

Case Nos. 19-35017 and 19-35019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADREE EDMO, AKA MASON EDMO,
Plaintiff-Appellee,

v.

IDAHO DEPARTMENT OF CORRECTION, et al.,
Defendants-Appellants

and

CORIZON, INC., et al.,
Defendants-Appellants

On Appeal from Orders of the United States District Court
For the District of Idaho
(No. 1:17-cv-00151-BLW)

**DEFENDANTS-APPELLANTS' JOINT MOTION
TO SUPPLEMENT THE RECORD ON APPEAL**

Lawrence G. Wasden
Attorney General State of Idaho
Brady J. Hall,
Special Deputy Attorney General
Marisa S. Crecelius
Moore Elia Kraft & Hall, LLP
P.O. Box 6756
Boise, ID 83707
(208) 336-6900
brady@melawfirm.net
marisa@melawfirm.net
*Attorneys for Defendants-Appellants
Idaho Department of Corrections, Henry
Atencio, Jeff Zmuda, Howard Keith Yordy,
Richard Craig, and Rona Siegert*
June 20, 2019

Dylan Eaton
J. Kevin West
Parsons Behle & Latimer
800 West Main Street
Suite 1300
Boise, ID 83702
(208) 562-4900
Deaton@parsonsbehle.com
KWest@parsonsbehle.com
*Attorney for Defendants-
Appellants Corizon, Inc., Scott
Eliason, Murray Young, and
Catherine Whinnery*

Pursuant to Federal Rule of Appellate Procedure 10(e), Defendants-Appellants hereby move the Court to supplement the record on appeal with documents relevant to determining whether the District Court conducted a final trial on the merits and issued a permanent injunction in this case.¹

On May 30, 2019, the Ninth Circuit Court of Appeals ordered a limited remand to the District Court to resolve the following issues: (1) whether its order denying Defendants' motion for a stay pending appeal was meant to renew the injunction; (2) whether, as part of its ruling on Ms. Edmo's motion for preliminary injunction, the District Court also granted permanent injunctive relief; and (3) whether the District Court concluded that Ms. Edmo actually succeed on the merits of her Eighth Amendment claim for permanent injunctive relief. (Dkt. 90). The next day, the District Court responded and stated that (1) its order denying Defendants' motion to stay pending appeal was not meant to renew the injunction, (2) it had intended to grant a permanent injunction, and (3) the it had determined Ms. Edmo succeed on the merits of her Eighth Amendment claim for permanent injunctive relief. (Dkt. 91). In addition, the District Court renewed "[t]he preliminary mandatory relief . . ." it had previously granted. (*Id.*). In light of this Court's limited remand and the District Court's response, Defendants feel compelled to move to

¹On June 19, 2019, counsel for Defendants emailed this Motion and attached exhibits to Plaintiff's counsel inquiring if they would stipulate to supplement the record as requested in this Motion. Plaintiff's counsel emailed back the same day and said they would not so stipulate.

supplement the record on appeal with documents and information that bear on whether the District Court conducted a final trial on the merits and granted Ms. Edmo a permanent injunction.²

First, Defendants seek to supplement the record with the attached transcript of the District Court's Telephonic Status Conference held on January 30, 2019. During that status conference, the District Court stated that it had "full jurisdiction" while this case was pending on appeal and did not need to stay "the argument for permanent injunctive relief." (Ex. A at 9:16-19). This statement conflicts with the District Court's recent statements that, in 2018, it held a final trial on the merits, concluded Ms. Edmo had succeed on her claim for permanent injunctive relief, and issued a permanent injunction.

Second, Defendants seek to supplement the record on appeal with the District Court's Discovery Plan, (Ex. B), and Scheduling Order, (Ex. C). These were issued after the District Court's Order granting Ms. Edmo injunctive relief and allowed Plaintiff to file a Third Amended Complaint, Defendants to file an Answer and Jury Demand, and the parties to continue to litigate all of Plaintiff's claims and causes of action in preparation for a jury trial. Pursuant to these orders, Plaintiff has noticed

²By moving to supplement the record on appeal, Defendants do not waive any appeal, defenses, or objections to the District Court's Order issued on May 31, 2019 in response to this Court's limited remand (ECF No. 196).

depositions of various defendants and witnesses; these depositions appear to be related, at least in part, to issues of liability.

Finally, Defendants seek to supplement the record with the pleadings subsequently allowed by the District Court: (1) Plaintiff's Third Amended Complaint (without exhibits) (Ex. D); (2) Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery's Answer to Plaintiff's Third Amended Complaint and Demand for Jury Trial (Ex. E); and (3) IDOC Defendants' Answer to Plaintiff's Third Amended Complaint (Ex. F). These documents show that the parties filed pleadings related to all of Ms. Edmo's claims and causes of action and that Defendants have properly demanded a jury trial on all issues so triable in this case. Such filings are inconsistent with any assertion that there was a final trial on the merits in October 2018 regarding Ms. Edmo's request for injunctive relief. (Dkt. 91).

In summary, Defendants respectfully ask the Court to supplement the record with the aforementioned documents and transcript because they relate to the Court's limited remand and indicate that the October 2018 hearing was not a final trial on the merits.

This 20th day of June, 2019.

s/ Dylan A. Eaton

Dylan A. Eaton, ISB #7686

s/ Brady J. Hall

Brady J. Hall, ISB #7873

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANTS-APPELLANTS’
JOINT MOTION TO SUPPLEMENT THE RECORD ON APPEAL by electronic
filing on the date stated below to:

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Lori E. Rifkin
HADSELL STORMER & RENICK, LLP
4300 Horton Street, #15
Emeryville, CA 94608

Dan Stormer
Shaleen Shanbhag
HADSELL STORMER & RENICK, LLP
128 N. Fair Oaks Avenue
Pasadena, CA 91103

Amy Whelan
Julie Wilensky
Alexander Chen
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102

Craig H. Durham
Deborah A. Ferguson
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 235
Boise, ID 83702

DATED: June 20, 2019.

s/ Dylan A. Eaton

J. Kevin West, ISB #3337
Dylan A. Eaton, ISB #7686
PARSONS BEHLE & LATIMER
800 W. Main Street, Suite 1300
Boise, ID 83702
Telephone: 208-562-4900
Facsimile: 208-562-4901
Email: deaton@parsonsbehle.com
*Attorneys for Defendants-Appellants
Corizon Inc., Scott Eliason,
Murray Young, and Catherine Whinnery*

s/ Brady J. Hall

Lawrence G. Wasden
Attorney General State of Idaho
Brady J. Hall, ISB #7873,
Special Deputy Attorney General
Marisa S. Crecelius, ISB #8011
Moore Elia Kraft & Hall, LLP
P.O. Box 6756
Boise, ID 83707
Telephone: (208) 336-6900
Email: brady@melawfirm.net
Email: marisa@melawfirm.net
*Attorneys for Defendants-Appellants
Idaho Department of Corrections, Henry Atencio,
Jeff Zmuda, Howard Keith Yordy, Richard Craig,
and Rona Siegert*