STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

SCOTT SCHARA, Individually, and as the Administrator of the Estate of Grace Schara

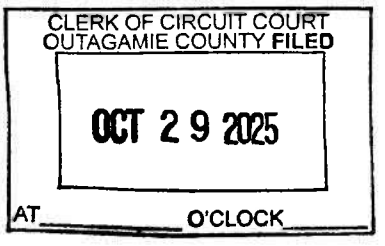
Plaintiff,

v.

ASCENSION NE WISCONSIN, INC., *et al.*

Defendants.

Case No. 23-CV-345



PLAINTIFF SCOTT SCHARA'S NOTICE OF MOTION AND COMBINED MOTIONS FOR RECONSIDERATION AND NEW TRIAL

Pursuant to Wisconsin Statutes §§ 805.15 and 805.17(3), please take notice that Plaintiff Scott Schara, individually, and as the Administrator of the Estate of Grace Schara, moves the Court for reconsideration and a new trial based upon newly discovered evidence of the Court's personal bias. A hearing, if any, on the motions will take place at a date and time to be set by the Court; however, Plaintiff hereby waives his right to a hearing.

INTRODUCTION

Throughout the trial, this Court allowed Defendants to attack Plaintiff and his family members with their religious beliefs and expressions and views on medicine and the broader health care system, with the presumed purpose and clear effect of undermining their credibility with the jury. Plaintiff anticipated this attack and attempted to prevent it with motions in limine, which the Court summarily and inexplicably denied despite Plaintiff's insistence that Wisconsin

Statute § 906.10 expressly prohibits evidence of religious beliefs or opinions to show that the witness's credibility is impaired or enhanced. It was not until after trial that Plaintiff discovered evidence of this Court's personal bias, which appears to have influenced its rulings against Plaintiff.

Several weeks after trial the Court violated multiple rules in ordering Plaintiff to pay Defendants' costs of over $50,000.00, and several months after trial Plaintiff learned of the criticisms previously published by the Appleton Post-Crescent directed at the Court, which showed the Court's personal bias against that publication. Not until he discovered evidence of what appears to be the Court's personal bias against him and against the Appleton Post-Crescent did Plaintiff understand the basis for the Court's denial of his motions in limine. Plaintiff now understands that when the Court learned, two weeks before trial, that Plaintiff had recently given an interview to the Post-Crescent and announced that Plaintiff would have consequences for this, the Court was reacting to the confluence of two things that it found personally repugnant: Plaintiff and the Post-Crescent. For the Court, this must have seemed like the perfect storm or the worst of all possible worlds. Almost immediately thereafter, the Court summarily denied all of Plaintiff's motions in limine without allowing argument.

Giving the Court the benefit of the doubt, at the time, Plaintiff assumed the Court had a legal basis for its ruling. It was not until the Court issued the cost judgments that Plaintiff stopped assuming its impartiality toward Plaintiff, and it was not until learning of the Post-Crescent's prior criticisms of the Court that Plaintiff understood the Court's personal bias against the publication and how the two getting together could so profoundly and personally affect the Court. Because Plaintiff did not know about the Court's personal bias at the time of the rulings, Plaintiff was unable to address this issue head-on. With this evidence now in hand, rather than

appealing over this Court's head, Plaintiff wishes to give this Court a chance to correct this injustice.

Evidence of a judge's alleged bias that comes to a moving party's notice after trial constitutes newly discovered evidence for the purposes of a motion for a new trial. *State v. Gudgeon*, 720 N.W.2d 114, 116 (Wis. Ct. App. 2006). Newly discovered evidence does not have to go directly to an element of a claim or defense; it can involve collateral information as long as it satisfies the multifactor test under Wis. Stat. § 805.15(3), including that the information, had it been known during the trial, would probably have changed the result. *See State v. Plude*, 750 N.W.2d 42, 56 (Wis. 2008) (finding a reasonable probability that had the jury known that the state's medical expert had falsely testified about his medical credentials, they would have had a reasonable doubt as to the defendant's guilt).

The Court's first ruling, and most egregious, as it prejudiced the jury against Plaintiff on all of his claims and denied him a fair trial, was the Court's erroneous denial of all of Plaintiff's motions in limine to prohibit Defendants from attacking him with his religious beliefs and expressions. Second, was the Court's erroneous dismissal on the merits of Plaintiff's declaratory judgment claim. Third, was the Court's erroneous directed verdict of dismissal of Plaintiff's battery claim. Plaintiff is confident that had the Court been unbiased and granted his motions in limine, a fair and impartial jury not prejudiced against him on the basis of his religious beliefs and expressions would have found for him on all counts, including battery. The Court's rulings denied justice to Grace Schara and all other victims impacted by her landmark case. Therefore, in the interests of justice, a new trial is warranted.

LEGAL STANDARD

"A party may move to set aside a verdict and for a new trial because of errors in the trial or . . . because of newly discovered evidence, or in the interests of justice." Wis. Stat. § 805.15. Motions after verdict shall be filed and served within 20 days after the verdict is rendered . . ." Wis. Stat. § 805.16(1). "Notwithstanding sub. (1), a motion for a new trial based on newly discovered evidence may be made at any time within one year after verdict." Wis. Stat. § 805.16(4). "[A] new trial shall be ordered on grounds of newly discovered evidence if the court finds that: (a) The evidence has come to the moving party's notice after trial; and (b) The moving party's failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it; and (c) The evidence is material and not cumulative; and (d) The new evidence would probably change the result." Wis. Stat. § 805.15(3). A motion for reconsideration "may be made with a motion for a new trial." Wis. Stat. § 805.17(3).

ARGUMENT

I. The Court's denials of Plaintiff's motions in limine were based upon personal bias.

When asked what the purpose of his lawsuit was, Plaintiff stated: "The first and most important is repentance of the individuals involved. Second, is to stop the behavior. Third, is to shed light on evil. And fourth, is to have the death certificate changed to the ***truth***." Deposition Transcript of Scott Schara (Schara Dep.) 14:3-13 (emphasis added). "The very nature of a trial [i]s a search for truth." *Nix v. Whiteside*, 475 U.S. 157, 158 (1986). In his search for truth, Plaintiff requested a declaratory judgment from this Court to make it clear that Dr. Shokar placed an illegal Do Not Resuscitate (DNR) order on his daughter, Grace. (Doc. 47) PLAINTIFF SCOTT SCHARA'S COMBINED BRIEF IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT at 24 (emphasis added). Plaintiff insisted that "to the extent there's any money

awarded, one dollar or $1 million, we are not going to take any money personally. We don't want to benefit financially from this lawsuit." Schara Dep. 399:17-21. Plaintiff memorialized his commitment not to benefit financially from this lawsuit before the start of the trial. AFFIDAVIT OF SCOTT SCHARA IN SUPPORT OF HIS COMBINED MOTIONS FOR RECONSIDERATION AND NEW TRIAL, Exhibits A and B.

Principally motivated by his religious beliefs, Plaintiff came before this Court in the search for truth, and he submitted to this Court's authority and allowed its rules to govern his actions,[1] rules which were vastly different from God's rules, which govern Plaintiff's actions outside this Court.[2] In exchange, Plaintiff expected this Court to follow the rules. Plaintiff was never threatened with nor found in contempt of court. He submitted to a protective order that limited his expression of his religious beliefs during the pendency of the litigation and trial, and the Court never informed him that should he express his religious beliefs within the confines of the protective order, the Court would nevertheless allow Defendants to attack him at trial with those beliefs and expressions.

