

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 12-0484

**FILED**

JAN 09 2013

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

ORDER

LARRY COLEMAN,

Plaintiff and Appellant,

v.

THE STATE OF MONTANA, acting by and  
through THE MONTANA DEPARTMENT  
OF TRANSPORTATION,

Defendant and Appellee.

Defendant and Appellee Montana Department of Transportation (MDOT), by counsel, has filed a motion to strike what it terms “extra-record” facts or information contained in the reply brief filed by counsel for Plaintiff and Appellant Larry Coleman (Coleman). Coleman has filed a response to MDOT’s motion.

MDOT complains that a footnote to the reply brief adds information not previously presented to MDOT in response to discovery requests, and that it therefore unlawfully “changes the facts” on appeal. Coleman responds in enigmatic fashion, simply contending that the facts set forth in the footnote “appear to be in dispute.” Because this Court cannot determine the merits of the motion to strike and the response without a full review of the briefs and the record, which has yet to be undertaken,

IT IS HEREBY ORDERED that the motion to strike filed by MDOT is TAKEN UNDER ADVISEMENT.

The Clerk is directed to provide copies of this Order to all counsel of record.

DATED this 8 day of January, 2013.

*Patricia Cotter*

Michael E. Whelan

Beth S. Abrahams

James P. ...

Jim Rice  
Justices