

Goodland surgeon's lawsuit thrown out

By Patty Decker
Colby Free Press

After 18 months of depositions, briefs and other court documents, a lawsuit filed by a Goodland surgeon alleging two Colby doctors tried to destroy his reputation has been thrown out of court.

Judge Jack Burr ruled Monday in Thomas County District Court that he could find "no justification" to continue the case.

He ruled that the physicians were within their rights to make statements about the surgeon's competence or performance in "peer review" sessions.

The judge said he could find "no genuine issues" alleging defamation or damages attributable to Drs. Victor Hildyard or Raymond Ketting with respect to Dr. Duncan

Davis' lawsuit filed in November 2002.

Burr ruled that any statements which Davis complained about were made in one of two meetings where providers review the quality of medical care. The first, Burr said, was a medical staff meeting at Citizens Medical Center in Colby. The second was a meeting of emergency medical technicians at the hospital in Colby.

"The court finds that both of said meetings are covered by the peer review privilege," Burr wrote.

The judge said statements made in that type of meetings are confidential and the evidence in this case indicated that if the statements were made, they were repeated outside of the meeting by others and not by Hildyard or Ketting.

Michael O'Neal of Hutchinson, attorney for both Hildyard and Ketting, had argued more than six months ago that a person cannot recover for defamation on privileged statements made in peer review meetings that are not open to the public.

There has to be an honest evaluation of doctors' performance, he said, "particularly when quality of health care is being discussed."

After hearing the decision, O'Neal said today, "We felt from the beginning that the case had no merit, but plaintiffs have the right to sue and you have to go to the time and expense to defend.

"The court is there to determine, at the appropriate point, whether the plaintiff (Davis) has enough to proceed to a jury.

"In this case, the court agreed with us that the Davis' case was insufficient and the case should end, and we appreciate the fact that more time and expense won't be expended and a jury's time not taken up with further consideration of these allegations."

Burr said he was not clear with regard to the alleged damages Davis claimed.

In prior documents, Davis cited a monetary remedy and a trial by jury based on defamation, economic loss including lost income, and non-economic damages, along with the embarrassment and humiliation caused by the statements Hildyard and Ketting made.

In Burr's ruling, he addressed that issue by saying, he wanted to take the evidence presented in the "best

light of the plaintiff (Davis)."

Consequently, the judge assumed that the statements alleged by Hildyard and Ketting were made and further assumed that the statements were false.

"Defamation has been defined as a communication of false information exposing another living person to public hatred, contempt or ridicule or depriving another of the benefits of public confidence and social acceptance," Burr said.

Burr said he agreed with Hildyard and Ketting's attorney in that communication which involved matters of legitimate public concern or matters involving employer-employee relations are covered by a qualified privilege.

"If a communication is qualified privilege," the judge said, "Davis

can only recover by proof of actual malice on the part of the defendants (Hildyard and Ketting)."

In proving this, Burr said, it would require that the communication was made with knowledge that a statement was false or with reckless disregard to whether it was false, and that it was made with actual evil-mindedness or specific intent to injure.

However, Burr said that if a defamatory statement is made in good faith on any subject matter in which the person communicating has interest and it is made to a person with a corresponding interest or duty, the communication is then covered by qualified privilege.

Following Monday's ruling, Burr said no more filings from either side are necessary.

Principal will be leaving

SCHOOL, from Page 1

would change their support for a new education bill. A state district court judge has ruled the school funding scheme is unconstitutional and demanded that the Legislature find about \$1 billion or close the schools on July 1.

In other business, the board:

- Heard from Mary Porterfield, standing in for high school Principal Harvey Swager, who asked for the board to approve holding graduating seniors' diplomas until Monday. This way, she said, the school is in a better position to be sure that all fees owed are paid, athletic uni-

forms returned and to encourage appropriate behavior.

- Approved a cooperative agreement with Wallace County High School, in Sharon Springs, so that its girls can train and compete with Goodland's cross country team next fall. They will be considered Cowgirls for all competitions except for the regional and state meets.

- Voted to buy a skid loader currently leased from White Star Machinery and Supply Co., in Garden City, for \$14,658. With its detachable blade, the loader is used for snow removal as well as for unloading trucks. The limit for purchases of equipment without requiring a

bidding process was changed in July from \$10,000 to \$20,000.

- Accepted the resignation of Maria Lazo as a custodian at Grant Junior High School effective May 14.

The meeting was chaired by vice president Jane Philbrick, filling in for Dick Short, who was delayed. He joined the meeting as a member rather than interrupt the proceedings. The meeting started at 4 p.m. to allow members to attend Band in the Park that night in Steever Park. The board adjourned at 5:15 p.m. The next meeting will be 7 p.m. Monday, May 24, at the district's office at 1312 Main Ave.

Lawyers ask court for stay

Lawyers for the state scrambled to file an emergency motion Wednesday with the Kansas Supreme Court to stay a court order that would shut down Kansas school when the fiscal year ends June 30.

