

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. DA 23-0200

MATTHEW “MATT” OLDS,

Plaintiff /Appellee/Cross-Appellant,

v.

MARK HUELSKAMP,

Defendant/Appellant/Cross-Appellee.

SUPPLEMENTAL APPENDIX TO OPENING APPELLATE BRIEF

On Appeal from the Fourth Judicial District Court, Missoula County
Cause No. DV-19-1036
The Honorable Jason Marks, Presiding

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8	Trial Ruling Excluding Defendant's Expert Witness Shawn Paul, pp. 325, 326, 386	November 18, 2021

MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

MATTHEW PAUL OLDS,

Plaintiff,

vs.

Cause No. DV-19-1036

MARK HUELSKAMP,

Defendant.

Taken at 200 West Broadway
Missoula, Montana
November 17-19, 2021

TRANSCRIPT OF PROCEEDINGS

The Honorable Jason Marks, presiding

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Reported by Catherine A. Rebish
Official Court Reporter
406 258-4738

NOTE: Court transcripts are the proprietary work of the
court reporter. Copies must be obtained from the reporter as
set forth in MCA 3-5-604.

1 with since the beginning of time in this case. And so I'm not
2 pulling fast ones here. I'm trying to follow this rule to the
3 letter which hasn't allowed me to do any number of things that
4 I normally would have done.

5 THE COURT: And I recognize none of us would be
6 here if I could have gotten this trial in six months like I
7 wanted to.

8 MR. STEARNS: I'm not trying to hold anything
9 against anyone. If that's the -- if people are accusing me of
10 a procedural trap here when I think I'm just complying with
11 Rule 6, then let Baylie talk, whatever it is she has to say.
12 She's not cracking the case for either side. But we're doing
13 the best we can here under the mandates of Rule 6 that we're
14 all trying to get used to.

15 MR. SCHMIDT: And I would concur with that. I do
16 believe all the parties are operating in good faith, Your
17 Honor. I don't think that's the issue. I think that what I
18 guess my response would merely be is just that to Mr. Stearns'
19 point, we have had the report for a long time. Just like they
20 have had the future medical information, just like they have
21 had Ms. Caulfield's information.

22 THE COURT: I agree. If the disclosure for Shawn
23 Paul wasn't made properly then he's not testifying. I'm going
24 to -- you know, I drew a firm line with Dr. Taylor, I'm going
25 to do the same thing with Mr. Paul. So I mean, to the degree

1 we're going down that road, you guys can go back and look at
2 your timeline and see if he was timely and properly disclosed
3 and we'll cross that bridge when we come to it. But I, you
4 know, with taking this firm line, I can't see, you know, Ms.
5 Caulfield testifying when she wasn't disclosed under the rule.
6 So I'm not going to let her testify.

7 You had another issue I think, Mr. Stearns.
8 Because I feel like you got all excited at the word insurance
9 during Dr. Taylor's testimony.

10 MR. STEARNS: I did. So Dr. Taylor gets up, gets
11 to testify, he gets to say that it was a treatment. My point
12 yesterday as The Court realized, was no, it was a consultation.
13 If a plastic surgeon sends you a bill for \$80, you weren't
14 treated. You received a consultation for a cosmetic procedure,
15 which is exactly what it says, which is what Dr. Feist said as
16 well. And so now he comes in and he sounds like this guy that
17 says, oh, you got this nasal deformity and you're having
18 trouble breathing and all this stuff that, again, going back to
19 what's been disclosed or not, that was not what the plastic
20 surgeon did. He did a cosmetic consultation. That's exactly
21 what the record says. And now he feels defensive about it
22 because he knows insurance won't pay for cosmetic procedures,
23 which is why they haven't gotten this done. It's a cosmetic
24 thing that is not compensable under insurance. So he utters
25 the insurance world that he's living in, meanwhile the jury is

1 were operating on the hurried timeline, on the quick, efficient
2 low cost trial and we opted not to have an expert under those
3 circumstances. When everything changed and the scheduling
4 order was vacated and trial was set way out in the future,
5 yeah, we reevaluated. Then we disclosed an expert in September
6 of 2020, so over a year ago now. Plaintiff's counsel objected
7 to that. And said they wanted to take his deposition. We
8 said, Fine, take his deposition, disclose your own experts if
9 you want. They didn't do any of those things. A year goes
10 past and now they're claiming to be somehow prejudiced by this.
11 It's not equivalent to telling us on the eve of trial that the
12 babysitter is going to testify because they have had every
13 opportunity to review and respond and get the full benefit of
14 that disclosure.

15 THE COURT: Well, I'll give you that it is not the
16 equivalent of the babysitter. I think it is the exact
17 equivalent of Dr. Taylor and future medicals. So Mr. Paul is
18 out.

19 MR. BERKOFF: Your Honor, one more thing. We have
20 Dr. Matz in the hallway. Do you want to continue on with the
21 cross of our client or do you want us to put Matz on. It
22 should take five minutes, ten minutes.

23 THE COURT: Mr. Stearns, do you agree that he
24 would take five or ten minutes? Do you have a big cross coming
25 for him?