

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA
97 JUN 11 PM 3:21

218
Jan

PAUL A. BONACCI,)	4:CV91-3037	NORBERT H. EBEL
)		CLERK
Plaintiff,)		
)		
vs.)	MEMORANDUM AND ORDER ON	
)	MOTION FOR SUMMARY JUDGMENT	
CITY OF OMAHA, et al.,)	OF DEFENDANTS CITY OF OMAHA,	
)	ROBERT WADMAN, AND MICHAEL	
Defendants.)	HOCH	

Counts III and IV state the claims against the City of Omaha, former Police Chief Robert Wadman and Police Officer Michael Hoch. Count III alleges deprivation of civil rights of due process, equal protection, and unreasonable seizures; Count IV alleges conspiracy.

Three subparagraph of paragraph 49 of the second amended complaint, filing 139, describe the plaintiff's claim of due process violations:

- "a. The rights under the due process clause of the 14th Amendment the Fourth Amendment, and the 'self-incrimination clause' of the Fifth Amendment to be free of the objectively unreasonable, intentional and unjustified infliction of extreme emotional distress, deliberate and unjustified assaults, detentions, and coercive, heavy handed and outrageous custodial interrogations;
-
- d. The right under the Due Process Clause of the 14th Amendment to be free of deliberate police department policy to refuse to enforce laws prohibiting child prostitution and pornography, delinquency, drug abuse when youths such as Plaintiff were the targets of special police department attention;
- e. The right under the Due Process Clause of the 14th Amendment to be free of deliberate police department policy to prevent the Plaintiff from alternative means of escaping his circumstances of child prostitution, pornography, drug and sex abuse . . ."

The equal protection claim is stated in subparagraphs of paragraph 49 as follows:

- "b. The right under the Equal Protection Clause of the 14th Amendment to be

Copies mailed on 6-11-97

218

free from arbitrary, discriminatory and unjustified mistreatment because Plaintiff was a member of a group of youths the police department wanted to stay under the control of Larry King and Alan Baer;

- c. The right under the Equal Protection Clause of the 14th Amendment to receive from law enforcement officials their protection from child abuse, neglect and delinquency which Plaintiff suffered because he belonged to the group of children the Police Department wished to stay under the control of Larry King and Alan Baer;

....

- f. The right to be free under § 1985 of Title 42 of the United States from conspiracies against him that have the purpose of depriving the Plaintiff of his equal protection from the laws of the United States . . .”

In support of the motion these moving defendants have submitted filing 204, consisting of defendant's Exhibit A, an indictment in the *State of Nebraska v. Paul A. Bonacci*, in the District Court of Douglas County, Nebraska, Docket 127, p. 193; and defendant's Exhibit B, comprising excerpts from the deposition of the plaintiff, Paul Bonacci. The plaintiff has submitted the declaration of plaintiff, Paul A. Bonacci, dated March 29, 1996.

Count IV recites the plaintiff's claims of conspiracy, pursuant to 42 U.S.C. § 1985(3) and § 1986. Second Amended Complaint ¶¶ 50-54.

Rule 56 of the Federal Rules of Civil Procedure in subparagraph (b) says:

“A party against whom a claim . . . is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.”

In subparagraph (c) the rule says:

“ . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.”

Subparagraph (e) includes the following:

“Supporting and opposing affidavits shall be made on personal knowledge, shall

set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. . . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. . . ."

In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 at 250 (1986), the Court said:

"There is no requirement that the trial judge make findings of fact. The inquiry performed is the threshold inquiry of determining whether there is the need for a trial-- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party."

I. WHETHER THE PLAINTIFF'S TESTIMONY HAS CREDIBILITY

In an earlier memorandum on a motion for summary judgment by the defendant Alan Baer I reviewed the plaintiff's testimony by deposition, the only testimony offered that could be considered to have been in support of the plaintiff's position. The plaintiff's testimony was that he had been hypnotized sometime between November 18, 1989, and October 21, 1992, when he was incarcerated, which was at least three and one-half years after he claims to have been last sexually abused. He also testified that he was hypnotized once or perhaps twice after that. I make the same observations now as I did relative to Baer's motion.

