

Neutral

As of: March 31, 2014 11:01 PM EDT

Kosilek v. Spencer

United States District Court for the District of Massachusetts
November 20, 2012, Decided; November 20, 2012, Filed
C.A. No. 00-12455-MLW

Reporter: 2012 U.S. Dist. LEXIS 165852

MICHELLE L. KOSILEK, Plaintiff, v. LUIS S. WOLF, D.J.
SPENCER, in his official capacity as Commissioner of the
Massachusetts Department of Correction, Defendant.

For the reasons described in detail in court on November 20, 2012, it is hereby ORDERED that:

1. Plaintiff Michelle Kosilek's Motion to Amend Judgment (Docket No. 568) is DENIED. The denial is, however, without prejudice to the filing of a new case concerning electrolysis based on current circumstances if they involve a material change in the relevant facts. See, e.g., [South Boston Allied War Veterans Council v. The City of Boston](#), 875 F. Supp. 891, 907-10 (D. Mass. 1995).

2. [*2] Defendant Luis S. Spencer's Motion to Stay Execution of Final Judgment Pending a Decision on Defendant's Appeal (Docket No. 561) is ALLOWED on the following conditions imposed pursuant to Federal Rule of Civil Procedure 62(c):

a) Defendant shall take forthwith all of the actions reasonably necessary to provide Kosilek sex reassignment surgery as promptly as possible if the September 4, 2012 decision ordering such treatment is affirmed.

b) Defendant shall, on the last day of each month, file under seal a report describing the actions he has taken, and any progress he has achieved, in preparation to provide Kosilek sex reassignment surgery promptly if the September 4, 2012 decision is affirmed. Unless otherwise ordered, each such report shall be served on Kosilek's counsel. Each report, and the information it contains, may be provided by counsel to Kosilek and those assisting counsel in this case, and may be used solely for the purpose of monitoring and litigating matters in this case. Any disclosure of a report or the information that it contains which is not authorized by this Order may be deemed a civil and/or criminal contempt.

Counsel: [*1] For Michelle Kosilek, Plaintiff: Frances S. Cohen, LEAD ATTORNEY, Bingham McCutchen LLP, Boston, MA; Joseph L. Sulman, LEAD ATTORNEY, Law Office of Joseph L. Sulman, Esq., Boston, MA; Christina Y. Chan, Jared A. Craft, Bingham McCutchen LLP - MA, Boston, MA.

For Department of Correction for the State of Massachusetts, Luis S. Spencer, Commissioner of the Department of Corrections, Defendants: Joan T. Kennedy, LEAD ATTORNEY, Department of Correction, Boston, MA; Richard C. McFarland, LEAD ATTORNEY, Commonwealth of Massachusetts, Department of Correction, Boston, MA.

For Does 1 through 100, Defendant: Joan T. Kennedy, LEAD ATTORNEY, Department of Correction, Boston, MA.

Christine M. Alexander, Movant, Pro se.

Judges: MARK L. WOLF, UNITED STATES DISTRICT JUDGE.

Opinion by: MARK L. WOLF

Opinion

ORDER

3. The parties shall, by December 7, 2012, supplement their [*3] submissions concerning Plaintiff's Motion for

Award of Fees and Costs, addressing at least the issues described by the court at the November 20, 2012 hearing.

4. A hearing at which the court intends to decide orally Kosilek's motion for attorneys fees and costs shall be held on December 19, 2012, at 3:00 p.m.

Spencer and/or other representatives of the Commonwealth of Massachusetts are invited, but not ordered, to attend the December 19, 2012 hearing if they

wish to discuss issues concerning the implementation of the court's orders or other matters. For planning purposes, defendant shall, by December 17, 2012, inform the court of whether Spencer, or any other representative(s) or of the Commonwealth of Massachusetts, will attend the December 19, 2012 hearing.

/s/ Mark L. Wolf

UNITED STATES DISTRICT JUDGE