Plaintiff's perspective, which he shares openly ***outside the courtroom***, is "rooted in the Biblical basis that you trust God first and man second" (Schara Dep. 542:17-18), and he characterizes the agenda he believes was responsible for Grace's death as "the agenda that's been implemented by Satan" (Schara Dep. 404: 13-14). Plaintiff understood that his ***outside the courtroom*** religious expressions would appear foolish at trial and prejudice the jury against him.[3]

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[1] "Let everyone be subject to the governing authorities, for there is no authority except that which God has established." Romans 13:1.
[2] "For my thoughts are not your thoughts, neither are your ways my ways, declares the Lord. As the heavens are higher than the earth, so are my ways higher than your ways and my thoughts than your thoughts." Isaiah 55:8-9.
[3] "For the message of the cross is foolishness to those who are perishing, but to us who are being saved it is the power of God." I Corinthians 1:18. "But God chose the foolish things of the world to shame the wise, and God chose the weak things of the world to shame the strong." I Corinthians 1:27.

Plaintiff's ***outside the courtroom*** statements focused on the motives behind Grace's killing[4] because God cares about the motives of the heart,[5] which Plaintiff believes is his duty before God to bring to the public's attention. But Plaintiff does not have to prove motive to prove his case inside the courtroom,[6] which is why Plaintiff brought motions in limine asking the Court to prohibit Defendants from attacking him with his religious beliefs and expressions concerning motives of the heart, which are irrelevant to the search for truth in this Court. This Court recognized the nature of what Plaintiff sought to exclude from the jury, stating "With respect to Plaintiffs' motions in limine . . . most of them have to do with, you know, cross examination regarding religious beliefs and expressions . . ." (Doc. 563) Transcript of May 20, 2025, Pretrial Hearing at 150.

Despite all indications that Plaintiff was pursuing the truth, the Court denied his motions in limine on the purported basis that there is a high enough likelihood that a man who has promised to not financially benefit from a jury verdict and wants his daughter's death certificate changed to the truth would lie under oath in order to accomplish this. Plaintiff is unashamed of his "religious beliefs"[7] and "expressions,"[8] however, when his religious beliefs and expressions are allowed to be attacked in trial on the sole basis that they have high relevance to his character for truthfulness, he is entitled to ask, where are the witnesses who can testify that I am

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[4] Plaintiff acknowledged that he had issued a press release in which he stated "Our government has motivated our medical system to do the dirty work through financial incentives. Doctors and nurses have become serial killers." Schara Dep. 456:24-458:2.

[5] Proverbs 16:2, which states that the Lord examines our motives; 1 Samuel 16:7, where God looks at the heart, not the outward appearance; Jeremiah 17:10, which says God searches the heart to give people according to their deeds; and 1 Corinthians 4:5, where Jesus will reveal the motives of the heart when He returns.

[6] Dobbs' Law of Torts, Dan B. Dobbs, Paul T. Hayden and Ellen M. Bublick, The Law of Torts § 30 (2d ed.)

[7] "For I am not ashamed of the gospel, because it is the power of God unto salvation to everyone who believes, first to the Jew, and also to the Greek." Romans 1:16.

[8] "Because, if you confess with your mouth that Jesus is Lord and believe in your heart that God raised him from the dead, you will be saved."

untruthful?[9] This Court allowed such an attack despite there being no such witnesses, which was the only acceptable method of attacking a witness's character for truthfulness in this case. This lack of witnesses is despite Plaintiff's public expressions about his religious beliefs and about this case, which this Court deemed so prolific that they warranted multiple pretrial orders addressed to the public to minimize the effect his expressions may have on the execution of a fair trial. With all this potential fodder, if Plaintiff is untruthful, shouldn't Defendants have been able to produce at least one witness to give such an opinion or testify as to such a reputation? The Court had no basis to believe that Plaintiff's truthfulness was in question.

A. The Court's denial of Plaintiff's motions in limine was a consequence for Plaintiff having recently given an interview to a local publication that had been critical of the Court's prior rulings.

1. The Court had a strong personal reaction to learning that Plaintiff had recently given an interview to the Post-Crescent.

The Court allotted three full days of pretrial hearing in this matter. (Doc. 224) SECOND AMENDED SCHEDULING ORDER. The focus of the pretrial hearing was to address dozens of unresolved motions in limine, all but seven of which were from Defendants. (Doc. 541) MOTIONS IN LIMINE SCORECARD. The Court first addressed the Defendants' motions in limine, and by mid-morning the second day, had entertained significant argument on them and made tentative rulings. (Docs. 553 and 554 - Minutes of 5-19-2025 and 5-20-2025 Pretrial Hearing, respectively). At that time, in the context of a discussion about media coverage of the trial, Plaintiff's counsel informed the Court that "We have been interviewed by the Milwaukee Journal, by the Appleton Post-Crescent, they are going to cover this trial." (Doc. 563) Transcript

[9] "Generally, the character of a witness may be impeached only in regard to matters which go directly to his reputation for truth and veracity." *Barren v. State*, 198 N.W.2d 345, 347 (Wis. 1972). "[T]he credibility of a witness may be attacked or supported by evidence in the form of reputation or opinion, but subject to the following limitations: (a) The evidence may refer only to character for truthfulness or untruthfulness." Wis. Stat. § 906.08.

of May 20, 2025, Pretrial Hearing at 70:4-7. The Court found this "a little bit offensive" (Id. at 74:14) and accused the Post-Crescent of being "misleading, not accurate, probably ***not consistent with the rulings that I've made***" (Id. at 75:8-11) (emphasis added), "not going to be two-sided" (Id. at 80:3), and not "neutral [or] fair" (Id. at 86:13-14). The Court predicted that the Post-Crescent would intentionally publish the story either the day before or the morning of trial because "they don't care about the issues that it will create for us. They are selling papers." Id. at 86:14-21. Plaintiff's counsel informed the Court, "I have no idea what they are covering, but I was –", and the Court interrupted with "I would think you guys do. We're not idiots." Id. at 79:16-19.

Despite the Post-Crescent not having published a story nor any actual indication that they would prior to trial, and despite the Court having no information as to the substance of what Plaintiff and the Post-Crescent discussed, the Court stated "It's almost interfering with our process of selecting a jury," (Id. at 74:14-15) "I would think that the comments that Mr. Schara made aren't going to be just normal, neutral comments," (Id. at 80:5-6) and it's "more irresponsibility by Mr. Schara" (Id. at 80:19-20). The Court went on: "So I can't hold the Post-Crescent responsible for publishing on Sunday, but I can hold Mr. Mendenhall and Pfleiderer, if he was part of it, and Mr. Schara, because he's a party – I can hold them all responsible, and I plan to." Id. at 86:23-87:1. The Court then said, "If I'm wrong and there's been no publication, I'm going to apologize and say I maybe didn't have enough respect for the Appleton Post-Crescent or maybe they care more about this case than what I thought." Id. at 88:11-14. The Court concluded with "***there will be a consequence, and all that consequence is going to be on Plaintiff's side***." Id. at 88:20-22 (emphasis added). One threatened consequence was to Plaintiff's counsel: "Mr. Mendenhall may get a letter from me tomorrow saying you are no

longer welcome to be part of this case." Id. at 84:5-7. The implication was clear; there had better not be a pretrial story by the Post-Crescent.

