

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2019 MTWCC 6

WCC No. 2018-4206

TERRY L. HAGBERG

Petitioner

vs.

ACE AMERICAN INSURANCE COMPANY

Respondent/Insurer.

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Summary: Respondent argues it is entitled to summary judgment because the IME physician's opinion that Petitioner's pain is unrelated to his industrial accident should control as he is the medical professional with greater expertise. Respondent alternatively argues that the pain medications prescribed by Petitioner's treating physician constitute palliative or maintenance care rendering it outside the scope of its liability. Petitioner asserts he is entitled to summary judgment because his treating physician's opinion that Petitioner's pain stems from his industrial injury carries more weight than the IME physician's opinion, and because his prescription pain medication constitutes primary medical services.

Held: Respondent's Motion for Summary Judgment is denied, and Petitioner's Motion for Summary Judgment is granted. The physicians have equal credentials to opine as to the cause of Petitioner's current back pain, but this Court gives more weight to the opinions of Petitioner's treating physician because his opinion is based upon better evidence. Moreover, this Court determines that Petitioner's prescription pain medications constitute primary medical services because they are necessary to sustain him at MMI and are therefore not palliative or maintenance care.

¶ 1 The parties dispute whether Respondent Ace American Insurance Company (Ace American) remains liable for Petitioner Terry L. Hagberg's prescription pain medications for his back pain. Relying on the opinion of its IME physician, whom Ace American claims has more expertise, Ace American argues that Hagberg's current back pain is not a sequela of his industrial injury; rather, Ace American argues that Hagberg's current pain

is solely a result of his degenerative conditions. In the alternative, Ace American contends it is not liable for Hagberg's prescription pain medications because they constitute palliative or maintenance care. Hagberg relies on the opinion of his treating physician, who has opined that his current back pain is from his industrial injury and that his prescription pain medications are primary medical services because they are necessary to maintain maximum medical improvement (MMI).

STIPULATED FACTS¹

¶ 2 Hagberg injured his back while lifting a 200-250 pound burner unit on or about May 18, 2006, while working for NAES Power in Rosebud County, Montana.

¶ 3 Ace American accepted liability for his claim.

¶ 4 On June 14, 2006, Hagberg saw Lawrence Splitter, DO. Dr. Splitter diagnosed Hagberg with a lumbar strain, prescribed pain medications and a muscle relaxer, and recommended an MRI.

¶ 5 On June 23, 2006, Hagberg had a CT scan of his lumbar spine. The CT scan showed probable foraminal narrowing at L5-S1. Hagberg also had x-rays which demonstrated degenerative disk narrowing at L4-L5, L5-S1, and L3-L4.

¶ 6 On June 26, 2006, Hagberg returned to Dr. Splitter complaining of right leg pain. Dr. Splitter referred Hagberg to Lashman Soriya, MD, a neurosurgeon.

¶ 7 On July 20, 2006, Hagberg had a lumbar myelogram with a CT scan demonstrating moderate to severe central stenosis at L3-L4.

¶ 8 On July 24, 2006, Hagberg saw Dr. Soriya, who recommended microsurgical L2-L4 segmental decompression. Dr. Soriya prescribed a pain reliever and a muscle relaxer.

¶ 9 On September 13, 2006, Dr. Soriya performed the segmental decompression surgery.

¶ 10 On September 22, 2006, Dr. Soriya noted that Hagberg still had bilateral hip pain, but that his lower extremity discomfort had resolved.

¶ 11 On October 17, 2006, Dr. Soriya noted that Hagberg reported significant improvement in lower extremity symptomology and back pain.

¶ 12 However, on November 15, 2006, Hagberg returned to Dr. Splitter, who noted:

¹ The facts of this case are taken from the parties' Joint Statement of Undisputed Facts and Contentions, including its exhibits, Docket Item No. 10.

The patient still complains of low back pain that he rates about 8-9 out of 10 precipitated by prolonged sitting, standing, and range of motion, alleviated by taking his medications. He states he is in physical therapy which does not seem to be helping that well. However, he just started that. He complains of numbness in the bilateral feet on the dorsal and plantar aspects distally and bilateral buttock pain. He describes the pain as a dull ache.

