

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 104

WCC No. 9507-7338

HELEN JO KIMERY

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

MISSOULA COUNTY SHERIFF'S DEPARTMENT

Employer.

SUMMARY JUDGMENT

Summary: Petitioner, who received death benefits until her re-marriage, moved for summary judgment on her request that benefits be re-instated following District Court's annulment of her re-marriage, which included a declaration that the marriage was void ab initio. She argued State Fund was bound by the District Court decree even though it was not a party to that proceeding and contended the Workers' Compensation Court lacked jurisdiction to make any orders inconsistent with the District Court.

Held: A judgment has no effect or force as to non-parties except under circumstances meeting the criteria for collateral estoppel, not met as to State Fund in this case. Where the WCC has jurisdiction to determine entitlement to benefits, it has jurisdiction to determine whether the annulment of claimant's marriage revives State Fund's obligation to pay death benefits. Summary judgment denied.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-721(5), MCA (1983). Widow whose death benefits were terminated upon her remarriage moved for summary judgment on her claim to reinstate benefits, arguing that District Court's order of annulment of her remarriage ab initio was binding on State Fund. WCC denied motion, holding that District Court's order was not binding on State Fund where it was not party to that proceeding.

Benefits: Death Benefits: Remarriage. Widow whose death benefits were terminated upon her remarriage moved for summary judgment on her claim to reinstate benefits, arguing that District Court's order of annulment of her remarriage ab initio was binding on State Fund. WCC denied motion, holding that District Court's order was not binding on State Fund where it was not party to that proceeding.

Jurisdiction: Subject Matter Jurisdiction. Where the WCC has jurisdiction to determine entitlement to benefits, it has jurisdiction to determine whether the annulment of widow's remarriage revives State Fund's obligation to pay death benefits.

Petitioner, Helen Jo Kimery, seeks reinstatement of survivor's benefits. She now moves for summary judgment as to her entitlement.

Standard of Review

As in other recent cases involving motions for summary judgment, this Court will follow Rule 56, Mont.R.Civ.P. Rule 56(c) provides in pertinent part:

[Summary] judgment . . . shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Mont.R.Civ.P. 56(c).

Summary judgment is appropriate when the moving party establishes that there is no genuine issues of material fact and that she is entitled to judgment as a matter of law. *McDonald v. Anderson*, 261 Mont. 268, 272, 862 P.2d 402, 404 (1993). The primary policy and the general purpose underlying summary judgment is to encourage judicial economy by eliminating unnecessary trials. *Id.* at 273, 862 P.2d at 404.

The facts upon which petitioner bases her motion are found in district court documents in an annulment proceeding. Copies of the documents are attached to the Petitioner's Brief in Support of Motion for Summary Judgment. In addition the Court requested and obtained a copy of the entire district court file, of which judicial notice is taken.

Facts

The petitioner is the widow of Allen Kimery, a Missoula County sheriff's deputy killed in the line of duty on December 6, 1984. The State Fund insured the County at that time and accepted liability for payment of survivors' benefits to petitioner and the two Kimery children.

On July 20, 1991, petitioner married David Archer. Pursuant to section 39-71-721, MCA, the State Fund paid her a lump sum of 104 weeks of benefits and terminated further biweekly benefits.

A year and a half later, on February 19, 1993, petitioner sought a dissolution of her marriage to Archer. (Ex. E.) Within a week of the filing of her dissolution petition, however, she filed an amended petition requesting that her marriage be annulled. (Ex. G.) The amended petition alleged that petitioner "lacked the capacity to consent [to the marriage] in that she was suffering [sic] from mental incapacity and her consent was induced by duress" (*Id.* at 2.) She and Archer thereafter entered into a Stipulation and Property Settlement Agreement in which Archer

hereby admits, acknowledges, stipulates, declares, agrees, and verifies that at the time of the parties' purported marriage Petitioner lacked the capacity to consent in that she was suffering from mental incapacity and that her ostensible consent to the purported marriage was induced by duress

(Ex. H at 2.) Archer also executed a stipulation consenting the entry of a decree of invalid marriage. (Ex. I.)

