IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 21

WCC No. 9808-8030

MICHAEL L. MILLER

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

JACK GALT

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Claimant, who suffered a serious head injury at work during 1983, entered into a full and final compromise settlement with State Fund during 1988. During 1998, he petitioned for an order to reopen the settlement on the ground of mutual mistake of fact concerning claimant's ability to operate his own ranching business with settlement proceeds.

Held: Claimant's demand to reopen is beyond the two-year limitations period of section 27-2-203, MCA. Although the statute does not commence running until the claimant discovers facts constituting fraud or mistake, actual knowledge of mistake is not necessary; the statute commences when the claimant would have discovered the mistake had he used reasonable diligence. Here, claimant was aware within a year or two of his settlement that he could not physically work a ranch. Further, claimant and his attorney were aware of the relationship between his back condition, which prevented his ranch work, and his injury by as early as 1995. The petition was not filed until more than three years after that date.

Topics:

> **Constitutions, Statutes, Regulations and Rules: Montana Code: section 27-2-203, MCA.** Claimant's demand to reopen his 1988 settlement agreement for mutual mistake of fact regarding his ability to work a ranch is barred by the two-year limitations period of section 27-2-203, MCA. Although the statute does not

commence running until the claimant discovers facts constituting fraud or mistake, actual knowledge of mistake is not necessary; the statute commences when the claimant would have discovered the mistake had he used reasonable diligence. Here, claimant was aware within a year or two of his settlement that he could not physically work a ranch. Further, claimant and his attorney were aware of the relationship between his back condition, which prevented his ranch work, and his injury by as early as 1995. The petition was not filed until more than three years after that date.

Limitations Periods: Reopening of Settlements. Claimant's demand to reopen his 1988 settlement agreement for mutual mistake of fact regarding his ability to work a ranch is barred by the two-year limitations period of section 27-2-203, MCA. Although the statute does not commence running until the claimant discovers facts constituting fraud or mistake, actual knowledge of mistake is not necessary; the statute commences when the claimant would have discovered the mistake had he used reasonable diligence. Here, claimant was aware within a year or two of his settlement that he could not physically work a ranch. Further, claimant and his attorney were aware of the relationship between his back condition, which prevented his ranch work, and his injury by as early as 1995. The petition was not filed until more than three years after that date.

Settlements: Reopening: Mistake of Fact. Claimant's demand to reopen his 1988 settlement agreement for mutual mistake of fact regarding his ability to work a ranch is barred by the two-year limitations period of section 27-2-203, MCA. Although the statute does not commence running until the claimant discovers facts constituting fraud or mistake, actual knowledge of mistake is not necessary; the statute commences when the claimant would have discovered the mistake had he used reasonable diligence. Here, claimant was aware within a year or two of his settlement that he could not physically work a ranch. Further, claimant and his attorney were aware of the relationship between his back condition, which prevented his ranch work, and his injury by as early as 1995. The petition was not filed until more than three years after that date.

¶1 The trial in this matter was held on November 18, 1998, in Helena Montana. Petitioner, Michael L. Miller (claimant), was present and represented himself at trial. Respondent, State Compensation Insurance Fund (State Fund), was represented by Mr. Thomas E. Martello. No transcript of the trial has been prepared.

¶2 Exhibits: Exhibits 1 through 23 were admitted without objection. Exhibits 24 and 27 were admitted over objection. Exhibits 25 and 26 were refused for the purposes of this proceeding. Exhibit 28 was refused and returned to the claimant.

¶3 Witnesses: Claimant, Bill Galt, Amy Miller, and Mike Welsh were sworn and testified. No depositions were offered.

¶4 Issues Presented: As set forth in the Pretrial Order, the following issues are presented for decision:

1. Should Petitioner be entitled to re-opening of the 1988 settlement.

2. Is the request for re-opening barred by applicable statute of limitation and/or laches.

3. If the request for re-opening is granted, is Petitioner entitled to a lump sum payment for the purchase of a malt shop and if so in what amount.

¶5 At trial the Court bifurcated claimant's request for a lump sum to purchase a malt shop. Therefore, the Court considers only whether claimant is entitled to reopen his prior 1988 Full and Final Compromise Settlement.

¶6 Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses and exhibits, the Court makes the following:

FINDINGS OF FACT

¶7 On October 23, 1983, claimant suffered a serious head injury during the course and scope of his employment.

¶8 At the time of his injury, claimant was working for Bill Galt (Galt). Galt was insured by the State Fund, which accepted liability for the claim and paid compensation and medical benefits.