. . . No changes since 6/26/06 other than resolved radicular symptoms in the lower extremities and recent L2 to L4 segmental decompression.

¶ 13 On January 3, 2007, Hagberg returned to Dr. Splitter. Dr. Splitter observed that Hagberg still had back pain, with no changes since his last appointment. Dr. Splitter also noted:

The patient states that bilateral sacroiliac joint injections did not help. He ranks his pain 10/10 today. He states that he did his functional capacity evaluation yesterday. He stated he could not complete it because of pain. However, I got the results [of] the FC[E] [after] he left today, and it demonstrated he is able to work in the medium physical demand level for an eight-hour day. He passed 3/3 validity criteria, which suggested excellent effort. He describes his pain as a dull ache. Aggravating factors are movement. Alleviating factors are trying to stay still. Pain is constant.

Dr. Splitter opined that Hagberg had reached MMI and that Hagberg had a 26% whole person impairment under the 5th Edition of the *Guides to the Evaluation of Permanent Impairment*. Dr. Splitter explained:

He qualified for a 10% impairment of the lumbar spine given his single-level decompression **with residual pain**, and an additional 2% regarding two extra levels . . . and . . . he qualified for 15% impairment due to loss of motion. These two impairments are combined . . . to correspond to a 26% impairment of the whole person.²

Dr. Splitter also referred Hagberg to Michael Schabacker, MD, at the Northern Rockies Regional Pain Center for pain management.

¶ 14 Dr. Schabacker has been acting as Hagberg's treating physician since January 3, 2007. Dr. Schabacker specializes in pain medicine, physical medicine, and rehabilitation. He is certified by the American Board of Physical Medicine and Rehabilitation and Pain Medicine.

¶ 15 Dr. Schabacker prescribed Hagberg opiate pain medications for his back pain.

² Emphasis added.

¶ 16 On September 21, 2007, the parties settled the indemnity portion of Hagberg's workers' compensation claim, leaving medicals open.

¶ 17 On December 29, 2009, x-rays of Hagberg's lumbar spine showed chronic-appearing degenerative changes with sclerosis.

¶ 18 On June 17, 2010, x-rays of Hagberg's lumbar spine revealed a progression of the lower lumbar degenerative disease when compared to the December 29, 2009, exam.

¶ 19 On September 6, 2012, x-rays of Hagberg's lumbar spine showed no significant change except for an increase in the scoliosis, a L3 laminectomy, and mild degenerative disc changes when compared to the June 17, 2010, x-ray.

¶ 20 On July 12, 2016, Joseph M. Erpelding, MD, met with Hagberg and conducted an Independent Medical Examination (IME). Dr. Erpelding is a general orthopedic surgeon, specializing in numerous anatomical parts including the low back and spine. He is board certified by the American Academy of Orthopedic Surgeons.

¶ 21 As part of his evaluation, Dr. Erpelding reviewed Hagberg's medical records and performed a physical examination. Dr. Erpelding concluded that Hagberg's L3-L4 stenosis was caused by his industrial accident. However, Dr. Erpelding opined that Hagberg's postoperative pain was not "directly related" to his L3-L4 stenosis. Rather, Dr. Erpelding opined that Hagberg's postoperative pain was caused by his degenerative lumbar scoliosis and degenerative lumbar spinal stenosis. Dr. Erpelding also determined that neither Hagberg's scoliosis nor stenosis was permanently aggravated by his industrial accident. Dr. Erpelding concluded that Hagberg's condition,

would not be related to his work or permanently aggravated as a consequence of his work and it would be my opinion that any ongoing narcotic treatment for that condition would not be a consequence of the work event of 2006 timeframe.

¶ 22 Based on Dr. Erpelding's opinion, Ace American denied liability for further benefits.

