Vermont Superior Court
Filed 09/30/26
Washington Unit

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CIVIL DIVISION

Case No. 25-CV-01118

Mikayla Preston, et al v. Copley Health Systems, Inc., et al

ENTRY REGARDING MOTION

Title: Motion to Reconsider; Motion; Motion Expedited ; for Leave to Supplement the Pending Motion for Reconsideration - EXPEDITED; Protective Motion for Permission to Take Interlocutory Appeal - V.R.A.P. 5(b) (Motion: 8; 9; 10)
Filer: Mario Bernard Hankerson; Mario Bernard Hankerson; Mario Bernard Hankerson
Filed Date: September 09, 2026; September 15, 2026; September 22, 2026

The motions are DENIED.

Plaintiffs have filed a motion to reconsider, a motion to supplement, and a motion for interlocutory review. Despite the framing of Plaintiffs' motions, the substance of all three filings does not lie in opposition to any actual order of the Court—much less sanctions imposed by it. These motions are effectively efforts by Plaintiffs to reset the discovery schedule and to cure a missed deadline to disclose experts. Understanding how the case arrived at this point requires some context.

It is uncontested that Plaintiff Mikayla Preston was admitted to Copley Hospital for an elective induction of labor. During her delivery Copley administered the incorrect medication to her. Due to a pharmacy error, Ms. Preston received two injections of morphine instead of penicillin. Plaintiffs (Ms. Preston and the child she delivered) filed this medical malpractice case on March 13, 2025.[1] From both the complaint and from the present record, it is unclear what injuries might have resulted to either Ms. Preston or her child from the morphine administrations as Plaintiffs have made no such representations or offered any evidence into the record concerning Plaintiffs' alleged injuries.[2]

[1] The claims in the complaint are styled as negligence, gross negligence, medical malpractice, battery, loss of child's consortium, loss of parental consortium, intentional infliction of emotional distress, and negligent infliction of emotional distress. All eight claims arise directly out of the medication error.
[2] Copley has never disputed the basic facts of this medication error, essentially conceding the duty and breach elements of Plaintiffs' core negligence claim. With that tacit concession, one might anticipate that much of the

Six months after the complaint was filed, on September 22, 2025, the Court approved the parties' stipulated scheduling order. As part of this Order, Plaintiffs were required to disclose their expert witnesses on or before July 15, 2026.

Plaintiffs conducted no discovery in this case until late May 2026 when they served each of the two Copley Defendants with 87 pages of written requests, including over 110 interrogatories, 128 requests to produce, and 145 requests to admit (not including subparts). Few if any of the requests touched on causation and injury.

Predictably, this extraordinary volume of requests alone prompted a motion for a protective order. That motion, in turn, prompted a flurry of motions from Plaintiffs, including a motion to amend the September 22, 2025, scheduling order. In that motion, Plaintiffs sought to delay the July 15, 2026, expert disclosure deadline until February 16, 2027. The asserted "good cause" for the delay was that Plaintiffs sought to complete all written discovery before disclosing an expert, and that Defendants had delayed discovery by seeking a protective order. They offered no explanation for waiting so long to start promulgating discovery requests or why written discovery primarily focused on issues *other than* causation and injury was necessary before disclosing an expert whose opinions presumably would be focused on those elements. Recognizing that they were on the eve of the expert deadline, Plaintiffs sought an "interim" stay of that deadline and announced that if they did not receive one prior to July 15, they would serve "preliminary" disclosures to ensure compliance with the scheduling order. See Plaintiffs' Motion to Amend at 5 (filed July 4, 2026). Defendants opposed these efforts to revise or extend the deadlines from the original timelines adopted by the parties.

Following a hearing on July 6, 2026, the Court resolved the pending motions as follows. First, it gave Plaintiffs 30 days to "edit, revise, and reduce the written discovery questions, including all interrogatories, requests to produce, and requests to admit, to a manageable number." See Entry Regarding Motion (filed July 7, 2026). Second, the Court also said that it would "set this matter for a discovery conference in no less than 45 days." Id. The purpose of this delay was "to permit Plaintiff to revise and file her written discovery and for the parties to confer at least once more *before any hearing regarding the written discovery*." *Id*. (emphasis

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focus of this case would have been on the remaining elements of causation and injury, two areas that were largely known or under the control of Plaintiffs from the start of the case.

added). Finally, the Court said, "At the discovery conference, the Court will address any remaining discovery issues as well as the timing of the remaining discovery disclosures. Pending this conference the discovery deadlines for any disclosures beyond the written discovery, including expert witnesses, are stayed." Id.

Plaintiffs, presumably based on this stay, served no expert disclosures. They also knew that Copley objected to any delay or extension for the remaining discovery deadlines.

The Court scheduled the discovery conference for September 8, 2026. Neither Plaintiffs nor their counsel appeared. At the hearing, Defendants represented that they had received updated written interrogatories from Plaintiffs. While Defendants believed that some of the interrogatories were still excessive and potentially objectionable, they indicated that they had begun responding to them rather than seeking an additional motion to compel. Defendants re-stated their opposition to any further extensions, and the Court, at that time, declined to take up Plaintiffs' request to extend or modify the discovery schedule.

A stay will stop or suspend something from happening for the duration of the stay, but it does not cancel the underlying event or obligation. The stay on discovery deadlines in this case was set to lift on September 8th as per the Court's Order. When Plaintiffs did not attend the hearing, having never disclosed experts, it became apparent that they had no expert, no time left to disclose one, and little chance of surviving any dispositive motion practice.

It is in this context that Plaintiffs filed the pending motions. Despite framing the matter as seeking reconsideration or interlocutory review of an order, as though the Court ordered something or sanctioned them, there was no order, and there has been no sanction. Plaintiffs were never promised an extended deadline to disclose experts. The situation Plaintiffs find themselves in, with the inability to disclose experts, is the natural consequence of their litigation strategy or tactics and their failure to appear at the September 8 hearing.

To the extent that the thrust of Plaintiffs' motions is that they now seek further delay to the scheduling order, that request is **Denied**.

The record is reasonably clear that Plaintiffs did not intend to disclose experts by the July 15th deadline in the scheduling order. They never made any "preliminary" disclosure during the stay, they did not disclose an expert once the stay lifted, and they still have neither disclosed an

expert nor indicated that they are prepared to do so imminently.

Plaintiffs have further never explained why they did not begin discovery until May 23, 2026, fourteen months after initiating this case and eight months after the formal discovery clock began. Plaintiffs' professed need to complete all written discovery before disclosing any expert, has only been asserted in their present filings, and it has never been well-supported in the record.[3]

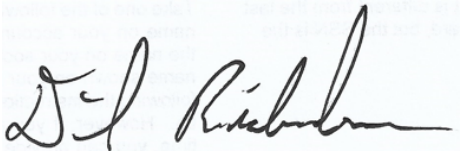
The medication error in this case is uncontested. Plaintiffs presumably have their medical records, and they presumably have some idea of what their injuries are, leaving an expert primarily to explain their extent and how the medication error caused them.

Plaintiffs have offered nothing approaching excusable neglect for having not attended the September 8th hearing or just cause to amend the scheduling order now to accommodate the missed deadline. V.R.C.P. 6. Counsel for Plaintiffs merely asserts that he got the time wrong for the September 8th hearing while the how and why go entirely unexplained.

In these circumstances, Court declines to modify the scheduling order. Plaintiffs' motion to reconsider is **Denied** as there is no order to reconsider. Plaintiffs' motion seeking interlocutory review is **Denied** because there is no order to review, and any attempt at involving the Supreme Court in routine discovery matters is not an appropriate subject to V.R.A.P. 5(b) review and would invite the type of piecemeal appeals that Rule 5 is intended to proscribe.

The Court will set this matter for a status conference within the next 30 days.

Electronically signed on 9/29/2026 5:30 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge

[3] At the outset of the case, Plaintiffs would have known their own injuries and have had time prior to the filing of the present action to investigate, examine, and review the nature of these injuries with experts and treatment providers—even if they were on-going. Plaintiffs were further aware of the breach in this case, unprescribed injections of morphine, to which a qualified expert, without additional discovery, could form a causative opinion as to any alleged resulting injuries.