

**IN THE SUPREME COURT OF THE STATE OF MONTANA
CASE NO. DA 21-0321**

DON DANIELS, as conservator of the Estate of SARAH DANIELS
Plaintiff / Appellee

v.

GALLATIN COUNTY, RICK BLACKWOOD, and JOHN DOES I-V
Defendants / Appellants
ATLANTIC SPECIALTY INSURANCE COMPANY
Defendant/Appellant

On Appeal from the Montana Eighteenth Judicial District
Gallatin County Cause No. DV-18-17B
Honorable Judge Rienne H. McElyea

**APPELLEE/ CROSS-APPELLANT DANIELS'
BRIEF IN OPPOSITION TO EXTENSION**

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Don Daniels, as Conservator for the Estate of Sarah Daniels (“Daniels”), objects to the Appellants’ Joint Motion for an extension of time to file opening briefs. Daniels provides this brief pursuant to Rule 16(3), M.R.App.P.

INTRODUCTION

Gallatin County and Rick Blackwood (“the County”) and Atlantic Specialty Insurance Company (“ASIC”) have jointly moved for a 30-day extension of time to file opening briefs pursuant to Rule 26(1), M.R.App.P. Daniels opposes the motion because any delay prejudices Sarah Daniels, and the movants have failed to establish the “good cause” required by Rule 26.

ARGUMENT

I. DANIELS IS PREJUDICED BY ANY DELAY.

A. The Judgment is Not Adequately Protected on Appeal.

Daniels has made it perfectly clear to both Gallatin County and Atlantic Specialty Insurance Company (“ASIC”) that time is of the essence to Daniels. Indeed, Daniels stipulated to accept a supersedeas bond with a value of half the judgment in exchange for immediate filing of notices of appeal. (Dkt. 189). Yet despite that agreement made on June 25, 2021, ASIC and the County did not provide *any* security for months. Over two months later, on August 30, ASIC finally posted a deficient bond that does not provide the required protection for

Daniels' judgment on appeal. (Ex. 1). The bond does not comport with the parties' stipulation or the requirements of Rule 22, M.R.App. P. Daniels has objected to the bond based on its inadequacy (Ex. 2), and the district court has not signed the bond. (See Ex. 1). Daniels has moved the district court to suspend the stay of execution based on the inadequacy of ASIC's bond. (See Ex. 3).

The failure to timely post a legally sufficient supersedeas bond does not affect the movants' right to appeal. *Progressive Direct Ins. Co. v. Stuvenga*, 2012 MT 75, ¶ 45, 365 Mont. 390, 276 P.3d 867. However, ASIC and the County should not be allowed additional time on appeal when they have failed to protect the judgment creditor as required by Rule 22 and the stipulation of the parties.

B. Most Importantly, Sarah Daniels is Damaged by Delay.

Lost in the movants' delay strategy is the plight of Sarah Daniels. Almost five years ago, Gallatin County's negligence caused Sarah to suffer a permanent, traumatic brain injury with diffuse axonal tearing – the “most serious of injuries.” (Findings of Fact, Dkt. 156, ¶¶ 13, 29). Gallatin County admitted its liability from the outset, but ASIC has refused to pay its policy limits for over three years.

Now 31 years old, Sarah has lost much of her memory of her life before the age of 27. *Id.* at ¶ 21. She is unemployable. *Id.* at ¶ 27. Sarah's pre-accident IQ in the 75th to 90th percentile is now reduced to the 14th percentile. *Id.* at ¶ 18.

She suffers from anxiety, loneliness, and depression, at one time including suicidal ideation. *Id.* at ¶¶ 18, 22.

At trial, unrefuted medical testimony established that as Sarah ages, her brain will become increasingly compromised. (Ex. 4, Dr. Schraa, Tr.Tr.2, p. 232, lines 4-15). Long term, Sarah will need assistive living or institutional care. (Ex. 4 at 235, lines 10-17). Sarah “has a window of time” before she starts “declining further and further.” (Ex. 4, Dr. Osterwell, at 78, line 1-4). “You will see in a short amount of time her increased need for care as she ages, greater decline as she ages due to her severe traumatic brain injury.” (Ex. 4 at 78, line 24 -79, line 2).

Any delay deprives Sarah of receiving needed services which increase the quality of her life. In addition, any delay erodes “the window of time” available to Sarah and her family before Sarah experiences further decline. Having already waited five years to recover the policy limits on an admitted liability claim, Sarah is prejudiced by any delay.

II. THE MOVANTS FAIL TO ESTABLISH GOOD CAUSE.

Rule 26(1) allows extensions “for good cause shown.” The County and ASIC have failed to establish good cause. The movants merely assert that the appeal involves complex and important issues, and that “Appellants desire additional time to fully develop these numerous and complex issues for the

Court's benefit.”

Movants' argument is unpersuasive for two reasons. First, this Court will not consider issues raised for the first time on appeal, so the issues on appeal must already be fully developed in the district court. *Borges v. Missoula County Sheriff's Office*, 2018 MT 14, fn 1, 390 Mont. 161, 415 P.3d 976, *citing Draggin' Y Cattle Co., Inc. v. Addink*, 2016 MT 98, ¶ 15, 383 Mont. 243, 371 P.3d 970. Second, both ASIC and the County have had years to “fully develop” the issues they intend to argue before the Supreme Court.

ASIC has had two years of litigation followed by one year of appellate process to develop the arguments due on September 17, 2021. ASIC filed extensive documents developing its legal arguments when seeking summary judgment. (Dkt. 52, 53, 92). The district court issued the order denying summary judgment to ASIC almost a year ago, on September 22, 2020. ASIC filed briefs in the district court when moving to alter or amend the summary judgment order. (Dkt. 109, 142). Furthermore, ASIC twice prematurely appealed from the order denying ASIC summary judgment. (DA 20-0516; DA 21-0069). In November of 2020, ASIC also petitioned this Court to assume supervisory control over the district court's summary judgment order *and* to stay the damages trial against the County. (DA 20-0516). In that petition, ASIC requested an expedited process

from this Court. (Petition, DA 20-0516). When it benefitted ASIC, time was of the essence. Now ASIC stalls.

The County has also had ample opportunity to develop its appeal arguments. The County submitted copious briefing prior to the entry of judgment. (Dkt. 54, 55, 76, 100, 137). The district court entered judgment against the County six months ago, on March 16, 2021. (Dkt. 160). The County then filed extensive post-trial briefing. (Dkt. 168, 181).

On appeal, the County and ASIC are limited to issues they raised in the district court. *Id.* Given that the movants are precluded from raising new issues on appeal, no additional time is needed to develop issues which have been repeatedly and exhaustively briefed in the district court. The County has made no showing that six months was an insufficient amount of time to prepare its opening brief. ASIC has made no showing that one year was an insufficient period in which to prepare its opening brief, especially in light of ASIC's two premature appeals and request for an expedited writ of supervisory control. The only justification given by the movants – a mere “desire” for additional time to “develop” the issues – does not constitute the good cause required by Rule 16(1) for an extension.

CONCLUSION

The movants' "desire [for] additional time to fully develop" their arguments does not constitute good cause for an extension. ASIC has had a year to formulate its arguments, and the County has had half a year. Given ASIC and the County's failure to provide adequate protection for the judgment on appeal, and given the harm to Sarah, no extensions should be granted.

DATED this 13th day of September, 2021.

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 16, Montana Rules of Appellate Procedure, I hereby certify that this brief is submitted in a single document limited to 1,250 words or less, proportionally spaced. This brief contains 1,190 words.

/s/Martha Sheehy

Martha Sheehy

CERTIFICATE OF SERVICE

I, Martha Sheehy, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Extension to the following on 09-13-2021:

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