¶ 23 Hagberg's counsel sent a copy of Dr. Erpelding's IME report to Dr. Schabacker. On March 4, 2017, Dr. Schabacker issued a letter in which he stated his disagreements with Dr. Erpelding's opinions. Dr. Schabacker opined that Dr. Erpelding's opinion that Hagberg's back pain is solely a result of degenerative conditions is unsupported by the medical evidence. Dr. Schabacker stated:

Dr. Erpelding fails to recognize that Mr. Hagberg suffered a substantial injury while at work and that he continues to suffer substantial sequela from the 5/18/06 work injury. It is noteworthy that in Dr. Erpelding's report he fails to even discuss his understanding of the mechanism of injury to Mr. Hagberg's 5/18/06 low back. For clarification, Mr. Hagberg injured his

back in a forceful twisting movement in a flexed position, which is significant in that such activity places the lumbar spine at [a] greater risk for injury.

Dr. Erpelding arbitrarily concluded that Mr. Hagberg's back condition is unrelated to his work injury. Dr. Erpelding provides no logical explanation regarding [his] conclusion that is adverse to Mr. Hagberg.³

Dr. Schabacker concluded, "Fact is that Mr. Hagberg has substantial low back pain that is a consequence of his work injury and he benefits from the opiate medications. He finds the opiate medications to reduce his pain, improve his quality of life and overall functional status."

LAW AND ANALYSIS

¶ 24 This case is governed by the 2005 version of the Montana Workers' Compensation Act (WCA) because that was the law in effect at the time of Hagberg's injury.⁴

¶ 25 Summary judgment is appropriate when there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.⁵

Issue One: Is Hagberg's current pain related to his industrial injury?

¶ 26 Ace American and Hagberg agree that no genuine issue of material fact remains as to how Hagberg suffered his industrial injury or what treatment occurred in the following years. What the parties dispute is which medical opinion carries more weight.

¶ 27 Ace American argues that this Court should give greater weight to Dr. Erpelding because, according to Ace American, as an orthopedist, he possesses greater expertise than Dr. Schabacker in determining whether Hagberg's current complaints are related to his industrial injury. Citing *Wright v. Ace American Ins. Co.*,⁶ a case in which the Montana Supreme Court affirmed this Court's decision to give more weight to an orthopedist's opinion over Dr. Schabacker's, Ace American asserts that this issue has already been decided. Ace American also cites to *Kloepfer v. Lumbermen's Mutual Casualty Co.* for the proposition that a treating physician's opinion should be disregarded when it is not supported by the objective medical findings.⁷

³ Alterations added.

⁴ *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687 (citation omitted); § 1-2-201, MCA.

⁵ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285 (citation omitted).

⁶ 2011 MT 43, ¶¶ 29-31, 359 Mont. 332, 249 P.3d 485.

⁷ 276 Mont. 495, 498-99, 916 P.2d 1310, 1311-12 (1996).

¶ 28 Hagberg argues that this Court should give greater weight to Dr. Schabacker's opinion because he has been Hagberg's treating physician since 2007. Hagberg argues that Dr. Schabacker is as qualified as Dr. Erpelding to opine as to whether his ongoing pain is a result of his May 18, 2006, industrial accident. Hagberg also argues that Dr. Schabacker's opinion is supported by the other evidence in the case.

¶ 29 As a general rule, the opinion of a treating physician is afforded greater weight than the opinion of a competing expert.⁸ In weighing medical opinions, this Court considers such factors as the relative credentials of the physicians and the quality of evidence upon which the physicians base their respective opinions.⁹

¶ 30 Under these factors, this Court gives Dr. Schabacker's opinion greater weight. Although Ace American claims that Dr. Erpelding has greater credentials, there is insufficient evidence from which this Court could determine that either Dr. Schabacker or Dr. Erpelding has greater credentials over the other in determining whether Hagberg's current pain is a sequela of Hagberg's industrial injury or solely caused by degenerative changes in his lumbar spine. Dr. Schabacker's and Dr. Erpelding's curriculum vitae show they are both board certified Doctors of Medicine with many years of experience treating patients. Because they have equal credentials to opine as to the cause of Hagberg's back pain, this factor supports the general rule that the treating physician's opinion is to carry more weight.

