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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HELEN MONROE, Administrator of The estate of deceased,)	
)	
)	No. 04 CV 7358
Plaintiff,)	
vs.)	Chicago, Illinois
UNITED STATES OF AMERICA and MELISSA GILLIAM,)	January 27, 2011
)	
Defendants.)	10:05 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

For the Plaintiff:

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1 Appearances (continued:)

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1 THE CLERK: 2004 C 7358, Monroe versus United
2 States.

3 MS. BROCK: Good morning, Your Honor.
4 Gena Brock for the United States.

:05AM

5 THE COURT: We'll pass the case.
6 I will rule today.

7 MS. BROCK: Okay. Thank you.
8 You're going to pass this up?

9 THE COURT: Yeah; just briefly.

10

11 (Whereupon, the Court directed his
12 attention to other matters on his call,
13 after which the following further
14 proceedings were had herein:)

:30AM

15

16 THE CLERK: 2004 C 7358, Monroe versus United
17 States.

18 MS. BROCK: Good morning, Judge.
19 Gena Brock for the United States.

:30AM

20

21 MR. LUMB: Kenneth Lumb on behalf of
22 plaintiff.

23 MR. SCHNEIDERMAN: Brad Schneiderman on
24 behalf of Dr. Gilliam, Your Honor. Sorry for being
25 late.

:30AM

25

THE COURT: The issue before me, which has

1 been the subject of briefing and a hearing, is
2 whether Dr. Gilliam is a federal employee for the
3 purposes of the Tort Claims Act.

4 The contract does say that Dr. Gilliam is an
5 independent contractor, which no one disputes.

6 Dr. Gilliam's position is is that the
7 governmental is effectively estopped from making
8 that assertion because she was, in fact, treated in
9 all respects and controlled by the VA in all
10 respects in a manner to render her an employee of
11 the Veterans Administration for purposes of the Tort
12 Claims Act.

13 It's the subject that comes up now and then,
14 the Supreme Court addressed it. The law in question
15 pretty much is the Restatement of Agency, the
16 Restatement (Second) of Agency.

17 The Restatement (Second) of Agency lists a
18 lot of factors, and it is the test. Although,
19 "test" may be too strong a word to describe it
20 because there are a fairly large number of factors
21 to be considered and the Office to Restatement, and,
22 for that matter, the courts of review have not
23 actually told me which of those factors should be
24 accorded which level of weight.

25 Essentially, there are two factors that I

1 think are of no significance here, I mean the
2 factors are essentially neutral:

3 One is "the kind of occupation, with
4 reference to whether, in the locality, the work is
5 usually done under the direction of the employer or
6 by a specialist without supervision," this is a tie.
7 It doesn't help me at all.

8 "whether the principal is or is not in
9 business," I think is not exactly appropriate in
10 this kind of setting, but that, too, is essentially
11 a neutral factor.

12 The factors that favor the government is
13 "whether the person employed is engaged in a
14 distinct occupation or business." "The skill
15 required in the particular occupation," that's also
16 in favor of the government because Dr. Gilliam has
17 such unique skill. "The length of time for which
18 the person is employed," Dr. Gilliam did have a
19 limited period of time for her employment. And "the
20 method of payment" also favors the government
21 because the payment was made by the Veterans
22 Administration to the University of Illinois.

23 There is some slight weight in Dr. Gilliam's
24 favor on the issue of whether or not the work is
25 part of the regular business of the employer,

1 because it was part of the regular business of the
2 employer despite the fact that she served as a
3 specialist or the unique skill requirement.

4 The instrumentalities, who supplied the
5 instrumentalities at the place of work is a little
6 in favor of Dr. Gilliam. She saw patients in two
7 separate locations and the equipment was not hers,
8 it was theirs, the VA had it. And, obviously,
9 whether the individual was employed in a distinct
10 occupation or business is in favor of the
11 government, as well.

12 The two factors that I think are most
13 important here are the extent of control the VA
14 exercised over Dr. Gilliam and the belief of both
15 parties whether they were in the relationship, to
16 use the old language, of master and servant.

17 The master and servant factor, I think, was
18 in favor of Dr. Gilliam. whatever the contractual
19 language said, she considered herself a VA employee,
20 conducted herself accordingly. Dr. Wood viewed her
21 as an employee. The VA's actions were consistent
22 with the notion that it considered her an employee.

23 And the government, ordinarily in these
24 cases--bearing in mind that this is a common
25 occurrence, somebody shows up at the office and is

1 contracted to do a specific bit of work, the line
2 supervisor would usually treat the individual as
3 though they were an employee--but, ordinarily, under
4 these circumstances, the government has to take some
5 effort to make sure that people understand and
6 operate on the premise that this is an independent
7 contractor.

8 The extent of control that the VA exercised
9 over Dr. Gilliam, I think, is a single biggest
10 factor here:

11 The VA basically determined when she showed
12 up for work, how many hours she worked, where she
13 worked, her professional appearance and practice,
14 her attitude toward the customers, her attitude
15 toward the bosses, and a control over outside
16 employment.

17 The rules dictated her professional
18 performance, her demeanor, her personal appearance,
19 her hours of employment. She wore a lab jacket
20 identifying her as a VA employee. She was expected
21 to behave in a manner befitting a VA employee, and
22 she was treated as a VA employee. She was not
23 supervised by anybody at the University of Illinois
24 in Chicago.

25 For these reasons, after considering

1 carefully all the factors, I find that she was a
2 federal employee for the Tort Claims Act.

3 I can see that the specific contract may
4 dictate that a person is a contractor even if
5 everything else implies an employer/employee
6 relationship. The VA did have a contract with the
7 University of Illinois at Chicago where the
8 University of Illinois agreed to provide the VA with
9 a board certified gynecologist. The contract stated
10 that the parties agreed that the contractor, it's
11 employees, agents, and subcontractors, shall not be
12 considered VA employees for any purpose.

13 Dr. Gilliam did, however, work at the VA
14 prior to the VA's contracting with the University of
15 Illinois Chicago for her services, and, to me, a
16 significant factor here is that the contractual
17 obligation was imposed on the University of Illinois
18 after she began her employment, so I give that
19 factor of little weight. My finding is that she was
20 a federal employee for the purposes of the federal
21 Tort Claims Act and we can proceed on that basis
22 from here on out.

23 Now that I've said that we can proceed on
24 this basis from here on out, I don't actually have a
25 very clear idea of what proceeding has to be done

1 and you can tell me.

2 MR. LUMB: Well, we would have to finish up
3 the subsequent physicians' depositions. I think the
4 ones that are still VA employees would be next. I
5 know there's at least one, probably two or three, so
6 perhaps we can probably schedule those and then come
7 back on a short status.

8 THE COURT: When do you want to come back
9 here?

10 MR. LUMB: Probably 60 days.

11 THE COURT: Mr. Walker, give them a couple of
12 months or a little more.

13 THE CLERK: Your next date will be April 14th
14 at 10:00 a.m.

15 MR. SCHNEIDERMAN: Your Honor, Brad
16 Schneiderman on behalf of Dr. Gilliam.

17 will there be a written ruling?

18 THE COURT: No, there will be an order.

19 MR. SCHNEIDERMAN: Okay. I could get a
20 transcript.

21 THE COURT: Right. Exactly.

22 MR. SCHNEIDERMAN: Okay. Thank you.

23 MS. BROCK: Thank you, Your Honor.

24 MR. LUMB: Thank you, Your Honor.

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THE COURT: Thank you, counsel.

(which concluded the proceedings had on
this date in the above entitled cause.)

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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
MATTER

/s/Blanca I. Lara

date

Blanca I. Lara

Date