

COPY

Discovery Deposition
of **WILLIAM McGUIRE**

Date: March 20, 2013

Case: Dulberg v. Gagnon

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IN THE CIRCUIT COURT
FOR THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
Plaintiff,)
)
vs.) No. 12 LA 178
)
DAVID GAGNON,)
Individually, and as)
Agent of CAROLINE)
McGUIRE and BILL McGUIRE)
and CAROLINE McGUIRE and)
BILL McGUIRE,)
individually,)
)
Defendants.)

The deposition of WILLIAM McGUIRE, taken in the above-entitled cause, before Paula Ann Erickson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public, on March 20, 2013, at 3421 West Elm Street, McHenry, Illinois, at the approximate hour of 2:25 p.m.

REPORTED BY: PAULA A. ERICKSON

C.S.R. LICENSE NO. 084-003899

1 APPEARANCES:

2
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24
Appeared on behalf of the Defendant, David
Gagnon.

* * * *

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1 THE REPORTER: Sir, can you raise your right
2 hand, please?

3 WILLIAM McGUIRE,
4 after being first duly sworn, deposeth and saith as
5 follows:

6 EXAMINATION

7 BY MR. MAST:

8 Q. Please state your name, sir.

9 A. William McGuire.

10 MR. MAST: This is the discovery deposition of
11 William McGuire, taken pursuant to notice, in
12 accordance with the applicable rules.

13 BY MR. MAST:

14 Q. Mr. McGuire, what's your address?

15 A. 1016 West Elder Avenue, McHenry,
16 Illinois 60051.

17 Q. Okay. And you live with Carolyn?

18 A. Yes.

19 Q. She is your wife?

20 A. Yes.

21 Q. How long have you been married?

22 A. I am not remembering very good. '91. Since
23 '91.

24 Q. Okay. And you have always lived at that

1 address?

2 A. Let's see.

3 Q. I meant during your marriage.

4 A. I moved in in '89.

5 Q. At the Elder address?

6 A. Correct.

7 Q. Before you were married?

8 A. Yeah. Yes.

9 Q. Okay. Do you have any prior marriages?

10 A. No.

11 Q. Okay. Any children?

12 A. No.

13 Q. Okay. Okay. And Carolyn has three children,
14 two daughters and a son, correct?

15 A. Yes.

16 Q. And the son is David Gagnon?

17 A. Yes.

18 Q. Okay. And have you known Dave -- Well, let
19 me ask this: How long before you were married did you
20 know --

21 A. I have known Dave since 1984.

22 Q. How did you meet Dave?

23 A. Through his mother.

24 Q. So you have known Carolyn since '84 as well?

1 A. Correct.

2 Q. Okay. Is that when you started kind of
3 dating, that type of thing?

4 A. Yes.

5 Q. Where did you meet? Through what kind of --

6 A. Where did I meet Carolyn?

7 Q. How did you meet Carolyn? I'm sorry.

8 A. I met Carolyn at a marina.

9 Q. Okay. And are you retired?

10 A. Yes.

11 Q. What is your work -- Before you retired, what
12 were you doing?

13 A. Carpenter.

14 Q. Okay. When did you retire?

15 A. '06.

16 Q. Is that because of the disability?

17 A. Yes.

18 Q. Okay. Are you -- What's your injury? What's
19 your disability, back?

20 A. Correct.

21 Q. Okay. So you are not able to do heavy type
22 work; is that correct?

23 A. No.

24 Q. Is that correct?

1 A. Yes.

2 Q. Okay. So you have some type of permanent
3 chronic back problem?

4 A. Yes.

5 Q. All right. I am sure you have used a chain
6 saw in your life, correct, or not?

7 A. No.

8 Q. So you never used a chain saw?

9 A. No.

10 Q. Okay. Although we have a chain saw here on
11 the table that I am understanding you and Carolyn
12 purchased --

13 A. Correct.

14 Q. -- the same year as Paul's accident at your
15 house?

16 A. Yes.

17 Q. Okay. And I might be wrong but I am taking
18 this from what Carolyn said but Carolyn said that
19 sometime early 2011 before Paul's June 2011 accident
20 you two purchased this chain saw that's here on the
21 desk today?

22 A. Yes.

23 Q. And it's a red bodied chain saw and it's a
24 gas chain saw, correct?

1 A. Yes.

2 Q. From Efco, E-F-C-O, MT, 3500. That's what I
3 am reading off of it; is that right?

4 A. Yes.

5 Q. Yes?

6 A. Yes.

7 Q. Okay. Who purchased it?

8 A. I did.

9 Q. Okay. Where did you purchase it from?

10 A. Menards.

11 Q. And since you have never used the chain saw
12 before and I am assuming because of your injury you
13 weren't planning on using this one, why did you
14 purchase it?

15 A. Well, I was wondering if we had a storm come
16 through and some trees come down I would learn how to
17 use it. I am a carpenter.

18 Q. Okay.

19 A. And I pick up things very quick but if I
20 don't have to use it, I don't want to use it.

21 Q. Okay. So you got it in case?

22 A. Emergency, correct.

23 Q. Okay. And you got it for your use, not
24 anybody else's?

1 A. Yes.

2 Q. For yours, I mean, you physically?

3 A. Personally. Personally in case we have trees
4 come down or any of that problems.

5 Q. But for you to use, correct? Not for you to
6 have somebody else use. You got it for you to use; is
7 that correct?

8 A. Basically I bought it if one of the kids
9 wanted to borrow it, I would let them borrow it.

10 Q. I understand the options there, but I am
11 asking the reason you bought it is for you to use, not
12 somebody else to use?

13 A. Yes.

14 Q. There is options, anybody can use it. I get
15 that.

16 A. Yes.

17 Q. But you bought it for yourself to use,
18 though, correct?

19 A. Yes.

20 Q. All right. How long have you known Paul
21 Dulberg?

22 A. I probably met him in the '80s because David
23 and him were probably friends and, you know, kids come
24 over and come and go and that's probably when I ran

1 across him the first time.

2 Q. All right. Before -- I think Paul's chain
3 saw accident at your house was sometime June 2011; is
4 that your understanding?

5 A. Yeah.

6 Q. Okay. Did you know Paul to ever use a chain
7 saw before his injury at your house in 2011?

8 A. Yes. He was on the property and David used
9 the chain saw.

10 Q. Are we talking the day of his accident?

11 A. This is prior.

12 Q. Okay. Go ahead.

13 A. Because you were asking if Paul -- I ever saw
14 him operate a chain saw.

15 Q. You are right.

16 A. And he was at the house. David cut down an
17 apple tree in the backyard and I saw Paul use the chain
18 saw on an apple -- the stump, the apple stump, to try
19 to get it closer to the ground. That's the only time I
20 ever seen him use the chain saw.

21 Q. Fair enough. Was that in the same year of
22 his accident at your house?

23 A. That was prior.

24 Q. Same year, though?

1 A. You know, probably -- I believe it was. I
2 believe it was.

3 Q. Carolyn seemed to think the apple tree
4 cutting was sometime in May of that year.

5 A. You know, she was probably right. It was
6 before the pine tree..

7 Q. The evergreens or --

8 A. Well, I call them evergreen, pine tree.

9 Q. Same thing. Right. Before Paul's accident?

10 A. Yes.

11 Q. Right. Okay. So according to you, sometime
12 in May 2011 when the apple tree was being cut down by
13 Dave, Paul was also there to help and he used it to
14 cut the stump?

15 A. The stump, the tree stump.

16 Q. Down lower?

17 A. Yes.

18 Q. Okay. And that's the only time -- So the
19 only time you ever saw Paul use a chain saw before his
20 accident in June 2011 was the one time at your house
21 when he cut the stump off that apple tree?

22 A. Yes. He got the stump lower to the ground.

23 Q. Is that true? What I just said, is that
24 true? I will say it again because you interrupted me

1 by adding on. Let's just answer what my question is.

2 Okay. My question is: The only time
3 you ever seen Paul use a chain saw before his accident
4 at your house in June 2011 was when he cut the stump
5 down a little bit lower from the apple tree that was
6 at your house in May of 2011?

7 A. Yes. The one David Gagnon cut down and he
8 got the stump down lower, yes.

9 Q. Is what I just said true?

10 A. Yes. Yes.

11 Q. All right. Because you keep adding. Just
12 answer -- If you don't understand my question, I will
13 reword it, but try to answer what I am asking instead
14 of adding on to what my question is, all right?

15 A. Okay.

16 Q. Got me?

17 A. Yeah.

18 Q. Did you see Paul doing anything with the use
19 of the chain saw that you thought dangerous or unsafe
20 before his accident?

21 A. No.

22 Q. Did you know that Paul -- and I'm not sure he
23 was but I have to ask you. On the day of Paul's
24 injury at your house in June 2011, you know, with Dave

1 there, do you know if Paul was ever even using the
2 chain saw that day?

3 A. No.

4 Q. Do you know? You don't know?

5 A. I don't know if he was using the chain saw.

6 Q. That's what I am asking. Okay. Let me ask
7 you a couple questions and today -- Well, let me ask
8 it this way: When is the last time you spoke or saw
9 Paul?

10 A. Probably three weeks ago in a grocery store.

11 Q. Did you speak to him or just see him?

12 A. Said hi.

13 Q. Did he say hi to you?

14 A. Yes.

15 Q. Was that it?

16 A. Correct.

17 Q. Did you see him carrying anything?

18 A. No.

19 Q. Okay. Did you see him do anything that would
20 suggest he wasn't having problems with his arm that he
21 cut in this chain saw accident at your house in 2011?

22 A. I did not see him doing anything but walking
23 with his mother.

24 Q. Okay. Before Paul's accident in June 2011 at

1 your house, were -- did you consider him a friend,
2 just a friend of your stepson's? How did you -- What
3 was his status with you?

4 A. I considered him a friend of my stepson.

5 Q. Okay. So more of an acquaintance to you
6 then? He wasn't somebody you'd socialize with outside
7 of your son or something then?

8 A. Correct. If he wasn't around for my son, he
9 didn't come around.

10 Q. So he wasn't like your buddy or anything?

11 A. No. No.

12 Q. Okay. So you were on good terms with him
13 because he was obviously on good terms with your son
14 before this accident occurred, right?

15 A. Yes.

16 Q. Did that change at all at least in your mind?
17 Now Dave has spoken his peace so we don't even need to
18 go into what Dave thinks, but in your mind has your
19 feelings about Paul changed today versus before his
20 injury at your house?

21 A. Yes.

22 Q. Okay. Good, bad, indifferent, what?

23 A. Well, I think he is a fibber.

24 Q. Okay. Fair enough. You are just being

1 honest. Okay. Why do you think he is a fibber?

2 A. You know, it should be cut and dry. I mean,
3 it was an accident.

4 Q. Right. All right.

5 A. And that's all I know.

6 Q. Is it -- So I am reading into this, you can
7 tell me if I am wrong, but is it because a lawsuit was
8 filed; is that why?

9 A. Duh. Yes.

10 Q. Well, listen, I have to ask these questions,
11 sir. Let me just go through this and make it easy for
12 me, all right?

13 A. I'm sorry. Yes.

14 Q. You are making it hard. The fact that a
15 lawsuit was filed and you are part of that lawsuit has
16 that made you feel that he is a fibber?

17 A. Well --

18 Q. Or I am trying to find out.

19 A. Basically, since the lawsuit was filed and,
20 you know, it wasn't cut and dry, I just probably don't
21 want nothing to do with him now, so.

22 Q. Okay. So let me -- again, I have -- because
23 some of the words you have used, I have to ask you
24 about it. Do you feel he is a fibber or you just

1 don't like the fact that he filed a lawsuit against
2 you?

3 A. I don't like the fact that he filed a
4 lawsuit.

5 Q. Okay. So fibber meaning liar, you are not
6 calling him a liar?

7 A. No. No. No. I'm sorry. Just because he
8 filed a lawsuit.

9 Q. All right. So let me -- Again, I got to
10 clear that up now. Do you believe in your mind that
11 Paul is a fibber or a liar or don't you know?

12 A. I don't know.

13 Q. Okay. And I meant more about this lawsuit
14 obviously. You don't know if he is lying or fibbing
15 about the lawsuit because you don't know what
16 happened, right?

17 A. Yes.

18 Q. Fair enough?

19 A. Yes.

20 Q. Okay. So you would not characterize him as a
21 fibber for filing the lawsuit because you don't know
22 if he is or not, true?

23 A. True. True. Yes.

24 Q. Before the accident occurred at your house in

1 June 2011, did you believe Paul was a credible, honest
2 soul, person?

3 A. Yes.

4 Q. Okay. Did you have any reason to believe
5 that he would fib prior to this accident?

6 A. No.

7 Q. Okay. All right. Have you heard -- Well,
8 let me put Dave aside for a minute. Other than
9 through Dave, have you heard that Paul was trying to
10 make more out of this accident than was warranted
11 other than -- I'm sorry. Let me --

12 MR. BARCH: Other than David or his attorney.

13 BY MR. MAST:

14 Q. Yeah. Other than through Dave or Dave's
15 attorney or your attorney I guess, have you heard
16 either from Paul or anybody else --

17 A. No.

18 Q. -- something to the effect that Paul was
19 trying to make more out of this claim or accident than
20 he should?

21 A. I have not heard nothing, no.

22 Q. Okay. Have you ever heard Paul suggest since
23 his accident that he was trying to get people to say
24 things to make this case worth more than it is?

1 A. No.

2 Q. Have you ever heard Paul since his accident
3 or anybody -- Strike that.

4 Have you ever heard Paul since his
5 accident ever suggest that he may never have to work
6 again in his life or he is going to be able to be rich
7 or anything like that, those issues, since this
8 accident?

9 A. No.

10 Q. Okay. Have you heard those through Dave?

11 A. No.

12 Q. Dave has not even told you those things that
13 Paul has said supposedly?

14 A. David has told me that he is not telling the
15 truth.

16 Q. Okay.

17 A. That's what he told me.

18 Q. All right. So Dave told you Paul is not
19 telling the truth about the accident.

20 A. Correct.

21 Q. But has Dave ever told you since the accident
22 that Paul was trying to get him to lie or get him to
23 say things so that they can retire?

24 A. Dave --

1 Q. Hold on. Let me finish the question -- so he
2 can retire or make a lot of money out of this case?
3 Has he said that?

4 A. No. Dave has never told me that.

5 Q. Okay. Okay. So I just want to make one
6 other question on that just to make sure I covered
7 everything.

8 Is it fair to say then other than maybe
9 through your attorney you have never heard any
10 allegation or suggestion whether by Paul or anybody
11 else, Dave, Paul, anybody, that Paul was trying to
12 make more out of this case than was justified and/or
13 trying to get people to talk in favor of him in return
14 for anything? Have you ever heard those things?

15 A. Other than David's comments or maybe my
16 attorney a little bit, I haven't heard nobody else say
17 a word.

18 Q. Okay. Including Paul, correct?

19 A. Oh, yeah.

20 Q. Okay. So what did Dave tell you in that
21 regard?

22 A. Dave was saying that somehow the accident
23 happened different than when the way Paul was
24 describing it.

1 Q. Okay. And that's not quite what I asked so
2 let me go back because we are going to get into that.
3 Okay.

4 Let me -- My question was framed more to
5 other than your attorney, have you heard from anyone
6 including Paul, including Dave, anyone, that Paul was
7 trying to get people to fabricate or lie to his favor
8 in this case or to help him recover in this case?

9 A. No. Nobody told me that.

10 Q. Not Dave, not Paul, nobody, right?

11 A. The only thing I am saying is the question
12 you are asking me is the same question I am saying is
13 if it's got to pertain to the accident, David didn't
14 agree with the way Paul stated the accident happened.
15 Other than that --

16 Q. And I understand there is two versions of the
17 accident. I understand that.

18 A. Correct.

19 Q. My question was different, though. My
20 question was: Have you ever heard, other than through
21 your attorney, that either Paul or Dave suggested that
22 Paul was wanting people to lie for him or to fabricate
23 anything?

24 A. Other than Dave and my attorney, no. Nobody

1 has told me anything about --

2 Q. I am including Dave in that. What did Dave
3 tell you about Paul wanting him to fabricate or lie?
4 Did he say that?

5 A. As far as Paul telling David to change the
6 story or fabricate?

7 Q. Yeah. Did he do that?

8 A. David never mentioned it to me like that, no.

9 Q. Okay. So all right. So let me say the
10 question again then. Is it fair to say, and putting
11 your attorney's comments to you aside, okay, I am not
12 asking you about your attorneys, but with regard to
13 anybody else, you have never heard anyone suggest that
14 Paul was trying to get Dave to lie, fabricate about
15 this case, fair enough?

16 A. Yeah.

17 Q. Okay. You never heard that?

18 A. No.

19 Q. All right. As I understand it, there are two
20 evergreens in your backyard back in June 2011 that you
21 guys wanted cut down so you could put a storage shed
22 back there, right?

23 A. Yes.

24 Q. Okay. And as I understand it, I don't

1 remember if it was you or your wife, but one of you
2 asked Dave to do that work -- help with that work,
3 right?

4 A. Yeah. Knock some lower branches down.

5 Q. Right. Who asked him to do that?

6 A. You know, I don't remember.

7 Q. Okay. It was either you or your wife?

8 A. Correct.

9 Q. And I think your wife said she was going to
10 pay Dave something for his gas or whatever, right?

11 A. Basically, she'd give him a pair of pants. I
12 don't know. They are always mothering the son, you
13 know.

14 Q. Right. So what their arrangement was as far
15 as money or --

16 A. Some kind of gift.

17 Q. Listen, you are going to make this last twice
18 as long as -- I'd like to get you in and out of here
19 as quick as possible but because I have to keep
20 repeating the question, it's going to make it
21 difficult so I am just trying to tell you we can
22 probably get out of here real quick but I am going to
23 have to keep backing up. So let me try to move
24 forward but let me finish my question, okay?

1 A. Uh-huh.

2 Q. All right. So whatever the arrangement was
3 between Carolyn and Dave as far as what he would get
4 in return for doing this work, you don't know; fair
5 enough?

6 A. Yes.

7 Q. Okay. And what was Dave's experience, if you
8 know, in use of a chain saw before this accident with
9 Paul at your house?

10 A. Stuff I have heard, a project he worked on
11 through the course of me living there and physically
12 seeing him prune the trees on the property with a chain
13 saw.

14 Q. Okay.

15 A. That's about the extent of it.

16 Q. With a chain saw?

17 A. Correct.

18 Q. With your chain saw?

19 A. No. We didn't have it then.

20 Q. Okay. With his chain saw on his property?

21 A. No. Back when David lived at the house.

22 Q. With you?

23 A. On our property when David lived there --

24 Q. Right.

1 A. -- I don't know where he got the chain saw
2 but he had a chain saw and he done some pruning on the
3 property and that I have seen him do.

4 Q. Okay. Okay. And how often was that? Just
5 the one time or was it repeatedly?

6 A. I would say a handful of times.

7 Q. Okay. Over the course of several years?

8 A. Yeah. Correct.

9 Q. And that was while he was living with you?

10 A. Yeah.

11 Q. And that's the only time you have known him
12 to use a chain saw other than in 2011?

13 A. This goes back in, you know, in say in the
14 mid '80s, in the '90s, you know, whenever he would go
15 around the yard and prune stuff up with the chain saw.

16 Q. Did you have a chain saw at the house at that
17 point?

18 A. Not mine. You know, he might have borrowed
19 one from a friend or he might have had one. I don't
20 know.

21 Q. Okay. In 2011 other than the two evergreen
22 trees he was going to take some of the branches down
23 off of, did he do -- did Dave do any other work with
24 the chain saw on your property in that year?

1 A. Cut the apple tree down.

2 Q. Okay. Anything else?

3 A. No.

4 Q. Okay.

5 A. You know, he did a little chain saw work.

6 No. That was about it. That was about it that I
7 remember.

8 Q. Okay. So the apple tree and the two
9 evergreens, those are the only chain saw work he was
10 doing at your house in 2011, correct?

11 A. That I remember. You know, I'm trying to
12 remember because I know Paul took some scrap from the
13 front yard from a maple tree.

14 Q. Yeah. Your wife said just to --

15 A. And --

16 Q. Go ahead.

17 A. And I don't remember if he used the chain saw
18 to cut them pieces up a little further but I don't
19 remember that.

20 Q. What your wife said was a tree company took
21 that tree down.

22 A. Yes, they did.

23 Q. Let me finish. And left some stumps or
24 sections and Paul and Dave cut those sections up so

1 Paul could have firewood. That's what she said.

2 A. I --

3 Q. You don't know?

4 A. I know Paul took the wood, the bulk of the
5 wood.

6 Q. Who cut it up, you don't know?

7 A. No.

8 Q. Okay. So the only time you know that Dave
9 used a chain saw on your property in 2011 was the two
10 evergreens that he was cutting branches off at the
11 time Paul was hurt and the one apple tree?

12 A. Yes.

13 Q. Okay. I think Paul's accident was June 28,
14 2011. Do you know that to be true or not?

15 A. You know, it sounds -- but I don't know.

16 Q. Do you know what day of the week it was?

17 A. No.

18 Q. Okay. You were retired so you would have not
19 been working. Would you have been home at the time?

20 A. Yes.

21 Q. What were you doing at the time of Paul's
22 injury?

23 A. I was in the house.

24 Q. Doing what?

1 A. Watching TV.

2 Q. Okay. Was that -- Do you know about what
3 time Paul's accident occurred that day?

4 A. I don't remember.

5 Q. If you were watching TV when his accident
6 occurred, would that have been pretty much what you
7 were doing for most of the day prior to leading up to
8 his accident or were you doing other things in the
9 house?

10 A. I was in the house. I am trying to
11 remember -- I might have walked around a little bit,
12 you know, and then I was in the house.

13 Q. Did you ever go outside the house while Paul
14 and Dave were in the backyard working?

15 A. No.

16 Q. So would it be fair to say that day of Paul's
17 accident before his injury, you don't know who was
18 doing what type of work, where, when or how?

19 A. That's true.

20 Q. Okay. And you never viewed at any time prior
21 to Paul's injury what they were doing back there in
22 the backyard, correct?

23 A. That's correct.

24 Q. Do you know what -- I know that you said Dave

1 was going to cut down some limbs from the two
2 evergreens, right?

3 A. Yes.

4 Q. And I think Carolyn then said ultimately once
5 the limbs were down, you were going to have the tree
6 company come out and cut the big base of the tree
7 down, right?

8 A. Yes.

9 Q. So Dave's task was really just to take the
10 branches off the base of the tree, right?

11 A. Yeah.

12 Q. All the way up?

13 A. No. No. It was too high.

14 Q. So just up to a certain level?

15 A. Yes. Yes.

16 Q. Okay. How high, do you know?

17 A. You know, I want to say, I don't know, 15, 20
18 some feet. You know, I don't know. It was tall trees.
19 That's all I am saying.

20 Q. And the limbs at the bottom are bigger than
21 the limbs at the top, right?

22 A. Yes.

23 Q. How wide -- if you have an estimate, how wide
24 are the limbs, the branches, coming off the evergreens

1 at the bottom of the trees?

2 A. Oh, they had to be -- in the base of it had
3 to be, I don't know, four or five feet, something like
4 that.

5 Q. How wide around?

6 A. Oh, wide around, inch and a half in diameter.

7 Q. Okay. All right. And do you have any idea
8 of how many total branches needed to be cut down by
9 Dave?

10 A. No.

11 Q. Okay. Was it more than 20?

12 A. Oh, yeah. Probably.

13 Q. There was a lot of them?

14 A. Probably, yes.

15 Q. Do you know when he started this work in
16 relationship to the day of the accident?

17 A. The day before.

18 Q. Okay. Do you know how many hours he worked
19 the day before?

20 A. Maybe an hour and a half, a couple hours I
21 think. I really don't remember.

22 Q. Okay. So after working the day before, there
23 would have been branches already on the ground, right?

24 A. Correct.

1 Q. And did you know Paul was coming over to help
2 out?

3 A. No.

4 Q. Did you know who invited him over?

5 A. No.

6 Q. Okay. Did you even know he was on your
7 property when --

8 A. Yes.

9 Q. Let me finish the question. Did you even
10 know Paul was on your property by the time he got
11 hurt?

12 A. Yes.

13 Q. How did you know he was on the property?

14 A. Because I seen him out in the yard. I petted
15 his dog.

16 Q. You mean when he arrived?

17 A. Sometime through the course when he was
18 there.

19 Q. Oh, because I asked you before if you ever
20 saw them work during the process of their work and you
21 said no, so.

22 A. I didn't see them working but I petted his
23 dog.

24 Q. Oh, so you knew he was there because his dog

1 was there?

2 A. Yes.

3 Q. You didn't know he was there by seeing him?

4 A. Yes. I seen him on the property.

5 Q. All right. When he got there or during the
6 course of the day?

7 A. I don't know when the exact time he arrived
8 but I looked out in the yard and there was him and his
9 dog.

10 Q. Okay. And did you go outside when you saw
11 him there?

12 A. Maybe I was outside or something. I don't
13 remember coming in and out but --

14 Q. This is what I am trying to understand, you
15 said you never saw what they were doing.

16 A. Right.

17 Q. Paul and Dave, so I am assuming what did the
18 dog come inside and that's when you petted him or when
19 did you pet the dog?

20 A. They were working behind the garage and I
21 didn't go behind the garage where they were working but
22 if you come up to the back -- the back of the house,
23 before you go around the garage, that's where I saw
24 David, Paul and the dog. I went outside, petted the

1 dog, said hi to Paul and I went back in the house.

2 Q. All right. So you were only outside a minute
3 or two?

4 A. Yeah. Not long.

5 Q. Okay. And you went out there specifically to
6 pet the dog and say hi to them or for some other
7 reason?

8 A. You know, I might have been taking out a bag
9 of trash. I don't remember.

10 Q. Okay. And where you saw Paul and Dave, were
11 they engaged in the tree work at the time or had they
12 taken a break? What were they doing?

13 A. No. No. Just chitchatting.

14 Q. Okay. So this is before they began work that
15 day, during the midst of their work, do you know?

16 A. I couldn't tell you.

17 Q. Okay. What time was this, do you know?

18 A. No. I don't remember.

19 Q. Do you know how long Paul was at the property
20 already by the time you went back to pet the dog and
21 say hi to him?

22 A. No.

23 Q. Okay. Where you saw them was that in the
24 area that they would have been working to cut the tree

1 down --

2 A. No.

3 Q. -- or was that somewhere else?

4 A. It was in -- It was like by the driveway and
5 the work was in the back of the -- towards the back of
6 the yard. They were in the -- by the -- say around the
7 back door of the back porch.

8 Q. Of the house.

9 A. Correct.

10 Q. Why were they there in relationship to the
11 work they were doing? Do you have any idea?

12 A. No. I don't know what they were doing. They
13 were standing there talking and the dog was sitting
14 there.

15 Q. All right. Your wife was inside?

16 A. Yes.

17 Q. Did you know your wife ever to go outside
18 while they were working that day?

19 A. She might have -- Go ahead.

20 Q. Did you know if your wife was ever outside
21 that day of Paul's injury before his injury?

22 A. I don't keep track of her.

23 Q. So the answer is you don't know?

24 A. I don't know.

1 Q. Okay. All right. So when you went outside,
2 you met up with them kind of at the rear of the house?

3 A. Yes.

4 Q. But they were not engaged in the work at the
5 time, right?

6 A. Right.

7 Q. And you pet the dog and went back inside?

8 A. Yes.

9 Q. Okay. And that's the extent of your time
10 outside the house prior to Paul's injury to your
11 knowledge?

12 A. Yeah.

13 Q. Okay. So you don't know who was doing what
14 that day, when and how, fair enough?

15 A. Yes. I don't know.

16 Q. As far as Dave and Paul, you don't know who
17 was doing what -- whose tasks were what tasks or what
18 they were doing, fair enough?

19 A. I don't know. I don't know.

20 Q. Is that fair enough then?

21 A. That's -- I don't know. Correct.

22 Q. Okay. What is your first knowledge or notice
23 of Paul's accident then?

24 A. I heard some commotion and I ran outside and

1 they were getting in the vehicle to go to the -- to get
2 patched up.

3 Q. To go to the hospital?

4 A. Yeah.

5 Q. Okay. So was Paul's arm already wrapped?

6 A. You know, I am trying to remember if my wife
7 was getting him a towel or something like that. I
8 don't know but all I know is they were beelining it for
9 the -- a vehicle.

10 Q. Okay. So they were on their way from the
11 house to the car?

12 A. Yeah. Yeah. So I might have caught a
13 glimpse of them by the back door going to the -- I am
14 trying to remember and then something about -- oh.
15 Yeah. I did hear him say from the vehicle please watch
16 my dog.

17 Q. Okay. Paul said that?

18 A. Yes. Yeah.

19 Q. It was Paul's dog?

20 A. Yes and I believe he was already in the
21 vehicle when he yelled out the window that.

22 Q. Okay. So they were already basically gone --

23 A. Yeah.

24 Q. You didn't have a chance to talk to them,

1 right?

2 A. I did not talk to them.

3 Q. So by the time they were leaving for the
4 hospital in the car that you saw, you didn't know what
5 happened other than there must have been some injury?

6 A. Correct.

7 Q. Did you know who was injured?

8 A. Yes. Paul.

9 Q. How did you know that?

10 A. My wife said Paul is injured.

11 Q. Did she say how he got injured?

12 A. No.

13 Q. Okay. After he left, Paul left with Dave to
14 the hospital, when did you next see Paul and Dave?

15 A. When they came back from the hospital.

16 Q. How many hours later?

17 A. It seemed like three, four.

18 Q. And did you speak to Paul and Dave?

19 A. Yeah.

20 Q. What did they say?

21 A. Well, they weren't talking too much. I asked
22 Paul how he is feeling. He said I am a little sore and
23 I asked David, you know, and Dave says not too good.
24 You know, he says -- weren't in a very talkative mood.

1 Q. Not too good meaning Paul wasn't too good or
2 what?

3 A. Well, Paul basically just came back and he --
4 I am trying to figure out how he got home. Maybe
5 Mike --

6 Q. I am not evening asking that right now.

7 A. Okay.

8 Q. My question is: What did Paul and Dave say
9 when they arrived home at the hospital? You said Paul
10 said I am sore. Then David --

11 A. David really wasn't talking at all.

12 Q. Did either of them discuss how the accident
13 occurred with the chain saw?

14 A. No. No.

15 Q. How long were they back at the house?
16 Short -- Were they only there for a short period of
17 time?

18 A. Yes. Yes.

19 Q. And did they both leave again?

20 A. I am trying to remember how he got home.

21 Q. I'm not asking how anybody got home. I am
22 asking once they arrived home with Paul and Dave, they
23 then left again or don't you know that?

24 A. You know, I don't remember if he came back to

1 our house or he came back to his house.

2 Q. Who is "he"? Who, Paul?

3 A. After the emergency room.

4 Q. Who?

5 A. Paul.

6 Q. Who is "he"? Okay.

7 A. I don't remember if he came back to our house
8 or I don't remember if David drove him directly home to
9 his house. I don't remember that. I am trying to
10 remember that.

11 Q. Okay. All right. So when -- You would not
12 have talked at least --

13 A. Wait a minute. I do remember now. He did
14 come back to our house and I asked him how you doing
15 and he says okay. And then --

16 Q. Who is "he"? I don't know who you are
17 talking about.

18 A. Paul, the guy that got hurt.

19 Q. Paul said I am okay?

20 A. I asked him how are you doing? Paul said I
21 am okay.

22 Q. Okay. Did he say anything else?

23 A. No.

24 Q. And then what did Dave say?

1 A. Dave didn't really talk.

2 Q. Okay. How long did they stay home?

3 A. A minute or something. He was collecting on
4 the dog.

5 Q. Okay. Then what did they do?

6 A. Let's see. Mike McArtor picked the dog up.
7 Maybe he took Paul, too. I don't remember.

8 Q. All right.

9 A. I don't remember.

10 Q. At least what Carolyn says is that Dave and
11 Paul drove away to fill his prescription and then Dave
12 came back alone.

13 A. You know, they could have. They could have.

14 Q. So you don't know that?

15 A. Right.

16 Q. Okay. All right. So by the time Dave
17 returned home, whether Paul was with him or not, you
18 don't know?

19 A. I don't know.

20 Q. Okay. Did Dave tell you -- now this is still
21 the same day of the accident? Did Dave tell you how
22 the accident occurred?

23 A. No.

24 Q. Has Dave ever described for you how the

1 accident occurred?

2 A. Yeah.

3 Q. When? First time.

4 A. Probably a day or so later.

5 Q. What -- So a day or so after the accident,
6 Dave had a conversation with you?

7 A. Yeah.

8 Q. What did he say?

9 A. He says -- How did it go? He stuck his
10 arm --

11 Q. Who is "he"? I need names so I know who you
12 are talking about.

13 A. Hang on. Hang on. He said that Paul stuck
14 his arm --

15 Q. Wait. Stop. Dave said that Paul --

16 MR. BARCH: Try to use names when you are
17 referring to the people. That's all he is asking.

18 THE WITNESS: Okay. David said that when working
19 with Paul, somehow Paul did something wrong and got
20 his arm cut.

21 BY MR. MAST:

22 Q. Did he explain what he did wrong?

23 A. No. He really didn't.

24 Q. Did he say that he got his arm cut on the

1 chain saw?

2 MR. BARCH: "He," David?

3 MR. MAST: You got me.

4 THE WITNESS: David said he got his arm -- Paul
5 got his arm cut on a chain saw.

6 BY MR. MAST:

7 Q. But David didn't specify how or what he did
8 to get cut?

9 A. No. No.

10 Q. Okay. Did Dave ever specify to you at any
11 other conversations about what Paul did and why it
12 caused him to get cut by the chain saw?

13 A. No.

14 Q. So other than that first conversation with
15 Dave where he just described generally that Paul did
16 something wrong to get cut --

17 A. Yeah.

18 Q. -- did you have any other conversations with
19 Dave about how the incident occurred?

20 A. No.

21 Q. Was that the only time?

22 A. Basically, yeah.

23 Q. Okay. Dave never got more specific than
24 that?

1 A. No.

2 Q. All right. So any time you have talked to
3 Dave it's always been, well, Paul did something wrong
4 to get cut but he didn't specify anything more than
5 that?

6 A. No.

7 Q. Is that correct?

8 A. Yes. He didn't want to talk about that, and
9 he wasn't --

10 Q. Is that correct what I just said?

11 A. Correct.

12 Q. Okay. Did you ever talk to Paul about how
13 the accident occurred?

14 A. No.

15 Q. Since the accident, have you ever talked to
16 Paul?

17 A. Yes.

18 Q. How many times?

19 A. Maybe -- I am trying to think here. That may
20 be once since the accident happened I have seen him in
21 the grocery store.

22 Q. Is that the one you talked about earlier
23 today?

24 A. Correct.

1 Q. Where you just said hi to him?

2 A. Correct.

3 Q. So since Paul's accident at your house with
4 the chain saw, you have only spoken to him once and
5 that was at the supermarket when you said hi to him
6 and he said hi to you and that was it, right?

7 A. You know, I think he did come over. I don't
8 remember. I think he did come over and I asked him,
9 you know, how you doing or something like that and it
10 was probably a week or so after.

11 Q. Okay. Let me go back then. My question was
12 how many times have you spoken to Paul since the
13 accident. Your answer is twice, right?

14 A. Probably twice.

15 Q. Okay. The first time is one week after the
16 accident where Paul came over to the house, correct?

17 A. Yes.

18 Q. And who was present?

19 A. My wife.

20 Q. Okay. And Paul?

21 A. Yes.

22 Q. Okay. And what -- How long was Paul there?

23 A. A couple minutes with his dog.

24 Q. And what did Paul say to you or either of

1 you?

2 A. Well, you know, basically said I am going
3 along. Everything is fine and, you know, my wife said
4 how you doing and exchanged pleasantries and that was
5 about it.

6 Q. Okay. Now, this is kind of what I'm wanting
7 to find out. Paul has obviously -- at least to me
8 obviously, has had some follow-up treatment and has
9 had some difficulties with his arm because of this
10 accident. Okay. Are you aware of that or not?

11 A. I have heard that, yes.

12 Q. Okay. So when you say a week afterwards that
13 he said I am doing fine, are you saying that
14 everything is great? He is not having --

15 A. Well, he seemed to be --

16 Q. Let me finish the question. Are you saying
17 that he related to you that everything is great, he is
18 having no problems or was he just trying to exchange
19 pleasantries and say yeah, everything is okay?

20 MR. BARCH: I just object to the form of the
21 question but go ahead if you understand it.

22 THE WITNESS: When the guy said he is fine, I
23 thought he was healing well and meant I am doing fine.
24

1 BY MR. MAST:

2 Q. Okay. Did he describe for you what he meant
3 by fine other than use the word --

4 A. No. No. No.

5 Q. -- other than use the word fine in response
6 to your inquiry?

7 A. No. He didn't describe fine.

8 Q. Okay. Did he say I am pain free?

9 A. No.

10 Q. Did he say I am back to normal or anything in
11 that regard?

12 A. No.

13 Q. Okay. Did he ever describe for you, again
14 Paul, how the specifics of his accident occurred?

15 A. No.

16 Q. After that couple minutes at your house, he
17 left and you only saw him one other time, that was at
18 the supermarket where you exchanged hi's and that was
19 it?

20 A. Yes. Yes.

21 Q. And that was the one you described earlier on
22 in this deposition when you met him at the grocery
23 store?

24 A. Yes.

1 Q. Okay. And you never spoken or talked to Paul
2 other than those two times since the accident,
3 correct?

4 A. Yeah.

5 Q. All right. I think I am -- Oh, wait. I
6 wanted to ask you since I got these photographs, I
7 might as well get these marked. I will just mark one
8 of them because they are all the same.

9 (Whereupon, Deposition Exhibits
10 1, 2 and 3 were marked and
11 dated.)

12 BY MR. MAST:

13 Q. Okay. I just marked three exhibits. The
14 first one is a photograph we took today of the chain
15 saw that's on the table in front of you, correct?

16 A. Uh-huh.

17 Q. Yes. I need you to verbalize the answer yes.

18 A. Yes.

19 Q. Okay. Is that the chain saw you have talked
20 about over the course of your deposition today?
21 That's the chain saw that Dave was using at the time
22 of Paul's accident?

23 A. Yes.

24 Q. And that's the chain saw that you purchased

1 earlier in the year new from Menards, correct?

2 A. Yes.

3 Q. Okay. And Exhibit 2, is that a true and
4 accurate copy of the manual for that same chain saw
5 you purchased?

6 A. I believe so.

7 Q. And Exhibit 3 I believe is some additional
8 paperwork that came with it as well as the receipt on
9 the top, correct?

10 A. I assume so, yes.

11 Q. Well, take a look. I need you to make sure.
12 Is that what that is? Just take a look through all of
13 those documents in Exhibit 3 just to make sure those
14 were all documents that came with the purchase of the
15 chain saw.

16 A. Yes. They came with the chain saw.

17 Q. So all of the materials, Exhibit 2 and 3, all
18 those materials came with the purchase of the chain
19 saw, correct?

20 A. Yes.

21 Q. Okay. And they are all accurate copies of
22 those documents, correct?

23 A. Yeah.

24 MR. MAST: Okay. Thank you. That's all I have.

1 MR. ACCARDO: I do not have any questions.

2 EXAMINATION

3 BY MR. BARCH:

4 Q. Just earlier when Mr. Mast was asking you
5 about what you knew about Dave's experience with a
6 chain saw, you mentioned that he did some pruning of
7 trees. You saw him do that around your home?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes.

11 Q. Then you also said you heard some stuff about
12 him using chain saws?

13 A. Yes.

14 Q. And when you say you heard some stuff about
15 him using chain saws, what were you referencing?

16 A. I was referencing to him through the course
17 of the years when he was living there when I was living
18 there when he was out helping friends and coming back
19 home and saying something like I did some work for --
20 pruning some trees on some people's property or, you
21 know, helping a friend out.

22 Q. Okay. So -- And to the extent David may have
23 had some experience with a chain saw away from your
24 home, you wouldn't know about that, you weren't there;

1 is that fair?

2 A. True.

3 Q. And at any time prior to Mr. Dulberg being
4 injured on June 28, 2011, did you have any reason to
5 be concerned about the manner or method that David was
6 using the chain saw?

7 A. No. I had no concern.

8 Q. At any time that day or the day before, did
9 you go out there and tell him how you wanted him to
10 use the chain saw?

11 A. No.

12 Q. Did you tell him how you wanted him to go
13 about tending to the trees, the pruning of the trees?

14 A. No.

15 Q. Is it fair to say that you left all the
16 cutting and the decisions on what to do and how to do
17 it up to David?

18 A. Yes.

19 Q. And with respect to what David and Paul may
20 have talked about, if anything, that day, how they
21 were going to go about using the chain saw, what they
22 were going to do with respect to those trees, you
23 weren't part of any of that?

24 A. True. I was not part of any of it.

1 MR. BARCH: That's all I have.

2 MR. ACCARDO: I don't have anything.

3 MR. MAST: All right.

4 MR. BARCH: We are going to -- We are just going
5 to reserve. Carolyn is going to look at her
6 transcript. I will give you a chance to read it, too,
7 before it's final.

8 THE WITNESS: Okay.

9 (FURTHER DEPONENT SAITH NOT.)
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IN THE CIRCUIT COURT
FOR THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)	
)	
Plaintiff,)	
)	
vs.)	No. 12 LA 178
)	
DAVID GAGNON,)	
Individually, and as)	
Agent of CAROLINE)	
McGUIRE and BILL McGUIRE)	
and CAROLINE McGUIRE and)	
BILL McGUIRE,)	
individually,)	
)	
Defendants.)	

I, WILLIAM McGUIRE, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken on March 20, 2013; that I have read the foregoing transcript of my deposition, and affix my signature to same.

WILLIAM McGUIRE

Subscribed and sworn to
before me this day
of , 2013

Notary Public

C E R T I F I C A T E

I, Paula Ann Erickson, Certified Professional Reporter, Registered Professional Reporter and Notary Public, do hereby certify:

That the witness in the foregoing deposition named was present at the time and place therein specified;

That the said proceeding was taken before me as a Notary Public at the same time and place and was taken down in shorthand writing by me;

That this transcript is a true and accurate transcript of my shorthand notes so taken, to the best of my ability.

1 I further certify that I am neither counsel for
2 nor related to or employed by any of the parties to
3 this action and that I am not a relative or employee
4 of any counsel employed by the parties hereto or
5 financially interested in the action.
6

7 
8 Paula Ann Erickson


9 Certified Shorthand Reporter

10 Registered Professional Reporter

11 License No. 084-003899

12 Notary Public
13

14 Dated this  day

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16 of , 2013.
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