

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 21

WCC No. 9601-7474

J. B. BAUGUS

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

EMPIRE SAND & GRAVEL

Employer.

ORDER DENYING MOTION TO COMPEL DISCOVERY

Summary: Respondent moved to compel production of financial documents seized by the Montana Department of Justice Criminal Investigations Bureau pursuant to search warrant. After an information was filed charging petitioner with felony theft of workers' compensation benefits, the evidence at issue was suppressed based on the district court's conclusion the warrant had been overbroad and service of the warrant, which involved police invitation of newspaper reporters into petitioner's home to photograph various things, violated petitioner's constitutional rights of privacy. At petitioner's request, the district court criminal proceedings were stayed pending resolution in the WCC of what benefits claimant was entitled to receive. Petitioner asks the WCC to deny the motion to compel, essentially applying the exclusionary rule recognized in the criminal case.

Held: Respondent's motion to compel denied. Where the district court ruling makes the WCC proceeding essentially an extension of the criminal case, the WCC need not decide whether Montana law permits illegally seized evidence to be admitted in a civil case. The evidence must be suppressed in this proceeding as in the parent proceeding in district court.

Topics:

Discovery: Generally. Where a district court ruling makes a WCC proceeding essentially an extension of a criminal case charging petitioner with felony theft of workers' compensation benefits, and financial records seized pursuant to an

overbroad search warrant have been suppressed in district court, the WCC need not decide whether Montana law permits illegally seized evidence to be admitted in a civil case. The evidence must be suppressed in this proceeding as in the parent proceeding in district court.

Discovery: Compelling Discovery. Where a district court ruling makes a WCC proceeding essentially an extension of a criminal case charging petitioner with felony theft of workers' compensation benefits, and financial records seized pursuant to an overbroad search warrant have been suppressed in district court, the WCC need not decide whether Montana law permits illegally seized evidence to be admitted in a civil case. The evidence must be suppressed in this proceeding as in the parent proceeding in district court.

Discovery: Requests for Production. Where a district court ruling makes a WCC proceeding essentially an extension of a criminal case charging petitioner with felony theft of workers' compensation benefits, and financial records seized pursuant to an overbroad search warrant have been suppressed in district court, the WCC need not decide whether Montana law permits illegally seized evidence to be admitted in a civil case. The evidence must be suppressed in this proceeding as in the parent proceeding in district court.

The matter before the Court is the respondent's motion to compel production of financial documents belonging to claimant but presently in the possession of the Montana Department of Justice Criminal Investigation Bureau (CIB) as a result of a search and seizure executed by CIB agents on October 19, 1994. The documents in question have been suppressed in a pending criminal case charging claimant with fraudulently securing workers' compensation benefits. The issue presented by respondent's motion is whether the documents should be suppressed in this proceeding as well. I find that they should be.

Factual Background

The following facts appear from documents provided to the Court and contained in the Court file. The documents are from the district court file in *State of Montana v. J.B. Baugus*, Montana Thirteenth Judicial District Court, Yellowstone County, Cause No. DC 94-554.

This matter began as a criminal prosecution on October 18, 1994, when the State presented Judge Russell Fillner with a motion for leave to file a Criminal Information, along with a supporting affidavit. Judge Fillner granted the State leave to file the Information. The Information, which was then filed, charged claimant with felony theft of workers' compensation benefits. While this Court does not have a copy of the original Information, an Amended Information filed January 4, 1996, alleges that between May 1982 and October 16, 1994, the claimant obtained "approximately \$136,963.85" in workers' compensation benefits by misstating his physical condition and by failing to report income he received

from construction and excavation projects. (Affidavit of Counsel in Support of Claimant's Response to Motion for Stay or in the Alternative to Continue, Ex. A at 1.)

At the same time he approved the Information, Judge Fillner also reviewed an application for a search warrant and signed the warrant. The warrant authorized agents of the CIB to search claimant's home and property.

CIB agents went to claimant's home the next day, October 19, 1994, and carried out an extensive search of the home. They were there for several hours, during which time they invited reporters from the *Billing's Gazette* into the home to photograph their efforts. Ultimately, they seized numerous items, including financial records belonging to claimant.

Subsequently, claimant filed a motion to suppress all evidence seized during the search, citing the State's violation of his constitutional right to privacy. The violation was based on the CIB permitting reporters to roam through the house and photograph items while the search was being conducted. The claimant also attacked the search warrant as overbroad.

On June 5, 1996, Judge Robert W. Holmstrom, who had assumed jurisdiction over the criminal case, issued an order finding that the search violated claimant's right to privacy and that the warrant was indeed overbroad. He ordered that all evidence obtained during the search be suppressed.

The State appealed the suppression order to the Montana Supreme Court. However, the appeal was then dismissed at the request of the Montana Attorney General.

In the meantime, on January 9, 1996, claimant filed the present action in this Court seeking a determination of his entitlement to workers' compensation benefits. On January 8, 1996, he filed a Motion to Dismiss Lack of Jurisdiction [sic] in the criminal case. In support of his motion to dismiss, he argued that the Workers' Compensation Court has exclusive jurisdiction to determine his legal entitlement to benefits and that "[u]ntil these workers' compensation issues are decided this Court [the District Court in the criminal matter] is unable to instruct a jury as to what Mr. Baugus' rights and entitlement under the workers' compensation law were during the period of time for which he is charged with theft." (Affidavit of Counsel in Support of Claimant's Response to Motion for Stay or in the Alternative to Continue, Ex. C at 7.)

On May 21, 1996, the District Court issued an order denying the motion to dismiss but staying further criminal proceedings "until the Workers' Compensation Court determines his [claimant's] benefits under the Workers' Compensation Act." (Petitioner's Response to State Fund's Motion to Compel and Request for Declaratory Ruling Regarding Release of Evidence, Ex. 10.) Judge Holmstrom wrote that the State Fund conceded that claimant was entitled to compensation "up to a certain point of time." (*Id.*, Ex. 10 at 7.) He concluded that before any criminal prosecution can proceed the Workers' Compensation Court must determine the extent of claimant's entitlement:

[T]he Defendant's guilt or innocence cannot be determined without making a determination of what, if any, benefits the Defendant was actually entitled to. Section 39-71-2905 is unequivocal in its assignment to the Workers' Compensation Court of exclusive jurisdiction over workers' compensation disputes.

(*Id.*, Ex. 10 at 9.)

This Court need not determine whether Montana Law permits illegally seized evidence to be admitted in a civil action. Even if admissible in a civil proceeding between private parties, Judge Holmstrom's Order renders the proceeding in this Court ancillary to the criminal case. Unlike *Edwin Taylor v. State Compensation Insurance Fund*, WCC No. 9407-7097 and *Taylor v. State Fund*, 275 Mont. 432, 913 P.2d 1242 (1996), this is not merely a case where a district court has stayed a criminal action to permit the Workers' Compensation Court to resolve separate civil litigation involving the same parties and issues. Here, the district court stayed the criminal proceeding because it determined that the Workers' Compensation Court must first resolve factual issues which are intertwined with the criminal prosecution. Under these circumstances, I must conclude that this proceeding is an extension of the criminal proceeding and apply the exclusionary rule prohibiting use of illegally seized evidence in criminal cases.

Therefore, the respondent's motion to compel discovery of evidence seized during the October 19, 1994 search of claimant's home and property is **denied**. Any fruits of that evidence, such as opinions or analysis developed from review of that evidence, is also inadmissible.

SO ORDERED.

DATED in Helena, Montana, this 23rd day of April, 1997.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. R. Russell Plath
Mr. Charles G. Adams
Mr. Daniel J. Whyte
Submitted: April 16, 1997