

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 65

WCC No. 2001-0409

LIBERTY NORTHWEST INSURANCE CORPORATION

Petitioner/Insurer for

RIMROCK STAGES, INCORPORATED

Employer

and

**BRENDA J. HALLING, a/k/a Brenda Oliver,
alleged surviving spouse of decedent/claimant
Steven R. Oliver, and mother of decedent/claimant's
natural child, SIOBHAN OLIVER, a minor**

and

**DEBORAH KLEIN OLIVER, alleged surviving spouse
of decedent/claimant of Steven R. Oliver, and mother of
decedent/claimant's natural child STEVEN RICK OLIVER, JR., a minor**

Respondents.

DECISION AND DECLARATORY JUDGMENT

Summary: Parties seek declaratory judgment as to the amount of death benefits due one of two siblings upon the first sibling reaching age twenty-two. The insurer argues that each sibling has a vested right in a half share of the total death benefits payable pursuant to section 39-71-721(2), MCA (1999), therefore, the second sibling should be entitled to only a continuation of her half share upon her brother reaching age twenty-two.

Held: *In re Gaither*, 244 Mont. 383, 797 P.2d 208 (1990), cited by the insurer in support of its position, is inapposite. That case deals with a beneficiary's renunciation of benefits to which she was entitled. This case deals with a reduction in the pool of beneficiaries due to a beneficiary no longer satisfying the statutory criteria for being a beneficiary, i.e., a case in which a beneficiary ceases to be one. A former beneficiary has no vested right to continued benefits, therefore the beneficiaries who continue to have vested rights are entitled to

share the full amount of death benefits undiminished by the former share allocated to the former beneficiary.

Topics:

Benefits: Death Benefits: To Whom Paid. Where a beneficiary ceases to be such, the remaining beneficiaries are entitled to share the full death benefits, as calculated pursuant to section 39-71-721(2), MCA (1999), undiminished by the former beneficiary's former share. *In re Gaither*, 244 Mont. 383, 797 P.2d 208 (1990), is distinguished.

Cases Discussed: *In re Gaither*, 244 Mont. 383, 797 P.2d 208 (1990). Where a beneficiary ceases to be such, the remaining beneficiaries are entitled to share the full death benefits, as calculated pursuant to section 39-71-721(2), MCA (1999), undiminished by the former beneficiary's former share. *In re Gaither*, 244 Mont. 383, 797 P.2d 208 (1990), is distinguished.

¶1 This matter involves death benefits. The decedent, Steven R. Oliver, died of work-related injuries on October 6, 1999. At the time of his death, his employer was insured by Liberty Northwest Insurance Corporation (Liberty), which has accepted liability for death benefits. However, questions arose regarding the entitlement of various persons to those benefits, hence, it filed the present petition.

¶2 Decedent's survivors, and potential beneficiaries, include two natural children and two putative wives. The first born child is Steven Rick Oliver (Steven), born March 27, 1985. His mother is Deborah Klein Oliver. Deborah was married to decedent, and, although they separated in 1985 and divorce proceedings were initiated, she may not have ever been legally divorced from him. The second child is Siobhan Oliver (Siobhan), born October 19, 1996. Her mother is Brenda J. Halling, who claims to have been married to decedent at the time of his death. The parties agree that one or the other of the mothers would have been found to be the surviving spouse of the decedent had the dispute gone to trial.

¶3 After the filing of Liberty's petition, this Court's hearing examiner mediated a settlement agreement with the parties. Under the agreement, the two mothers effectively ceded any entitlement they may have had to death benefits to their children in exchange for nominal payments. Under the agreement, Deborah received \$5,000 in a lump sum, and Brenda \$7,500 in a lump sum. There was no dispute over the beneficiary status of either of the children. Under the agreement, Steven's interest was handled through the purchase of an annuity for \$55,000. The annuity provides future payments to Steven and is approximately equal to a one-half share of death benefits to age twenty-two. For Siobhan the agreement provides for payment of biweekly benefits at one-half the total benefit rate during her eligibility or "until otherwise ordered by a Court of competent jurisdiction." (Stipulation for Entry of Partial Judgment, filed April 8, 2002.)

¶14 At the time of the agreement (April 2002), Steven was seventeen years old. Siobhan was six and one-half years old. The annuity for Steven in essence provided him with a half share of death benefits until age twenty-two. The agreement specifically left open the question of whether Siobhan is entitled to the full amount of death benefits upon Steven reaching age twenty-two or only to a continuation of her current, one-half share. Having reserved that question for the Court to determine, on May 30, 2003, Liberty filed a motion for summary judgment requesting the Court to issue a declaratory ruling holding that she will continue to be entitled to only a one-half share of death benefits after Steven reaches age twenty-two on March 27, 2007.

Discussion

¶15 All parties agree that the issue is proper for declaratory judgment. The matter was argued in West Yellowstone on October 1, 2003. At the conclusion of that argument the Court indicated that it would find that upon Steven reaching twenty-two years of age on March 27, 2007, Siobhan is entitled to the full amount of death benefits, not merely a one-half share. This Decision and Declaratory Judgment confirm that indication.

¶16 Resolution of the dispute is a matter of statutory interpretation of the statutes governing death benefits.

¶17 Section 39-71-721(1)(a), MCA (1999), establishes the right to death benefits in the first instance. It provides:

39-71-721. Compensation for injury causing death -- limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

The section speaks of "beneficiary" in the singular, however, the following subsections recognize that there may be multiple beneficiaries and provide for a single amount to be divided among them. Subsection (2) provides for payment to the surviving spouse, minor children, children up to age twenty-two who are attending school, and adult invalid children who were dependents of the decedent.⁽¹⁾ Subsection (3) makes similar provision for dependent parents and dependent minor siblings of the decedent but only where there are no other beneficiaries.⁽²⁾

¶18 Payment of benefits is further controlled by section 39-71-723, MCA (1999), which provides:

39-71-723. How compensation to be divided among beneficiaries. Compensation that is due to beneficiaries must be paid to the surviving spouse, if any, or if none, divided equally among or for the benefit of the children. In cases in which beneficiaries are a surviving

spouse and stepchildren of the spouse, the compensation must be divided equally among all beneficiaries. Compensation that is due to beneficiaries, as defined in 39-71-116(5)(e) and (5)(f), if there is more than one, must be divided equitably among them.

Under this provision, and in light of the termination of the mothers' interests, the benefits are to be divided equally between Steven and Siobhan. Essentially, that was what was done through the settlement agreement.

¶9 Liberty argues that the benefits payable to Steven and Siobhan are vested, therefore Siobhan is entitled to only a one-half share of the total benefits available to beneficiaries at the time of the decedent's death. It cites language from *In re Gaither*, 244 Mont. 383, 797 P.2d 208 (1990), in support of its contention. In that case the surviving spouse of the decedent renounced her statutory share of benefits. That share amounted to one-third of the total death benefits. The other two-thirds were for the benefit of two minor children of the decedent.

¶10 In *Gaither* the Court held that the widow's one-third share was personal to her and did not pass to her children upon her renouncing that share. In so holding, the Supreme Court said that each beneficiary's right to benefits is a "vested right [which] is personal to each of the beneficiaries." 244 Mont. at 391. It is that language which *Liberty* cites in this case in support of its argument.

¶11 Liberty's interpretation of *Gaither* is unpersuasive. In that case, the widow would have been entitled to continue to receive benefits but for her renouncing them. The case did not address the distribution of benefits in situations where a beneficiary **loses** eligibility - i.e., where the beneficiary ceases to be a beneficiary as defined by statute, such as occurs where a widow receiving benefits remarries, § 39-71-721(5), MCA (1999), or a child receiving benefits and going to school reaches age twenty-two, § 39-71-116(5)(c), MCA (1999). The vested right of any beneficiary is simply to his or her share of the total death benefits **so long** as he or she remains a beneficiary. Former beneficiaries **no longer** have vested rights to share in those benefits. Thus, where a beneficiary no longer meets the statutory criteria for beneficiary status, he or she is no longer a beneficiary and **the pool of beneficiaries simply decreases**. Section 39-71-721(2), MCA, requires distribution of death benefits to the decedent's statutory beneficiaries. Since the former beneficiary is no longer a beneficiary, those benefits must be distributed, undiminished, to the remaining beneficiaries. In this case, upon Steven reaching age twenty-two, Siobhan is entitled to full death benefits, not merely to a one-half share.

¶12 In reaching this conclusion, I have considered section 39-71-721(5), MCA, which provides:

(5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving

spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(5)(b) through (5)(d).

I do not read this section as undermining my conclusion. The subsection deals with special cases where a beneficiary or his or her estate might otherwise be entitled to benefits.

ORDER AND JUDGMENT

¶13 Upon Steven Rick Oliver reaching the age of twenty-two, Siobhan Oliver is entitled to the full amount of death benefits payable on account of the death of Steven R. Oliver and as calculated under section 39-71-721(2), MCA (1999). Her entitlement shall continue until she reaches eighteen, or if going to school in compliance with section 39-71-116(c), MCA (1999), until age twenty-two.

¶14 This judgment is certified as final for all purposes.

DATED in Helena, Montana, this 5th day of November, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Larry W. Jones

Mr. R. Russ Plath

Mr. Geoffrey R. Keller

Mr. Steven S. Carey

Submitted: October 1, 2003

1. Subsection (2) refers to section 39-71-116(5)(a)-(d), MCA, which encompass the mentioned beneficiaries, providing as follows:

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

....

2. Subsection (3) refers to beneficiaries defined in section 39-71-116(5)(e) and (f), MCA, which encompass the mentioned beneficiaries, providing:

(5) "Beneficiary" means:

....

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.