No. 32303

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

GERALD SNYDER,
Plaintiff-Appellant,

v.

JOHN C. HARMSTON, M.D.,
Defendant-Appellee.

Appeal from District Court Case No. D-506-CV-2010-00054
Fifth Judicial District Court, Lea County
The Honorable Mark Sanchez

APPELLEE'S ANSWER BRIEF

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ABBREVIATIONS AND RECORD REFERENCES

Abbreviations:

Appellee John C. Harmston is referred to as "Dr. Harmston."

Appellant Gerald Snyder is referred to as "Snyder."

Record References:

References to the Record Proper filed in the Court of Appeals are in the form of "RP [page]."

STATEMENT IN REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 12-214 NMRA, Appellee respectfully requests oral argument. This Court twice proposed summary dismissal of this case, both times focusing its analysis on the issue of causation. Oral argument would help give clarification to the pertinent facts and applicable law relating to causation.

SUMMARY OF PROCEEDINGS

I. Nature of the case, course of proceedings, and disposition below.

This is a medical negligence case relating to knee replacement surgery that Dr. Harmston performed on Snyder. RP 2. Snyder alleged that as a result of Dr. Harmston's negligence, he suffered damage to his peroneal nerve resulting in peroneal nerve palsy. RP 2. Dr. Harmston moved for summary judgment, arguing that pursuant to the report and deposition testimony of Snyder's only retained expert, the element of causation was negated as a matter of law. RP 420, 428-31. As he admits in his Brief in Chief, Snyder did not file a timely response to Dr. Harmston's motion. RP 509-10; Appellant's Brief in Chief, page 2. The trial court granted summary judgment in favor of Dr. Harmston. RP 544. This appeal followed.

II. Summary of relevant facts.

After suffering a work related injury on his left knee, Snyder was treated by Dr. Harmston for degenerative arthritis. RP 433. When conservative treatment failed, Dr. Harmston performed knee replacement on Snyder on January 16, 2007. RP 433. Dr. Robert Tonks–Snyder's sole retained expert–acknowledged that the surgery was "mechanically sound," and that Snyder's nerve damage did not occur during the surgery and was not caused by the surgery. RP 434, 437, 440.

Following surgery, Dr. Harmston used a compressive wrap to treat Snyder's knee. RP 434, 442. The use of a compressive wrap following knee replacement is

routine for many orthopedic surgeons and does not constitute breach of any standard of care. RP 442-43. In the days following surgery, the blood in Snyder's knee was draining and decompressing through a drain hole in Snyder's leg, and there was no pressure building in up in Snyder's knee as a result of the compressive wrap. RP 444-45. At around 8:00 a.m. on January 19, Dr. Harmston examined Snyder's knee and redressed the surgery wound. RP 446-47. Dr. Tonks acknowledges and admits that as of this 8:00 a.m. examination, there is no damage to Snyder's nerve, no blistering, and absolutely nothing to suggest there was any problem with Snyder's knee post-surgery. RP 445, 448. At approximately 3:00 p.m. on January 19, Snyder developed numbness in his leg. RP 445. Dr. Harmston examined Snyder again at 3:20 p.m. and observed blisters on Snyder's knee. RP 433, 448. Snyder was placed in rehab and months later, he was diagnosed with peroneal nerve palsy. RP 433.

As stated by Dr. Tonks, in order to cause Snyder's type of injury there "has to be enough pressure built up to smash the nerve." RP 445. Dr. Tonks posits that there can be enough pressure to smash the nerve either through a small amount of pressure for a long period of time, or through a large amount of pressure for shorter period of time. RP 446. Dr. Tonks suggests that the compressive wrap used by Dr. Harmston put enough pressure on Snyder's knee to crush the nerve because Dr. Harmston did not simultaneously use a drain to prevent blood from accumulating in Snyder's knee. RP 434, 442.

SUMMARY OF THE ARGUMENT

To establish causation in a medical negligence case, the plaintiff must have expert testimony that shows the alleged conduct caused the alleged injury to a reasonable degree of medical probability. *Bourgeous v. Horizon Healthcare Corp.*, 1994-NMSC-038, 117 N.M. 434, 440. "The burden of proving reasonable medical probability rests with the plaintiff, and a causal connection between the alleged act of malpractice and the plaintiff's loss or damages cannot be substantiated by arguments based upon conjecture, surmise, or speculation." *Alberts v. Schultz*, 1999-NMSC-015, ¶ 38, 126 N.M. 807.

