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Bates v. Anderson, 2014 MT 7, --- Mont. ---, --- P.3d

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Under the two-prong test set forth in Rule 36(b), the mere inconvenience of a party's failure to respond to requests for admission is not sufficiently prejudicial to warrant the denial of Plaintiff's motion to withdraw or amend his admissions.

In September 1999, Plaintiff Gary Bates traveled to Montana for a hunting trip organized by Koocanusa Outfitters. While traveling as a passenger in a vehicle driven by one of Koocanusa's employees, Bates was injured in a vehicle accident. The employee was legally intoxicated at the time of the accident. As a result of the injuries sustained in the accident, Bates engaged Defendants Scott Anderson and Michael Bliven of Anderson Law Office (collectively "Anderson Defendants") to assist him in seeking recovery for his damages. Upon the advice of counsel, on May 5, 2000, Bates entered into a settlement agreement with the driver that included a provision stating he forever released and discharged the driver and "principals, agents and representatives" from any claims arising from the accident.

On August 22, 2002, Bates filed a complaint against Koocanusa, its owners, and its insurers (collectively "Koocanusa Defendants") for nine claims. On December 22, 2005, the district court granted the Koocanusa Defendants' motion to dismiss five of the nine claims based on the language of the previously signed release. After retaining new counsel, Bates settled the remaining claims in 2011 and agreed not to execute against Koocanusa's owners' personal assets.

On December 18, 2008, Bates filed a complaint against the Anderson Defendants. The complaint alleged legal malpractice based upon their advice to sign the original release against the driver and the resulting loss of the five dismissed causes of action. On January 9, 2012, the Anderson Defendants served discovery requests on Bates. In particular, a request for admission sought Bates' admission that the dismissal of the vicarious liability claims against the Koocanusa

Defendants did not cause him any monetary damage. Bates requested an additional 30 days to respond to all discovery requests, to which the Anderson Defendants agreed. A month after the new deadline passed Bates requested a second 30-day extension, which the Anderson Defendants agreed to in regard to the interrogatories and requests for production, but refused in regard to the requests for admission. Bates did not seek court intervention and served his verified responses on May 1, 2012.

On July 31, 2012, the Anderson Defendants moved for summary judgment relying on the argument that, under Montana Rule of Civil Procedure 36, Bates had not timely responded to the requests for admissions, and therefore the requests were deemed admitted. On August 21, 2012, Bates moved to withdraw or amend his admissions. The district court denied Bates' motion and granted the Anderson Defendants' motion for summary judgment, concluding no issue of material fact existed because Bates' admissions established he had been fully compensated for all damages relating to the vehicle accident. Bates appealed, arguing the requests for admission improperly sought to eliminate the element of damages, or alternatively the Anderson Defendants did not meet their burden of proving prejudice.

Under the 2011 amendment to Rule 36, if a matter is admitted, the court may, upon motion, allow the admission to be withdrawn or amended. Rule 36(b) sets forth a two-prong test. First, withdrawal or amendment must promote the presentation of the merits of the case. Second, the party who obtained the admission must prove withdrawal or amendment would prejudice maintaining or defending the case on the merits. As the first case to interpret the new Rule 36, the Montana Supreme Court looked to the interpretation of the similar federal rule. The Court held the requests were within the proper scope of Rule 36 because they related to facts in the case, and not simply pure unrelated conclusions of law. Further, the Court held the district court

properly found granting Bates' motion would promote the presentation of the merits of the case because the admissions conceded a core element of Bates' case. The Court held the district court incorrectly concluded the Anderson Defendants would be prejudiced because they relied on the admissions as their basis for summary judgment. The mere inconvenience of Bates' untimely admissions was not sufficient to constitute prejudice under Rule 36 because Bates provided responses well before the close of discovery, before the issuance of a scheduling order, and before a trial date was set.

The Court's decision in *Bates* is noteworthy to the Montana practitioner because it sets forth a more rigorous interpretation of prejudice when applying Rule 36. It also directs the district courts to anchor a denial of a motion to amend or withdraw admissions to dilatoriness that causes an undue delay in pretrial proceedings or an abuse of the judicial process.

Honorable Heidi Ulbricht, District Court for the Eleventh Judicial District

For Appellant: Larry Jent of Williams & Jent, PLLP; Bozeman, Montana.

For Appellees: J. Daniel Hoven & W. John Tietz of Browning, Kaleczyc, Berry & Hoven, P.C.; Helena, Montana.

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