

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 60

WCC No. 2003-0749

MONTANA STATE FUND

Petitioner

vs.

**IN RE: BENEFICIARY BENEFITS RELATING
TO THE DEATH OF CALVIN COX.**

ORDER GRANTING PROTECTIVE ORDER

Summary: Putative common-law wife admitted paternity of deceased worker's natural daughter but then served discovery asking for proof of both the paternity and a parental relationship. *Guardian ad litem* for the natural child seeks a protective order barring the discovery.

Held: Protective order granted except as to interrogatory seeking facts pertaining to whether the discovering party was the common law wife of the deceased.

Topics:

Discovery: Protective Orders. Where paternity of natural child of deceased worker is not in dispute, discovery concerning paternity and the relationship between the deceased and the child is immaterial and is not reasonably calculated to lead to admissible evidence. Protective order barring the discovery is granted.

Discovery: Relevancy and Materiality. Where paternity of natural child of deceased worker is not in dispute, discovery concerning paternity and the relationship between the deceased and the child is immaterial and is not reasonably calculated to lead to admissible evidence. Protective order barring the discovery is granted.

¶1 This matter began on the petition filed by Montana State Fund to determine the beneficiaries of decedent Calvin Ray Cox under the Workers' Compensation Act. Among the potential beneficiaries was Elizabeth Cahli-Rhae Cox, understood by State Fund to be the biological child of decedent. (Petition, Exs. 4, 5.) On May 16, 2003, this Court issued an Order to Respond to Joni Cox, as parent and natural guardian of Elizabeth Cahli-Rhae Cox. On May 22, 2003, Joni Cox filed documents with the Court, including:

¶1a A statement that she "was married to Calvin Cox on or about the date of August 5 1989; we divorced on or about September 1993. He is the biological father of Elizabeth Cahli-Rhae Cox. Parental rights of Calvin Cox have never been forfeited for his daughter, Cahli."

¶1b A certified copy of the birth certificate of Elizabeth Cahli-Rhae Cox, naming Calvin Ray Cox, as father, with the birth place of Montana, and Joni VeLyn Neill as mother.

¶1c A copy of the decree of divorce, issued in the 301st Judicial District Court of Dallas County, Texas, on November 17, 1992, decreeing that Joni VeLyn Cox and Calvin Ray Cox be divorced and finding them the parents of Elizabeth Cahli-Rhae Cox.

¶2 On May 28th, counsel for Heather Marie Cox, another potential beneficiary, indicated his client does not object to Cahli-Rhae Cox's status as a beneficiary in this case. (May 28, 2003 letter from Mr. David A. Lauridsen.)

¶3 On June 2, 2003, counsel for Brenda Warila Cox, another potential beneficiary, filed a Response with the Court asking the Court to deny Cahli-Rhae Cox's claim for benefits in "that Elizabeth Cahli-Rhea [sic] has made no claim for benefits and it is believed that no contact has occurred between the decedent and Miss Cahli-Rhea [sic] for at least two years." (Response to Motion for Order Determining Beneficiary Status at 4.)

¶4 Attached as Exhibit 1 to the Response was a copy of the Application for Informal Appointment of Personal Representative in Intestacy filed by Brenda Warila Cox In the Matter of the Estate of Calvin R. Cox. The Application was evidently filed in the Montana Ninth Judicial District Court, Toole County, and was signed by Brenda Warila Cox as applicant, and signed by her counsel, Dale L. Keil, who is also counsel for Brenda Warila Cox in this proceeding. The application asserted the identity of decedent's spouse and children, and specifically named as "daughter," Elizabeth Cahli-Rhae Cox.

¶5 Given the developing dispute, on June 12, 2003, this Court appointed attorney Richard J. Martin as Guardian *ad litem* for Cahli-Rhae Cox.

¶6 Now before the Court is the Motion for Protective Order filed by Mr. Martin on behalf of Cahli-Rhae Cox. The motion objects to a series of interrogatories and requests to produce served upon Cahli-Rhae Cox and Mr. Martin, which are attached as Exhibit A to the Motion. Nine of the ten interrogatories ask for information relating to whether the decedent was in fact Cahli-Rhae's biological father and regarding what contact they had. For instance, the first interrogatory asks for the "dates of contact between Calvin R. Cox and Chali-Rhae [sic] Cox"; interrogatory number five asks for, "the blood types of Chalie-Rhae [sic] Cox, Calvin R. Cox and Joni Cox"; and interrogatory number seven asks, "when you were advised that Calvin R. Cox was your biological father." Request for Production one through seven asks for documents relating to similar matters. Request for Production No. 004, for instance, asks for production of "all child support records pertaining to Chali-Rhae Cox [sic]."

¶17 The Motion for Protective Order argues that the information sought from the minor is "an unwarranted invasion of her privacy, overly broad, unduly burdensome and intended to annoy, harass or embarrass." The guardian *ad litem* argues that the paternity of the child is not at issue. The motion attaches copies of the child's birth certificate, and the aforementioned decree of divorce, arguing there is no issue in this case regarding paternity.

¶18 The Court agrees and will grant the motion as to interrogatories 001 through 009 and requests to produce 001 through 007. Under section 39-71-116(5), MCA (2001), the definition of beneficiary includes "an unmarried child under 18 years of age." The response filed with this Court by Brenda Warila Cox does not challenge paternity, but rather, through incorporating the Application, affirmatively concedes that Cahli-Rhae is the decedent's daughter. This is also established through the birth certificate and divorce decree. Brenda Warila Cox has offered nothing to justify a fishing expedition regarding paternity, particularly where she has herself signed a judicial document stating that Cahli-Rhae Cox is the decedent's daughter. Interrogatories 001 through 009 and requests to produce 001 through 007 are not reasonably calculated to lead to admissible evidence and are burdensome and harassing.

¶19 Interrogatory No. 010, and Request for Production No. 008, however, are as follows:

Interrogatory No. 010: Please state, in detail, each and every fact and witness you will claim establishes that a common law marriage did not exist.

Request for Production No. 008: Please provide a copy of every document you intend to use to establish that a common law marriage did not exist.

These requests are calculated to discover information relating to what *is* at issue in this proceeding, whether Brenda Warila Cox is entitled to beneficiary status as a common law spouse of decedent. If Cahli-Rhae Cox or her counsel have information or documents they intend to use for arguing against the purported common law marriage, Brenda Warila Cox is entitled to discover that information and those documents. The guardian *ad litem* for Cahli-Rhae Cox is ordered to answer Interrogatory No. 010 and Request for Production No. 008 within fourteen days of the date of this Order.

ORDER

¶110 The motion for protective order is granted as to interrogatories 001 through 009 and requests for production 001 through 007.

¶111 The guardian *ad litem* for Cahli-Rhae Cox is ordered to answer Interrogatory No. 010 and Request for Production No. 008 within fourteen days of this Order.

Dated in Helena, Montana, this 30th day of September, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Thomas E. Martello

Mr. David A. Lauridsen

Mr. Dale L. Keil

Mr. Richard J. Martin

Submitted: September 19, 2003