Although Dr. Tonks suggests that the compressive wrap created enough pressure on Snyder's knee to crush the nerve, Dr. Tonks admitted under oath that he does not know whether the compressive wrap put any pressure on Snyder's knee, and that it is impossible to tell whether the compressive wrap put any pressure on Snyder's knee. RP 443, 447. Dr. Tonks also admitted under oath that he does not know–and that it is impossible to tell–how long the compressive wrap was on Snyder's knee. RP 446. As such, Dr. Tonks cannot show within reasonable medical probability that the wrap put enough pressure on Snyder's knee for a long enough period of time to crush the nerve. Dr. Tonks's conclusions create no more than a mere possibility that the compressive wrap caused Snyder's injury, and a mere possibility is insufficient as a matter of law to establish causation. *Schultz*,

1999-NMSC-015, ¶ 38 (citing *Buchanan v. Downing*, 1964-NMSC-175, 74 N.M. 423, 426).

Dr. Tonks' conclusions are further insufficient to establish causation because they are based on unsupported assumptions. *Shultz*, 1999-NMSC-015 ¶ 36-37. Dr. Tonks assumes that there was blood accumulation in Snyder's knee, but he acknowledged and admitted that following surgery and until Dr. Harmston checked Snyder's knee at 8:00 a.m. on January 19, the blood in Snyder's knee was draining and decompressing through a drain hole in Snyder's leg, there was no pressure building in up in Snyder's knee as a result of the compressive wrap, there was no damage to Snyder's nerve, and there was absolutely nothing to suggest there was any problem with Snyder's knee post-surgery. RP 444-45, 448. Dr. Tonks does not state–and the record does not show–that there was any blood accumulating in Snyder's knee after the 8:00 a.m. examination on January 19. Nor does Dr. Tonks state or assert that the six-hour period between examinations on January 19 was a sufficient amount of time for the compressive wrap to crush Snyder's nerve.

Because Dr. Tonks' conclusions are insufficient to establish causation as a matter of law, the trial court properly granted summary judgment in favor of Dr. Harmston, and the trial court's decision should be affirmed.

BRIEF OF THE ARGUMENT

I. Summary Judgment Was Proper Because Causation Is Negated As A Matter Of Law.

The sole issue in this appeal is whether the trial court erred by granting summary judgment in favor of Dr. Harmston. Summary judgment was proper because according to Dr. Tonks–Snyder's own expert–it is impossible to show that the compressive wrap applied enough pressure for a long time to crush Snyder's nerve. Further, Dr. Tonks' conclusions are based on unsupported assumptions and are insufficient to establish causation as a matter of law. For these reasons, the trial court's decision should be affirmed.

A. Standard of review.

An appeal from the grant of a motion for summary judgment presents a question of law and is reviewed de novo. *Montgomery v. Lomos Altos, Inc.*, 2007–NMSC–002, ¶ 16, 141 N.M. 21. "Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Self v. United Parcel Serv., Inc.*, 1998–NMSC–046, ¶ 6, 126 N.M. 396. "The movant need only make a prima facie showing that he is entitled to summary judgment. Upon the movant making a prima facie showing, the burden shifts to the party opposing the motion to demonstrate the existence of specific evidentiary facts which would require trial on the merits." *Roth v. Thompson*, 1992-NMSC-011, 113 N.M. 331, 334-35 (citations omitted).

A prima facie case may be established if, through discovery, it appears that the party opposing summary judgment cannot factually establish an essential element of his or her case. *Blauwkamp v. Univ. of New Mexico Hosp.*, 1992-NMCA-048, 114 N.M. 228, 232. Where a summary judgment movant has made prima facie showing, the party opposing summary judgment cannot rely on allegations contained in its complaint or upon argument or contention of counsel to defeat it; rather, opponent must come forward and establish with admissible evidence that genuine issue of fact exists. *Ciup v. Chevron U.S.A., Inc.*, 1996–NMSC–062, ¶ 7, 122 N.M. 537, 540; *Dow v. Chilili Coop. Ass'n*, 1956-NMSC-084, 105 N.M. 52, 54-55.