Almost immediately thereafter, the Court stated, "I am going to deny the Plaintiff's motions in limine in their entirety." Id. at 150:14-15. After hearing arguments on each of Defendant's motions in limine, the Court allowed no discussion on Plaintiff's motions in limine other than to acknowledge that they could object throughout the trial to Defendants attacking Plaintiff with his religious beliefs and expressions. Rather than utilizing the afternoon of the second day and the third day allotted for the pretrial conference to hear argument on Plaintiff's motions in limine, the Court adjourned the hearing at 12:26 p.m. on the second day. See Minutes of 5-20-2025 Pretrial Hearing. That evening, attorney Mendenhall filed a letter addressed to the Court apologizing for granting a media interview proximate to the trial date and informing the Court that he and Plaintiff's other legal counsel had since directed Plaintiff to cancel any media interviews through the conclusion of the trial. (Doc. 555). Neither the Post-Crescent nor any local media outlet published a story about the case prior to trial, and Plaintiff was optimistic that the Court would reconsider its ruling on his motions in limine, or, at a minimum, significantly limit Defendants' attacks on Plaintiff's religious beliefs and expressions. After all, in denying the motions in limine and allowing the attacks on Plaintiff, the Court did state, "there might be a point in trial where I say enough is enough. So you can object . . ." (Doc. 563) Transcript of May 20, 2025, Pretrial Hearing at 151:2-4. Plaintiff took the Court at its word.

Despite there being no pretrial story by the Post-Crescent, beginning with Plaintiff's first witness, the Court allowed a relentless attack on Grace's mother, Cindy Schara, with her religious beliefs and expressions and with her views on medicine and the broader health care system – all of which Plaintiff had attempted to prohibit with his motions in limine. In the midst

of the attack, Plaintiff's counsel objected, asking the Court how long this would be allowed to go on, but the Court overruled the objection, allowing it to continue. The attacks continued throughout the trial in a sustained attack on Plaintiff and culminated in an attack on Grace's sister, Jessica Vander Heiden, until it was objectively clear that there was more behind the Court's denial of Plaintiff's motions in limine than the implication that there had better not be a pretrial story by the Post-Crescent. After all, despite no pretrial story, the Court neither apologized nor revisited its denial of Plaintiff's motions in limine, nor limited the attacks. Something else was going on.

Even as these attacks continued, Plaintiff had to assume that the Court was fair and impartial and that its ruling was not based upon any personal bias. "[W]e always presume that the judge was fair, impartial, and capable of ignoring any biasing influences. That presumption, however, is rebuttable." *State v. Gudgeon*, 720 N.W.2d 114, 121 (Wis. Ct. App. 2006). After trial, however, two revelations - one involving the Post-Crescent and the other involving the Court issuing over $50,000.00 in cost judgments against Plaintiff in violation of the law - showed the Court's personal bias, and the Court lost the presumption of impartiality.

2. Not until reading an August 28, 2025, article by the Post-Crescent did Plaintiff learn of the Court's personal bias triggered by Plaintiff's interview with the Post-Crescent.

At the time of his ruling, but unbeknownst to Plaintiff, Judge McGinnis had been the subject of an investigation and a Post-Crescent article published in January 2024 critical ***of the rulings he had made***.[10] Not until September 10, 2025, did Plaintiff learn that the Post-Crescent had been critical of Judge McGinnis' prior rulings, alleging that they were based upon his personal

[10] See https://www.postcrescent.com/story/news/local/2024/01/24/outagamie-county-judge-faces-scrutiny-over-decision-to-jail-man/72322214007/, January 24, 2024 (originally published by Wisconsin Watch). Last visited September 11, 2025.

bias. AFFIDAVIT OF SCOTT SCHARA IN SUPPORT OF HIS COMBINED MOTIONS FOR RECONSIDERATION AND NEW TRIAL at ¶¶ 1-4. According to the article, "In 2009, an appellate court admonished McGinnis for being "objectively biased" after he threatened a defendant with maximum sentencing if the man violated his probation. The court ruled the defendant was entitled to a new judge and resentencing." Id. "In 2018, the appellate court reversed a six-month contempt sentence that McGinnis imposed when a defendant rolled his eyes and glared at him in a case that attracted scrutiny from legal watchdogs." Id. "McGinnis said the man could be released only by submitting a written apology and paying a $5,000 fine to the court." Id. According to the Post-Crescent, this sentence went beyond the 30-day statutory maximum, and "[t]he $5,000 fine imposed by McGinnis was also reversed because it exceeded the legal maximum by tenfold." Id.

More recently, according to the Post-Crescent, "Judge Mark McGinnis has come under investigation after he jailed a man over a contract dispute with a courthouse employee." Id. "John P. Gross, director of the Public Defender Project at University of Wisconsin Law School, reviewed the transcripts in Barth's case and said *it's unclear what the legal basis was for the judge jailing the defendant.*" Id. (emphasis added).

> Barth, the cement contractor jailed by McGinnis for the unspecified debt, didn't stay locked up for long. Fond du Lac County attorney Kirk Everson received a tip about the matter, ordered the transcript and . . . appeared by phone with Barth within 48 hours of the first hearing. McGinnis' tone had changed, and he quickly walked back the sentence.

Id.

Despite the Court's accusation that the Post-Crescent's reporting is "***not consistent with the rulings that I've made,***" the Post-Crescent was recently vindicated and published a follow-up story on August 28, 2025, with the headline "Outagamie County judge will resign, won't face

criminal charges for jailing cement contractor."[11] According to the Post-Crescent, "Outagamie County Judge Mark McGinnis [who] had jailed cement contractor Tyler Barth in December 2021 over a private money dispute . . . won't face criminal charges . . . but he will resign in February before his term expires, a special prosecutor assigned to the case said Aug. 28." Id.

There is no question that the Court, just prior to ruling on Plaintiff's motions in limine, took personal offense to the Post-Crescent reactions *and* what it presumed would be the Plaintiff's reactions to his decisions, likening them to a direct and dire threat toward him personally.

> But I think when I make decisions, if Mr. Schara is going to put me up on a billboard tomorrow because I make a certain decision, right, I – or somebody who I sentence to prison for life is going to make a death threat on me and send people to my house – which has happened – guess what, I still have to send you to prison, or in this case, I'm going to have to still make decisions.

Id. at 14:23-15:4. The Court's personal feelings toward Plaintiff could explain why the Court "asked for security – a lot of security on the day that voir dire is going to happen, and then additional security throughout the trial." (Doc. 563) Transcript of May 20, 2025, Pretrial Hearing at 82:18-20. "And security in the building, and they're involved in the trial. And we've been planning on how that happens, ***but I only control this***." Id. at 55:17-18 (emphasis added).

While characterizing his personal sentiment upon learning that Plaintiff and the Post-Crescent had gotten together as "a little bit offensive," the Court's reaction to this news revealed just how personally triggering it was. The Court was so personally upset that it summarily denied all of Plaintiff's motions in limine without a proper legal basis. The Court should reconsider its denial of Plaintiff's motions in limine and recognize that, while lacking a proper legal basis for denying Plaintiff's motions in limine, it likely harbored a personal resentment

[11]See https://www.postcrescent.com/story/news/local/2025/08/28/outagamie-county-judge-will-resign-wont-face-criminal-charges/85869698007/, August 28, 2025 (originally published by Wisconsin Watch). Last visited September 11, 2025.

toward the Post-Crescent and Plaintiff, which caused it to issue a biased ruling against Plaintiff, resulting in great prejudice and an unfair trial.

