IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 46

WCC No. 2002-0566

TODD GEERY

Petitioner

vs.

TRAVELERS INSURANCE COMPANY

Respondent/Insurer.

DECISION AND ORDER DENYING MOTIONS TO COMPEL AND FOR PARTIAL SUMMARY JUDGMENT

Summary: Respondent insurer moved for partial summary judgment and claimant moved for an order compelling discovery in a case in which claimant seeks to set aside a prior settlement stipulation and judgment. The discovery related to the merits of the settled case. Claimant alleges that the settlement was executed solely by his attorney, who did not have authority to do so. The insurer argues that the settlement was authorized or in the alternative ratified by claimant and that the judgment is res judicata as to all matters except claimant's claim for further medical benefits reserved under the agreement.

Held: The facts are insufficient to establish as an uncontroverted matter that the claimant either authorized or ratified the settlement agreement. While the doctrine of res judicata bars relitigation of the issues resolved by the stipulation and judgment, the present petition must be construed as requesting the Court to set aside the judgment. Since neither party has addressed the authority or grounds for setting aside the judgment, the Court will not decide the issue based on the current motion for summary judgment. Moreover, since the issue may be avoided if as a matter of fact the claimant authorized or ratified the stipulated settlement, an evidentiary hearing will be held to determine whether he did so.

Topics:

> **Attorneys: Authority.** Lacking specific authorization by the client, an attorney has no authority to enter into a compromise settlement on his client's behalf.
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> **Attorneys: Settlements.** Lacking specific authorization by the client, an attorney has no authority to enter into a compromise settlement on his client's behalf.

Settlements: Authority. Lacking specific authorization by the client, an attorney has no authority to enter into a compromise settlement on his client's behalf.

Settlements: Reopening: Lack of Authority. Lacking specific authorization by the client, an attorney has no authority to enter into a compromise settlement on his client's behalf. A settlement executed by an attorney without authority is void unless ratified by the client.

Settlements: Ratification. Ratification of a settlement agreement entered into by a claimant's attorney without authorization of the claimant requires that claimant have known actual knowledge of the full facts concerning the settlement at the time of the alleged ratification.

Summary Judgment: Disputed Facts. Partial summary judgment denied where facts regarding the matter at issue are disputed.

Summary Judgment: Briefs. Partial summary judgment inappropriate and premature where significant legal issue connected to ground advanced for partial summary judgment has not been briefed by either party.

¶1 Petitioner (claimant) seeks to set aside a settlement agreement and stipulation reached between his attorney and the respondent insurer (Travelers) in a prior case, Todd Geery v. Travelers insurance Company, WCC No. 2000-0149. Pursuant to the stipulation, judgment was entered by this Court incorporating the terms of the stipulation. Claimant, who has since discharged his attorney and now represents himself, now alleges that his attorney was not authorized to enter into the settlement and that he was unaware of the settlement until after the fact. He also seeks payment of medical expenses.

¶2 Claimant issued discovery responses to which Travelers objected. He then moved to compel responses. Travelers opposed the motion and also moved for partial summary judgment on the merits of reopening the settlement, urging that the Court's judgment in the prior proceeding is res judicata. I stayed discovery and now rule on the motions, denying both.

Discussion

¶3 The settlement agreement at issue was styled "Stipulation For Dismissal and Order of Dismissal With Prejudice." It was executed on behalf of the claimant by his attorney; claimant did not sign the settlement. The agreement recited "[t]hat a dispute exists between the parties concerning Petitioner's entitlement to further disability and/or rehabilitation benefits as a result of his September 6, 1998 industrial accident claim." It went on to resolve that dispute by providing for payment of $8,000, out of which claimant's attorney was authorized to recover a 20% fee. The agreement expressly reserved the

claimant's right to future medical benefits but barred any further claim for compensation benefits, penalties, and attorney fees. Finally, the stipulation provided:

7. That pursuant to this Stipulation, a Judgment and Order shall be entered by the Workers' Compensation Court dismissing this action with prejudice, each party to bear its own costs and attorneys fees.

The stipulation was filed October 13, 2000. On October 16, 2000, I entered judgment in accordance with the stipulation.

I. Partial summary judgment is appropriate
only if uncontroverted facts establish that Travelers
is entitled to partial judgment as a matter of law.

¶4 The standard for summary judgment is well established and is incorporated into this Court's own rules. Rule 24.5.329(2) provides for summary judgment where "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The standard is the same where only partial summary judgment is involved, the only difference being that there be no genuine issue of material fact pertaining to the issue on which judgment is sought.

II. There are factual disputes regarding authority and ratification,
and the res judicata issue has not been sufficiently developed,
therefore, summary judgment is denied.

¶5 The claimant argues that he did not authorize his attorney to enter into the settlement agreement and was misled by his attorney as to the disposition of the prior proceeding. His affidavit (Ex. 3 to Petitioners [sic] Answer Brief to Respondents' [sic] Motion for Summary Judgment), states that he was informed by his attorney in October of 2000 that he was finally going to have his case heard by the Workers' Compensation Court "to get my coverage issue settled (Affidavit of Todd Geery, ¶ 18)," but that later in October his attorney

> asked [me] to come into town. At that time I was issued a check as partial payment of my benefits which I had be denighed [sic] since my injury, and informed that more would be coming. I was also informed at that time that my Medical was now covered and I should go back to my preferred treating physician as soon as possible.

(Id., ¶ 19.) His affidavit indicates he did not receive a copy of the stipulation and only learned of it later. (Id., ¶'s 23-25.) After obtaining a copy of the stipulation, he filed his present petition.

¶6 Claimant is correct that his hiring of an attorney did not confer settlement authority upon the attorney. "An attorney, as such, has no authority to compromise a controversy of his client, no matter what may be the difficulties involved, nor however advantageous the result may be to the client. A general retainer in a case does not imply such authority, and,

if a compromise of the controversy be made, it must be made under special authority delegated for that purpose." *Harris v. Root*, 28 Mont. 159, 72 P. 429, 432 (1903); accord *Webb v. First National Bank of Hinsdale*, 219 Mont. 160, 165, 711 P.2d 1352, 1355 (1985).

¶7 Travelers has tendered no evidence showing that claimant in fact authorized his attorney to enter into the settlement, much less shown such fact on an uncontroverted basis. Rather it argues that the facts admitted by the claimant demonstrate he "ratified" the agreement. It says:

> . . . Petitioner was notified via U.S. mail about the settlement agreement and the stipulation. See Respt.'s Br., p. 6. As already explained, Petitioner ratified the settlement agreement by allowing the stipulation to be filed, cashing the settlement check and accepting the benefits of the negotiated settlement. . . .

(Respondent/Insurer's Reply Brief in Support of Motion for Partial Summary Judgment at 3.)

¶8 Travelers' characterization of the facts is inaccurate. First, claimant was only "copied" with a letter that was from his counsel to the Court. The letter stated that the stipulation was being enclosed and provided "a complete resolution of all issues pending in the Petition for Hearing in this Matter." It did not indicate that the stipulation was sent to claimant and claimant's affidavit contains an implicit denial that he saw the stipulation prior to entry of judgment. It also did not inform claimant of the nature of the resolution. From all that appears in the letter, the stipulation could have been nothing more than an acknowledgment of liability for benefits alleged in the petition. Such stipulations have been filed and approved by the Court.

¶9 Second, Travelers has presented no evidence that claimant signed the settlement check. While it is likely that he did, it is also likely that, in light of the express provision for the 20% attorney fee to be taken from the settlement proceeds, the check was jointly payable to him and his attorney thus claimant may well have signed without understanding the terms and nature of the stipulation or payment.

¶10 Third, there is no showing that claimant accepted the settlement proceeds with the knowledge that the agreement finally settled his entire entitlement to compensation benefits. According to his affidavit, he was told by his attorney that he would be receiving additional benefits.

¶11 Ratification requires proof of three elements. The three elements are:

> "(1) acceptance by the principal of the benefits of the agent's acts,
>
> "(2) with full knowledge of the facts and,
>
> "(3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangement."

Moore v. Adolph, 242 Mont. 221, 223, 789 P.2d 1239, 1241 (1990) (emphasis added). Travelers has failed to prove as an uncontroverted matter that claimant had "full knowledge of the facts."

¶12 Travelers has therefore failed to establish as a matter of law that the claimant either authorized his attorney to enter into the stipulated settlement or that he ratified the settlement.

¶13 The more troublesome issue involves res judicata. "The doctrine of res judicata states that a final judgment on the merits by a court of competent jurisdiction is conclusive as to causes of action or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." *Hollister v. Forsythe*, 277 Mont. 23, 27, 918 P.2d 665, 667 (1996). Thus, unless set aside, the prior judgment bars all claims for compensation except as to future medical expenses.

¶14 While not artfully pleaded, the petition attacks not only the validity of the settlement agreement but the validity of the Court's entry of judgment pursuant to the stipulation. I construe the petition as requesting the Court to set aside or nullify the judgment. However, neither party has addressed the Court's authority to do so. Rule 60 of the Montana Rules of Civil Procedure sets out the grounds and procedure for setting aside a district court judgment. This Court has no similar rule, however, in other instances where its rules are silent it has properly looked for guidance from the Rules of Civil Procedure. *See Murer v. Montana State Compensation Mut. Ins. Fund*, 257 Mont. 434, 849 P.2d 1036, 1037 (1993). Neither party has discussed whether the rule can or should be applied, or proposed other standards. Similarly, neither party has discussed whether the alleged lack of authority of the claimant's attorney constitutes extrinsic fraud which gives rise to an independent action to set aside the judgment. *See In re Marriage of Miller, 273 Mont*. 286, 292, 902 P.2d 1019, 1022 (1995). Lacking argument, I decline to rule on the matter.

¶15 Moreover, the res judicata issue may be moot if in fact the claimant authorized his attorney to enter into the settlement stipulation or if in fact he ratified the agreement. An evidentiary hearing regarding authority and ratification should therefore be held.

III. The Motion to Compel is denied but may be renewed
if the claimant succeeds in persuading the Court
to set aside the settlement and judgment.

¶16 The interrogatories and requests for production to which claimant seeks answers relate to his claims for compensation and his allegations that the insurer acted unreasonably. Unless the Court is persuaded to set aside the prior judgment, those matters are barred by the prior judgment. The objections to the discovery are therefore well taken at present. If the prior judgment is set aside, the claimant may then renew the motion.

¶17 Although, the motion to compel is denied, claimant may currently seek discovery with respect to medical expenses and treatment which have been denied since the prior judgment was entered. A new scheduling order will issue setting medical expense and treatment issues for trial.

ORDERS

¶18 Finding good cause, the following orders are made:

¶19 Travelers' motion for partial summary judgment is denied.

¶20 Claimant's motion to compel discovery is denied without prejudice to claimant renewing the motion if the judgment in the prior action is set aside.

¶21 A hearing as to the authority of claimant's attorney to enter into the stipulated settlement agreement executed in the prior case involving the parties, and as to whether claimant ratified the stipulated settlement agreement, is set for Friday, the 25th of October, at 10:00 a.m., in the courtroom of the Workers' Compensation Court, 1625 Eleventh Avenue, Helena, Montana.

¶22 Claimant's prior attorney, Mr. Howard Toole, shall attend the hearing and shall be subject to examination by both parties and the Court.

¶23 A new scheduling order will issue setting medical expense and treatment issues for trial.

DATED in Helena, Montana, this 15th day of October, 2002.

(SEAL)

/s/ MIKE McCARTER
JUDGE

c: Mr. Todd Geery
Mr. Kelly M. Wills
Mr. Thomas J. Harrington
Mr. Howard Toole - Courtesy Copy
Submitted: September 6, 2002