B. Legal requirements for causation.

Snyder alleges that he suffered nerve damage to his leg as a result of Dr. Harmston's medical negligence. RP 2-3. To establish medical negligence, a plaintiff must show: (1) the defendant owed the plaintiff a legal duty; (2) the defendant breached the duty by departing from the proper standard of medical practice recognized in the community; and (3) the alleged acts or omissions proximately caused the plaintiff's injuries. *Blauwkamp*, 1992-NMCA-048, 114 N.M. at 231. To establish causation, the plaintiff must have expert testimony that shows the alleged conduct caused the alleged injury to a reasonable degree of medical probability. *Bourgeous v. Horizon Healthcare Corp.*, 1994-NMSC-038, 117 N.M. 434, 440. "The burden of proving reasonable medical probability rests with the plaintiff, and a causal

connection between the alleged act of malpractice and the plaintiff's loss or damages cannot be substantiated by arguments based upon conjecture, surmise, or speculation." *Alberts v. Schultz*, 1999-NMSC-015, ¶ 38, 126 N.M. 807. To put it another way, "proximate cause must be shown as a probability, not a possibility." *Id.* (citing *Buchanan v. Downing*, 1964-NMSC-175, 74 N.M. 423, 426).

C. Causation is negated because Dr. Tonks stated under oath that it is impossible to determine whether the compressive wrap applied enough pressure for a long enough time to crush Snyder's nerve.

Dr. Tonks stated that to cause peroneal nerve palsy, there has to be enough pressure on the knee to crush the nerve: "[T]here has to be enough pressure built up to smash the nerve between the dressings on the outside and the internal pressure." RP 445. According to Dr. Tonks, sufficient pressure to crush the nerve results from a small amount of pressure for a long period of time, or a large amount of pressure for a shorter period of time:

> Well, with nerves it's a time intensity pressure. So you can take a small amount of pressure and push on a nerve and it will go out. You take a large amount of pressure and push out right away, and it will go out. So there's a whole continuum between how much, you know, intensity of pressure you have and how long the nerve–pressure is applied. You can have a low volume of pressure applied over a long period of time and give you the same result as having one little poke like that.

RP 446.

However, when Dr. Tonks was asked to move from generalities about peroneal nerve palsy and address the specifics of Snyder's knee injury, Dr. Tonks admitted under oath that he did not know how long the compressive wrap was on Snyder's knee and that it was impossible to tell how long the wrap was on Snyder's knee:

> Q. Can you tell us in Mr. Snyder's case how long the peroneal nerve was compressed prior to 3:00?
>
> A. No.
>
> Q. It would be impossible to tell, wouldn't it?
>
> A. Correct.

RP 446. Dr. Tonks further admitted under oath that he did not know how much pressure the compressive wrap put on Snyder's knee and that it is impossible to tell how much pressure–if any–the wrap put on Snyder's knee:

> Q. Is there any way to tell how much pressure is put on the tissues by one of these compressive wraps?
>
> A. No.
>
> Q. When – I mean, like could you quantify it by pounds per square inch or any other measurement?
>
> A. If you quantify it, it would be millimeters of mercury pressure. They are compressive dressings that you put on for, you know, venostasis disease that have various levels of compression, from 15 up to 40 millimeters of pressure.

Q. Now, as it applies to Mr. Snyder, we don't know how much pressure was put on his tissues by that compressive dressing, true?

A. That's correct.

Q. In any quantitative way?

A. Correct.

Q. As you sit here right now, you couldn't tell us how much?

A. Too much.

Q. Well, I mean, quantitatively could you tell us? Is there any way to tell us within a reasonable degree of medical probability how much millimeters of mercury the compressive wrap used on him, how much pressure was put?

A. No.

RP 443.

