

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 49

WCC No. 2002-0711

JOHN SPURLOCK

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

SUMMARY JUDGMENT

APPEALED - 08/15/03

Dismissed on Motion of Appellant 11/13/03

Summary: Petitioner, a sole proprietor operating a trucking business, seeks occupational disease benefits even though he elected not to provide coverage for himself. He urges that the insurer's issuance of a Certificate of Insurance for his trucking firm precludes the insurer from denying coverage.

Held: The Workers' Compensation Court has jurisdiction to determine coverage where a petitioner is pursuing a claim for compensation and the insurer interposes a lack of coverage as a defense. On the merits, the Certificate of Insurance in this case does not estop the insurer from denying coverage since it accurately notifies readers that Workers' Compensation Laws allow certain employees (such as petitioner) to opt out of coverage and states that the reader must determine for himself whether there is coverage. Since petitioner had opted out, there is no coverage for his claim and his petition must be dismissed.

Topics:

Jurisdiction: Original Jurisdiction. The Workers' Compensation Court has original jurisdiction to adjudicate coverage issue where a lack of coverage is raised as a defense to a claimant's petition for workers' compensation benefits. *Auto Parts of Bozeman v. Uninsured Employers' Fund*, 2001 MT 72, 305 Mont. 40, 23 P.3rd 193 is inapposite.

Jurisdiction: Coverage Disputes. The Workers' Compensation Court has original jurisdiction to adjudicate coverage issues where a lack of coverage is raised as a defense to

a claimant's petition for workers' compensation benefits. *Auto Parts of Bozeman v. Uninsured Employers' Fund*, 2001 MT 72, 305 Mont. 40, 23 P.3rd 193 is inapposite.

Insurance: Coverage. Where a sole proprietor has expressly opted not to cover himself or herself, and has not reported his or her wages for premium purposes, that proprietor is not entitled to workers' compensation benefits under a policy maintained for the proprietor's business.

Insurance: Coverage: Estoppel. A certificate of insurance which certifies there is workers' compensation insurance coverage for a business operated by a sole proprietor but which also warns the reader that certain employees may opt out does not estop the insurer from denying coverage to a sole proprietor who has expressly opted not to have coverage for himself or herself. There is no estoppel since there is no misrepresentation of fact.

Estoppel and Waiver: Equitable Estoppel. A certificate of insurance which certifies there is workers' compensation insurance coverage for a business operated by a sole proprietor but which also warns the reader that certain employees may opt out does not estop the insurer from denying coverage to a sole proprietor who has expressly opted not to have coverage for himself or herself. There is no estoppel since there is no misrepresentation of fact.

¶1 This matter is before the Court on the respondent's motion for summary judgment. The material undisputed facts are as follows:

Facts

¶2 At all times relevant to this matter, petitioner was an independent, self-employed trucker, doing business as Spurlock Trucking. (Petition, ¶ 1; Motion for Summary Judgment at 1.)

¶3 In May 1996, petitioner obtained workers' compensation insurance from the Montana State Fund, electing to cover himself as an owner of Spurlock Trucking earning \$900 per month. (Motion for Summary Judgment and Brief in Support, Ex. 1; Petition, ¶ 1.)

¶4 On February 24, 1997, petitioner signed an "Endorsement Agreement Rescinding Coverage Previously Elected by an Sole Proprietor, Partner or LLC Member." (Motion for Summary Judgment and Brief in Support, Ex. 2.) The Endorsement provided:

I previously elected coverage, under the provisions of the Workers' Compensation and Occupational Disease Laws of the State of Montana, as the owner, working partner or member/manager of the above business.

I wish to rescind coverage for **myself** effective (*must be a date in the future*) 2-24-97 but leave my **policy** in effect. I understand I must submit another Sole Proprietor, Partner or Member/Manager Endorsement if I desire coverage for myself in the future.

(*Id.*; Response to Motion for Summary Judgment and Counter-Motion for Summary Judgment, Agreed Facts, at 2.)

¶15 On April 13, 1998, petitioner signed and submitted to the Montana State Fund a Payroll and Premium Report listing no covered owners or officers for Spurlock Trucking for coverage purposes. The word "none" was written under the section titled "Covered Owners or Officers." (Motion for Summary Judgment and Brief in Support, Ex. 3.)

¶16 On June 26, 1999, petitioner signed and submitted to the Montana State Fund a payroll and premium report. The report did not list any owners or officers of Spurlock Trucking. The section titled "Covered Owners or Officers" was left blank. (Motion for Summary Judgment and Brief in Support, Ex. 4.)

¶17 On August 10, 1999, the Montana State Fund provided two Certificates of Insurance on behalf of petitioner's business, one addressed to American Timber Co., the other addressed to Glacier Line Lodging. Another Certificate of Insurance was issued on December 15, 1999 to Glacier Line Lodging. All three documents provided:

This document certifies the State Fund provides workers' compensation, occupational disease and employers liability insurance coverage for the above named insured. The policy includes coverage for all Montana employees as required by law.

Employers liability coverage is included at the following limits of liability:

\$100,000 Bodily Injury by Accident - Each Accident
\$100,000 Bodily Injury by Disease - Each Employee
\$500,000 Bodily Injury by Disease - Policy Limit

Coverage for certain employments under Montana law may be elected or rescinded, upon the employer's request, at any time during the policy period. We cannot verify the coverage status of such employments; therefore, you should verify these employments with the employer.

This certificate is valid for one year from the date of issue unless cancellation procedures are initiated. We will attempt to notify you if cancellation procedures are initiated.

If the insured is still contracting for your company when this Certificate expires, you may request re-certification through the insured. Please advise us if the contract expires prior to that time.

(Response to Motion for Summary Judgment and Counter-Motion for Summary Judgment, Exs. A-C.)

¶18 Petitioner filed a claim for occupational disease benefits on December 13, 1999, contending his claim "occurred in the summer of 1999." (Petition for Hearing, ¶¶ 1, 6.)

¶19 On January 31, 2000, petitioner asked the Montana State Fund to cancel his policy. (Motion for Summary Judgment and Brief in Support, Ex. 5; Response to Motion for Summary Judgment and Counter-Motion for Summary Judgment, Agreed Facts at 2.)

Discussion

I.

¶110 As an initial matter, I must consider this Court's jurisdiction to decide the coverage issue raised in this case. Subject matter jurisdiction is an issue that may be raised *sua sponte* and at any time. The only reason I address it here is because of possible confusion created in the aftermath of *Auto Parts of Bozeman v. Uninsured Employers' Fund*, 2001 MT 72, 305 Mont. 40, 23 P.3d 193. In *Auto Parts* the Supreme Court held that the Department of Labor and Industry does not have jurisdiction to determine coverage issues as between an employer and an insurer. At issue there was whether the employer's policy with the Montana State Fund had been properly cancelled. The employer asserted it had not and that it was therefore insured and not subject to the penalties sought by the Uninsured Employers' Fund.

¶111 *Auto Parts* does not speak to the jurisdiction of this Court to decide coverage issues where a claim for benefits is involved. Unlike the situation in *Auto Parts*, the coverage issue in this case is an integral part of the claim for compensation. Although an employer, petitioner also claims to be an employee for compensation purposes. The Supreme Court long ago held that the jurisdiction of the Workers' Compensation Court goes "beyond" the mere adjudication of workers' claims and reaches disputes related to those claims. *State ex rel. Uninsured Emp. Fund, Division of Workers' Compensation v. Hunt*, 191 Mont. 514, 519, 625 P.2d 539, 542 (1981). The Court pointed out:

Although the Workers' Compensation Court is not vested with the full powers of a District Court, it nevertheless has been given broad powers concerning benefits due and payable to claimants under the Act. It has the power to determine which of several parties is liable to pay the Workers' Compensation benefits, or if subrogation is allowable, what apportionment of liability may be made between insurers, and other matters that go beyond the minimum determination of the benefits payable to an employee.

Id.

¶112 Where a petitioner's claim for benefits is denied for lack of coverage, and the petitioner pursues his claim against the insurer, coverage becomes an issue which is inextricably tied to petitioner's entitlement to benefits. The dispute is no longer a separate contract dispute involving only the employer and the insurer. To deny a petitioner his or her day in the Workers' Compensation Court on account of the insurer's assertion of no coverage would frustrate the purpose of the Workers' Compensation Act in a manner similar to that discussed in *Auto Parts* by forcing petitioners into district court and denying them their right

to prompt payment of benefits. See *Auto Parts*, ¶¶ 21-22. I therefore conclude that this Court has jurisdiction to determine whether the Montana State Fund policy at issue in this case provided coverage for industrial injuries suffered by the petitioner.

II.

¶13 Summary judgment is appropriate if the undisputed facts material to the motion entitle the moving party to judgment as a matter of law. Rule 24.5.329(2); *Lewis v. Nine Mile Mines, Inc.*, 268 Mont. 336, 340, 886 P.2d 912, 914 (1994). The Montana State Fund moves for summary judgment on the ground that the undisputed facts show that petitioner was not covered by its workers' compensation policy. The Court agrees.

¶14 Section 39-71-401(2), MCA (1999), provides that:

Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

....

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

....

Under this section a sole proprietor, such as petitioner, *may* elect workers' compensation coverage but was not required to do so. In fact, he initially elected coverage but thereafter rescinded that coverage. During the summer of 1999, when petitioner alleges he suffered an occupational disease, he was not in fact covered. On April 14, 1998, he had rescinded his election for coverage and never sought new coverage for himself thereafter. Consistent with his rescission of coverage, in his post-April 14, 1998 payroll reports the petitioner did not list himself as a covered employee.

¶15 The Montana State Fund's two Certificates of Insurance, which were provided to two companies with which the petitioner contracted, do not give rise to coverage or estop the Montana State Fund from asserting a lack of coverage. Both certificates certify the existence of liability insurance coverage and certainly certify coverage for any employees the petitioner had other than himself. However, the certificates put the two companies to which they were addressed on notice that petitioner may not be covered by the policies. The certificates provide the following express warning:

Coverage for certain employments under Montana law may be elected or rescinded, upon the employer's request, at any time during the policy period. We cannot verify the coverage

status of such employments; therefore, you should verify these employments with the employer.

(Response to Motion for Summary Judgment and Counter-Motion for Summary Judgment, Exs. A-C.) Estoppel, as an initial matter, requires a misrepresentation or concealment of a material fact. *Selley v. Liberty Northwest*, 2000 MT 76, ¶ 10, 299 Mont. 127, 998 P.2d 156.⁽¹⁾

The undisputed facts in this case show there was no misrepresentation since the certificates, upon which the petitioner relies in arguing for coverage, expressly notify all concerned that certain employees may not be covered by the policy since they are free to elect coverage or not. Petitioner was such an employee and the statement was true.

¶16 Finally, I note that while petitioner has noted he had funds in deposit with the Montana State Fund to cover premiums. The policy afforded liability insurance coverage. Claimant has not alleged that the Montana State Fund deducted any amounts for sole proprietor coverage. There are simply no facts from which this Court could infer the existence of sole proprietor coverage at the times alleged in the petition.

JUDGMENT

¶17 Petitioner's request for occupational disease benefits is denied because he was not a covered employee under the policy of insurance issued by the Montana State. The petition is **dismissed with prejudice**.

¶18 This judgment is certified as final for the purposes of appeal.

DATED in Helena, Montana, this 15th day of July, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Donald E. Hedman

Mr. Greg E. Overturf

Submitted: March 3, 2003

1. In *Selley v. Liberty Northwest*, 2000 MT 76, the Supreme Court set out the six elements of equitable estoppel as follows:

(1) the existence of conduct, acts, language, or silence amounting to a representation or concealment of material facts;

(2) the party estopped must have knowledge of these facts at the time of the representation or concealment, or the circumstances must be such that knowledge is necessarily imputed to that party;

(3) the truth concerning these facts must be unknown to the other party at the time it was acted upon;

(4) the conduct must be done with the intention or expectation that it will be acted upon by the other party, or have occurred under circumstances showing it to be both natural and probable that it will be acted upon;

(5) the conduct must be relied upon by the other party and lead that party to act; and

(6) the other party must in fact act upon the conduct in such a manner as to change its position for the worse.

(Id., ¶ 10.)