¶ 31 Despite Ace American's claim, *Wright* does not stand for the proposition that an orthopedist's opinion will control over a pain management physician's opinion in every case. In *Wright*, Wright suffered a shoulder injury.¹⁰ In the years following his surgery, Wright continued to experience shoulder and cervical spine pain.¹¹ Wright saw several physicians for treatment, including an orthopedic surgeon who recommended additional shoulder surgery and referred Wright to a neurosurgeon, because the orthopedist thought that Wright's industrial injury aggravated his degenerative cervical spine condition. At the same time, Wright saw Dr. Schabacker, who recommended managing his pain with medication.¹² This Court held a trial to determine the insurer's liability for an additional shoulder surgery.¹³ On appeal, the Supreme Court affirmed this Court's decision to give the orthopedic surgeon's opinion greater weight than Dr. Schabacker's on the issue of whether the insurer was liable for the shoulder surgery because, "The issue before the

⁸ *EBI/ORION Grp. v. Blythe*, 1998 MT 90, ¶ 12, 288 Mont. 356, 957 P.2d 1134.

⁹ *Ford v. Sentry Cas. Co.*, 2011 MTWCC 19, ¶ 42, *aff'd*, 2012 MT 156, 365 Mont. 405, 282 P.3d 687.

¹⁰ *Wright*, 2011 MT 43, ¶ 4.

¹¹ *Id.*

¹² *Wright*, 2011 MT 43, ¶¶ 6-8.

¹³ *Wright*, 2011 MT 43, ¶ 9.

Court is not an issue of pain management—it is an orthopedic issue and whether orthopedic surgery is indicated.”¹⁴

¶ 32 Unlike the claimant in *Wright*, Hagberg does not seek benefits involving a surgical procedure for which the opinion of an orthopedic surgeon would carry significant weight. Instead, the issue is whether Hagberg’s current pain is caused by his industrial injury. As set forth above, Dr. Schabacker is at least as qualified as Dr. Erpelding to review the medical evidence and determine the cause of Hagberg’s back pain. Thus, the facts of this case are dissimilar from *Wright*, and this Court will not deviate from the general rule.

¶ 33 As for the second factor, the facts show that Dr. Schabacker relied upon and based his opinions on better evidence than Dr. Erpelding. Dr. Schabacker incorporated the mechanism and severity of Hagberg’s industrial injury into his determination that Hagberg’s current pain stems from his May 18, 2006, injury. As Dr. Schabacker points out in his March 4, 2017, letter, there is no evidence that Dr. Erpelding understood the mechanism or severity of Hagberg’s injury because Dr. Erpelding’s report is silent on these issues. The only description in Dr. Erpelding’s IME report provides that Hagberg “was moving a burner bucket when he felt pain in his lower back.” This Court has rejected the opinions of IME physicians who do not fully understand the mechanism of, or severity of, the industrial injury.¹⁵

¶ 34 Moreover, Dr. Schabacker relied on the other evidence since Hagberg’s injury, while Dr. Erpelding disregarded it without sufficient explanation. Dr. Schabacker, who has treated Hagberg since 2007, noted that Hagberg has had ongoing back pain since his injury. Dr. Erpelding, who has seen Hagberg only once, does not dispute that Hagberg has had ongoing back pain since his injury but concluded that Hagberg did not permanently aggravate his back and that the back pain Hagberg suffered from his 2006 industrial injury resolved. However, there is no evidence that Hagberg had any lower back pain before his industrial injury nor any evidence that Hagberg ever returned to pre-injury baseline. In fact, the evidence shows Hagberg did not return to his pre-injury baseline. On November 15, 2006 — two months after Hagberg’s surgery — Dr. Splitter noted that while Hagberg’s radicular symptoms resolved after his surgery, Hagberg’s back pain was the same as it was before his surgery. On January 3, 2007, Dr. Splitter noted that Hagberg still had back pain and opined that it was “residual [back] pain” from his surgery. In short, Dr. Erpelding’s opinion that the onset of Hagberg’s back pain from his degenerative conditions coincidentally started at the moment his back pain from his injury resolved is not supported by the other evidence in this case. Thus, Dr. Schabacker’s opinion carries more weight.

¹⁴ *Wright*, 2011 MT 43, ¶ 28; *Wright*, 2010 MTWCC 11, ¶ 75.

¹⁵ See, e.g., *Myles v. Sparta Ins. Co.*, 2014 MTWCC 19, ¶¶ 59-61 (giving less weight to IME physician who did not acknowledge or incorporate the medical record regarding the claimant’s onset of symptoms following his injury).

¶ 35 Lastly, this Court does not agree with Ace American's contention that this Court should give greater weight to Dr. Erpelding's opinion under *Kloepfer* on the grounds that his opinion is the only opinion supported by objective medical evidence. While the objective medical evidence shows that Hagberg has degenerative conditions, Dr. Erpelding did not sufficiently explain how the objective medical evidence demonstrates that Hagberg's current pain is not caused by his industrial injury nor explain when the cause of Hagberg's pain changed from his industrial injury to solely from his degenerative conditions; rather, Dr. Erpelding just states in conclusory fashion that Hagberg's pain is solely caused by degenerative conditions. This Court has declined to give weight to a physician's opinion when the physician offers nothing more than a conclusory opinion.¹⁶

¶ 36 In short, this Court agrees with Hagberg that Dr. Schabacker's opinion regarding causation and pain management is entitled to greater weight. Dr. Schabacker concluded that Hagberg's current pain is directly related to his May 18, 2006, injury. Ace American accepted liability for Hagberg's injury and then settled with medical benefits open, thereby acknowledging that Hagberg suffered an injury.¹⁷ Moreover, § 39-71-407(2)(a)(ii), MCA, provides that an injury which aggravates a preexisting condition is compensable. This Court has explained:

It has long been the law of Montana that employers take their workers as they find him, with all their underlying ailments, and that a traumatic event or unusual strain which lights up, accelerates, or aggravates an underlying condition is compensable. "The rule is that when preexisting diseases are aggravated by an injury and disabilities result, such disabilities are to be treated and considered as the result of the injury."¹⁸

¹⁶ See, e.g., *Gary v. Mont. State Fund*, 2012 MTWCC 38, ¶ 37 (giving more weight to the opinion of an IME physician regarding medical causation over that of a treating physician because, "A conclusory statement from a treating physician that there is a cause and effect relationship between an industrial accident and a condition occurring some five years later, without explaining the mechanism for that causation, is insufficient for this Court to conclude the two are related."); *Fleming v. Mont. Sch. Grp. Ins. Auth.*, 2010 MTWCC 13, ¶¶ 38-50 (giving no weight to IME physician's opinion that claimant suffered only a temporary aggravation because the IME physician testified that he did not know when claimant returned to her preinjury baseline).

¹⁷ See *Narum v. Liberty Nw. Ins. Corp.*, 2008 MTWCC 30, ¶¶ 40-43 (rejecting insurer's argument that claimant's hip replacement surgery was not causally related to industrial injury, in case in which insurer accepted liability and settled with medicals left open, because an insurer "cannot accept liability for a claim, settle the claim, and then un-accept the claim at a later date because it has changed its mind about whether it should have accepted liability in the first place."). See also *Barnhart v. Liberty Nw. Ins. Corp.*, 2016 MTWCC 12, ¶ 50 (holding that insurer's acceptance of liability, settlement of indemnity portion of claim, and reservation of medical benefits prevented it from unaccepting the claim upon receipt of a contrary medical opinion).

¹⁸ *Weatherwax v. State Comp. Ins. Fund*, 2000 MTWCC 15, ¶ 40 (citations omitted).

Here, since Hagberg has not returned to baseline from his 2006 injury, he suffered a permanent aggravation and Ace American remains liable.¹⁹ Accordingly, Ace American remains liable for Hagberg's medical benefits.

Issue 2: Do Hagberg's prescription pain medications constitute primary medical services or palliative or maintenance care?

¶ 37 Ace American argues that even if this Court gives Dr. Schabacker's opinion greater weight and finds Hagberg's current pain stems from his industrial injury, it properly denied Hagberg's ongoing medical benefits because he is at MMI and the pain management prescribed by Dr. Schabacker is palliative or maintenance care.

¶ 38 Hagberg asserts that the treatment regimen prescribed by Dr. Schabacker is necessary to sustain MMI and, therefore, constitutes primary medical services that Ace American is required to provide.