The matter was heard on May 24, 1993, by the Honorable Douglas Harkin, District Judge of the Fourth Judicial District. The petitioner testified, but this Court has not been furnished with a transcript of her testimony, and is not aware of whether the testimony was recorded. In any event, Judge Harkin entered a Decree of Invalid Marriage. (Ex. J.) In his findings of fact he found that petitioner "lacked capacity to consent to marriage because of mental incapacity and duress" (Ex. J at 2), however, he did not elaborate on the basis for that ultimate conclusion. The District Court annulled the marriage *ab initio*, declaring: "That the interests of justice require that the parties' purported marriage be declared invalid as of its inception and void ab initio." (*Id.* at 3; underlining in original.)

Almost a year later, on March 25, 1994, petitioner requested the State Fund to reinstate her widow's benefits. The State Fund refused. On March 15, 1995, she renewed her request. The State Fund again refused. On July 3, 1995, she filed her petition with the Court.

Discussion

Through her motion for summary judgment, the petitioner argues that the Decree of invalid marriage rendered her remarriage a nullity and entitles her, as a matter of law, to reinstatement of her widow's benefits. She argues that the State Fund is bound by the decree even though it was not notified of the proceeding and had no opportunity to appear and be heard.

On its part, the State Fund insists that the annulment is not binding on it. It seeks discovery into the factual basis for the annulment and an opportunity to litigate whether there is a

valid basis to annul the marriage *ab initio* and thereby resurrect its obligation for widow's benefits. It agrees that if a valid basis for an *ab initio* annulment exists then the petitioner is entitled to reinstatement of her benefits.

The starting point in resolving the dispute is the statutory framework for death benefits. Since the statutes are not quoted verbatim in our discussion, they are set forth verbatim in an appendix to this Order.

Section 29-71-721, MCA (1983)⁽¹⁾, provides that where an employee dies as a result of an industrial accident, then his beneficiaries are entitled to weekly compensation in an amount equal to two-thirds of the decedent's wages, but subject to both a maximum and minimum rate. The maximum rate is the state's average weekly wage; the minimum is one-half the state's average weekly wage. Where there are multiple beneficiaries, each of the beneficiaries, other than dependent parents and siblings, has a vested right to a proportionate share of the weekly amount. §§39-71-116(2)(e)-(f) and 39-71-721, MCA (1983); and see *In re Gaither*, 244 Mont. 383, 390-91, 797 P.2d 208, 213 (1990). Assuming that the only beneficiaries in this case were petitioner and the two children, petitioner was entitled to one-third of the weekly amount and the Kimery children were entitled to the other two-thirds.

The death benefit statutes, however, contain a specific provision for termination of the widow's share of benefits upon her remarriage. Section 39-71-721(5), MCA (1983), provides in relevant part:

Death benefits must be paid to a widow or widower for life **or until remarriage**, and in the event of remarriage, 2 years' benefits must be paid in a lump sum to the widow or widower. [Emphasis added.]

Termination of benefits upon remarriage does not increase the share of the other beneficiaries. See *In re Gaither* at 391, 797 P.2d at 213. Thus, assuming there are three original beneficiaries consisting of the widow and two children, upon the widow's remarriage the two children would continue to be entitled to a one-third share each; the widow's share is not added to their entitlement. *Id.*

The parties agree that if there are valid grounds for annulling the petitioner's marriage *ab initio*, then she is entitled to a restoration of her biweekly benefits.⁽²⁾ The petitioner contends that the matter has already been determined by the district court, which expressly declared the marriage *void ab initio*, and that the State Fund is bound by the judgment even though it was not a party to the annulment proceeding and had no notice of it. She argues that the State Fund is attempting to improperly collaterally attack the judgment of the district court. This Court disagrees with petitioner's analysis and finds that the Montana Supreme Court decision in the case of *In re the Marriage of Williams*, 208 Mont. 252, 677 P.2d 585 (1985), is controlling with respect to both the respondent's right to

contest retroactive application of the annulment and this Court's jurisdiction to determine whether the decree should be retroactively applied against the respondent.

A declaration that a marriage is *void ab initio* has legal significance. *Void ab initio* means that the act to which it applies is deemed void from the beginning. See Black's Law Dictionary (Rev. 4th Ed.). The act has no consequence or significance. In the context of an annulment, voiding the marriage *ab initio* means that the marriage must be treated as if it never occurred. As a consequence rights and obligations otherwise terminated by the marriage are restored and spring to life once more. See *Marriage of Williams*, 208 Mont. 252, 677 P.2d 585 (1984). The converse is that if the marriage is not declared *void ab initio*, the fact of the marriage is not ignored, and the legal consequences springing from the fact of the marriage are unaffected. See *Id.*

Under Montana statutes an annulment is not automatically *ab initio*. Section 40-1-402(5) (1983), MCA, provides in relevant part:

Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interest of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. . . . [Emphasis added.]

The provision demonstrates that the legislature recognized that voiding a marriage *ab initio* may have legal consequences. It therefore adopted a specific provision which required the district court to consider those consequences before making an annulment retroactive.

In this case, there is no indication in the district court record that the district court ever considered the consequences of making the annulment retroactive, much less any indication that it considered the possibility that such retroactivity would resurrect a liability which had been extinguished by the marriage. More importantly, the district court record affirmatively shows that the affected debtor -- the State Fund -- was not a party to the action and was never given notice of it.

The situation here is similar to the one considered by the Supreme Court in *Williams*. In that case the parties were a former husband (Dennis) and wife (Rose), who had divorced in 1980. The settlement agreement between them provided that Dennis pay the mortgage, taxes and insurance on the family home until such time as the home was paid for or sold, or until Rose remarried, provided she continued to live in the home. Rose in fact remarried on June 10, 1982, and she and her new husband decided to live in the family home. Dennis stopped making payments, as he was entitled to do. However, within two months, Rose filed a petition to invalidate her new marriage. (In this case the petition was filed a year and a half after the new marriage.) A decree was entered declaring Rose's second marriage *void ab initio*. She then filed a petition against Dennis seeking reinstatement of house

payments. The district court held that the annulment "served to revive" Dennis' obligation to make house payments. Dennis appealed.

On appeal Dennis argued that the annulment decree did not "automatically" revive his obligation. The Supreme Court agreed. The Court initially noted that Montana statutes governing annulments do not provide for automatic retroactivity and in fact require the Court issuing the decree to consider the effect of retroactivity on third parties. *Id.* at 254, 677 P.2d at 586. The Court then pointed out that retroactivity has important legal consequences:

These provisions [concerning retroactivity] do not alter the status of the marriage; in the eyes of the law the marriage is deemed as having never occurred, regardless of whether the decree of invalidity is declared retroactive or nonretroactive. These provisions do, however, have an effect on the rights of the parties to the recent marriage and other third persons, depending on whether the decree of invalidity is declared nonretroactive or retroactive. For example, if a decree of invalidity is declared to be nonretroactive, the spouse granted the decree may petition the District Court for a division of the marital property, maintenance, or child support. Therefore, before making a decision as to the retroactivity or nonretroactivity of a decree, the District Court must consider all of the relevant circumstances *including the effect of a retroactive decree on third parties* and balance the equities involved.

Id. at 254-55, 677 P.2d at 586 (italics in original). The decision makes it clear that the retroactivity issue involves more than just the division of marital property and child support and custody issues mentioned in the quoted paragraph. The Court went on to consider the effect of retroactivity on Dennis, who was an affected third party.

The decision does not say whether Dennis was a party to the annulment proceeding, but it is likely that he was not since such fact is not mentioned. Moreover, had he been a party his arguments would have been barred under the doctrine of res judicata. The Court made express note of the district court's failure in the annulment action to consider the possible effect of retroactivity on third parties, including Dennis:

Unfortunately, there is no evidence in this record that the District Court considered any possible effect of a retroactive decree on third parties before granting the decree and declaring it to be retroactive.

Id. at 255, 677 P.2d at 586.

It then considered the effect of such failure. It rejected decisions from some other jurisdictions holding that an annulment permanently terminates any prior obligation for alimony or maintenance. *Id.* It also rejected decisions which held the opposite, i.e., that an annulment automatically restores prior alimony and maintenance obligations. *Id.* Rather, it found more persuasive a Utah Supreme Court case rejecting any automatic rule and

adopting a more flexible rule that a court must exercise its equitable discretion to determine, whether under all of the circumstances, alimony or maintenance should be reinstated. *Id.* at 255-56; 677 P.2d at 586-87. The Montana Supreme Court expressly adopted the Utah approach. *Id.* at 256, 677 P.2d at 587.

While not express, it is nonetheless clear that the decision in *Williams* was bottomed on the Montana statute and its distinction between retroactive and non-retroactive application of an annulment -- retroactivity resurrecting old obligations, non-retroactivity confirming the usual legal effect of remarriage. After adopting the Utah approach, the Supreme Court in *Williams* pointed out that the district court entering the decree of annulment had done so "without making the findings required in Section 40-1-402(5), MCA." *Id.* It went on to note that under the cited section. Dennis was a "third party" and that "[h]is objections, if any, to [the] retroactive effect should be heard in court." *Id.* It is apparent that his objections had not been heard in the annulment proceeding because the Supreme Court went on to hold that he was entitled to have his objections heard by the district court having jurisdiction over the dissolution between himself and Rose.

I find no basis for distinguishing the situation presented in this case from that in *Williams*. While this case involves workers' compensation benefits and an insurer rather than a divorcée and former spouse, the State Fund is as much a "third party" under section 40-1-402(5), MCA, as Dennis was. As did Dennis, the State Fund faces the resurrection of an obligation which was extinguished by the remarriage. Similarly, it did not have an opportunity to present its objections in the annulment proceeding. Similarly, the findings of fact of the district court issuing the annulment decree fail to set forth specific findings of fact supporting its determination to make its decree retroactive. Section 40-1-402(5), MCA, makes no distinctions among classes or types of "third parties" who may be affected by a *void ab initio* decree of annulment. The statute applies to **all** third parties and does not authorize special rules for insurers or workers' compensation cases. The "liberal construction" rule in effect at the time of the decedent's death, §39-71-104, MCA (1983), cannot alter the plain meaning of section 40-1-402(5), MCA.

Moreover, there are good reasons why strangers to a judgment or decree should not be bound by it. First, there is a danger of collusion or friendly litigation, especially in a case, such as this, where the action is uncontested and both parties may benefit.⁽³⁾ Moreover, even in the absence of collusion there is the potential that an absent party might have mustered evidence which would have persuaded the judge to reach a different result.

Petitioner's assertion that the State Fund's position in this case represents an improper collateral attack upon the decree of annulment and her reliance on workers' compensation cases from other jurisdictions are unpersuasive.

The rule forbidding collateral attack on a judgment, except in defined circumstances, is well recognized. However, the position of the State Fund in this case does not represent a

collateral attack on the decree of annulment. It does not challenge the validity of the decree as between the parties to the annulment action. The State Fund was not a party to the action and is not bound by the decree.

What is meant by "collateral attack" is illustrated in two decisions of the Montana Supreme Court. In *Irwin v. Marvel Petroleum Corp.*, 139 Mont. 413, 422, 365 P.2d 221, 225 (1961), the Court defined collateral attack in the following terms:

"A "collateral attack" on a judgment or judicial proceeding is an attempt to avoid, defeat, or evade it, or to deny its **force and effect** in some manner other than by appeal, writ of error, certiorari, or motion for a new trial, or by a proper action in equity." [Emphasis added; quoting from two Oklahoma cases, citations of which are omitted.]

In *Daly Bank v. State of Montana*, 132 Mont. 387, 395, 318 Mont. 230, 236 (1957), the Court described a collateral attack as follows:

"By 'collateral attack' is meant 'every proceeding in which **the integrity** of the judgment is challenged, except those made in the action wherein the judgment is rendered or by appeal, and except suits brought to obtain decrees declaring judgment to be void *ab initio*.'" [Emphasis added; citations omitted.]

A judgment or decree has no effect or force as to non-parties except under circumstances meeting the criteria for collateral estoppel. Petitioner's expansive notion of what is precluded by the collateral attack doctrine flies in the face of fundamental principles of fairness and due process. A judgment cannot determine the rights of strangers to the litigation. Petitioner's notion also flies in the face of res judicata and collateral estoppel doctrines, for it would render such doctrines irrelevant. Both doctrines declare that a prior judgment bars a claim only if the claimant was a party in the prior action in which the judgment was rendered or was in privity with such party:

The doctrine of collateral estoppel is similar to the doctrine of res judicata. The doctrines differ in that res judicata bars the same parties from relitigating the same cause of action, while collateral estoppel bars the party against whom the claim is asserted, or a party in privity with the earlier party, from relitigating issues which have been decided with respect to a different cause of action.

Haines Pipeline Const., Inc. v. Montana Power Co., 265 Mont 282, 287-88, 866 P.2d 632, 636 (1994).

On a more specific basis, the petitioner's collateral attack argument is refuted by the decision in *Williams*. In addition to *Williams*, another case illustrating the limited meaning and application of the collateral attack doctrine is *Murphy v. Atkinson*, 262 Mont. 164, 864 P.2d 263 (1993). In that case Murphy brought an action to set aside certain transfers of

property as fraudulent with respect to creditors. In a prior action not involving Murphy, the transfer had been declared non-fraudulent. Atkinson relied on that prior judgment as barring Murphy's action. The district court and Supreme Court disagreed, holding that the prior judgment did not preclude Murphy's action because he was not a party to the prior action. The judgment failed to satisfy the requirements for *res judicata*.

The workers' compensation cases cited by petitioner from other jurisdictions are inapposite since they concern interpretation and application of the statutes of the particular states and do not address the issue presented in the present case, which is the bindingness of the annulment decree on the insurer. It does not appear from any of these cases that the statutes under consideration had a requirement similar to that of section 40-1-402(5), MCA, expressly requiring consideration of the effect of a retroactive decree on third parties.

Finally, I must determine whether the Workers' Compensation Court has jurisdiction to determine the retroactivity of the annulment as to the State Fund. I find that it does.

In *Williams* the Court rejected returning the case to the district court granting the annulment. It had no continuing jurisdiction over the matter, whereas the Court granting the original dissolution had continuing jurisdiction over maintenance obligations. This case presents a similar situation: the Workers' Compensation Court has jurisdiction to determine petitioner's entitlement to benefits. § 39-71-2905, MCA. In determining her entitlement to benefits it has jurisdiction to resolve all issues necessary to that determination. *Carlson v. Cain*, 216 Mont. 129, 141, 700 P.2d 607, 615 (1985) (holding "once workers' compensation has acquired jurisdiction of a dispute under the Act, it has jurisdiction to try and decide all of the issues that arise between the parties"); *State ex rel. Uninsured Employers' Fund v. Hunt*, 191 Mont. 514, 519, 625 P.2d 539, 542 (1981) (holding the "workers' compensation court . . . has the power to determine . . . matters that go beyond the minimum determination of the benefits payable to an employee."). Whether the annulment should be applied retroactively as to the State Fund, and thereby revive its obligation for widow's benefits, is an issue which must be addressed.

THEREFORE, IT IS HEREBY ORDERED that the Motion for Summary Judgment is **denied**. The parties shall proceed with discovery and preparation of their case in accordance with the Amended Scheduling Order which accompanies this Order.

Dated in Helena, Montana, this 11th day of December, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. David H. Rott
Mr. Thomas E. Martello
Submitted: October 6, 1995

1. Since the law in effect at the time of Allen Kimery's death applies, *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 730 P.2d 380 (1986), the 1983 version of the Workers' Compensation Act applies in this case.
2. If benefits are restored the State Fund will undoubtedly be entitled to a credit for the two years lump sum paid petitioner upon her remarriage and therefore liable for biweekly benefits commencing two years after the remarriage.
3. The retroactive application of the decree at issue in this case relieved Archer from any potential maintenance obligation.