IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 17

WCC No. 9907-8280

STATE COMPENSATION INSURANCE FUND

Petitioner

vs.

MONTANA SIGN, SKINNER ENTERPRISES/ LIFESTYLE HOMES AND ANDY SKINNER

Respondents/Purported Employers

and

DANIEL GLOVER

Claimant/Respondent.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT,
ORDER RESETTING TRIAL

Summary: Putative employers filed motion for summary judgment arguing WC claimant was an independent contractor.

Held: SJ denied where answer to petition alleges claimant was an employee of one of the companies. Moreover, the facts are not sufficient to establish uncontroverted IC status where claimant not tied to IC exemption tendered and purported agreement to work as IC is not conclusive.

Topics:

Independent Contractor: Generally. Purported employers filed summary judgment arguing WC claimant was an independent contractor. SJ denied where answer to petition alleges claimant was employee of one of the purported employer companies. Moreover, facts not sufficient to establish uncontroverted IC status where evidence does not tie claimant to IC Exemption tendered and purported agreement for claimant to work as IC is not conclusive under SC precedent. See section 39-71-120, MCA; Schrock v. Evans Transfer and Storage, 225 Mont. 348, 351, 7332 P.2d 848, 850 (1987).

Summary Judgment: Disputed Facts. SJ denied on IC issue where answer to petition alleges claimant was employee of one company associated with moving party. Where answer not amended, Court will not find "undisputed fact" contrary to moving party's answer.

¶1 Respondents, Montana Sign, Skinner Enterprises, Lifestyle Homes, and Andy Skinner (collectively referred to as "the Skinner companies"), have moved for summary judgment dismissing the claims against them. A hearing on the motion was held March 24, 2000. The motion is **denied** and this matter **reset** for trial commencing on July 24, 2000 in Helena.

Discussion

¶2 The State Fund insures all or some of the Skinner companies. Through its petition, the State Fund seeks a determination that Daniel Glover (claimant), who was injured August 21, 1998, was not an employee of its insureds. In their motion for summary judgment, the Skinner companies argue that Glover was an independent contractor, hence they have no interest in this litigation and should be dismissed. The problem with their argument is that it is contrary to their own admission, set out in their answer to petition, that claimant was in fact an employee of one of the Skinner companies (Skinner Enterprises, Inc.). Their answer has not been amended and the Court cannot consider arguments contrary to their own admissions and allegations in that answer. Thus, their motion cannot be considered unless and until their answer is amended.

¶3 Moreover, the facts set forth in support of their motion are insufficient to establish, as an uncontroverted matter, that claimant was an independent contractor at the time of his accident. Their reliance on the Independent Contractor Exemption, without more, is misplaced. The exemption is for KRD Builders and the facts tendered to the Court fail to establish that KRD is a sole proprietorship of claimant, or even a partnership between claimant and others. Evidence referred to by the parties indicate KRD is, or at least may be, a sole proprietorship of claimant's wife. The Skinner companies' further argue that the parties' agreed claimant was an independent contractor. The agreement is not conclusive. The Montana Supreme Court has consistently held that the designation of an individual as an independent contractor is not decisive, rather the courts must look at all statutory factors, including right of control, § 39-71-120, MCA, in determining whether the claimant was an employee in fact. *Schrock v. Evans Transfer and Storage,* 225 Mont. 348, 351, 732 P.2d 848, 850 (1987); and *see Walling v. Hardy Const.,* 247 Mont. 441, 451, 807 P.2d 1335, 1341 (1991).

¶4 During oral argument, questions were raised whether the Skinner companies have a stake in the outcome of this case and therefore whether they are proper parties. That issue is not before the Court and I make no determination. In light of incomplete status of discovery, and the agreement of the parties, the April trial date was vacated and has been

reset in July, therefore, the parties will have time to present any motions they wish regarding parties and other matters.

DATED in Helena, Montana, this 4th day of April, 2000.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Thomas E. Martello
Mr. Robert T. Cummins
Mr. Norman H. Grosfield