

Document # 10

Amended Report of Dr. Kenneth Condrell, P.h.d.
06/05/08

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARMEN BRITT and CARMEN BRITT, as
Executor of the Estate of LULA BAITY,

Plaintiffs,

vs.

BUFFALO MUNICIPAL HOUSING AUTHORITY,
et al.,

Defendants.

AMENDED REPORT
OF
EXPERT WITNESS

Index No. 06-CV-0057

I, **Kenneth N. Condrell, Ph.D.**, a Clinical Psychologist, being duly sworn, deposes and says:

1. I am a Clinical Psychologist certified in the State of New York. I have been in full time private practice for 38 years and an Assistant Clinical Professor in the Department of Psychiatry, School of Medicine, State University of New York at Buffalo. I am personally familiar with the facts alleged herein.

2. Ms. Lula Baity was first referred to me for an evaluation in early 2004. At that time Ms. Baity was 87 years of age and despite her age was both energetic and articulate.

3. Upon information and belief, on October 1, 2003, Lula Baity was involuntarily taken from her home against her will without warning and without any family involvement and transferred to the Erie County Medical Center. Lula Baity was admitted under the diagnosis as "unable to care for self." Over adamant protestations and objections by Lula and her niece, Carmen Britt, doctors at ECMC refused to release Lula on her own accord and, instead, absent court order or judicial approval, further held Lula against her will for a period of ten (10) days, and then involuntarily transferred Lula to Grace Manor Health Care Facility, a nursing home, where she remained for an additional ninety-two (92) days.

4. I have been requested by plaintiffs' counsel to address and render an opinion as to the psychological impact this traumatic experience had on Lula Baity.

5. As considered sources for the preparation of this instant Report, I conducted personal and confidential interviews and evaluations of Lula Baity, on January 23, 2004 and March 22, 2006. I also had personal interviews with family and friends of Ms. Baity, all of whom frequently visited and engaged in private and social activities with Lula. I made a review of Lula Baity's medical records, dated March 18, 2004, obtained by Ms. Baity's counsel from Buffalo General Hospital, which medical record demonstrates that Ms. Baity was "orientated to time, place, person, President, season." Additionally, I reviewed Ms. Baity's mental health counseling notes compiled by her Mental Health Counselor, Barbara Dennis, MHC/BS. And, lastly, I reviewed Voluntary Nursing Association (VNA) Evaluation, Page 1, dated January 29, 2004, which nursing notes, in pertinent part, states that *Ms. Baity "has hx of problems related to removal from apt. to ECMC then to nursing home, . . ."*. The referred medical/counseling records are attached hereto as **Exhibit "A"**.

6. In considering the information set forth at ¶ 5, above, I, further, utilized my extensive experience as a Clinical Psychologist and made review, study and applied and/or utilized testing procedures set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, (DSM-IV-R), which manual lists mental diseases, conditions, and disorders, and also lists the criteria established by APA to diagnose them. Based thereupon, I have concluded and opine with a reasonable degree of psychological certainty that Lula Baity, as a direct and proximate cause of the abrupt and uncaring way she was involuntarily removed from her home and confined for a total of one hundred and two (102) days, suffered a Psychological trauma that resulted in her developing an Anxiety Disorder.

7. Specifically, my interviews were conducted in accordance to the anxiety disorders based on DSM-IV-R criteria methods. To this end, information regarding history of the problem, situational and cognitive factors influencing anxiety, and information for differential diagnosis and treatment planning was explored. I concluded that Lula should obtain mental health counseling, in the first instance, in hope that her anxiety disorder may be addressed. I later learned that she received such counseling with Barbara Dennis, a licensed mental health counselor.

8. The diagnostic criteria listed in the DSM-IV-R for an Anxiety Disorder are:

- A. Excessive anxiety and worry (apprehensive expectation) occurring more days than not for at least 6 months, about a number of event or activities (such as work or school performance).
- B. The person finds it difficult to control the worry.
- C. The anxiety and worry are associated with three (or more) of the following six symptoms (with at least some symptoms present for more days than not for the past 6 months):
 - 1) restlessness or feelings keyed up or on edge
 - 2) being easily fatigued
 - 3) difficulty concentrating or mind going blank
 - 4) irritability
 - 5) muscle tension
 - 6) sleep disturbance (difficulty falling or staying asleep or restless unsatisfying sleep)

9. In Lula's case, my interviews were conducted in accordance to the anxiety disorders based on DSM-IV-R criteria methods. To this end, information regarding history of the problem, situational and cognitive factors influencing anxiety, and information for differential diagnosis and treatment planning was explored. In Lula's case, I suggested that she obtain mental health counseling in the first instance to address her anxiety disorder. I later learned that she received such counseling with Barbara Dennis, a licensed mental health counselor.