If Dr. Tonks does not know how long the compressive wrap was on Snyder's knee, and if it is impossible to tell how long the wrap was on Snyder's knee, Snyder cannot establish within reasonable medical probability that the wrap was on his knee long enough to crush the nerve. *See Schultz*, 1999-NMSC-015, ¶ 38. Similarly, if Dr. Tonks does not know how much pressure the compressive wrap put on Snyder's knee, and if it is impossible to tell how much pressure the wrap put on Snyder's knee,

Snyder cannot establish within reasonable medical probability that the wrap put enough pressure on his knee to crush the nerve. *See id.* As a result, any conclusion that the compressive wrap caused Snyder's injury is no more than conjecture, surmise, or speculation, and is insufficient as a matter of law to establish causation. *See id.*

Snyder asserts that Dr. Tonks' deposition testimony is sufficient to establish causation because in passing, Dr. Tonks said that–despite not knowing how much pressure the wrap put on Snyder's knee, and despite it being impossible to tell how much pressure the wrap put on Snyder's knee–he thought the wrap put "[t]oo much" pressure on the knee. RP 442. Snyder characterizes the rest of Dr. Tonks' testimony on pressure as a mere inability to state the precise amount of pressure the wrap put on Snyder's knee. Appellant's Brief in Chief, page 15. Snyder's assertion and characterization here are incorrect. It is not that Dr. Tonks can show there was some pressure caused by the wrap but simply cannot say exactly how much; instead, Dr. Tonks stated under oath that he does not know if the wrap put *any* pressure on Snyder's knee at all:

> Q. As you sit here today can you, within a reasonable degree of medical probability, tell us whatever compression you believe was put on the nerve was from the compressive wrap that was put on on the 16th or the wound redressing on the 19th? Can you say one way or another?

A. I don't know.

RP 447. Therefore, Dr. Tonks cannot show within reasonable medical probability that there was any pressure on Snyder's knee from the compressive wrap. At best, Dr. Tonks's belief that there was "[t]oo much" pressure creates only a possibility that the wrap caused Snyder's knee injury, and a mere possibility is insufficient as a matter of law to establish causation. *Id.* ¶ 38 (citing *Buchanan v. Downing*, 1964-NMSC-175, 74 N.M. 423, 426).

D. Causation is negated because Dr. Tonks' conclusions are based on unsupported assumptions.

In *Shultz*, the plaintiff visited his primary care physician complaining of severe "rest pain" in his right foot, which is an acknowledged sign of impending gangrene that could lead to the amputation of the affected limb. *Schultz*, 1999-NMSC-015, ¶ 2. Despite noting that plaintiff's foot was a "dusky" color, the primary physician did not order an arteriogram, did not conduct a motor sensory examination, and declined to send the plaintiff to a specialist right away. *Id.* ¶ 2-3. Plaintiff saw a specialist thirteen days later who immediately sent plaintiff to a hospital. *Id.* ¶ 4. Despite several procedures, plaintiff's condition showed no sign of improvement and his leg was amputated. *Id.*

The plaintiff filed a medical negligence and lost-chance case against his treating physician and the specialist. *Id.* ¶ 5. The plaintiff's case was supported by the testimony of Dr. Max Carlton Hutton, a vascular surgeon. *Id.* ¶ 6. Dr. Hutton

stated that in his opinion the primary physician should have performed motor and sensory exams, should have immediately ordered an arteriogram, and should not have allowed nearly two weeks to pass before plaintiff could be seen by a specialist. *Id.* Dr. Hutton also stated that the specialist was negligent in not performing motor and sensory exams, and in not doing a bypass immediately. *Id.* In Dr. Hutton's opinion, the probability that plaintiff's leg could have been saved decreased significantly because of the inaction of both physicians. *Id.* ¶ 7. Dr. Hutton stated that in cases such as the plaintiff's, even the passage of six hours can make the difference between success and failure. *Id.* ¶ 6.

The trial court granted summary judgment in favor of the physicians on the basis that the plaintiff "could not establish to a reasonable degree of medical probability that the [physicians'] conduct proximately caused the amputation of [plaintiff's] leg." *Id.* ¶ 8. On appeal, the New Mexico Supreme Court affirmed the summary judgment, holding that a showing of proximate cause was precluded because Dr. Hutton's conclusions were premised on unsupported assumptions. *Id.* ¶ 40.

