IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 27

WCC No. 2001-0284

JANICE BUTTE, PERSONAL REPRESENTATIVE OF THE ESTATE OF LaVONNE KENNEDY

Petitioner

vs.

ACE AMERICAN INSURANCE COMPANY

Respondent/Insurer for

TOWN PUMP, INCORPORATED

Employer.

ORDER DISMISSING PETITION

Case summary: Estate of murder victim brought petition for death benefits, alleging that the deceased was murdered by her husband in the course and scope of her employment. The respondent insurer moved for an order directing the estate to name a specific beneficiary who would be entitled to benefits if the employment allegations were true.

Held: The motion raises the issue of whether the estate can maintain this action at all, therefore the Court will treat the motion as one to dismiss for failure to state a claim. The estate is not a potential beneficiary, therefore the petition must be dismissed.

Topics:

Benefits: Death Benefits. The estate of the deceased worker is not a potential beneficiary of death benefits under section 39-71-721 and therefore has no standing to maintain an action for benefits under that section.

Procedure: Motion to Dismiss. Whatever the caption of a motion filed in response to a petition, where the motion challenges the standing of the petitioner to recover benefits based on the face of the petition, the motion will be treated as a motion to dismiss.

Procedure: Motion to Dismiss. Where the petition affirmatively shows that the petitioner is not entitled to benefits, it will be dismissed.

Procedure: Motion to Dismiss. The estate of the deceased worker is not a potential beneficiary of death benefits under section 39-71-721 and therefore has no standing to maintain an action for benefits under that section. Therefore, a petition brought on behalf of the estate for death benefits must be dismissed.

¶1 The petition in this case is brought by the personal representative of the estate of LaVonne Kennedy (Estate). Kennedy was murdered at work by her husband and her estate seeks death benefits under the Workers' Compensation Act. Respondent, Ace American Insurance Company (ACE), moves for an order compelling the estate to designate a beneficiary eligible for benefits under section 39-71-721, MCA, which provides for death benefits.

Discussion

¶2 Section 39-71-721, MCA (1999),[(1)] governs death benefits. It provides in relevant part:

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).

. . .

(2) To **beneficiaries as defined in 39-71-116(5)(a) through (5)(d)**, weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of death.

(3) To **beneficiaries as defined in 39-71-116(5)(e) and (5)(f)**, weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) **If the decedent leaves no beneficiary, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.**

. . .

(6) **In all cases, benefits must be paid to beneficiaries**.

. . .

The emphasis is the Court's.

¶3 As set forth in the section quoted above, the beneficiaries eligible for death benefits are those persons identified in section 39-71-116(5), MCA (1999). That section provides in relevant part:

> (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;
>
> (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.

The estate of the deceased worker is **not** a beneficiary. Thus, it is not entitled to, and has no standing to pursue, death benefits.

¶4 While ACE's motion requests that the estate designate the proper beneficiary, the estate has no standing to do so. ACE's motion properly raises the issue of the estate's standing to bring the current action. In effect it is a motion to dismiss the estate as a party. The Court will treat the motion accordingly.

¶5 A motion to dismiss must be granted where the petition on its face shows that the party bringing the petition is not entitled to relief. "[W]hen a complaint alleges facts and, assuming the facts are true, there still is no claim for relief stated under any theory, a motion to dismiss must be granted." *Duffy v. Butte Teachers Union, No. 332, AFL-CIO*, 168 Mont. 246, 253, 541 P.2d 1199, 1203 (1975). The estate of the decedent is not a beneficiary under any possible interpretation of the statutes governing death benefits, therefore it has no claim for relief.

ORDER

¶6 Accordingly, the petition is **dismissed.** The dismissal does not preclude any beneficiaries enumerated in the statutes from bringing their own petition.

DATED in Helena, Montana, this 29th day of May, 2001.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Edward K. Duckworth
Mr. Leo S. Ward
Submitted: May 23, 2001

1. The murder occurred on September 18, 1999. Thus, the 1999 version of the Workers' Compensation Act applies. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).