

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
EASTERN DIVISION

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|---------------------|---|----------------------------|
| - - - - - | X | |
| KIMBERLY ANN SMITH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| vs. | : | Case No. 3:21-cv-12 |
| | : | |
| MENARD, INC., | : | <u>TRANSCRIPT OF FINAL</u> |
| | : | <u>PRETRIAL CONFERENCE</u> |
| Defendant. | : | |
| - - - - - | X | |

Courtroom 265, Second Floor
U.S. Courthouse
131 East Fourth Street
Davenport, Iowa
Monday, June 5, 2023
1:53 p.m.

BEFORE: THE HONORABLE STEPHEN B. JACKSON, JR., Magistrate Judge

APPEARANCES:

Appearing pro se: KIMBERLY ANN SMITH, pro se

For the Defendant: VERONICA KIRK, ESQ.
MWH Law Group LLP
Regency West Office Park, Building B
4350 Westown Parkway, Suite 120
West Des Moines, IA 50266

TONYA R. GERKE, CSR, RDR, CRR
United States Courthouse
123 East Walnut Street, Room 197
Des Moines, Iowa 50309

1 All right. So we will be calling about 30 potential
2 jurors for the trial. You'll receive -- you can receive from
3 the clerk's office their questionnaires that give kind of their
4 name --

5 MS. KIRK: Your Honor, I'm sorry. May I be heard on
6 the issue of a spoliation instruction, or will you be
7 considering that at this time?

8 THE COURT: Briefly. We need to wrap this up here in
9 about 20 or 25 minutes. I've got a number of things to go
10 through. So what do you have to say about that, Ms. Kirk?

11 MS. KIRK: I would just say that there needs to be --
12 in Iowa there needs to be intent for a spoliation requirement or
13 an adverse inference instruction to be issued, and I've got a
14 couple of citations for you if you'd like both from the United
15 States Court of Appeals for the Eighth Circuit and an Iowa Court
16 of Appeals decision that was recently issued.

17 I've got Morris v. Union Pacific Railroad --

18 THE COURT: Are those in your response to the
19 motion -- or to the --

20 MS. KIRK: No.

21 THE COURT: Okay. Well, I'm most interested in -- you
22 know, it seems like there is parts of the videos that aren't
23 available now -- right --

24 MS. KIRK: Correct.

25 THE COURT: -- based on what you said.

1 MS. KIRK: Okay.

2 THE COURT: And so I'm most interested in evidence, an
3 affidavit or testimony from people who can talk about the whys
4 and wherefores of that. That's the most important thing as far
5 as I'm concerned.

6 MS. KIRK: I would also note that this was not an
7 issue that was brought up during the discovery period. This has
8 only come up now once discovery is closed.

9 THE COURT: I understand that, but that doesn't answer
10 the question of does this even exist or did it even exist, and
11 so those are the things that I need to see.

12 MS. KIRK: Okay.

13 THE COURT: So it's more important to have evidence
14 about the whys and wherefores in that regard which would be an
15 affidavit from an affiant or testimony in that regard.

16 MS. KIRK: All right. Sounds good.

17 THE COURT: All right. So juror questionnaires will
18 be available. That's basic background of the jurors, where
19 they're from or where they work, things of that nature. You can
20 obtain those from the clerk's office.

21 I just want to make clear and remind everyone --
22 Ms. Smith and counsel -- that our local rules prohibit contact
23 with jurors -- jurors or prospective jurors before, during, or
24 even after the trial, and so I just want to be really clear
25 about that. This information is to be utilized only to make