Goodland school Superintendent Marvin Selby said he was confident the stay will be granted. He said the stay will allow the school finance system to continue as is, which, unless changed, keeps the formula used to determine a school district's budget next year the same as this year.

A preliminary order, filed Dec. 2, by Shawnee County District

Judge Terry Bullock found the state's school finance system unconstitutional and ordered the Kansas executive and legislative branches to correct problems identified in the order by July 1. The Legislature adjourned last Friday without taking action on school finance.

Four days later, Judge Bullock filed a remedy order that requires Kansas "to cease and desist the expenditure of funds under all education funding statutes for the purpose of operating schools" effective June 30.

"The remedy order threatens to disrupt every essential activity of

the public school system," the state attorney general's office said in its request for a stay. "(It) cites absolutely no reason why such drastic, destructive and unwarranted steps must be hurriedly taken before appellate review can occur."

The state is asking the Supreme Court for a complete stay of the remedy order in order to keep the public school system functioning until the high court has time to consider an appeal of Judge Bullock's ruling.

Selby said he feels the Supreme Court will consider the two orders by Bullock together for a combined ruling.

No one wants to claim leak

Pipes under the kiddie pool at Steever Water Park began leaking not long after the pool opened three years ago, but neither the pool contractor nor the park contractor is willing to admit the problem is their fault.

Because of the impasse, the city has been forced into a mediation process, and at 5 p.m. on Monday, city commissioners will consider hiring expert witnesses to build its case.

City Manager Ron Pickman and Jerry Fairbanks, legal representative for First National Bank of Goodland, went to Denver last month to interview potential experts.

Pickman said experts from a construction engineering firm and a forensic engineer will investigate the problems at the water park to determine who is at fault. He said this is the first step in determining liability. The process could take more than a year and could go to court for a final decision.

Safety training for city utility employees was brought up at the meeting on May 3. Pickman said Kansas Municipal Utilities plans to set up a year-long program for 12 cities in northern Kansas to provide hands-on safety training one day a month. The estimated cost is \$8,192 and the commission will decide whether to join the other cities, and when the program will start.

In other business, the commission will:

- Review bids for a four-wheel-

drive pickup for the water department to replace one damaged in a collision. The money for the pickup was in the budget for last year, but the purchase was delayed.

- Consider a request from the Northwest Kansas Animal Shelter for a \$100 donation to their annual golf tournament.

- Appoint two members to the city tree board. The terms for Lou Spiney and Dale Ellison are up. Chair-

man Dale Hayden is expected to provide two recommendations.

- Pickman said he has researched the quorum requirements under the state law as requested by the commissioners at the last meeting.

- Note that Monday, May 31, is a city holiday and the offices will be closed for Memorial Day.

The city commission meets on the second floor of the City Administration Building, 204 W. 11th.

Marching for life



A group of members of Operation Save America, along with their horse Judgement and donkey Mercy, walked down the west side sidewalk on Main Avenue on Tuesday morning as part of their Walk Across America "prophetic tour." The group started in San Clemente, Calif., headed to a national Right to Life event in Ohio scheduled for July 17. The group travels from town to town in vehicles, walking through populated areas. Photo by Greg Stover/The Goodland Star-News

Guard unit goes to training

By Greg Stover
The Goodland Star-News

The 170th Maintenance Company of the Kansas Army National Guard will begin its annual training early Saturday morning by loading its equipment for the trip to National Training Center at Fort Irwin, Calif.

The 170th is a general support maintenance unit with headquarters in Norton and detachments in Goodland, Colby and Russell. Its mission will be to help repair and maintain the vehicles used in training.

The soldiers, including 28 assigned to the detachment in Goodland, will fly out of Salina and land in Barstow, Calif., then be bused to Fort Irwin.

Most of the soldiers have been ordered to 15 days active duty starting Saturday and ending May 29.

Some departed Wednesday as an advance party to prepare for the rest of the unit's arrival. These soldiers either have been ordered to a longer period of duty or will return home earlier than the others.

Fort Irwin is about 95 miles northeast of Los Angeles and 75 miles southwest of Las Vegas, Nev. The National Training Center provides a large maneuver area for Army brigade task forces.

Armored, infantry and aviation units operate together as a combined-arms team in simulated combat using the multi-integrated laser engagement system.

Walt Eggers of Great Bend is one of the soldiers assigned to the detachment in Goodland. The cer-

emony for Eggers' promotion to chief warrant officer 3, effective March 17, was held May 1 during the unit's drill weekend. He is the unit's allied trades technician, providing expertise to the welders, machinists, crane and wrecker operators in the 170th's service and evacuation section.

Eggers attended the Unit Public Affairs Representative course in March, which will help him tell the National Guard story. Eggers, a veteran of Desert Storm, has been in the Guard 18 years after serving four years in the regular Army. He is a graduate of Cheylin High School in Bird City and earned a Bachelor of Science in finance from Fort Hays State University in 1996.

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