The plaintiff's testimony by deposition includes this as to his having been hypnotized:

"Q. At some period of time when you were incarcerated, you were hypnotized; is that correct?

A. Yes.

Q. Tell me about that.

A. I believe the first time was one -- about the week after Dr. Mead had diagnosed me with MPD, he -- the next week he came in, he wanted to, wanted me to close my eyes, and when he did, he said -- I don't know, I can't remember what he said, but it brought out one of the other personalities.

And I didn't know that that's what he was trying to do, but -- and I guess he spoke to the personality for a while.

And then later on, I was hypnotized with, I think it was -- Detective Hoch was

there, and I think there was another lady, but I'm not sure.

Q. Do you have any particular recollection of those circumstances?

A. Not really. Detective Hoch wanted to find out how accurate some of the things that I had related to him were, how -- not whether they were the truth or not, but how much of them may have been added in, you know, stuff may have been added in by personalities that maybe don't deal completely with reality, you know, may have added stuff, like things that happened that didn't really happen, but to them, they did. And -- 'cause there was distortions and stuff, which I guess happens quite a bit with MPDs when they're first trying to go through the memories.

Q. And you have not been hypnotized since then --

A. No.

Q. -- that you're aware of?

A. Well, yes, and it was with Densen-Gerber, and that was in Lincoln."

Bonacci Deposition 1874:18-1876:5

"Q. You did an interview with Judith (phonetic) Densen-Gerber?

A. Yeah."

Id. 1876:16-18.

Q. I'm sorry, thank you. And you were hypnotized during part of that?

A. I think, yeah, at one point, I was put under hypnosis. I --

Q. Have you ever been told, Paul, that you give different responses under hypnosis than you do when you're in a nonhypnotic state?

A. No.

Q. Do you believe that you give different answers when you're under the influence of hypnosis?

A. Humm. I believe some of the stuff that was given under hypnosis may have been more, more accurate, because it takes out a lot of the, more of the distortions that happen by the different personalities all coming out at the same time. They can

specifically go to one personality. You know, they used to be able to do that, anyway, and get things -- 'cause it slows your mind down a little bit."

Id. 1877:1-20

"Q. And other than the incident you described where Dr. Mead -- or, not Dr. Mead, Dr. Densen-Gerber supposedly hypnotized you which was recorded on videotape, had you been actually hypnotized by the psychiatrists up till then?

A. By Dr. Mead, I know I was. Dr. Stoller, I remember very little of that meeting, though.

Q. What's your definition of hypnotized?"

Id. 2006:16-24

"THE WITNESS: I'm not sure.

BY MR. DeCAMP:

Q. So far as you understand, what does hypnotized mean?

A. When the psychiatrists or whatever kind of make you, like, ah, close your eyes, and then it's like all of a sudden -- you listen to whatever they're saying. All of a sudden, it seems like you just go somewhere else. That's the way it felt to me, like I went somewhere else, like I was --

Q. What exactly did Dr. Mead do that you understood was hypnotizing you?

A. Oh, basically, he had me close my eyes, and he would talk and count, and he, he told me that because of the MPD and stuff, that it wasn't really him hypnotizing me, that MPDs were able to do that all on their own without really too much help, they're very easy to hypnotize or something, I guess. And that's about all I, I know. I don't understand what he did.

Q. When he told you to close your eyes, was it then that the other personalities would come out?

A. No, it wasn't right then. He would talk for a little while and stuff, and then he would -- I don't, I don't know. It's like -- 'cause it's -- there's a point where I just -- I can't remember, 'cause it's like I lose track of what went on after that."

Id. 2007:1-2008:5.

