

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS OF OHIO

2014 JUL 23 PM 3: 37

DARLENE LANE FERRARO

Plaintiff

v.

THE OHIO STATE UNIVERSITY
MEDICAL CENTER

Defendant

CASE NO. 2011-10371

JUDGE PATRICK M. McGRATH

MAGISTRATE
ROBERT VAN SCHOYCK

**DEFENDANT'S MOTION TO SUBMIT DEPOSITION TESTIMONY DUE TO
UNAVAILABILITY OF WITNESS CHAD MEEKS**

Defendant, The Ohio State University Medical Center, respectfully asks this Court for leave to submit the deposition transcript of witness Chad Meeks at the trial of this matter due to his unavailability pursuant to Evid.R. 804(B)(1).

Chad Meeks was driving southbound on I-71 and observed the collision in the northbound portion that is at issue in this lawsuit. He was the first to report it to the police, as he pulled over immediately and informed an officer that was at the side of the road. He then turned around to go to the scene of the accident. His observations were included in the Traffic Crash Report prepared by the Brook Park Police Department and he was deposed by counsel for the plaintiff on April 13, 2012. His deposition transcript was filed with this Court by plaintiff's counsel in anticipation of the first trial date in December, 2013. Unfortunately, the defendant's efforts to procure Mr. Meeks' attendance at the trial scheduled for Monday, July 28 have been unsuccessful. As a result, Mr. Meeks' deposition testimony should be admitted pursuant to Evid R. 804.

Counsel for the defendant first issued a subpoena to Mr. Meeks when the trial of this matter was scheduled to take place in December 2013. He accepted the subpoena and willingly

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communicated with counsel in the time leading up to that scheduled trial. The trial has since been twice continued, and none of counsel's efforts to procure his attendance since December 2013 have been fruitful. He was issued a second subpoena for the trial scheduled in April of this year, but never signed for or accepted service of that subpoena. Multiple phone calls and written communication did not result in any response. All similar efforts since that time have likewise failed to produce any response or any indication of cooperation on his part. The phone number that he provided in his deposition testimony still results in a voicemail indicating that the number belongs to Chad Meeks, but he has not responded to multiple messages. Likewise, publicly available information indicates that he still resides at the same address, yet he has not responded to written communication attempts nor signed to receive a subpoena.

In fact, it appears that his reluctance to cooperate first developed after being vigorously pressed by plaintiff's counsel in his deposition, when he stated "I'm never giving another statement anymore" (Deposition transcript at 62). He did indicate in his communications with undersigned counsel in December of 2013 that he felt being dragged into litigation was poor thanks for his willingness to report an accident and provide assistance. He expressed that sentiment multiple times before communication ceased and he failed to respond to the renewed subpoena for the twice-rescheduled trial.

Pursuant to Evid.R. 804(A)(5), a declarant is considered "unavailable" where the declarant "is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under division (B)(2), (3), or (4) of this rule, the declarant's attendance or testimony) by process or other reasonable means." In this case, the criteria of Evid.R. 804(A)(5) are satisfied, as it appears that Mr. Meeks simply will not respond either to "process or other reasonable means" to appear at

the trial starting this coming Monday. (The defendant will, of course, withdraw this Motion should Mr. Meeks respond and appear, though it seems unlikely.)

Under Evid.R. 804(B)(1), deposition testimony taken in “the same or another proceeding” may be admitted “if the party against whom the testimony is now offered ... had an opportunity ... to develop the testimony by direct, cross, or redirect examination.” In this case, Mr. Meeks’ deposition was conducted entirely by counsel for the plaintiff, who had ample opportunity to examine and/or cross-examine Mr. Meeks—and in fact did press him quite firmly on a number of issues. Accordingly, the criteria for admission of the transcript under Evid.R. 804(B)(1) are satisfied.

Therefore, the defendant respectfully requests that this Court admit the deposition transcript of Chad Meeks’ April 13, 2012 testimony at the trial of this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 23, 2014, a copy of this document was served via regular mail and email on the following:

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