

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No.: DA 25-0181

PAUL MOSES II

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Counsel for Joel Andrews and Traci Andrews, Defendants/Appellants

CHRIS TAVENNER and GRETCHEN TAVENNER,

Appellees,

v.

JOEL ANDREWS, TRACI ANDREWS, and MTWeb LLC,

Appellants.

RESPONSE TO MOTION TO DISMISS

COMES NOW APPELLANTS, JOEL ANDREWS and TRACI ANDREWS (“Appellants”), by and through their undersigned counsel, and hereby file this as their Response to the Motion to Dismiss filed by APPELLEES, CHRIS TAVENNER and GRETCHEN TAVENNER (“Appellees”). In support thereof, Appellants would respectfully show the Honorable Court as follows:

1. Respectfully, Appellees have misstated the status of the case and Appellants' efforts to prosecute this appeal.

2. Appellants Have Diligently Attempted To Contact the Mediator and Coordinate Mediation. To Appellees' argument that mediation has not taken place within seventy-five (75) days of the Notice of Appeal, Appellants have diligently attempted to contact the Mediator and coordinate the mediation.

a. On April 29, 2025, the undersigned had a lengthy telephone call with Michael C. Doggett, Esq., the selected mediator, to review the case and coordinate mediation dates.

b. Although some initial dates were proposed, the undersigned had other professional obligations or was otherwise unavailable to attend mediation.

c. Subsequently, Appellants attempted to contact the Mediator several times by telephone and electronic mail in April and June, as the Mediator had indicated that he would be on vacation for the better part of May.

d. Thus, on June 2, 2025, presuming the Mediator's vacation would be over, Appellants once again contacted the Mediator and copied Counsel for Appellees:

From: Attorney Paul Moses II <paul@attorneypaulmoses.com>

Date: Monday, June 2, 2025 at 4:29 PM

To: Michael Doggett <mike@doggettlawoffice.net>

Cc: jhelvie@kkmlaw.net <jhelvie@kkmlaw.net>

Subject: Re: Montana Supreme Court mediation

Hello, Michael.

I will be returning to the office in a few days and wanted to touch base regarding the mediation of the *Tavener v. Andrews* matter. In the meantime, the transcripts still haven't been filed with the Supreme Court Clerk's office. I will also be following up with the Jefferson County Court Recorder.

Thank you.

Very truly yours,

Paul

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e. On June 17, 2025, the undersigned was contacted by the Mediator, and he indicated that he had returned from vacation as of Monday, June 16, 2025, and would be available to schedule mediation:

My apologies for the lack of communication. I am back from vacation as of Monday. My computer died on the trip. I am relatively free for mediation

Indeed, this was the first communication from the Mediator since April 28, 2025.

f. The undersigned responded with five (5) dates on which Appellants would be available to attend mediation and provided the Mediator (and Appellees' Counsel) with Appellants' Statement of Position.

g. The diligence by which Appellants have tried to contact the Mediator and schedule mediation belies Appellees' claim that Appellants have not substantively prosecuted the appeal.

3. Appellants Have Diligently Attempted to Obtain the Transcripts from the Two (2) Court Recorders Responsible. To Appellees' argument that the District Court's transcripts have been delayed, Appellants have diligently attempted to obtain the transcripts from the two (2) Court Recorders responsible.

a. On the one hand, delays in providing transcripts are an issue facing Court Recorders throughout the State. That there has been a delay is not at all indicative of Appellants' failure to prosecute their Appeal diligently.

b. More specifically, on February 27, 2025, Appellants begin the process of obtaining District Court transcripts.

c. On March 4, Appellants confirmed they had contacted Ms. Ruby Pierce, the Court Recorder for Jefferson County.

d. On March 5, 2025, Appellants indicated they would have the transcripts by March 17, 2025.

e. On March 6, 2025, Appellants received word from Ms. Pierce that, in fact, the transcripts would not be ready by March 17.

f. Over the next several weeks, Appellants continued to attempt to obtain the transcripts even though they understood that delays were systemic and that the Court Recorder was doing her best.

g. Still not having received the transcripts, on April 24, 2025, Appellants filed with this Court their Notice of Transcripts Deemed Necessary for Appeal.

h. The undersigned was out of the office for the latter half of May, so, on June 3, 2025, he sent correspondence to Ms. Pierce inquiring once more about the status of the District Court transcripts.

i. On June 3, 2025, Ms. Pierce responded with new information indicating that the preparation of transcripts from 2024 was, in fact, the responsibility of another Court Recorder, Ms. Kathy Hilton.

j. Not having heard from Ms. Hilton, on June 18, 2025, the undersigned sent correspondence to her inquiring about the status of the 2024 transcripts. Ms. Hilton has not responded as of the time of this submission.

4. Appellants (and this Court, and Appellees) Are Without a Complete Record To File Their Initial Brief. To Appellees' position that Appellants have not

filed their initial brief, without the transcripts of the proceedings in the District Court, Appellants (and this Court, and Appellees) are without a complete record.

5. Any brief(s) thus prepared would be incomplete at best and inaccurate at worst.

6. Similarly, throughout this period, the undersigned had several conversations with personnel in the Clerk's office of the Montana Supreme Court.

a. From these conversations, the undersigned (mis)understood that there was a general pause on the deadlines in this matter because the transcripts from the District Court still had not been transmitted to the Montana Supreme Court.

b. In hindsight, the undersigned realizes that he misunderstood the information kindly provided by the Clerk of the Montana Supreme Court and that the Mediation Statement should have been provided to the Mediator and Counsel for Appellees by May 5, 2025.

c. In light of the realization of this misunderstanding, Appellants have served their Mediation Statement upon the Mediator and Counsel for Appellees forthwith.

7. Accordingly, the fact of the matter is that the prosecution of this Appeal has been delayed largely for reasons outside of Appellants' control.

8. For this reason, and for any or all of the reasons outlined above, this Court should deny Appellees' Motion to Dismiss.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the body of the foregoing document is double-spaced and typewritten in 14-point Times New Roman. The total word count is 1,149 words.

CERTIFICATE OF SERVICE

I hereby certify that I have served true and accurate copies of the foregoing upon each attorney of record, as follows:

JORDAN P. HELVIE, ESQ., and JANE MERSEN, ESQ.
Kasting, Kauffman & Mersen, P.C.
716 South 20th Avenue, Suite 101
Bozeman, Montana 59718
Counsel for Appellees

Dated on this 21st day of June, 2025.

Respectfully submitted,



PAUL MOSES H., ESQ.
Counsel for Appellants

CERTIFICATE OF SERVICE

I, Paul Moses, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to Dismiss to the following on 06-21-2025:

Jordan P. Helvie (Attorney)
716 S. 20th Ave. Suite 101
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Representing: Chris Tavenner, Gretchen Tavenner
Service Method: eService

Jane Mersen (Attorney)
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Representing: Chris Tavenner, Gretchen Tavenner
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Electronically Signed By: Paul Moses
Dated: 06-21-2025