The Supreme Court noted that Dr. Hutton's testimony was based on the presumption that the plaintiff's leg could have been saved if specific arteries in his leg were suitable candidates for bypass surgery. *Id.* ¶ 7. However, the Supreme Court found that Dr. Hutton "based his opinion on inadequately verified and

speculative assumptions concerning [plaintiff's] condition" *Id.* ¶ 37. Specifically, the Court held that although Dr. Hutton "testified that bypass surgery would have had a strong chance of being successful if [plaintiff's] leg had exhibited 'a good saphenous vein,'" Dr. Hutton "stated no authoritative conclusions about the integrity of [plaintiff's] saphenous vein." *Id.* The Supreme Court concluded that "[w]ithout proof that [plaintiff's] leg possessed at least one vein or artery that was suitable for bypass surgery, [plaintiff] cannot validly contend that the failure to timely perform a bypass caused the leg to deteriorate." *Id.*

Likewise, with respect to the allegation that the delay in treatment decreased the probability of saving the plaintiff's leg, Dr. Hutton testified that "[t]he only thing we know is that at least by the point that [the treating physician] saw the patient, we had crossed the line in non-limb-threatening ischemia to potentially limb-threatening ischemia." *Id.* ¶ 7. The Supreme Court found this testimony insufficient to establish causation: "Dr. Hutton could not pinpoint a time when the ischemia became irreversible, nor could he pinpoint a time when earlier intervention would have changed the outcome." *Id.* Further, Dr. Hutton admitted that "he could not state to a reasonable degree of medical probability that immediate use of the motor and sensory exams, the arteriogram, and the bypass would have increased the chances of saving [plaintiff's]." *Id.* As a result, the Supreme Court concluded that "[Plaintiff] cannot demonstrate that there was a window of time during which measures could

have been taken to foreclose the need to amputate [his] leg" and that "[Plaintiff] cannot show, to a reasonable degree of medical probability, that timely and proper medical intervention would have saved [his] leg." *Id.* ¶ 36.

Shultz is dispositive in this case and shows that Dr. Tonk's conclusions are insufficient to establish causation. As explained above, Dr. Tonks stated in passing that he thought the compressive wrap put "[t]oo much" pressure on Snyder's knee. RP 442. However, Dr. Tonks admitted under oath that (1) he does not know how much pressure the compressive wrap put on Snyder's knee, (2) he does not know whether the wrap put *any* pressure on Snyder's knee, (3) it is impossible to tell how much pressure the wrap put on Snyder's knee, (4) he does not know how long the wrap was on Snyder's knee, and (5) it is impossible to tell how long the wrap was on Snyder's knee. RP 443, 446-47. Thus, like the expert in *Shultz* could not pinpoint the exact time when the plaintiff's condition became irreversible or whether available procedures would have increased the chance of saving the plaintiff's leg, Dr. Tonks' cannot show that there the wrap put sufficient pressure on Snyder's knee for a long enough period of time to crush the nerve. Dr. Tonks' passing belief that the wrap caused "[t]oo much" pressure is an unsupported assumption and is insufficient to establish causation. *Shultz*, 1999-NMSC-015, ¶ 36-37.

Dr. Tonks' conclusions are also based on unsupported assumptions about blood accumulation in Snyder's knee and Dr. Hamrston's failure to use a drain on the knee:

> If you put a drain in, you're *assuming* there's going to be a lot of bleeding. When you pull the drain out accidentally, now the *assumption* you're making is the blood is going to be profusive inside the knee.
>
> ****
>
> That's really what this case is. There's a lot of bleeding here in the case. There was no place for the blood to go except expand inside the knee. And then there was compressive dressing on the outside, and the nerve got caught between the compressive dressing on the outside and the swelling on the inside of the knee.

RP 422 (emphasis added). Despite these assumptions, Dr. Tonks acknowledged and admitted that in the days following surgery and until after Dr. Harmston checked Snyder's knee at 8:00 a.m. on January 19, the blood in Snyder's knee was draining and decompressing through a drain hole in Snyder's leg, there was no pressure building in up in Snyder's knee as a result of the compressive wrap, there was no damage to Snyder's nerve, and there was absolutely nothing to suggest there was any problem with Snyder's knee post-surgery. RP 444-45, 448.

What Dr. Tonks must show, then, is that blood was accumulating in Snyder's knee after the 8:00 a.m. examination on January 19 and prior to the 3:20 p.m. examination on that same day that revealed problems with Snyder's knee. RP 433, 448. Dr. Tonks does not state–and the record does not show–that there was any blood accumulating in Snyder's knee between 8:00 a.m. and 3:20 p.m. on January 19.