3. The evidence of the Court's personal bias satisfies the test for objective bias and for newly discovered evidence warranting a new trial.

"The test for [judicial] bias comprises two inquiries, one subjective and one objective." *State v. Gudgeon*, 720 N.W.2d 114, 121 (Wis. Ct. App. 2006). "Either sort of bias can violate a [party]'s due process right to an impartial judge." *Id.* (citing *State v. Walberg,* 325 N.W.2d 687 (1982). "The second component, the objective test, asks whether a reasonable person could question the judge's impartiality." *Id.* (citing *Walberg,* 325 N.W.2d 687).

> Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.'

In re Murchison, 349 U.S. 133, 136 (1955) (quoting *Offutt v. United States,* 348 U.S. 11, 14 (1954).

Relying on the U.S. Supreme Court in *Murchison*, the Wisconsin Court of Appeals in *State v. Gudgeon* determined that newly discovered evidence of a judge's handwritten note written before a probation revocation hearing stating "I *want* his probation extended" showed that the judge was not objectively impartial. *State v. Gudgeon*, 720 N.W.2d at 123 (emphasis in original). The *Gudgeon* court explained:

> We must resolve this case based on what a reasonable person would conclude from reading the court's notation, not what a reasonable trial judge, a reasonable appellate judge, or even a reasonable legal practitioner would conclude. The court here used strong language. "*I want* his probation extended." (Emphasis added.) "Want" signifies a personal desire on the court's part . . . Neutral and disinterested tribunals do not "want" any particular outcome. Moreover, a reasonable person familiar with human nature knows that average individuals sitting as judges would probably follow their inclination to rule consistently with rather than against their personal desires. The ordinary reasonable person would discern a great risk that the trial court in this case had already made up its mind to extend probation long before the extension hearing took place. Further, nothing in the transcript of the extension hearing would dispel these concerns. We therefore agree with Gudgeon that the extension hearing violated his due process right to an impartial tribunal.

Id. (internal citations removed).

In this case, just prior to the hearing on Plaintiff's motions in limine, the Court stated that he found Plaintiff's conduct of having recently given an interview to the Appleton Post-Crescent "a little bit offensive" and "there will be a consequence, and all that consequence is going to be on Plaintiff's side." Just as in *Gudgeon*, the Court's comments about being offended, along with all its criticisms of the Post-Crescent, showed a personal sentiment on the Court's part; and its promise that there will be consequences to Plaintiff's side, also like in *Gudgeon*, showed that the Court was committed to rule consistently with that sentiment and promise. The ordinary, reasonable person (had they known of the Court's personal history with the Post-Crescent) would discern a great risk that the Court had already made up its mind to render an unfavorable ruling against Plaintiff as the promised consequence for giving the interview to the Post-Crescent. Just as in *Gudgeon*, the evidence of the Court's personal sentiments did not come to light until after the trial.

The Court should find that Plaintiff has satisfied the requirements for moving for a new trial under Wis. Stat. § 805.15(3) because (a) this evidence of the Court's personal bias only came to Plaintiff's notice after trial when he read the Post-Crescent August 28, 2025, article where he first learned of the Post-Crescent January 24, 2024, article; and (b) Plaintiff's failure to discover this evidence earlier did not arise from lack of diligence in seeking to discover it; and (c) this evidence is material and not cumulative; and (d) this new evidence would probably change the result because had it been known to Plaintiff before the ruling, Plaintiff could have taken steps to prevent this biased court from presiding over his trial which would probably have changed the result of the trial.

B. The Court improperly allowed Defendants to cross-examine Plaintiff with his religious beliefs and expressions.

In denying Plaintiff's motions in limine, the Court announced that it would allow defense counsel to *cross-examine* Plaintiff about his *character* by means of confronting him with his religious beliefs and expressions, which is an improper method of eliciting character evidence. The Court ruled:

> With respect to Plaintiffs' motions in limine . . . most of them have to do with, you know, cross examination regarding religious beliefs and expressions and excluding evidence of conspiracy theories and postdeath (sic) advocacy activities. I'm going to allow all of those to come in. I am going to deny the Plaintiff's motions in limine in their entirety. And that might be case by case as we get in the middle of trial, but I believe that it is proper to cross examine a party to impeach them, to, you know, show their ***character***. I don't think any of those are being offered as impermissible ***character*** evidence. I don't believe any of that is not relevant. I think they are relevant. And it seems to be more probative than unfairly prejudicial.

(Doc. 563) Transcript of May 20, 2025, Pretrial Hearing at 150 (emphasis added).

"Generally, the character of a witness may be impeached only in regard to matters which go directly to his ***reputation*** for truth and veracity." *Barren v. State*, 198 N.W.2d 345, 347 (Wis. 1972) (emphasis added). "Wisconsin Stat. § 906.08(1) does not provide an exclusive list of the types of character attacks that fall within its bounds. The statute merely notes that the attack must be made "by opinion or reputation evidence or otherwise." *State v. Eugenio*, 579 N.W.2d 642, 647 (Wis. 1998). "A witness' testimony may be impeached by evidence of his reputation for veracity and truthfulness in his community." *Edwards v. State*, 181 N.W.2d 383, 386 (Wis. 1970). According to Wis. Stat. 906.08, character evidence:

> (1) Opinion and reputation evidence of character. Except as provided in s. 972.11 (2), the credibility of a witness may be attacked or supported by evidence in the form of reputation or opinion, but subject to the following limitations:
> **(a)** ***The evidence may refer only to character for truthfulness or untruthfulness***.

(emphasis added). In ruling against Plaintiff's motions in limine, the Court labeled the evidence as character evidence which can only refer to character for truthfulness or untruthfulness and can

only be admitted in the form of opinion and reputation testimony by other witnesses; but the Court allowed Defendants, who produced no opinion and reputation witnesses, to attack Plaintiff and his family on cross examination to elicit this evidence. This was against the rules and highly prejudicial. With this ruling made less than two weeks before trial, Plaintiff and his other witnesses had to completely overhaul their direct testimony to integrate his religious beliefs and expressions into the testimony in an effort to minimize the unfair prejudice sure to result from the anticipated cross-examination.

C. There was no proper basis under which the Court could have allowed Defendants to cross-examine Plaintiff with his religious beliefs and expressions.

The Court provided no basis for allowing Plaintiff to be cross-examined with his religious beliefs and expressions other than that they concern his character, which, as shown above, was improper. The Court issued no written order to memorialize its decision, and the full extent of its reasoning is contained in the aforementioned 3 pages of transcript from the May 20, 2025, pretrial conference.

1. It is improper to allow cross-examination of a witness with his religious beliefs and expressions for the purposes of attacking his credibility.

In his motions in limine, Plaintiff informed the Court:

> Wisconsin Statute § 906.10 explicitly prohibits evidence of religious beliefs or opinions to show that the witness's credibility is impaired or enhanced. Additionally, under Wis. Stat. § 904.03, even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury. This evidence has minimal to no probative value regarding the specific claims at issue. ***The only possible purpose of Defendants introducing Plaintiff's religious beliefs would be to prejudice the jury against him based on his personal religious convictions. This would violate Wis. Stat. § 906.10 and would be unduly prejudicial under Wis. Stat. § 904.03.***

(Doc. 357) PLAINTIFF SCOTT SCHARA'S COMBINED MOTIONS IN LIMINE at 4 (emphasis added).

The language of Wis. Stat. § 906.10 is very similar to Fed. R. Evid. 610, which provides that "Evidence of a witness's religious beliefs or opinions is not admissible to attack or support

the witness's credibility." "[Fed. R. Evid. 610] closely resembles a privilege, and is probably grounded in a judgment that such evidence is not highly probative, and that it is unseemly for courts to invade unnecessarily this very personal sphere of the witness' life." *United States v. Jorell*, 73 M.J. 878, 883 (A.F.C.C.A. 2014) (quoting Saltzburg & Redden, *Federal Rules of Evidence Manual* 560 (4th ed. 1986)) (internal quotations and citations omitted). "[T]he purpose of the [rule] is to strictly avoid any possibility that jurors will be prejudiced against a certain witness because of personal disagreement with the religious views of that witness." *Id.* (quoting *David v. Jones*, No. 1:04-cv-294, 2007 WL 2873041, at 10 (W.D. Mich. September 26, 2007)). In the *Jorell* case, the court prohibited the defense from cross-examining a witness with her religious beliefs when the purpose would be to create a prejudice against her:

> It was obvious that the defense was trying to introduce evidence of ASW's beliefs for the very reason Mil. R. Evid. 610 prevents it. Their fundamental argument was that ASW's beliefs were so ridiculous that they were evidence of her being out of touch with reality and unworthy of belief. The defense was attempting to use the witness's faith or religious beliefs to create a prejudice against her so she would not be believed when she testified as to what the appellant had done to her. This is precisely the sort of evidence not allowed under Mil. R. Evid. 610.

Id. In his motion in limine, Plaintiff informed the Court that "The only possible purpose of Defendants introducing Plaintiff's religious beliefs would be to prejudice the jury against him based on his personal religious convictions." (Doc. 357) PLAINTIFF SCOTT SCHARA'S COMBINED MOTIONS IN LIMINE at 4. The Court did not even acknowledge this concern in dismissing the motion.

2. It is improper to allow cross-examination of a witness with his religious beliefs and expressions, especially if the probative value of the testimony is substantially outweighed by the danger of unfair prejudice.

a. The Court did not follow the legal standard.

Even if relevant, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ." Wis. Stat. § 906.03. Even after improperly

disregarding the law under Wis. Stat. 906.10, the Court was supposed to determine whether Plaintiff's religious beliefs and expressions were relevant to his credibility due to any tendency they may have to show his bias, prejudice, or interest. It did not. If it had, the Court should have next determined the probative value to the case, should Plaintiff's credibility be diminished by the attack. It did not. If it had, the Court should have next determined the danger of unfair prejudice Plaintiff would suffer due to the attack. It did not. If it had, the Court should have next compared the probative value with the danger of unfair prejudice. It did not. If it had, the Court should have determined that the probative value would be substantially outweighed by the danger of unfair prejudice.

b. Had the Court followed the legal standard, it would have been compelled to determine that the probative value of the testimony was substantially outweighed by the danger of unfair prejudice.

By labeling the evidence as character evidence, the Court limited its relevance to its tendency to show Plaintiff's truthfulness or untruthfulness. The Court did not find that the evidence was relevant to any claims of contributory negligence or failure to mitigate, and ultimately, such defenses were not even put to the jury. Thus, the degree to which Plaintiff's decisions leading up to Grace's death were motivated by his religious beliefs and expressions was of no probative value. The Court did not disagree with Plaintiff's insistence that he was only a fact witness and that his out of court opinions were inadmissible under Wis. Stat. §§ 907.01 and 907.02. (Doc. 357) PLAINTIFF SCOTT SCHARA'S COMBINED MOTIONS IN LIMINE at 7-8 and (Doc. 563) Transcript of May 20, 2025, Pretrial Hearing at 150-152. Thus, the degree to which the jury agreed or disagreed with Plaintiff's opinions about Grace's medical care was of no probative value. The only probative value of the evidence was the degree to which Plaintiff's case hinged on the jury believing his testimony. However, the Court never

explained why allowing Plaintiff to be attacked with his religious beliefs and expressions would make the jury more or less likely to believe his testimony.

Even if the Court had based its ruling on the idea that the evidence showed Plaintiff's bias, prejudice, or interest in the case, such predispositions are only relevant to Plaintiff's credibility and truthfulness as a witness. The probative value of the evidence depends upon the degree to which the jury would expect a man who has agreed to not financially benefit from their verdict and wants his daughter's death certificate changed to the truth to lie under oath in order to accomplish this. The Court had no reason to believe that Plaintiff would do this. There is a vast difference between the probative value of a witness's religious beliefs and expressions that *might* point to bias and the possibility of diminished credibility (low probative value, if any) and the probative value of the testimony of a credible witness of another witness's reputation for dishonesty (higher probative value, but not present in this case). Had the Court engaged in such an analysis, it would have been compelled to determine that the evidence of Plaintiff's religious beliefs and expressions had little to no probative value.

On the other side of the scale is the danger of unfair prejudice likely to occur as a result of the attack on the Plaintiff's religious beliefs and expressions. "[W]hile we will accept the erroneous and even foolish reasoning of jurors as a reflection of the human condition that all jurors bring to the jury deliberation table, we will not tolerate such racial or religious prejudices that are violative of our fundamental beliefs of fairness and equality." *Anderson v. Burnett County*, 558 N.W.2d 636, 641 (Wis. Ct. App. 1996) (citing *State v. Shillcut*, 350 N.W.2d 686, 695 (Wis. 1984)). There is always the very real and significant danger of a jury being prejudiced against a witness who holds religious beliefs with which they strongly disagree, and that such prejudice will interfere with the search for truth.

II. The Court's cost judgments against Plaintiff showed its personal bias.

On July 15, 2025, in violation of Wis. Stat. § 814.10(1) and (4), the Court, and tellingly, not the Clerk of Courts, issued judgment for costs and disbursements against Plaintiff totaling over $50,000.00. (Docs. 894 and 895) JUDGMENT[S]. On July 24, 2025, Plaintiff filed a motion for review of these costs, which detailed how the Court's judgment for costs and disbursements violated the law. (Doc. 899) NOTICE OF MOTION AND MOTION FOR COURT REVIEW OF COSTS.

On July 11, 2025, Defendants filed their Notice of Taxation of Costs, and the Court issued judgment for these costs before the expiration of the statutory notice period during which Plaintiff was entitled to object. Id. at ¶¶ 2-9. On July 14, 2025, during the statutory notice period, Plaintiff did file a timely Objection, "[h]owever, by the time the Objection (July 14, 2025, Docket No. 896) was processed by the Court's Electronic Filing System, it appears that the Costs already had been inserted into the Judgments (July 15, 2025, Docket Nos. 894-895)." Id. at ¶¶ 7-8. In addition, "The statute on costs requires that the Clerk of Courts 'shall note on the bill all items disallowed, and all items allowed, to which objections have been made.' Wis. Stat. 814.10(4). The docket contains no record entry of this occurrence." Id. at ¶ 10. Plaintiff's Objection to costs, filed within the statutory notice period, was not even part of the court record at the time the Court filed the cost judgments against Plaintiff, which the Court issued prematurely and in violation of the statutory notice period. This is doubly clear from the fact that the cost judgments contain no reference to Plaintiff's objections. The Court never did grant Plaintiff a hearing on his motion for review of costs or make a ruling on it, simply letting it lapse. Instead, on July 29, 2025, Bills of Costs were issued against Plaintiff and in favor of each

Defendant, signed by the Clerk of Courts and the Deputy Clerk. (Docs. 902 and 903) BILL[S] OF COSTS.

