IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

ROGER WELCH, AS EXECUTOR OF THE ESTATE OF NORMA J. WELCH,	:	
Plaintiff,	:	Case No. 19CV-806
v.	:	(JUDGE FRYE)
MOUNT CARMEL HEALTH SYSTEM D/B/A MOUNT CARMEL WEST, et al.,	:	
Defendants.	:	

KAREN WEIS, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF TIMOTHY FITZPATRICK,	:	
Plaintiff,	:	Case No. 19CV-1081
v.	:	(JUDGE FRYE)
MOUNT CARMEL HEALTH SYSTEM D/B/A MOUNT CARMEL WEST, et al.,	:	
Defendants.	:	

JOURNAL ENTRY
GRANTING, IN PART, MOTIONS TO CONSOLIDATE;
(Motions filed April 16 and April 18, 2019)
AND
ASSIGNING CASES FOR PRETRIAL MANAGEMENT
TO MAGISTRATE SKEENS.

In Case No. **19CV-806**, Roger Welch brought suit in January 2019 on behalf of the Estate of Norma J. Welch. Dr. William S. Husel and Mt. Carmel Health System are the primary defendants. Allegedly, Dr. Husel was an agent of Mt. Carmel in May 2015 when he prescribed two doses, totaling 900 mcg, of the drug Fentanyl which was then

administered to Norma Welch through an IV line. Allegedly this was a grossly excessive dosage, and it was medically unnecessary because Ms. Welch was already receiving doses of Dilaudid to control pain. Ms. Welch was pronounced dead at age 85 just 20 minutes after receiving the lethal doses of Fentanyl, according to the complaint.

In Case No. **19CV-1081** Karen Weis brought suit as Special Administrator against Mt. Carmel and Dr. Husel and several others involved in the medical care of Timothy Fitzpatrick. His care was given in September and October 2017. This suit was begun early in February 2019. Allegedly, Mr. Fitzpatrick was only 55 years of age when he was hospitalized "due to altered mental status * * * diagnosed with plueral effusions." (Complaint ¶ 7.) After about a week in hospital his respiratory status had not improved, so his family was encouraged to withdraw further care. At this point Dr. Husel allegedly caused a lethal dose of Fentanyl to be administered through an IV line resulting in Mr. Fitzpatrick's death seven minutes later. Again, it is also alleged that this Fentanyl prescription was "grossly inappropriate [and] served no therapeutic purpose or function." (Complaint ¶ 14).

On April 16 counsel for Dr. Husel filed identical motions to consolidate in both cases. In addition to consolidation of just these two cases, the motion also asks that all 26 "similar cases" be consolidated for both discovery and trial. Defendant Mt. Carmel filed a separate motion to consolidate on April 18, again in both cases but referencing all similar cases.

Plaintiffs filed a Memorandum in each case agreeing that consolidated discovery is appropriate. However, both counsel for plaintiffs and counsel for Dr. Husel appear to be operating under the mistaken assumption that a single judge – with the lowest numbered case – can order consolidation of any or all the cases. That is incorrect. Both judges having cases involved in any proposed consolidation must agree; one is not enough. Local Rule 31.02(E) makes this clear, as does familiarity with local practice in this court over many years.

There is a controversy over which judge currently has the lowest numbered case, but at least for the undersigned that is neither relevant now nor likely to be important in the future. It seems inconceivable that one single active common pleas judge could try all the cases involving Dr. Husel and Mt. Carmel in a timely fashion while still handling the criminal docket. Indeed, transfer of all cases to one judge would seem unfair even if the

number of trials were reduced to less than a dozen through settlements. Practically speaking, therefore, there is no need at this time to further consider overall consolidation of these cases for trials, or the arguments about which judge has the lowest-numbered case.

Since the undersigned has the two active cases summarized above, the motion to consolidate them with another judge's cases is **DENIED.** However, both cases are consolidated for pretrial discovery and case management purposes. To that extent the motions are **GRANTED.**

Pretrial case management (including discovery) in both cases is hereby referred to Magistrate Skeens, pursuant to Civ. R. 53(D)(1). The two cases are ***not*** consolidated for non-discovery motion practice, or for trial. Any motions to set aside discovery orders, or objections to decisions entered by Magistrate Skeens will be heard by the undersigned.

The current case schedule for dispositive motions and current trial dates (of Feb. 9, 2021 in both cases) are ***not*** altered by this order.

The Magistrate may adjust the discovery cut-off dates if necessary, as well as set additional interim deadlines for completion of document production, completion of fact discovery, expert witness disclosure deadlines, expert discovery, and other matters that will facilitate an efficient, timely resolution of the cases. Although these cases are not formally consolidated with others pending before other judges, Magistrate Skeens retains full discretion to set a master discovery schedule applicable in all cases he is supervising, in order to avoid duplicate depositions, conflicting discovery obligations for counsel, and in general minimize cost and delay for all parties.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 04-30-2019

Case Title: KAREN WEIS -VS- MOUNT CARMEL HEALTH SYSTEM ET AL

Case Number: 19CV001081

Type: JOURNAL ENTRY

It Is So Ordered.

/s/ Judge Richard A. Frye