That raises the flag of *Sprynczynatyk v. General Motors Corp.*, 771 F.2d 1112 (8th Cir. 1985), which said at page 1122-23:

“We adopt a rule which requires the district court, in cases where hypnosis has been used, to conduct pretrial hearings on the procedures used during the hypnotic session in question and assess the effect of hypnosis upon the reliability of the testimony before making a decision on admissibility. The proponent of the hypnotically enhanced testimony bears the burden of proof during this proceeding. In addition, we adopt a version of the [*State v. Hurd*, 86 N.J. 525, 432 A.2d 86 (1981)] safeguards to the extent that the district court should consider whether and to what degree the safeguards were followed when making its determination that the hypnotically enhanced testimony is sufficiently reliable. Other factors the district court should take into account are the appropriateness of using hypnosis for the kind of memory loss involved, and whether there is any evidence to corroborate the hypnotically enhanced testimony. The district court must then determine whether in view of all the circumstances, the proposed testimony is sufficiently reliable and whether its probative value outweighs its prejudicial effect, if any, to warrant admission. Ultimately the district court must decide whether the risk that the testimony reflects a distorted memory is so great that the probative value of the testimony is destroyed.

By our ruling today we place this hypnosis evidentiary problem directly within the control of the district court. We think the better approach is for the district court and not the jury to make the preliminary determination of admissibility as is the case with other evidentiary questions. *See* FED.R.EVID. 104(a). It is our hope that this case-by-case method of determining the admissibility of hypnotically enhanced testimony will guard against the problems of hypnosis, especially undue suggestiveness and confabulation, but also allow for the inclusion of reliable refreshed memory which hypnosis can at times under certain circumstances produce. In sum, we hold that the district court should, before trial, scrutinize the circumstances surrounding the hypnosis session, consider whether the safeguards we have approved were followed and determine in light of all the circumstances if the proposed hypnotically enhanced testimony is sufficiently reliable and not overly prejudicial to be admitted.”

There is no evidence before me of the details of the hypnosis. There is no way that I can tell the effect, if any, of the hypnosis upon the reliability of the testimony of the plaintiff. I do not know what safeguards were utilized. The burden is upon the plaintiff and there has been no evidence presented on his behalf to the effect that his testimony was either unaffected or affected to such a small extent that the probative value of his testimony was not destroyed.

The plaintiff cites *United States v. Reynolds*, 77 F.3d 253 (8th Cir. 1996), in connection with his argument that expert testimony is not necessary when expert evaluation of the credibility of the testimony is not called for or relevant. That statement is true enough, but does not apply, because in the present case without *some* evidence to the effect that Bonacci's testimony was

either unaffected or nominally affected I cannot reasonably determine the effect of his hypnosis, if any, upon the reliability of Bonacci's testimony. I do not know what safeguards were taken during the hypnotic session or sessions. I might be highly benefited by expert testimony on the subject; perhaps lay testimony on the subject would be helpful. There simply is none, unless it be the declaration of Bonacci that was attached to the plaintiff's brief.¹ In the plaintiff's declaration he says, "Dr. Mead however had little to do with refreshing any memories involving the police department." That is of little value to the plaintiff. The question is the reliability of the plaintiff's testimony, which includes both his deposition and his declaration, which were given after the occasions when he was hypnotized by Dr. Mead and again by Dr. Densen-Gerber and, possibly, by Dr. Stoller. With one, two or three sessions of hypnosis involved, with my having no information from any of those doctors as to the safeguards taken or the techniques used, and with the plaintiff's acknowledging that Dr. Mead brought out one of the other personalities² and acknowledging that personalities do contradict others, the unsupported testimony of Paul Bonacci after hypnotism is of doubtful reliability. It should be noted, also, that there were, according to Bonacci's testimony, dozens of persons involved in the matters he brings before the court as claims against these moving defendants, yet there has been not one word of evidence by any of those persons to support Bonacci's claims. That does not mean that the claims are all false, but it does mean that Bonacci's hypnotized testimony is highly problematic.

There are also other reasons to question the credibility of the plaintiff's testimony.

