IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 40

WCC No. 2002-0683

RODNEY OENS

Petitioner

vs.

EMPLOYEE BENEFITS INSURANCE OCMPANY

Respondent/Insurer.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Summary: Respondent seeks summary judgment finding that claimant's request to reopen a 1985 settlement agreement is barred by the two-year statute of limitations of section 27-2-203, MCA.

Held: While the two-year limitations applies, the statute does not begin to run until claimant discovered the facts showing the mistake or became aware of circumstances such that he would have discovered the mistake with reasonable diligence. While full development of the record may lead the Court to infer that claimant knew or should have known of the alleged mistake more than two years before the petition was filed, the Court will not make such inference on a motion for summary judgment.

Topics:

Constitutions, Statutes, Regulations, and Rules: section 27-2-203, MCA. While the two-year statute of limitations applies to a claim to reopen a settlement agreement, the statute does not begin to run until the claimant discovers facts showing the mistake or becomes aware of circumstances such that he would have discovered the mistake with reasonable diligence. While full development of the record may lead the Court to infer that claimant knew or should have known more than two years before the petition was filed of an alleged mistake giving rise to the claim to reopen the Court declines to make this inference in this case on a motion for summary judgment.

Summary Judgment: Motion for Summary Judgment. Motions for summary judgment are not favored. Summary judgment will be refused where the Court

would be required to make inferences about claimant's knowledge or diligence without full development of the record.

Summary Judgment: Disputed Facts. Motions for summary judgment are not favored. Summary judgment will be refused where the Court would be required to make inferences about claimant's knowledge or diligence without full development of the record.

Settlements: Reopening: Mistake of Fact. Where respondent asserts the statute of limitations as a defense to a claim to reopen a settlement, the Court refuses to grant summary judgment where the Court would be required to make inferences about claimant's knowledge or diligence without full development of the record.

Limitations Periods: Reopening of Settlements. While the two-year statute of limitations (§ 27-2-203, MCA) applies to a claim to reopen a settlement agreement, the statute does not begin to run until claimant discovers facts constituting the mistake or becomes aware of circumstances such that he would have discovered the mistake with reasonable diligence. While full development of the record may lead the Court to infer that claimant knew or should have known more than two years before the petition was filed of an alleged mistake giving rise to the claim to reopen, the Court declines to make such inference on a motion for summary judgment.

¶1 This matter is before the Court on respondent's motion for summary judgment. Respondent argues the two-year statute of limitations set out at section 27-2-203, MCA, bars claimant's request to set aside a 1985 settlement agreement on the ground of mutual mistake of fact.

Uncontroverted Facts

¶2 The respondent tenders the following facts in support of its motion. These facts are not disputed by claimant.

1. Petitioner [claimant] was employed by Rocky Mountain Log Homes, Inc. ("Rocky Mountain") on October 31, 1983. During the course of his employment for Rocky Mountain, Petitioner sustained an injury to his back and neck while moving and stacking logs.

2. At the time of Petitioner's injury, Rocky Mountain Log Homes, Inc., was insured for purposes of workers compensation by Respondent, Employee Benefits Insurance Co. Respondent accepted liability for Petitioner's injury and paid various medical benefits and disability benefits.

3. On January 27, 1985, Petitioner and Respondent reached an agreement to settle the Petitioner's claim for his October 31, 1983 injury. A petition for full and final

compromise settlement was executed by the parties and filed with the Insurance Compliance Bureau of the Workers' Compensation Division. [*See* Exhibit A to Respondent/Insurer's Motion for Partial Summary Judgment.]

4. On February 15, 1985, the Insurance Compliance Bureau approved the petition for full and final compromise settlement. [*See* Exhibit B to Respondent/Insurer's Motion for Partial Summary Judgment.] That order was transmitted by the Insurance Compliance Bureau to the Workers' Compensation Court. On February 20, 1985, Timothy W. Reardon, Judge of the Workers' Compensation Court, entered an order approving the full and final compromise settlement. [*See* Exhibit C to Respondent/Insurer's Motion for Partial Summary Judgment.]

5. Prior to the settlement, Petitioner had surgery to his cervical spine to treat his injury. [*See* First Amended Petition, ¶ 3.]

6. Petitioner had a second surgery for a fusion at the C6-7 level of his cervical spine on July 3, 1985 by Richard Lehman, M.D. in Alaska. [*See* Exhibit D to Respondent/Insurer's Motion for Partial Summary Judgment.]

7. Petitioner has had continuing problems with his cervical spine in the years since his original injury in 1983.

8. In his First Amended Petition for Benefits, Petitioner now seeks to have the settlement of his October 31, 1983 injury set aside on the grounds of mutual mistake.

9. Petitioner bases his claim upon the fact that when he resumed treatment with James Burton, M.D. in 2001 he was advised all of his ongoing neck symptoms were related to the original injury in 1983. [*See* First Amended Petition, ¶ 5.] Dr. Burton noted in his March 13, 2001 office note that Petitioner was having problems at the C4-5 level which resulted from the previous fusions at C5-6 and C6-7. [*See* Exhibit E to Respondent/Insurer's Motion for Partial Summary Judgment.]

(Respondent/Insurer's Motion for Partial Summary Judgment at 1-2.)

¶3 Petitioner adds other alleged "facts" to the mix and argues that the facts cited by respondent do not as a matter of law establish that his claim is barred. He points out that his 1984, pre-settlement diagnosis was "C5-6 degenerative disc disease," but his 1985, post-settlement surgery was at the C6-7 level. (Response to Insurer's Motion for Summary Judgment at 2.) He emphasizes that the insurer refused over the years to pay medical benefits relating to his neck, telling him his post-settlement treatment was not related to his 1983 injury. Claimant argues it was not until the relatively recent treatment with Dr. Burton that he was given a medical reason to believe his post-settlement condition resulted from his 1983 injury.

Applicable Law

¶4 The law regarding claimant's request to reopen is well settled. A workers' compensation settlement agreement may be set aside for mutual mistake of a material fact as to the nature and the extent of the injury caused by the claimant's accident. *South v. Transportation Ins.* Co., 275 Mont. 397, 401, 913 P.2d 233, 235 (1996); *Kienas v. Peterson*, 191 Mont. 325, 330, 624 P.1d 1, 3 (1980). The statute of limitations applicable to an action based on mutual mistake of fact is two years. Section 27-2-203, MCA, provides:

> **27-2-203. Actions for relief on ground of fraud or mistake.** The period prescribed for the commencement of an action for relief on the ground of fraud or mistake is within 2 years, the cause of action in such case not to be deemed accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

Actual knowledge of the mistake is not required to begin the running of the statute; rather, the statute of limitations begins to run when the facts are such that the party bringing the action would have discovered the mistake had he or she exercised ordinary diligence. *Rath v. St. Labre Indian School*, 249 Mont. 433, 439, 816 P.1d 1061, 1065 (1991). Thus, to grant summary judgment I would either have to find that claimant was in fact aware of the mistake more than two years prior to his petition or was aware of circumstances that with reasonable, diligent investigation would have led to discovery of the mistake more than two years prior to the petition.

¶5 In considering the respondent's motion, I note that summary judgment is disfavored. "Summary judgment is an extreme remedy which should not be a substitute for a trial on the merits if a material factual controversy exists." Moreover, "all reasonable inferences which can be drawn from the evidence presented should be drawn in favor of the nonmoving party." *Delaware v. K-Decorators, Inc.,* 1999 MT 13, ¶ 55, 293 Mont. 97, 973 P.2d 818. Because trials in the Workers' Compensation Court are held on an expedited basis, summary judgment is particularly disfavored in workers' compensation cases. ARM 24.5.329(b).

Discussion

¶6 *Miller v. State Compensation Ins. Fund*, 1999 MTWCC 21 (aff'd in non-citeable opinion, 2000 MT 19N), is instructive regarding the sort of facts that give rise to a bar based on the two-year statute of limitations. Miller suffered a serious head injury at work in 1983. He fully and finally settled his claim with the insurer in 1988. Ten years later, he petitioned to reopen the settlement on the ground of mutual mistake of fact, alleging that the settlement agreement envisioned his operation of a ranch and that, in fact, he was unable to operate the ranch on account of a back injury suffered in the original industrial accident.

¶7 In *Miller* the insurer argued the petition to reopen was barred by the two-year statute of limitations. Trial involved testimony by claimant and several other witnesses, and review of

numerous records in the context of that testimony. After consideration of all the evidence, I concluded that Miller *had* been aware within a year or two of his settlement that he could not physically work his ranch, and that more than two years prior to the filing of his petition it was "plain that . . . claimant and his attorney had sufficient knowledge to request a reopening of the settlement agreement." *Miller, supra,* ¶ 26. To reach that conclusion, I necessarily made inferences about what Miller and his counsel knew at various times. Those inferences were made against the background of a full record developed through testimony and exhibits.

¶8 In this case, the respondent asks the Court to conclude, without trial, that claimant had sufficient facts well before his recent treatment with Dr. Burton to believe the parties had been mistaken at the time of settlement regarding the extent of his neck injury. In its reply to claimant's opposition, respondent draws the Court's attention to medical records and letters over the years. Those records report claimant's statements to the effect that his neck problems began with the 1983 injury. Respondent suggests that this Court must *interpret* those statements as demonstrating claimant's knowledge of a mistake about this or at least putting him on notice of such mistake. On the other hand, claimant points out that his neck surgery prior to the settlement was at the C5-6 level and that Dr. Burton's opinion in 2001 was the first medical evidence attributing his neck problems at other levels to his 1983 injury. Claimant also notes that following the settlement the insurer refused medical coverage for his neck (Response to Insurer's Motion for Summary Judgment at 2), a contention not denied by the respondent.

¶9 This is not a dispute that may be resolved on summary judgment. It is not enough that claimant suspected a relationship between subsequent neck problems and his original injury. All the suspicion and belief in the world would not have gotten him through the courtroom doors absent some supporting medical opinion. The facts as presented at this juncture are insufficient for me to conclude on an uncontroverted basis that the claimant was aware of a medical opinion pointing to a connection between his post-settlement neck problems and his original industrial accident or that he should have more diligently pursued such opinion.

ORDER

¶10 The motion for summary judgment is **denied.**

Dated in Helena, Montana, this 5th day of June, 2003.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Howard Toole
Mr. Robert E. Sheridan
Submitted: April 15, 2003