10. In my personal evaluations of Lula over the past couple years (as substantiated by Ms. Dennis, MHC., family and friends), I found the symptoms of an Anxiety Disorder to be still present two years after my initial diagnosis in 2004. Specifically, and based on the diagnostic criteria listed in the DSM-IV-R for Anxiety Disorders, with Lula, I found:

Excessive anxiety and worry (apprehensive expectation) occurring more days than not for at least 6 months, about the events that took place in her life on October 1, 2003 when she was involuntarily taken out of her home, against her will, and confined at ECMC and Grace Manor Nursing Home for 102 days; isolated from her friends, relatives and weekly visits to her church.

11. In addition, with respect to category "C" in paragraph 6, above, Lula suffered symptoms, 1, 4 and 6 at least up to the time I saw her again two years after my initial meeting. She was restless, keyed up and would over react with fear when there was a knock at her door. Each knock at the door provoked even more anxiety that her intruders had come to get her again and take her away. Lula was also irritable and suffered with difficulty sleeping and had recurrent nightmares of being (what she described) kidnapped again.

12. In reliance on my March 6, 2004 statement to the Social Security Administration and Social Security's personal interview of Ms. Baity, as attested by Carmen Britt in her Affidavit sworn on May 30, 2008, the Social Security Administration decided that Ms. Baity's was capable of managing her own financial affairs and, accordingly, directed that benefits would be paid directly to her. **Exhibit "B"** - collective documents.

13. In summary, Carmen Britt, Bishop Young, (head of Lula's church), Dolores Young (friend) and Barbara Dennis, MHC/BS, who Ms. Baity and family hired based upon my recommendation that she (Ms. Baity) receive counseling for her Anxiety Disorder on a weekly basis

over the next 12 months. All agreed that Ms. Baity at no time ever impressed them as in need of assisted living or the services of a nursing home. In fact, they were all shocked to hear that Lula was removed from her home, hospitalized in the county hospital and then placed in the Grace Manor Health Facility.

14. My examination of Lula Baity revealed an 87 year old woman who could still touch her toes. She had a great sense of humor and a spirit rarely seen at this age. I observed no evidence of delusional thinking. In fact Ms. Lula's reality testing was within normal limits. I found Ms. Baity to be alert, with good memory and attention span and displaying an impressive amount of inner strength. This woman had a lot of character and related in a warm, friendly manner.

15. In my professional opinion, based on the observations and the data I had collected, Ms. Baity was competent to continue living in her residence. Due to the abrupt and uncaring manner in which Ms. Baity was removed from her home she has been caused to develop and suffer an Anxiety Disorder.

16. Ms. Baity, once a confident and secure woman, was at the times I examined her, living in fear as a result of being abducted from her home. She further expressed fear that were she to make any kind of a mistake that such would result in her being once again taken from her home. She was on edge and hyperalert, and her sleep was interrupted by nightmares of being taken away. She continued to obsess about the day she was taken away and separated from her family, her friends, her church and her home.

17. In my professional opinion, due to the abrupt and uncaring manner in which Ms. Baity was involuntarily removed from her home and involuntarily confined at ECMC and Grace Manor nursing home for the one hundred and two (102) days period, such event(s) caused Ms. Baity to

suffer a major traumatic experience that left her feeling vulnerable, apprehensive with excessive worries about her future. In Ms. Baity's mind, she was kidnapped and isolated from everything and everyone she valued. She was left for months, feeling isolated and alone with an uncertain fate of not knowing if she would return home or live the rest of her life in a nursing facility. Ms. Baity experienced a sense of helplessness, despair and depression.

18. In my professional opinion, the major traumatic experience which happened so late in the life of Ms. Baity left her psychologically damaged, possibly permanently and suffering with an emotional Anxiety Disorder, which caused her severe mental pain, suffering and anguish until her death on May 11, 2006.

19. I attest that I have had no prior acquaintance with either Ms. Baity and/or Ms. Britt or their legal representatives prior to January of 2004 and this litigation. I further state that, in such instance, I am not persuaded in one direction or another as to rendering a just and fair professional opinion regarding this case.

SUMMARY OF PROPOSED TRIAL TESTIMONY

20 If I am called to testify at trial in this matter, I would offer my opinions as set forth at ¶ 5 through ¶14,

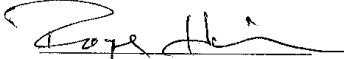
21. I have been retained by plaintiffs' attorney in this matter. The compensation paid to me to write this report was \$500. Additional nonrefundable fees of \$750 for trial preparation and \$1250 for ½ day trial testimony will be due two weeks before trial. An additional fee of \$1250 will be required if testimony extends into an extra ½ a day.

QUALIFICATIONS, INCLUDING A LIST OF ALL PUBLICATIONS
AUTHORED IN THE PREVIOUS 10 YEARS:

22. My Curriculum Vitae, my qualifications, including a list of all publications and a listing of other cases in which I have testified as an expert within the preceding four years is attached to this affidavit as **Exhibit "C"**.


Kenneth N. Condrell, Ph.D.

Sworn to before me this
5th day of June, 2008



ROGERS HICKS
COMMISSIONER OF DEEDS
In and for Buffalo, Erie County, NY
Commission Expires December 31, 2008