Bonacci was addicted to illegal drugs, according to his testimony, extending into 1984. He said:

"Q. Well, going back to this little chronology of what you were involved with between the period of 1980 and '84, as I understand your testimony, at some -- during this period of time, you were acting as a drug runner at the behest of Larry King; is that correct?"

A. Yes.

Q. And you took hundreds of trips which you've described in your earlier testimony.

A. Yes.

¹ NELR 7.1(a)(2) requires that evidentiary materials in support of motions be filed with the clerk and not be attached to a brief, because briefs are not filed. The declaration of the plaintiff was attached to a brief and has not been filed, but I shall cause it to be filed.

² The plaintiff is a victim of Multiple Personality Disorder (MPD).

Q. You were also involved in the scavenger hunts which you have described at length in your earlier testimony during the period of 1980 to '84 -- .

A. Yes.

Q. -- is that correct? You were also yourself using multiple drugs during this period.

A. Yeah. On and off, yeah.

Q. Well, you described a period earlier today when you had to take uppers every day.

A. Yeah.

Q. Is it fair to say that you were fairly consistently using some drug during most of the period between '80 and '84?

A. Yeah, mostly from about '83 till '84 was when I got stuck on it every day where I had to take uppers in the morning and then downers to put myself to sleep.

Q. So it was at its zenith during '83 to '84, but you also took drugs during the earlier period of time?

A. Yeah. That's why I don't remember my tenth grade.

(An off-the-record discussion was had between the Reporter and the witness.)

THE WITNESS: I say that's why I don't remember my tenth grade year in school and my grades prove it."

Id. 934:15-936:1

The last time the plaintiff says he remembers being sexually abused was in March of 1986. *Id.* 948:4-17.

More problematic than the addiction is the mental condition known as Multiple Personality Disorder (MPD). He testified that he had within him, all at the same time, many distinct personalities. Bonacci Deposition 6:5-8:20, Exhibits in Support of Motion for Summary Judgment (on Behalf of Alan Baer), filing 187. He testified in his deposition after being sworn under 14 different personalities distinct from the primary personalty, Paul Bonacci. *Id.* 9:1-10:23. He testified that the combination of multiple personalities and the drugs and events of his life on occasion cause him to confuse people or events. *Id.* 1154:3-12. When he was questioned about whether he was satisfied that a person he had identified with some particular material was the same Gary Kerr that is on television locally, he said:

"A. Not really. I mean because it's like -- I have tried to go through the memories and they're too vague for me to try to rely upon. There's -- there's enough doubt in my own mind to actually say it could have been, you know, it might not have been him. That's just going in my mind and stuff and knowing how in the past if I have gone through information and dismissed it . . ."

Id. 1657:6-13.

Bonacci says that his multiple personality disorder affected his testimony before the grand jury. In response to a question about changing his testimony in the grand jury after a break, he said:

"A. It's kind of hard to explain because during the break -- before the break the personalities that were out were completely unwilling because of threats and other things. After the break them personalities were no longer out because of inner arguments. So another personality came out and took over in the second part of it and corrected what the other personalities had done. At that time I did not have any co-consciousness or any awareness, so it was all depending on whether or not the personalities were listening and had the ability to come out and take charge."

Id. 1511:3-15.

His deposition also shows this:

"Q. But as I understand what you're telling us, what Paul Bonacci says may be contradicted by another personality; is that true?

A. I believe the only one that would ever try and contradict him, if he's still around, would be Wesley.

Q. Okay. And if I ask you a question about a date and you give me an answer and that answer is later contradicted by Wesley, how do we know which one is telling us the truth?

A. Probably because of the fact that Wesley is trying anything he can to sabotage my memories. He has been erasing memories that I've had, because the more I remember something, the more I'm starting to lose.

Q. And why is Wesley trying to do that?

A. Like I said, he wants nothing to do with any of this. He wants me to quite simply forget everything and go on with my life and just forget what everybody's done.

Q. And how do you know that that's the way Wesley feels?

A. Because before I thought he integrated, that's exactly what he said."

Id. 736:9-737:7.

