" is "obviously the product of juror error." Pl.'s Interlocutory

Appeal Statement at 13. The Court *never* entered a finding to this effect. Indeed, the Court correctly concluded that it would be inappropriate to recall the jury days after the verdict was rendered when no party asked for that on the date of the verdict and jurors would have been exposed to the considerable press the verdict in this case generated.

26. For this reason, too, the second question presented is not appropriate.

27. In sum, DHHS does not oppose an interlocutory appeal related to the proper interpretation of the phrase "single incident" as used in RSA 541-B:14, I, but there is no legal or factual basis to grant the plaintiff's motion as it relates to the three questions the plaintiff presents. Rather, if an interlocutory appeal is to be taken, a new transfer statement with new questions is required.

28. Thus, to the extent the Court does not reconsider its decision to grant a new *de novo* trial, it should reconsider its decision to grant an interlocutory appeal to the extent doing so transfers the plaintiff's proposed questions.[2]

**C. The Court should add to any interlocutory appeal the question of whether it erred in granting the plaintiff a new *de novo* trial.**

29. DHHS requests that the Court reconsider its *Order – Post-Verdict* and Order on Interlocutory Appeal to add the following question:

> Whether the trial court erred in granting the plaintiff a new *de novo* trial?

30. Unlike the questions presented in the plaintiff's interlocutory appeal statement, this question directly implicates the proper interpretation of the phrase "single incident" in RSA 541-B:14, I.

[2] To the extent the plaintiff wished to bring these questions directly to the Supreme Court, he could have sought to do so, consistent with the preservation doctrine and the actual record in this case, through a direct appeal from judgment. He did not pursue that path, and instead moved for a new *de novo* trial. It is simply a natural consequence of this strategic decision that these questions cannot be presented now.

31. Additionally, this question is appropriate for review now because the Court has granted a new *de novo* trial over DHHS's objection, thus generating a ruling that can be appealed.

32. Resolving this question has the potential to materially advance the termination or to otherwise clarify further proceedings in this case and other YDC-related cases currently pending in this Court and other courts. *See* Sup. Ct. R. 8(1).

33. It would also promote efficiency and judicial economy to allow this question to go up now, as part of an already-approved interlocutory appeal, rather than require DHHS to seek to file a separate interlocutory appeal or directly petition the Supreme Court for review under Rule 11.

WHEREFORE, for the reasons set forth in this Motion, DHHS respectfully requests that this Honorable Court:

A. Grant this motion to reconsider; and

B. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

New Hampshire Department of Health and Human Services; Division of Children, Youth, and Families; and Division of Juvenile Justice Services

By their attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: December 20, 2024

*/s/ Brandon F. Chase*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent via the Court's electronic filing system to all parties of record on the date above.

*/s/ Brandon F. Chase*

Brandon F. Chase