IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 10

WCC No. 2001-0412

LAURIE PRESTON

Petitioner

vs.

TRANSPORTATION INSURANCE COMPANY

Respondent/Insurer for

WASTE MANAGEMENT

Employer.

ORDER ON MOTION FOR SUMMARY JUDGMENT

Summary: Insurer moved for summary judgment, arguing petition to reopen settlement agreement on ground of mutual mistake of fact was barred by two-year statute of limitations set out in section 27-2-203, MCA.

Held: Motion denied where claim to reopen is based on allegation parties were mistaken about extent of claimant's mental condition and her inability to work in any capacity, but undisputed facts do not establish claimant knew or should have known of this condition and inability to work more than two years prior to filing date of petition.

Topics:

> **Settlements: Reopening: Mistake of Fact.** Insurer moved for summary judgment on ground claimant did not file petition for hearing within two years of when she knew, or should have known, basis for claim to reopen settlement agreement. Motion denied where undisputed evidence does not establish that claimant knew or should have known of the extent of her allegedly work-related mental condition and inability to work more than two years prior to filing date.

¶1 Before the Court is Respondent's Motion for Summary Judgment filed by Transportation Insurance Company (Transportation). Transportation argues that the petition, which seeks to set aside a settlement agreement on the basis of mutual mistake of fact, is barred by the applicable statute of limitations.

Facts

¶2 The uncontroverted facts are as follows:

¶2a On September 14, 1994, petitioner was injured in the course and scope of employment. (Petition for Hearing ¶ 1; Respondent's Undisputed Fact 1.)

¶2b On August 11, 1995, petitioner settled her workers' compensation claim with Transportation. The settlement was approved by the Employment Relations Division of the Department of Labor and Industry. (Petition for Hearing ¶ 2; Respondent's Undisputed Fact 2.)

¶2c At the time of the settlement, petitioner had been treated for depression but had returned to work. (Petition for Hearing at ¶ 3, admitted by respondent.)

¶2d On February 12, 1999, Mary Ann Evans, M.D. prepared an "initial intake" following examination of claimant. Her assessment included:

- Panic Disorder with agoraphobia, severe.
- Major depressive disorder, single episode, recurrent, severe.
- PTSD.
- Pathologic gambling.

(Respondent's Reply Brief In Support Of It's Motion For Summary Judgment, Ex. 1; Evans Dep. at 60-61.) Claimant testified at deposition that she recalled Dr. Evans discussing diagnoses with her during February, 1999. (Preston Dep. at 25, 34-35.) Dr. Evans testified she believed these diagnoses were work-related. (Evans Dep. at 62-63.)

¶2e On April 19, 1999, Patrick Wallace, the adjuster in charge of the claim, wrote jointly to claimant and her attorney at the time, Mr. Randall O. Skorheim. The letter included:

It is our understanding from the telephone calls we've had from Ms. Preston that she is requesting Workers' Compensation benefits for psychiatric care. As I explained to Ms. Preston on the telephone on April 1, 1999, based upon the information that the insurer has, no benefits will be provided for psychiatric care. Any claims for any benefits relating to this kind of treatment are respectfully denied. This denial of benefits refers to the 09-14-94 incident, which claim was settled. It also refers to a filing of 06-25-98, which claim was abandoned.

(Letter of April 19, 1999, attached to Affidavit of Patrick Wallace.)

¶2f On August 25, 1999, petitioner resigned from her employment. (Affidavit of Roger Bridgeford at 1.)

¶2g On November 29, 2000, petitioner, through her attorney, submitted a Petition for Mediation. As later phrased by the Department of Labor, the issue involved "Ms. Preston's entitlement to re-opening of her claim based on medical and vocational mistake of fact." (Affidavit of Richard J. Martin, Ex. 2; not disputed by respondent.)

¶2h The mediation report was dated January 4, 2001. (Affidavit of Richard J. Martin, Ex. 3; not disputed by respondent.)

Discussion

¶3 The present petition was filed September 19, 2001. In it claimant contends that the 1995 settlement was based upon the parties' understanding that petitioner's depression was treatable and she could return to work. (Petition for Hearing ¶ 4; Respondent's Undisputed Fact 3.) Claimant alleges that the parties were mutually mistaken as to the nature and extent of her mental disorder and her ability to be successfully employed. (Petition for Hearing at 2, ¶ 6; Respondent's Undisputed Fact 3.) She alleges she has been permanently totally disabled since September 24, 1999. (Petition for Hearing ¶ 7.) ¶4 General principles of contract law govern full and final compromise settlement agreements, thus a settlement may be set aside if the parties to the agreement were operating under a mutual mistake of material fact. *Kienas v. Peterson*, 191 Mont. 325, 524 P.2d 1 (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 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 of limitations, rather, the limitations period commences when the claimant would have discovered the mistake had she exercised ordinary diligence. *Rath v. St. Labre Indian School*, 249 Mont. 433, 439, 816 P.2d 1061, 1065 (1991).

¶5 In this case, respondent argues that more than two years transpired between the time petitioner knew or should have known of the matters constituting mutual mistake of fact and the time she filed her petition in this Court. Respondent points to (1) its adjuster's letter to claimant and her attorney dated April 19, 1999, denying benefits for psychiatric care; (2) claimant's deposition testimony, and that of psychiatrist Mary Ann Evans, regarding Dr. Evans' diagnosis of claimant; and (3) claimant's termination of employment on August 25, 1999.

¶6 While the general nature of the occurrences cited by respondent appear undisputed, the undisputed facts before the Court are insufficient to permit the Court to conclude that the request to reopen is barred by the two-year statute. The heart of claimant's petition is the allegation that the parties were mutually mistaken as to the severity of claimant's mental condition and her ability to work. She alleges she has been permanently totally disabled **since September 24, 1999.** If September 24, 1999, is indeed the date she learned she was totally disabled on account of her mental condition then it is possible her petition may be timely since it was filed within two years thereafter (September 19, 2001). If claimant was aware of both her psychiatric condition and her inability to work prior to September 19, 1999, then her petition is time barred.

¶7 While claimant may have known by April 19, 1999, that she was suffering from a mental condition requiring treatment, it has not been shown that at that time the condition was so severe as to totally disable her. Further, the parties have not informed the Court whether the 1995 settlement agreement closed or left open claimant's entitlement to medical benefits, thus it has not been shown that claimant was seeking a reopening of her claim or that she had grounds to do so at that time. Similarly, evidence that during February 1999, Dr. Evans told claimant about particular diagnoses, or that claimant understood particular diagnoses, does not prove claimant was aware that the settlement foreclosed her from receiving medical benefits for her mental condition or that she was or would become totally disabled on account of her mental condition.

¶8 Similarly, while respondent argues that when claimant quit working on August 25, 1999, she knew or should have known that she was unable to work on account of her mental condition, the facts presented are insufficient for me to draw that conclusion as an undisputed fact. The affidavit of Roger Bridgeford asserts that claimant resigned August 25, 1999 for reasons of "health," but the "papers" referenced in the affidavit, which purportedly establish health as the reason for her resignation, were not attached to the copy of the affidavit filed with the Court. Further, claimant has not conceded she resigned for reasons of health, or that her resignation was on account of her mental condition. Those matters require further exploration and explication.

¶9 Finally, claimant argues for a tolling of the statute of limitations during the period between the November 29, 2000 filing of her Petition for Mediation and the January 4, 2001 issuance of the Mediation Report and Recommendation. The Court need address the issue only if it finds, after trial and as a matter of fact, that the claimant knew or should have known of the alleged mutual mistake of fact two or more years prior to filing her petition but less than time period if tolled by the mediation.

ORDER

¶10 The motion for summary judgment is **denied** and this case should proceed to trial as scheduled.

DATED in Helena, Montana, this 13th day of February, 2002.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Richard J. Martin
Mr. Todd A. Hammer
Submitted: December 13, 2001