One of the strange features of Mr. Bonacci's testimony occurred as follows:

"BY MS. HAHN:

Q. Let me ask you first, you have answered a series of questions under the persona of West Lee.

A. Yes.

Q. Are the answers that you have given to those questions within the last half an hour true and accurate answers?

A. Yes.

Q. Are they complete answers?

A. Yes.

Q. All right. Now I'm going to ask you, what triggered the arrival or development or birth of your personality West Lee in 1974?

A. I cannot give that information under direct orders.

Q. Orders by whom?

A. I cannot say:

MS. HAHN: Mr. DeCamp, would you please instruct your client that he has to answer these questions?

MR. DeCAMP: Yes. You're supposed to answer these questions. Does this have to do with Monarch?

THE WITNESS: Yes.

MR. DeCAMP: If I use the code, will that help, that I just obtained in the last hour? D-6 41 3782 Program XPY Eagle Alex Hope. Please go ahead and

answer all questions.

THE WITNESS: I was created by a government program.

BY MS. HAHN:

Q. Which government program?

A. Monarch.

Q. And what is Monarch?

A. Monarch is an operation that was created by the United States Government to create spies for other countries. They use children for the purpose that they're easily integrated into multiple personalities because they can dissociate.

Monarch is a program that is run by Michael Angelo Aquino who was an Army Reserve Colonel at Presidio. He is also the leader of the Temple of Set. He is also -- he also runs a child day-care center. He also is involved in human sacrifice.

Q. Is he employed by the United States?

A. Yes.

Q. At what facility?

A. Presidio, California.

Q. Is that in the San Francisco area, the Presidio --

A. Yes.

Q. -- Naval base?

A. Yes.

Q. Do you know what rank Michael Aquino holds?

A. He was a colonel.

Q. Is he currently employed there?

A. I am not aware of the current situation.

Q. Now, describe the program again, the Monarch program.

A. Monarch, as I said, was a program that used children to make multiple personalities for future use as spies and as a way to take over the United States Government.”

Id. 1044:6-1046:23.

The testimony of the plaintiff in many respects is bizarre. Multiple personality disorder is a cruel mental condition. Its effects are stunning. Although the plaintiff believes that his personalities are probably wholly integrated, there is no psychiatric testimony before me that assesses his present condition or what impact the multiple personalities and their differing recollections have had on the plaintiff's ability to recall and testify accurately the awful events that have prompted this lawsuit. In no way do I say that those events or some of them never happened. My concern is what to do with the evidence that is before me as it impacts a motion for a summary judgment. The Eighth Circuit Court of Appeals has already spoken with respect to hypnosis and that, alone, may make Mr. Bonacci's testimony outside the realm of usefulness in opposing this motion. Piled on that is the matter of the addiction, which by the plaintiff's own testimony has harmed his ability to remember, and the multiple personality disorder, which tricks him, covers for him, and disputes him. Without expert testimony to help evaluate the ability of Paul Bonacci, whether partially or wholly integrated, to tell the truth in a reasonably accurate way, I cannot say that the testimony is sufficient to show any support for the claims against these moving defendants.

I am troubled, as I was about the claims against Alan Baer, that all claims against the City of Omaha, former Police Chief Robert Wadman, and Police Officer Michael Hoch be disposed of in summary fashion. I do not know whether there is expert testimony available regarding the possible effect of hypnosis, drug addiction and multiple personality disorder, but there is none that has been presented to me. There is not even evidence by any nonexpert that corroborates anything alleged in the complaint against these defendants. Under such circumstances, a dismissal of all claims against these defendants is necessary.

On former occasions I have been critical of the quality of the representation of the plaintiff by his counsel. That is not so relative to this motion. Counsel responded. Even though the response has not saved the plaintiff from a summary judgment, I am appreciative of the effort.

I find that the plaintiff's evidence is so unreliable that it would not allow a reasonable factfinder to return a verdict for the plaintiff against these moving defendants and, therefore, that summary judgment is in order.