

ORIGINAL

FILED

03/25/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0485

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 24-0485

DAREN ENGELLANT, individually and acting as
Personal Representative of the ESTATE OF
GREGORY ENGELLANT,

Plaintiff, Appellant, and Cross-Appellee,

v.

CROWLEY FLECK, PLLP, a Montana
Professional Limited Liability Partnership, and
DANIEL N. MCLEAN, an individual,

Defendants, Appellees, and Cross-Appellants.

CROWLEY FLECK, PLLP, and DANIEL N.
MCLEAN,

Third-Party Plaintiffs and Cross-Appellees,

v.

KENNETH ENGELLANT,

Third-Party Defendant and Cross-Appellant,

and

SHANA DIEKHANS,

Third-Party Defendant.

KEVIN ENGELLANT,

Proposed Intervenor and Appellant.

FILED

MAR 25 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Appellant and Cross-Appellee Daren Engellant (Daren) moves this Court to unseal three pages of a hearing transcript sealed by the District Court in the matter underlying this appeal. Appellees and Cross-Appellants Crowley Fleck, PLLP, and Daniel N. McLean (collectively Crowley Fleck) oppose Daren's motion. Cross-Appellant Kenneth Engellant joins in Crowley Fleck's opposition.

Daren advises us that the underlying dispute concerns a gift of stock the decedent Gregory Engellant made to Third-Party Defendant Shana Diekhans. The gift was executed by a Crowley Fleck attorney. Daren commenced a malpractice action against Crowley Fleck, which then brought in Kenneth and Diekhans as third-party defendants.

Prior to trial, Crowley Fleck and Diekhans entered into a settlement agreement. Daren alleged Diekhans "changed her position in litigation" afterward. He requested the terms of the settlement agreement for the purpose of cross-examining Diekhans on the issues of bias and credibility. After hearing counsel for Crowley Fleck and Diekhans about the terms of the settlement agreement outside the presence of Daren's counsel, the District Court concluded the agreement's terms did not materially alter the bias or motive to testify and sealed that portion of the hearing transcript.

Daren's appellate counsel asks this Court to unseal those transcript pages. He alleges Daren's trial counsel believed the terms of the settlement agreement were material because Diekhans "changed positions" based on the settlement agreement. He argues that, as appellate counsel, he needs to review the transcript to determine if the District Court erred in denying trial counsel's request to learn the terms of the settlement agreement. Appellate counsel explains he does not seek the settlement agreement itself but only the sealed transcript for the purpose of identifying potential issues on appeal. Counsel proposes that, if he determines the sealed transcript contains an appealable issue, he could file a redacted brief as provided in M. R. App. P. 10(7).

Crowley Fleck argues that, at this juncture, Daren is not entitled to unseal the transcript pages in order to determine if the court erred in sealing them. Crowley Fleck asserts Daren may instead raise the issue in his opening brief and make his arguments on

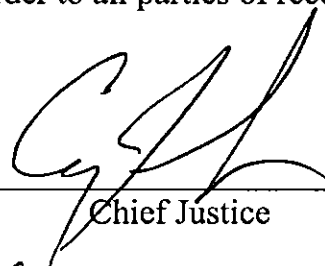
the non-sealed record. This Court may then review the sealed portion of the record, determine whether the District Court abused its discretion in sealing the record, and order a remedy if necessary. Crowley Fleck points out that in *State v. Twardoski*, 2021 MT 179, 405 Mont. 43, 491 P.3d 711, Appellant Twardoski argued that a district court had abused its discretion when it did not require the State to disclose certain confidential criminal justice information to Twardoski. Twardoski appealed the ruling, supporting his argument on the basis of the record. This Court then conducted its own independent review of the documents the District Court had protected from disclosure, ultimately determining no exculpatory evidence existed in the non-disclosed record. *Twardoski*, ¶ 20. Crowley Fleck argues this Court should deny Daren's motion to unseal because Daren is not precluded from following the same process as *Twardoski* here.

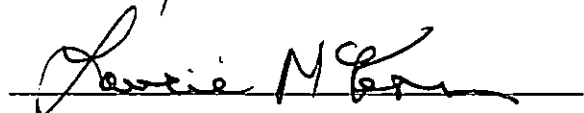
We agree with Crowley Fleck that this issue is more suited to briefing as part of the appeal where Daren may, if he so chooses, raise the argument of whether the District Court abused its discretion in sealing that portion of the transcript.

IT IS ORDERED that Appellant's Motion to Unseal is DENIED.

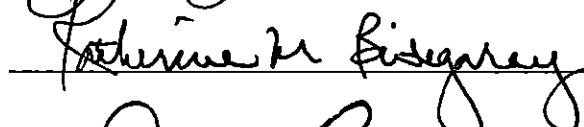
The Clerk is directed to provide a copy of this Order to all parties of record.

DATED this 25th day of March, 2025.



Chief Justice

Laurie McLean

John John

Katherine M. Bissegger

Justices