These occurrences are not merely irregularities. This is evidence of the Court's personal bias because the Court itself, rather than the Clerk of Courts, took it upon itself, in violation of Wis. Stat. § 814.10(1), to issue the costs judgments against Plaintiff which violated Plaintiff's substantive rights under Wis. Stat. § 814.10(1) and (4) to notice and to have his objections noted. Each cost judgment contained a signature line at the bottom for the "Outagamie County Clerk of Court," which the Court left blank and instead signed the top itself. (Docs. 894 and 895) JUDGMENT[S]. This is despite the fact that the notices of taxation of costs filed by Defendants were directed to and requested to be completed "by and before the Clerk of said Court of Outagamie County." (Docs. 886 and 889) NOTICES[S] OF TAXATION OF COSTS. Based upon these facts, "a reasonable person could question the [J]udge's impartiality." *See State v. Gudgeon*, 720 N.W.2d 114, 121 (Wis. Ct. App. 2006).

III. The Court's Dismissal of Plaintiff's declaratory judgment claim was erroneous.

A. Plaintiff's declaratory judgment claim was his most important claim.

In his Amended Complaint, Plaintiff sought declaratory judgment that the DNR order placed on Grace's medical chart and the administration of certain drugs without consent were unlawful and/or in violation of hospital policy. Plaintiff's declaratory judgment alleged that the DNR was placed on Grace's chart contrary to hospital policy, without informed consent, in violation of the duty of care, and in violation of Wis. Stat. § 154.19 ("Statutory DNR"). This was Plaintiff's most important claim, as Plaintiff's counsel argued:

> I am speaking for my client, no amount of money in the world will replace what happened to him. A declaration will go much further than money could. It won't go far enough. It will not replace his daughter, but a declaration will go further than money. He is not here for the money. He is losing money on this case.

(Doc. 563) Transcript of May 20, 2025, Pretrial Hearing at 35:17-23.

B. The Court denied Defendants' numerous motions to dismiss Plaintiff's declaratory judgment claim, including the Statutory DNR.

Prior to trial, the Court denied Defendants' motions to dismiss and motions for summary judgment concerning the declaratory judgment action. Defendants made ripeness and mootness arguments, but the Court denied all of them. Throughout the trial and after the close of evidence, Defendants continued to oppose the declaratory judgment and the Statutory DNR, making arguments on the record and in writing,[12] but the Court, after careful and ongoing consideration, continued to reject Defendants' arguments.

On day eleven of the trial, after the jury had been excused for the day, the following exchange occurred on the record regarding the Statutory DNR claim:

> MR. GUSE: Based on the Court's comments, are we to assume that the statutory DNI [sic] issue you are going to let the jury -- that go to the jury?
>
> . . . .
>
> ***THE COURT: My most recent research -- and the thing that thinks that the statute applies, which is a little bit of a change is -- if you look at all the statutes and the administrative rules, there is no other provision anywhere that would deal with DNR orders within a hospital setting.***
>
> . . . .
>
> MR. VOILAND: Judge, I have to add this on this topic. It's the – it's actually the most cited decision of the Wisconsin Supreme Court of any time in history, it's State ex rel. Kalal vs. Circuit Court for Dane County. 2005 case. Justice Sykes wrote the decision. It's about statutory interpretation. The – the Court begins and ends with language of the statute. The Court does not consult extrinsic sources unless the language of the statute is ambiguous. And the one thing that Justice Sikes writes, a couple years before I was – the one thing Justice Sykes writes is that the Court does look at the language of surrounding statutes. And you just said that, Your Honor, that you were looking at the language of the surrounding statutes. But that answers this question on 154. The Court does not consult extrinsic sources. It's inappropriate.
>
> THE COURT: Anyway, let's just leave it at that, and at least you know what the issues are.

[12] See DEFENDANTS' GAVIN SHOKAR, M.D. AND ASCENSION MEDICAL GROUP-FOX VALLEY WISCONSIN, INC.'S TRIAL BRIEF ON THE INTRODUCTION OF WIS. STAT. § 154.19 and DEFENDANTS' JOINT TRIAL BRIEF ON THE SPECIAL VERDICT FORM.

(Doc. 908) Transcript of JURY TRIAL DAY 11 – AFTERNOON SESSION at 180:24 – 183:7 (emphasis added). That evening, Attorney Voiland sent an email to the Court and parties stating: "Attached is the Wisconsin Supreme Court's decision in *Kalal v. Circuit Court for Dane County*, 2004 WI 58, which Plaintiff referenced at the close of argument today."

On day twelve of the trial, after the close of evidence, the Court clearly denied Defendants' motion for a directed verdict of dismissal of the declaratory judgment claim, stating:

> THE COURT: So I think we've covered, to the extent that we need to, the motions after verdict, both at the time that the plaintiff rested and at the time that the case was finished in full. ***All of them have been denied other than the battery claim.*** There's the DNR statutory claim, which has been undecided, which we'll talk about when we get to the instructions. And there's the declaratory judgment by you, Attorney Franckowiak, regarding the nurse having no responsibility, but I think we're answering that by the way we're doing this too. So those are still there, but the rest of them are denied.

(Doc. 909) Transcript of JURY TRIAL DAY 12 – AFTERNOON SESSION at 91:17 – 92:3 (emphasis added).

After hearing all the evidence and considering the law, the Court denied Defendants' motion for a directed verdict on the declaratory judgment claim, including the Statutory DNR; however, that ruling was never reduced to writing. After the jury rendered its verdict for the hospital, the Court failed to address the declaratory judgment claim.

C. After the jury verdict, the Court executed Defendants' proposed order for Judgment on the verdict, which erroneously dismissed Plaintiff's declaratory judgment claim upon the merits.

On July 7, 2025, Plaintiff's counsel filed a letter noting that an order for judgment on the verdict had not yet been rendered or entered, that the claim for declaratory judgment remained at issue, and that Plaintiff intended to file a motion with respect to that claim. On July 8, 2025, Defendant Shokar's counsel filed a letter response stating:

> As to Attorney Voiland's claim regarding the declaratory judgment action, it is Dr. Shokar's position that the jury verdict rendered on June 19, 2025 is now the law of the case. As such, the twin doctrines of issue and claim preclusion apply. The jury determined that Dr. Shokar was not negligent regarding the orders placed for lorazepam and morphine or for the continuing use of

> Precedex. The jury also concluded that Dr. Shokar did not violate the standard of care as to informed consent when he ordered lorazepam and morphine. Further, question 3C of the verdict form gave the opportunity for the jury to determine whether the do-not-resuscitate (DNR) order was placed without informed consent and the jury declined to answer that question by virtue of their answer to question 3. Thus, based on the findings of the jury, there is no basis upon which this Court can render a declaratory judgment in favor of the Plaintiff and that cause of action must be dismissed with prejudice.

(Doc. 345).

On July 9, 2025, Defendants filed a Proposed Order For Judgment stating:

> NOW, THEREFORE, IT IS HEREBY ORDERED: That judgment on the verdict may be entered as follows:
>
> That the Amended Complaint of plaintiff, and all of the causes of action set forth therein, ***including but not limited to any cause of action for declaratory judgment, are hereby dismissed upon the merits***, with prejudice, together with taxable costs and disbursements to be awarded to the defendants against the plaintiff, Scott Schara, individually, and as the Administrator of the Estate of Grace Schara, pursuant to Wis. Stat. §814.04.

(Doc. 882) (emphasis added). On July 10, 2025, the Court adopted and issued Defendants' proposed order.

As stated above, Plaintiff's declaratory judgment claim was his most important; his counsel meticulously developed and elucidated the legal basis for this claim, and besides his battery claim, it was the most strenuously opposed by Defendants. The work done by all parties and the Court in developing this issue for decision should not be for naught. Defense counsel argues that the jury verdict rendered on June 19, 2025, is now the law of the case, and as such, the twin doctrines of issue and claim preclusion apply. However, that verdict was rendered by a jury prejudiced against Plaintiff due to the Court's denial of Plaintiff's motions in limine, which allowed Defendants to attack him with his religious beliefs and expressions. Should the Court grant Plaintiff's motion for a new trial, it would serve the interests of judicial economy for the Court and parties to be guided by the Court's reasoned decision to allow the declaratory judgment claim, including the Statutory DNR, to go forward. The Court should issue an order memorializing its basis for having denied all of Defendants' motions to dismiss the declaratory judgment claim, including the Statutory DNR.

D. The Court should issue a declaratory judgment that Dr. Shokar placed an illegal DNR on Grace's chart in violation of Wis. Stat. § 154.19.

At the close of evidence, the Court denied Defendants' motions to dismiss the declaratory judgment claim based upon the Statutory DNR. The facts necessary for the Court to issue a declaratory judgment that Dr. Shokar placed an illegal DNR on Grace's chart in violation of Wis. Stat. §154.19 were undisputed, and the Court had already determined that the statute applied to those facts. It was undisputed that neither Grace nor any of her health care agents signed the DNR order, which was a violation of §154.19(1)(d) with reference to §154.225(2). It was undisputed that neither Dr. Shokar nor any person at his direction provided Grace nor any of her health care agents with written information about the resuscitation procedures they supposedly chose to forego and the methods by which they may revoke the DNR order in violation of §154.19(2)(a). It was undisputed that neither Dr. Shokar nor any person at his direction either affixed to Grace's wrist a DNR bracelet meeting the specifications established under §154.27(1) or provided an order to permit Grace or someone on her behalf to order a DNR bracelet from a commercial vendor in violation of §154.19(2)(b).

IV. The Court's Dismissal of Plaintiff's battery claim was erroneous.

Plaintiff's battery claim alleged that Dr. Shokar and Nurse McInnis administered medications to Grace without consent, which constituted either harmful or offensive contact. At the close of evidence in this matter, the Court granted Defendants' motion to dismiss the battery claim and provided its basis on the record.[13] Under the overarching idea of a patient giving implied consent by being in a hospital, the Court based its dismissal on its finding that Plaintiff had consented to the contact. Id. The Court principally relied on: Exhibit 360, page 3, paragraph

[13] (Doc. 909) Transcript of JURY TRIAL DAY 12 – AFTERNOON SESSION at 46:2 – 52:11.

3 which, according to the Court, showed Plaintiff's consent to sedate Grace for oxygen support "at least at some point during Grace's hospitalization"; Jessica Vander Heiden's testimony that she knew that Precedex was being administered; and Plaintiff's trial testimony of telling Dr. Shokar when they spoke on the phone October 13th, the morning of Grace's death, to do the best he can do for Grace short of intubating and ventilating her (DNI), which, in the Court's opinion, was Plaintiff's consent to Dr. Shokar subsequently administering her Lorazepam and Morphine. Id. Lacking evidence of express consent from anyone in Grace's family, the Court looked for implied consent through its own biased lenses, ignoring the context of their testimony, and claimed to have found it. The Court erred by substituting its judgment for the jury's on the critical fact question of whether Plaintiff consented to the contact.

A. The Court erroneously prevented the jury from deciding if there was consent.

In substituting its judgment for the jury's, the Court ignored the significant conflict between Dr. Shokar's testimony and Plaintiff's testimony about the October 13th phone call. For example, the court ignored Plaintiff's testimony that Dr. Shokar informed Plaintiff and his wife that Grace "had such a good day yesterday that we should work on nutrition," and that Plaintiff approved a feeding tube based on this prognosis. Additionally, the court ignored Plaintiff's testimony that Dr. Shokar never used the term DNR or Do Not Resuscitate, never told them that CPR would be futile, and never mentioned anything about comfort care. The Court ignored Plaintiff's testimony that, had Dr. Shokar simply told them "because you do not want to give a pre-approval for a ventilator, we call that DNI (Do Not Intubate), and in our view, for a patient with a respiratory disease, DNI equals DNR (Do Not Resuscitate), therefore I am going to enter a DNR order on Grace's chart," Plaintiff would have never agreed to this.

The trial testimony clearly presented an important fact question for the jury regarding the context of the October 13th phone call. Dr. Shokar claimed to have informed Plaintiff of Grace's dire condition which, ***if the jury believed Dr. Shokar***, could have allowed them to infer that he would have discussed end of life issues with Plaintiff such as what he could and could not do to sustain Grace's life including using powerful drugs like Lorazepam and Morphine for off-label uses and CPR and that Plaintiff may have given some sort of consent. Plaintiff insisted that Dr. Shokar reported on Grace's progress and improvements such that nutrition goals including a feeding tube were the focus of the call, and, ***if the jury believed Plaintiff***, they could have found it unreasonable for Dr. Shokar to conclude from that call that Plaintiff had given any kind of consent to end-of-life treatments such as off label use of Lorazepam and Morphine or to the DNR. Because the Court recognized that any finding of consent would be based upon the substance of the hotly contested October 13th phone call, it should have deferred that decision to the collective judgment of the jury.

B. The Court erroneously prevented the jury from deciding if any consent was vitiated or invalidated.

After erroneously finding consent rather than submitting that fact question to the jury, the Court completely ignored that Plaintiff's trial evidence presented a genuine issue of material fact that Dr. Shokar's conduct following the October 13th phone call vitiated and/or invalidated any consent. Almost immediately following that phone call, Dr. Shokar entered a unilateral and undisclosed DNR order on Grace's chart, which Plaintiff argued was a material non-disclosure vitiating any consent, implied or otherwise, to any medications Dr. Shokar subsequently caused to be administered to Grace, or was a substantial change in circumstances invalidating any such consent. In *Hageny v. Bodensteiner*, the Wisconsin Court of Appeals stated that the Wisconsin Supreme Court has recognized that a patient's consent to treatment is not categorically

immutable once it has been given. 762 N.W.2d 452, 455 (WI. Ct. App. 2008) (citing *Schreiber v. Physicians Ins. Co.*, 588 N.W.2d 26 (WI. 1999)). Instead, a physician must initiate a new informed consent discussion when there is a substantial change in circumstances, be it medical or legal. *Id.* (Doc. 345) PLAINTIFF'S REPLY IN SUPPORT OF HIS TRIAL BRIEF REGARDING BATTERY AND EMERGENCY CONSENT at 3-7. At the close of evidence, Plaintiff's counsel argued:

> There's enough intentionality here with the combination of the DNR, which are -- we believe the evidence can allow the jury to decide was unilateral and undisclosed. And the fact that the morphine -- an intentional decision was made when Scott specifically wanted to be informed, that Dr. Shokar must have known by that morning he would have used it as one of the few tools in his tool box and also that he would not have been able to use resuscitative measures should that drug cause an overdose, and all of these things combined make the fact -- and this is where that offensive conduct [sic] -- the other jury instruction for battery comes in, all of these things would be offensive to a reasonable sense of personal dignity. Here I am, a patient who doesn't know there's a DNR . . . . doesn't know that – that . . . she's going to get morphine that can cause overdoses, and doesn't know that the DNR is going to preclude resuscitative and reversal measures, and a reasonable person in that patient's – or Scott's position would be offended by the fact that they are going to be subjected to that undisclosed risk. And so my argument is that that whole scenario vitiates any potential consent that the Court wants to find existed arising from that conversation. If there was consent, it was vitiated by that material nondisclosure that was in Dr. Shokar's mind of the consequences of the DNR and the morphine, or it was invalidated by a substantial change in circumstance, which was the consequence of the DNR that only he knew about.