Instead, Dr. Tonks relies on the further assumption that the drain hole in Snyder's leg eventually closed up:

> Q. So let me see if we can make this clear. You know post-op on the 16th, 17th, 18th, and possibly the morning of the 19th – would you agree with me the left knee was – and its tissues and – including the peroneal nerve was still decompressing through a hole?
>
> A. The peroneal nerve wouldn't be decompressing. It would be – the blood inside the knee join would be decompressing through the hole. But then it seals up at some point. All holes seal up at some point. It's usually about two or three days postoperatively when they seal up. And then you get an accumulation of fluid inside the knee. And no you're putting pressure on it.
>
> Sometime between 8:00 in the morning, when Dr. Harmston saw him, and 3:00 in the afternoon, when the nurse said, He's got numbness in his leg, *something happened.* That's a period of about – what's that? Four, seven, eight hours, something like that. So *something happened* in that period of time.

RP 445 (emphasis added). While Dr. Tonks may be implying and assuming that Snyder's drain whole closed up between 8:00 a.m. and 3:00 p.m. on January 19, Dr. Tonks' statements here only concern drain holes in general–Dr. Tonks makes no statement, and the record does not show, that Snyder's particular drain hole closed during this period of time. In the same fashion, while Dr. Tonks states that

"something happened" during this time period, he makes no authoritative statements or conclusions about exactly what happened.

Like the expert in *Shultz* that stated no authoritative conclusions about the integrity of the plaintiff's vein and suitability for bypass surgery, Dr. Tonks states no authoritative conclusions about blood accumulation in Snyder's knee between 8:00 a.m. and 3:20 p.m. on January 19, or what allegedly happened during that time period. Nor does Dr. Tonks state or assert that the six-hour period between 8:00 a.m. and 3:20 p.m. on January 19 was a sufficient amount of time for the compressive wrap to crush Snyder's nerve. Dr. Tonks' opinions about blood accumulation, drain hole closures, and pressure on Snyder's knee are unsupported assumptions and are insufficient to establish causation. *Shultz*, 1999-NMSC-015, ¶ 36-37.

Snyder contends that *Shultz* is inapplicable because the issue in *Shultz* was the "failure to timely provide services," whereas this case involves "the inappropriate wrapping of the joint resulting in nerve injury." Appellant's Brief in Chief, pages 19-20. If only it was that easy to distinguish binding case law from the New Mexico Supreme Court. The nominal factual differences between this case and *Shultz* do not change that *Shultz* correctly states and demonstrates the legal requirements for causation in a medical negligence case in New Mexico. *See Waconda v. U.S.*, No. CIV 06-0101 JB/ACT, 2007 WL 2461622, *4 (D.N.M. May 30, 2007) (non-precedential) (citing *Shultz* and stating, "The standards of causation in a loss of

chance case are the same as in medical malpractice actions prosecuted under other theories.").

CONCLUSION AND PRAYER FOR RELIEF

Dr. Tonks admitted he does not know–and it is impossible to tell–whether the compressive wrap in this case put any pressure on Snyder's knee. Dr. Tonks also does not know–and it is impossible to tell–how long the compressive wrap was on Snyder's knee. As such, he cannot show within reasonable medical probability that the compressive wrap applied enough pressure for a long enough period of time to crush Snyder's nerve. Dr. Tonks' opinions are based on unsupported assumptions and pure guesswork about pressure and blood accumulation in Snyder's knee. As a matter of law, Dr. Tonks' unsupported conclusions are insufficient to establish causation in this case. Dr. Harmston established a prima facie case for summary judgment, and Snyder failed to file a timely response or put forth evidence to show there is a genuine issue of material fact as to causation. Dr. Harmston respectfully requests that this Court affirm the summary judgment of the trial court.

Respectfully submitted,

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STATEMENT OF COMPLIANCE

I hereby certify that the Brief in Chief of Appellants complies with the Type-Volume limitation requirements set forth in Rule 12-213, F(3), NMRA. The Brief in Chief of Appellants is prepared in Times New Roman, a proportionally-spaced typeface, and the body of the Brief in Chief contains 4,257 words. The Brief in Chief of Appellants was prepared using WordPerfect 15, and the word count was obtained from WordPerfect 15.

_____
JASON HUNGERFORD

CERTIFICATE OF SERVICE

Pursuant to Rule 12-307 NMRA, I hereby certify that a true and correct copy of the foregoing Answer Brief was sent via certified U.S. mail, return receipt requested, on this 2nd day of July 2013, to the following:

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