IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 23

WCC No. 2003-0841

PATSY SIAPERAS

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER FOR TRANSMITTAL OF RECORD WITHOUT TRANSCRIPT

Summary: On date for transmittal of the record on appeal to the Montana Supreme Court, the court reporter notified the Workers' Compensation Court that petitioner/appellant did not make arrangements for a transcript of proceedings until the business day prior to the transmittal date.

Held: The Court is relieved from preparing a transcript and the record shall be forthwith transmitted without transcript.

Topics:

> **Appeals (To Supreme Court): Record on Appeal.** Appellant is responsible for ordering a transcript within ten days of her notice of appeal. The order must be in writing. A last minute order will not suffice and will result in the record being transmitted to the Supreme Court without a transcript.
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> **Appeals (To Supreme Court): Record on Appeal.** Where appellant failed to take timely steps to secure a transcript, good cause is lacking for an extension of time for transmission of the record on appeal.

¶1 Petitioner in this matter filed her Notice Of Appeal on January 28, 2004. Under Rule 9(b), Mont.R.App.P., absent a stipulation a petitioner has ten days in which to make a written request for a transcript of proceedings. Rule 9(b), provides:

> **(b) The Transcript of Proceedings-Duty of Appellant to Order-Notice to Respondent if Partial Transcript Is Ordered-Costs of Producing**. Absent a stipulation filed with the clerks of the supreme court and the district court pursuant to Rule 54(c), within 10 days after filing the notice of appeal the appellant shall order

> from the reporter a transcript of all of the proceedings not already on file for inclusion in the record. The order shall be in writing and within the same period a copy shall be filed with the clerk of court. Any attorney who orders a transcript of the evidence shall be personally liable for the payment of the costs of the transcript.

No stipulation was filed, thus the petitioner was required to order the transcript no later than February 7, 2004.

¶2 Under Rule 10(a), Mont.R.App.P., the Clerk of this Court is required to transmit the record on appeal, including the transcript, no later than 40 days after the filing of the notice of appeal unless the time is extended pursuant to Rule 10(c), Mont.R.App.P. The 40th day in this case is Tuesday, March 9, 2004, unless the time is extended pursuant to Rule 10(c).

¶3 This Court now has before it an affidavit of its court reporter in this matter. That affidavit shows that the transcript in this matter was not ordered in writing within ten days as required by Rule 9(b). The petitioner's attorney contacted the court reporter several days later to orally indicate his desire for a transcript. However, because of prior difficulty in obtaining payment from the petitioner's counsel, the court reporter requested up-front payment of one-half of the cost of the transcript. That payment was received and the transcript ordered on Thursday, March 4, 2004, making it virtually impossible for the court reporter to prepare a transcript in time for the transmission date.

¶4 Under Rule 10(c), the time may be extended only upon motion "show[ing] that the inability of the appellant to cause timely transmission of the record is due to causes beyond the appellant's control or to circumstances which may be deemed excusable neglect." Good cause has not been shown in this case since the petitioner failed to take timely and necessary steps to secure the transcript.

¶5 Since the petitioner failed to make a timely request for a transcript, the court reporter is not required to prepare a transcript. The record in this case is

¶6 THEREFORE ORDERED transmitted forthwith to the Supreme Court without a transcript.

DATED in Helena, Montana, this 8th day of March, 2004.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Robert C. Kelleher - U.S. Mail and Faxed
Mr. Charles G. Adams - U.S. Mail and Faxed