

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

DEBRA G. HOPKINS, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 BOARD OF COUNTY COMMISSIONERS)
 OF WILSON COUNTY, KANSAS, et al.,)
)
 Defendants.)
)

Case No. 15-2072-CM

MEMORANDUM AND ORDER

This case is before the court on two summary judgment motions filed by defendants (Docs. 107 and 129). Both motions deal with issues of causation and discuss plaintiffs’ failure to have expert testimony to establish causation. One motion also argues that plaintiffs cannot show deliberate indifference, a required element of their case.

This week, Magistrate Judge Teresa J. James held that plaintiffs’ expert designation of Dr. Erik Mitchell is not stricken. Judge James further held that plaintiffs’ expert designation of Dr. Paul Kurth is not stricken, but that plaintiffs must supplement Dr. Kurth’s report as required by Fed. R. Civ. P. 26(a)(2)(B). The parties will be discussing potential scheduling order changes later this month.

In light of these rulings, the arguments in defendants’ summary judgment motions are either moot or potentially moot. Although defendants argue that allowing plaintiffs to proceed with an expert will not impact their arguments on deliberate indifference, the court can conceive of a situation in which it might. At a minimum, notions of justice, fairness, and judicial economy dictate that plaintiffs should be given the opportunity to argue that their expert opinions impact the deliberate indifference question.

For these reasons, the court determines that both summary judgment motions should be denied without prejudice as moot. If defendants believe that they still have a valid deliberate indifference argument after completing any additional discovery necessitated by allowing plaintiffs to proceed with Dr. Kurth designated as an expert witness, they may refile their motions at a later time.

IT IS THEREFORE ORDERED that defendants' motions for summary judgment (Docs. 107 and 129) are denied without prejudice as moot.

Dated this 18th day of January, 2018, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge