

DA 23-0200

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 82

MATTHEW “MATT” OLDS,

Plaintiff, Appellee and Cross Appellant,

v.

MARK HUELSKAMP,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV-19-1036
Honorable Jason Marks, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Scott M. Stearns, Zach A. Franz, Boone Karlberg P.C., Missoula, Montana

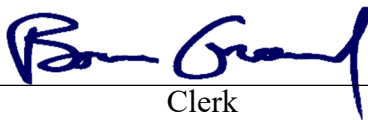
For Appellee:

Carey B. Schmidt, David C. Berkoff, Schmidt Berkoff, PLLC, Missoula,
Montana

Submitted on Briefs: February 14, 2024

Decided: April 16, 2024

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Mark Huelskamp (Huelskamp) appeals from the March 3, 2023 Order issued by the Fourth Judicial District Court, Missoula County, that entered judgment in favor of the plaintiff, Matthew Olds (Olds), after a jury found Huelskamp committed the torts of assault and battery of Olds. The Order imposed \$10,500 in compensatory damages, \$13,700 in punitive damages, and \$91,300 in attorney fees against Huelskamp.

¶2 We reverse and remand to the District Court for a new trial and action consistent with this opinion.

¶3 We restate the issue on appeal as follows:

Did the District Court err when it denied Huelskamp's expert witness from testifying because he was not timely disclosed?

FACTUAL AND PROCEDURAL BACKGROUND

¶4 This case arose from an ongoing dispute between neighbors Huelskamp and Olds. On July 18, 2018, Huelskamp and Olds passed each other on a narrow stretch of Horseback Ridge Road in Missoula, Montana. They both slowed down and exchanged middle fingers at each other. Both parties stopped their vehicles, and Huelskamp got out and approached Olds. From this point, the parties' perceptions of their interaction diverge significantly. According to Huelskamp, he approached Olds's vehicle and Olds spat in his face and threatened, "I'm going to kill you." Then, Olds started to open his vehicle door, and Huelskamp defensively put his arm out and either hit Olds in the nose, or hit the door forcing it into Olds's nose. According to Olds, Huelskamp approached him and pointed a

gun at him. Olds chided Huelskamp, “you’re a big tough guy with that gun in your hand.” Then, Huelskamp punched Olds in the nose and returned to his truck.

¶5 Olds filed a civil suit against Huelskamp alleging negligence, assault, battery, actual malice, and negligent infliction of emotional distress. The case was initially scheduled for trial for May 6, 2020, with the deadline for disclosing expert witnesses on February 25, 2020. Initially, Huelskamp did not intend to present an expert witness. On April 3, 2020, because of the COVID-19 pandemic, the parties filed a joint Stipulated Motion to Vacate Scheduling Order of November 25, 2019. On April 6, 2020, the District Court vacated its November 25, 2019 Scheduling Order, thus vacating the expert disclosure deadline. In September 2020, over one year before the trial, Huelskamp disclosed an expert witness, Shawn Paul (Paul). In the interim of rescheduling the trial, Olds filed a motion in limine seeking to exclude evidence of his prior criminal record and all references to prior interactions between the parties—including arguments and bad acts such as his speeding in the neighborhood, dumping waste on Huelskamp’s property, shooting Huelskamp’s trailer, and any other circumstances—including prior interactions between Olds and Huelskamp’s wife—between the parties leading up to the July 18, 2018 incident at issue in the case. He also sought to preclude opinion testimony of Huelskamp’s expert regarding the circumstances surrounding the July 18, 2018 incident. Olds argued that evidence he was a fast driver and caused Huelskamp to drive off the road, that he shot up Huelskamp’s trailer, or that he dumped debris on Huelskamp’s property was not relevant to the July 18, 2018 incident and would be offered only to show he was a bad guy in violation of M. R.

Evid. 404. He further argued Huelskamp's expert, Paul, lacked the requisite training and experience to testify and also asserted his disclosure—in September 2020—was untimely. The District Court granted Olds's motion to exclude evidence of his prior criminal record and references to prior interactions between the parties. The District Court denied Olds's motion to preclude testimony from Huelskamp's expert witness, but the court did indicate it would allow Olds to *voir dire* Paul outside the presence of the jury so the court could determine the admissibility of any opinion testimony.

¶6 During discovery, Olds requested a detailed, itemized list of Huelskamp's net worth. Huelskamp filed a protective order to shield himself from such an invasive discovery request. The District Court then required Huelskamp to provide his own accounting of his net worth and advised that if Olds took issue with Huelskamp's accounting, he could file his objection and, if necessary, request further information. Huelskamp then provided his accounting of his net worth to which Olds did not object, request further information, or make further inquiry into Huelskamp's financials.

¶7 Following additional continuances, the case finally went to trial on November 17-19, 2021. Before opening statements on the first day of trial, Olds again sought to preclude the testimony of Huelskamp's expert on the basis of untimely disclosure. Olds, relying on the original scheduling order that required expert disclosure on February 25, 2020, again claimed Huelskamp's disclosure was untimely. Huelskamp countered that when the original order was vacated and trial pushed back, he reevaluated his strategy and disclosed his expert in September 2020, over a year prior to the trial, giving

Olds plenty of time and opportunity to depose him. The District Court's written order on motions in limine did not preclude Paul from testifying. The District Court again advised the parties Huelskamp's expert would be permitted to testify. As such, in his opening statement Huelskamp's attorney told the jury it would hear the testimony of Huelskamp's expert. On the second day of trial, however, the District Court reversed course and denied Huelskamp from presenting Paul as an expert witness concluding his disclosure was untimely. On the third day of trial, after Huelskamp rested, Olds brought an oral motion for judgment on Huelskamp's justifiable use of force defense, asserting that since Huelskamp's expert did not testify, there was no evidence in support of it. The District Court granted Olds's motion and refused to give any instruction on self-defense or justifiable use of force.

¶8 The jury found Huelskamp committed the tort of assault and battery against Olds. The jury awarded Olds \$13,700 in compensatory damages and \$75,000 in punitive damages. However, post-trial the District Court reduced the punitive damages to \$13,700 and the compensatory damages to \$10,500. Additionally, Olds claimed attorney fees in the amount of \$105,869, but the District Court reduced that amount to \$91,300. In total, Huelskamp was ordered to pay Olds \$115,500 in compensatory and punitive damages and attorney fees.

¶9 Huelskamp appeals.

STANDARD OF REVIEW

¶10 We review a district court's ruling on the admissibility of expert testimony for an abuse of discretion. *Higgins ex rel. E.A. v. Augustine*, 2022 MT 25, ¶ 7, 407 Mont. 308,

503 P.3d 1118; *State v. St. Germain*, 2007 MT 28, ¶ 14, 336 Mont. 17, 153 P.3d 591. Absent a showing of an abuse of discretion, we will not overturn a district court's determinations on evidentiary matters. *State v. Hocevar*, 2000 MT 157, ¶ 54, 300 Mont. 167, 7 P.3d 329 (citation and quotation marks omitted). A district court abuses its discretion if it acts arbitrarily, unreasonably, or without employing conscientious judgment, resulting in substantial injustice. *Higgins ex rel. E. A.*, ¶ 7; *State v. Hart*, 2009 MT 268, ¶ 9, 352 Mont. 92, 214 P.3d 1273.

DISCUSSION

¶11 *Did the District Court err when it denied Huelskamp's expert witness from testifying because he was not timely disclosed?*

¶12 The District Court has “broad discretion in determining what evidence will be allowed at trial, [however] that discretion nonetheless is not unlimited and must be exercised in such a manner as to afford a fair trial to all parties.” *Circle S Seeds of Mont., Inc. v. T & M Transporting, Inc.*, 2006 MT 25, ¶ 24, 331 Mont. 76, 130 P.3d 150. Under M. R. Civ. P. 26, as part of the discovery process a party can “require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify.” Under M. R. Civ. P. 16, “[u]pon request by a party, . . . the judge must issue a scheduling order after consulting with the parties' attorneys.” The scheduling order governs, among other things, the time to complete discovery and disclose expert witnesses.

¶13 Here, the initial deadline for disclosing expert witnesses was February 25, 2020, and the original date for trial was May 6, 2020. At that time, Huelskamp did not intend to present expert testimony. However, because of the COVID-19 pandemic, the District Court vacated the original scheduling order on April 6, 2020, and pushed the trial date back multiple times before landing on November 17, 2021. After vacating the scheduling order, the District Court never issued a new scheduling order, nor did either party request one.

¶14 As the trial date kept getting pushed back, Huelskamp's trial strategy changed and he decided to present an expert witness in support of his defense. Huelskamp disclosed the expert witness in September 2020, over 13 months prior to trial. Huelskamp also offered Olds the opportunity to depose Paul, but Olds never did. Huelskamp intended to use the expert testimony to support his justifiable use of force defense as well as interpret for the jury what happened during the incident. Olds filed a motion in limine in October 2020 to preclude Paul from testifying.

¶15 On November 8, 2021, the District Court ruled on the motion in limine, refusing to preclude Paul as an expert witness:

Plaintiff moves to preclude opinion testimony from Shawn Paul regarding the July 18, 2018, incident that is the subject of this case. This motion is DENIED but Plaintiff may *voir dire* Mr. Paul outside the presence of the jury to allow the Court to determine the admissibility of any opinion testimony. Defendant should be aware that in the Court's view Mr. Paul's testimony, if allowed, may open the door to evidence that he was criminally charged for striking the Plaintiff.

At a pretrial conference on the eve of trial, the court explained that it was unlikely to permit opinion testimony from Paul interpreting what happened during the incident, but inclined to permit Paul to testify about the justifiable use of force as a defense.

¶16 During trial, Olds again challenged Huelskamp's use of an expert witness as not being timely disclosed because the witness was disclosed after the original disclosure deadline of February 25, 2020. The District Court agreed, and on the second day of trial, changed course from the first day of trial and excluded Huelskamp's expert witness.

¶17 Under these circumstances, we find the court abused its discretion when it precluded Huelskamp's expert witness during the second day of trial for untimely disclosure. "[T]he purpose of expert disclosures is to avoid trial by ambush and to promote effective cross examination of expert witnesses." *Higgins ex rel. E.A.*, ¶ 11. Here, Huelskamp disclosed Paul's report over 13 months prior to trial and provided Olds the opportunity to depose Paul. There was no surprise to or ambush of Olds as he was given sufficient time to discover Paul's expert opinions, depose him, and prepare for his cross-examination. Huelskamp reasonably relied on the court's prior written denial and later verbal indication at conference on the eve of trial that the court would permit testimony from his expert. As such, Huelskamp advised the jury during his opening that they would hear the testimony of his expert and he centered his defense around justifiable use of force. To Huelskamp's prejudice, when the court changed course on the second day of trial and precluded Huelskamp from presenting any expert testimony regarding justifiable use of force, Huelskamp was put at an unfair disadvantage as he was unable to present the defense for

which he had prepared. Therefore, we reverse the District Court's exclusion of Huelskamp's expert witness and remand for a new trial.

¶18 While we reverse and remand for a new trial based on the expert witness issue, we find it necessary to briefly address ancillary matters which will likely present themselves upon retrial. Olds previously brought a motion in limine which was granted to preclude Huelskamp of presenting prior incidents occurring between Olds and Huelskamp—evidence that Olds was a fast driver and caused Huelskamp to drive off the road, that he shot up Huelskamp's trailer, or that Olds dumped debris on Huelskamp's property. Huelskamp appeals this issue asserting that the evidence was not intended to demonstrate Olds was merely a bad person, but to provide a basis for Huelskamp's belief that during the July 18, 2018 incident at issue, it was reasonable for him to fear imminent serious bodily injury by Olds such that his reaction to Olds opening his car door was justified. We agree that these prior incidents between Olds and Huelskamp occurring prior to July 18, 2018, provide context of the parties' relationship, are relevant and admissible under M. R. Evid. 403, and are not precluded by M. R. Evid. 404 as such are not offered as character evidence.

¶19 Huelskamp has also appealed the issue of attorney fees, asserting the District Court erred in awarding Olds attorney fees pursuant to § 27-1-722, MCA, as he did not plead any defense under this statute and no claim for attorney fees was made by Olds in the pretrial order, which supersedes the pleadings. On remand, we note the parties will have the opportunity to present their respective positions to the District Court, and the parties and

District Court will assure all trial issues and claims are appropriately set forth in the pretrial order, as required.

¶20 Finally, we address whether the District Court erred by limiting the discovery of Huelskamp's financial situation. Olds asserts he was deprived of relevant financial information when the District Court granted Huelskamp's protective order that precluded Olds from obtaining a list of every item Huelskamp owns. After Olds served overbroad and invasive discovery requests on Huelskamp, the District Court ordered Huelskamp to provide a statement of net worth with certain itemized information, including real estate and collectibles. At that point, the District Court provided Olds could demand additional information if he deemed the statement of net worth inadequate. Huelskamp complied, and Olds requested no additional information. Under these circumstances, we find no error on the part of the District Court. Upon remand for new trial, we leave the issue as to whether additional financial discovery should be permitted to the sound discretion of the District Court.

CONCLUSION

¶21 We reverse and remand for a new trial after finding the District Court abused its discretion by excluding Huelskamp's expert witness from testifying.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE