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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
GALLATIN COUNTY

MICHAEL A. ROUCHLEAU, and KIM)
ROUCHLEAU and JOSEPH)
ROUCHLEAU, as parents and guardians of)
Michael A. Rouchleau,)

Plaintiffs,)

v.)

THREE FORKS SCHOOL DISTRICT)
J-24,)

Defendant.)

Cause No. DV-12-260C
Department No. 3

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
DEFENDANT'S MOTION TO
ENFORCE SETTLEMENT
AGREEMENT**

On May 12, 2014, this Court held an evidentiary hearing on Defendant Three Forks School District J-24's Motion to Enforce Settlement Agreement and to Dismiss Michael Rouchleau's Claims, filed on July 22, 2013. Appearing were: Plaintiff Michael Rouchleau with counsel, Michael Sand; Aaron Engle and Michael Nelson, Pro Hac Vice counsel for Plaintiff Michael Rouchleau, via teleconference; Plaintiffs Kim Rouchleau and Joseph Rouchleau, pro se; and David Dalthorp, counsel for Defendant Three Forks School District J-24 ("School District").

On the record in open court, after discussion with counsel and the parties, this Court denied Michael Rouchleau's Motion to represent himself pro se.

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This Court heard sworn testimony from Michael Nelson, Michael Sand, Michael Rouchleau, and Aaron Engle. Based upon the briefing before the Court and the testimony and other evidence in the record, this Court now makes the following:

FINDINGS OF FACT

1. Attorney Mike Anderson mediated this case for the parties on March 12, 2013.
2. The parties did not settle at the mediation because Kim Rouchleau wanted 24 hours to think about the School District's offer.
3. A couple weeks after the mediation, the School District made an offer of judgment in the same amount.
4. On April 10, 2013, the day the offer of judgment expired, the Rouchleaus' attorney, Mike Sand, emailed the School District's counsel and reported that Michael Rouchleau had accepted the offer of judgment and would be by his office later that day to sign a letter agreeing to it. Mr. Sand asked the School District's counsel to prepare a settlement agreement because he did not want the Rouchleaus to have a change of heart.
5. Thereafter, Mr. Sand told the School District's counsel that the Rouchleaus had reviewed the proposed Settlement Agreement and Release in his office and taken a copy home to further study it.
6. According to the plaintiffs' attorneys, Michael Rouchleau agreed to the proposed Settlement Agreement and Release with an addition of language clarifying that it does not release claims under a Mutual of Omaha medical and disability policy purchased by the Montana High School Association ("MHSA"). This Court found the testimony of Michael Rouchleau's attorneys to be credible and accepts the same in full.
7. The following day, plaintiffs' counsel asked that additional language be added to

the proposed Settlement Agreement and Release, and the School District's counsel added language stating: "Nothing in this Agreement is intended to release any claim that Releasor might have against Mutual of Omaha Policy Number SB20CC-P-50582, and Releasor is specifically not releasing any rights to future benefits under the Mutual of Omaha Policy Number SB20CC-P-50582."

8. Plaintiffs' attorney Mike Nelson testified that Michael Rouchleau agreed to the proposed settlement agreement. Mr. Nelson stated that they discussed the difference between accepting the offer and going to Mr. Sand's office to sign the actual Settlement Agreement and Release.

9. On May 16, 2013, Mr. Sand sent the School District's counsel an e-mail indicating that Michael had agreed to accept the School District's offer and would sign the release the next day or following Monday.

10. Mr. Nelson testified that his practice is devoted to brain injury cases, and he supports the settlement and the amount offered by the School District as ample consideration under the circumstances. Mr. Nelson is confident that Michael Rouchleau agreed to the settlement, but outside interference and pressure from his mother, Kim Rouchleau, later changed his mind.

11. Michael Rouchleau testified that he did not change his mind due to pressure from his mother. He testified he did not agree to the settlement or to the proposed Settlement Agreement and Release. ~~This Court did not find Michael Rouchleau's testimony in this regard to be credible.~~

12. Michael Rouchleau testified that he had concerns that it did not address his future medical bills, which were being paid under the Mutual of Omaha medical and disability policy

purchased by MHSA.