(Doc. 909) Transcript of JURY TRIAL DAY 12 – AFTERNOON SESSION at 63:7 – 64:11.

The Court should reconsider its ruling that Plaintiff consented to the harmful and offensive contact with Grace because any consent Plaintiff may have given, express, implied or otherwise, was vitiated and/or invalidated the morning of her death when Dr. Shokar placed the unilateral and undisclosed DNR on her chart which precluded the use of any resuscitative and reversal measures should the Precedex, Lorazepam and morphine individually or in combination cause Grace to experience an overdose.

V. The Court should order a new trial in the interests of justice.

In his Complaint, Plaintiff stated that "This suit seeks to lay the groundwork for other hospital victims where their right to informed consent was denied, and the patient suffered injury

and death." (Doc. 65) FIRST AMENDED COMPLAINT at 6. In seeking the declaratory judgment and to have Grace's death certificate changed to the truth, and in disclaiming any financial proceeds from a jury verdict, Plaintiff invested years of his life and over one million dollars[14] with the selfless goal of getting justice not only for Grace, but the larger community, by exposing the true state of medicine and the broader healthcare system.

Plaintiff's pursuit of justice began ***after*** he placed Grace under Defendants' care in the hospital on October 6, 2021, at which time he had a favorable bias toward medicine and the broader healthcare system, not unlike the average member of a jury of his peers. It took Grace's death and his review of her medical records to overcome his favorable bias and to develop a negative bias toward medicine and the broader healthcare system based on the objective facts such as Defendants' use of Precedex, Lorazepam, and Morphine in lethal combination after an illegal DNR had been placed and in the context of fraudulent medical records such as the one depicting the phantom discussion with Grace Schara and her purported ***verbal*** General Consent for Treatment because she supposedly could not sign her name despite how much she loved signing her name and despite her being completely lucid at the time.

It is understandable that Plaintiff would share the facts of Grace's death and his personal opinions of negative bias toward medicine and the broader healthcare system with the public in order to save others from being victims like Grace. In fact, he rarely missed an opportunity. George Washington cautioned that without freedom of speech, people would be silenced and easily led, like "sheep, to the Slaughter."[15] However, Plaintiff knew that the jury should be

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[14] https://www.cambridgemedicalexperts.com/covid-19-and-the-grace-schara-case-thats-shaping-litigation/. Last visited September 25, 2025.

[15] "For if Men are to be precluded from offering their Sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of Mankind, reason is of no use to us; the freedom of Speech may be taken away, and, dumb and silent we may be led, like sheep, to the Slaughter". - Address to the Officers of the Army on March 15, 1783.

limited to the objective facts rather than his personal opinions, which is why he moved "To Exclude Plaintiff's Opinions Regarding Medicine and the Broader Healthcare System." (Doc. 357) PLAINTIFF SCOTT SCHARA'S COMBINED MOTIONS IN LIMINE at 6-9. Plaintiff's counsel argued:

> Mr. Schara's opinions on these matters are irrelevant in his role as a fact witness and do not make any fact of consequence more or less probable in this case. Even if these opinions had some minimal relevance, their probative value would be substantially outweighed by the danger of unfair prejudice, confusion of issues, and misleading the jury under Wis. Stat. § 904.03. In the current social climate, strong opinions about COVID-19 vaccination and medical care are common. Jurors may be influenced by their personal views on these matters rather than focusing on the actual medical care provided during Grace's hospitalization. Allowing this evidence would risk converting this trial into a referendum on vaccination policies or hospital care generally, which would be improper and prejudicial.

Id. at 8. Plaintiff wanted a jury of his peers that could arrive at the truth, one objective fact at a time, rather than one that was prejudiced against him from the outset because it had been told of his strong religious beliefs and expressions and negative bias toward medicine and the broader healthcare system all at once and without any facts or context. "In small doses, truth is a stimulant. In large doses, truth is a paralytic." Sean Michael Norris, *Heaven and Hurricanes* (2022).

Tell all the truth but tell it slant –
Success in Circuit lies
Too bright for our infirm Delight
The Truth's superb surprise
As lighting to the children eased
With explanation kind
The Truth must dazzle gradually
Or every man be blind.

Emily Dickinson, *Tell all the truth but tell it slant* (1890) (published posthumously).

Plaintiff's trial was supposed to be about why his daughter died – that was the real controversy. Plaintiff's case was "Landmark"[16] "first-of-its-kind"[17] "high-profile"[18] and "the first jury trial in the U.S. to directly challenge the listing of COVID-19 as the cause of death on a death certificate."[19] Instead, when the Court denied Plaintiff's motions in limine and allowed Defendants to attack him with his religious beliefs and expressions and his personal opinions of negative bias toward medicine and the broader healthcare system, these issues clouded the real controversy and the jury's ability to fairly decide it.

"For improperly introduced evidence to merit a new trial in the interest of justice, the testimony must so cloud a crucial issue that it may be fairly said that the real controversy was not fully tried." *State v. Burns*, 798 N.W.2d 166, 177 (Wis. 2011) (cleaned up) (internal quotations and citations omitted). The jury did not decide the real controversy - why Grace died. The jury decided to discredit Plaintiff's religious beliefs and expressions and his personal opinions of negative bias toward medicine and the broader healthcare system, and then it threw the baby out with the bathwater. In the interests of justice for Grace, and all the other victims with cases affected by her landmark case, the Court should order a new trial in which the real controversy of why Grace died can be decided by a jury not prejudiced by evidence improperly admitted by an objectively biased judge.

CONCLUSION

For the above reasons, the Court should reconsider its denial of Plaintiff's motions in limine, its order dismissing on the merits Plaintiff's declaratory judgment claim, and its directed

[16] https://healthexec.com/topics/healthcare-management/legal-news/landmark-covid-malpractice-trial-begins-over-death-19-year-old-down-syndrome. Last visited September 25, 2025.
[17] Id.
[18] https://www.wpr.org/news/jury-clears-wisconsin-hospital-malpractice-charges-death-grace-schara. Last visited September 25, 2025.
[19] https://www.cambridgemedicalexperts.com/covid-19-and-the-grace-schara-case-thats-shaping-litigation/. Last visited September 25, 2025.

verdict of dismissal of Plaintiff's battery claim. The Court should order a new trial in which Plaintiff can present these claims to the jury, wherein Defendants are prohibited from prejudicing the jury against Plaintiff by attacking him with his religious beliefs and expressions.

Respectfully submitted,

Dated: October 29, 2025

Electronically signed by Scott Schara
Scott Schara, Individually, and as the Administrator of the Estate of Grace Schara
Pro Se