¶ 39 Under the WCA, insurers "shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires."²⁰ The WCA defines "primary medical services" as "treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability."²¹ The WCA defines "secondary medical services" as "those medical services or appliances that are considered not medically necessary for medical stability."²²

¶ 40 However, insurers "may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care" except in limited enumerated circumstances.²³ Section 39-71-116(17), MCA, defines "maintenance care" as "treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status." Moreover, § 39-71-116(22), MCA, provides that "palliative care" constitutes "treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms."

¶ 41 In *Hiett v. Missoula County Public Schools*,²⁴ the Montana Supreme Court analyzed and classified prescription pain medication under the WCA. As a result of a thoracic spine

¹⁹ See, e.g., *Barnhart*, ¶¶ 41-42 (explaining that insurer is liable if the industrial accident caused a permanent aggravation and ruling that insurer was liable because claimant's condition worsened after his industrial accident and he has not returned to baseline); *Fleming*, ¶ 48-50 (ruling that insurer was liable because claimant aggravated her preexisting back condition and had not returned to baseline).

²⁰ § 39-71-704(1)(a), MCA.

²¹ § 39-71-116(26), MCA.

²² § 39-71-116(30)(a), MCA.

²³ § 39-71-704(1)(g), MCA.

²⁴ 2003 MT 213, 317 Mont. 95, 75 P.3d 341.

injury, Hiett's treating physician prescribed pain medications and antidepressants.²⁵ However, after she reached MMI, the insurer asserted that the medications were secondary medical services and that it was liable for them only if Hiett was working.²⁶ The Supreme Court held "the phrase 'achieving' medical stability and 'achieved' medical stability . . . to mean the *sustainment* of medical stability. Given this interpretation, a claimant is entitled to such 'primary medical services' as are necessary to permit him or her to *sustain* medical stability."²⁷ The court then also held that prescription pain medication is a primary medical service because one needs to keep taking it to achieve and sustain MMI:

"Achieving" a level of tolerable pain or a relatively healthy mental attitude in the face of a chronic condition, however, is not such a discrete "end." Rather it is an ongoing process. Temporary freedom from pain is meaningless if eight hours later intolerable pain and depression have returned. Reaching a level of tolerable physical and mental health after a chronic injury can be "achieved" only when it can be sustained.²⁸

The court also held that prescription pain medication was not "maintenance care" nor "palliative care," explaining:

These categories of care come into play only *after* one has "achieved" medical stability as we interpret the phrase here. More to the point, the ability to avoid a relapse through proper primary care is not the Cadillac of treatments—it is not an "optimum" state of affairs, nor is it care which will reduce symptoms below that level already reached with appropriate medication.²⁹

In sum, the court held that Hiett was "entitled to receive payment for those prescription drugs necessary for her to sustain medical stability."³⁰

¶ 42 Here, Hagberg's prescription pain medications are necessary to sustain him at MMI. Dr. Schabacker believes that Hagberg "benefits" from the treatment and "finds the opiate medications to reduce his pain, improve his quality of life and overall functional status." As in *Hiett*, if Hagberg stops taking the pain medications prescribed by Dr. Schabacker, he will relapse to non-MMI status. Thus, Hagberg's prescription pain medications constitute primary medical services and not palliative or maintenance care.

²⁵ *Hiett*, ¶¶ 5, 10.

²⁶ *Hiett*, ¶¶ 10-13.

²⁷ *Hiett*, ¶ 35 (emphasis in original).

²⁸ *Hiett*, ¶ 33.

²⁹ *Hiett*, ¶ 34 (emphasis in original).

³⁰ *Hiett*, ¶ 38.

Because this Court accepts Dr. Schabacker's conclusion that Hagberg's pain is a direct result of his industrial injury, and the treatment prescribed by Dr. Schabacker allows Hagberg to sustain MMI, Ace American is liable for these primary medical benefits.

ORDER

¶ 43 Ace American's Motion for Summary Judgment is **denied** and Hagberg's Motion for Summary Judgment is **granted**.

¶ 44 Because he prevailed, Hagberg is entitled to his costs under § 39-71-611, MCA. After awarding Hagberg his costs, this Court will certify this Order as final.

DATED this 15th day of April, 2019.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: R. Russell Plath
Jeffery B. Smith

Submitted: May 21, 2018