13. Statements made in the hearing by Michael and Kim Rouchleau reveal that they were confused over the MHSA policy and thought that the Settlement Agreement and Release would release claims for payment of future medical expenses under the MHSA policy.

14. ~~At the hearing, the School District's counsel explained that the School District's insurance would pay the settlement.~~ He further explained that the MHSA disability policy is unrelated to the School District's insurance. It is a policy that pays medical bills and disability benefits to injured student athletes without regard to liability.

15. The proposed Settlement Agreement and Release, which is attached to the Affidavit of David C. Dalthorp (filed on July 22, 2013), specifically states it does not release claims for future benefits under MHSA's policy with Mutual of Omaha.

16. Michael Rouchleau is over the age of 18 years.

17. The firm of Nelson Langer Engle, PLLC represents Michael Rouchleau in this matter, and Aaron Engle of that firm was admitted to practice pro hac vice in Montana through attorney Mike Sand, who also represents Michael Rouchleau in this matter.

18. Any factual findings contained in the following Conclusions of Law are hereby incorporated by reference herein.

Based upon the above Findings of Fact, this Court now draws the following:

Conclusions of Law

1. Any conclusions of law contained in the foregoing Findings of Fact are hereby incorporated by reference herein.

2. Settlement agreements are contracts subject to contract law. *Kluver v. PPL Montana, LLC*, 2012 MT 321, ¶ 31, 293 P.3d 817, 368 Mont. 101 (citing *Murphy v. Home Depot*,

2012 MT 23, ¶ 8, 364 Mont. 27, 270 P.3d 72).

3. The elements of a contract require identifiable parties capable of contracting, their consent, a lawful object, and sufficient consideration. *Kluver*, ¶ 31; § 28-2-102, MCA. “A contract must contain all its essential terms in order to be binding.” *Id.* (internal citations omitted).

4. Michael Rouchleau and the School District are parties capable of contracting, the settlement of a disputed claim is a lawful object, and the settlement amount is sufficient consideration. The only disputed element is whether Michael Rouchleau consented to the settlement.

5. Both Mike Nelson and Mike Sand had authority to act as Michael Rouchleau’s agent by virtue of the fact that Mike Nelson’s firm and Mike Sand’s firm represent him in this action.

6. A party is bound to a settlement agreement if he unconditionally consents to the general terms of the agreement. *See Kluver*, ¶¶ 33-34.

7. Such is the case here. Michael Rouchleau consented to the School District’s offer by telling his attorney, Mike Nelson, that he agreed to the amount but wanted to make sure the Settlement Agreement and Release did not release his claim for future benefits under the Mutual of Omaha policy. Mike Sand emailed the School District’s attorney that Michael had accepted the offer. Mike Nelson later related to Mike Sand that Michael Rouchleau had accepted the offer and had agreed to sign the proposed Settlement Agreement and Release with the addition of language stating it does not release claims for future benefits under the Mutual of Omaha policy.

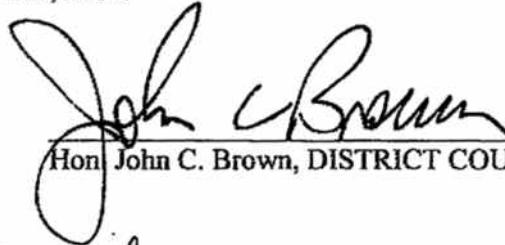
8. Therefore, this Court concludes that the settlement is valid and contains the terms

set forth in the Settlement Agreement and Release.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that Plaintiff Michael Rouchleau's claims shall be DISMISSED forthwith after Plaintiff's counsel provides written notification to the Court, along with a proposed Order of Dismissal, that the School District has paid the \$300,000 amount of the settlement to Plaintiff's counsel's trust fund and that Michael Rouchleau has been sent the proceeds of the net settlement in the amount of \$200,000.00, in accordance with the retainer agreement as well as Plaintiff's counsel's offer of reduced legal fees.

DATED this 23rd day of June, 2014.



Hon. John C. Brown, DISTRICT COURT JUDGE

Cc: ✓ Michael Sand - mail
✓ Aaron Engle/Michael Nelson - email
✓ David Dalthorp/Murray Warhank - email
✓ Kim Rouchleau/Joseph Rouchleau - mail