¶9 On September 20, 1988, claimant and the State Fund entered into a full and final compromise settlement of his claim. The settlement provided that the State Fund pay claimant $132,145.10 in a lump sum. The Department of Labor and Industry approved the settlement by Order dated November 4, 1998. (Ex. 7.)

¶10 The purpose of the lump-sum settlement was to allow claimant to purchase a small ranch and be self-employed. (Petitioner's Contention No. 1; Ex. 8.)

¶11 At the time of the 1988 settlement, claimant was represented by counsel.

¶12 Claimant now contends that at the time the parties entered into the full and final compromise settlement, they were operating under a mutual mistake of material fact. In his contentions claimant states, "However, within a year after the settlement, Petitioner began having back problems and was unable to physically work on the ranch." (Petitioner's Contention No. 1.)

¶13 Claimant testified that when he entered into the settlement he believed he could operate the ranch, but that he soon discovered he could not physically handle the work.

His back began bothering him the summer after he started the cattle operation, and according to claimant, became real bad after a couple of years. Although his testimony is not entirely clear, it appears he leased the ranch or his cattle for three of the years between 1988 and 1992. In 1992 his brother took over the running of the ranch and ran it for a year. In 1993 claimant again tried to do run the ranch but found that he was unable to handle the work. Thus, by at least late 1993 or sometime in 1994 he was aware that he could not physically work his ranch and cattle.

¶14 The medical records verify that claimant did experience back problems after he began the ranching endeavor. It appears he first saw a chiropractor for low-back pain on October 30, 1989. (Ex. 19 at 1.) At that time he reported chronic low-back pain for the previous three to four years and also reported that the pain had increased over the previous couple of years. (*Id*. at 2.)

¶15 On August 24, 1994, claimant was seen by Dr. William B. Ferril. Dr. Ferril related claimant's back problems to his industrial injury. (Ex. 10 at 17; Ex. 23 at 50.)

¶16 On May 3, 1995, claimant saw Dr. Dean E. Ross. Dr. Ross diagnosed lumbar facet syndrom at L5-S1. Although he could not categorically attribute the condition to claimant's industrial injury, Dr. Ross did believe that the industrial injury placed claimant at higher risk for the condition. (Ex. 2 at 6; Ex. 23 at 50.)

¶17 On June 30, 1995, claimant's attorney, Mr. R.J. Pinsoneault (Pinsoneault), wrote to the State Fund urging that claimant's back condition was related to his industrial accident and requesting that the State Fund pay for medical treatment of the condition. He wrote in relevant part:

I contact you concerning the above Claimant and ask that consideration be given to a recurring back problem that Mr. Miller has experienced since his accident in 1983.

Apparently he has made contact with your office and you requested substantiating information. **Michael has had a comprehensive medical examination relating specifically to his back problem and we would like to have this information reviewed, with a view towards your reconsidering your initial decision.**

Your most recent correspondence has been misplaced and I would ask that you provide me with the proper information **so we might arrange for mediation or hearing as appropriate.**

(Ex. 4 at 22, emphasis added.) The last sentence quoted above indicates that Pinsoneault was prepared to litigate claimant's entitlement to benefits for his back if the State Fund did not accept liability for the back condition.

¶18 The State Fund responded by seeking a medical desk review of claimant's records, after which it then requested an independent medical examination by Dr. Catherine C. Capps, an orthopedic surgeon. (Ex. 23 at 50, 53.)

¶19 Dr. Capps examined claimant on January 2, 1996. She diagnosed chronic mechanical low-back pain and related the condition to claimant's industrial injury. (Ex. 13 at 8.)

¶20 In 1996, sometime after the IME, the State Fund accepted liability for the back condition and paid claimant medical benefits. (Tr. Test.) The exact date of the acceptance is unknown.

¶21 The present action was commenced on August 3, 1998.

CONCLUSIONS OF LAW

¶22 General principles of contract law govern full and final compromise settlement agreements, thus they may be set aside if the parties to an agreement were operating under a mutual mistake of material fact. *Kienas v. Peterson*, 191 Mont. 325, 524 P.2d 1, (1980).

¶23 Claimant alleges mutual mistake of fact as the basis for his request to reopen his 1988 settlement. The statute of limitations applicable to an action based on mutual mistake of fact is two years. Section 27-2-203, MCA, provides:

27-2-203. Actions for relief on ground of fraud or mistake. The period prescribed for the commencement of an action for relief on the ground of fraud or mistake is within 2 years, the cause of action in such case not to be deemed accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

¶24 Actual knowledge of the mistake is not required to begin the running of the statute of limitations. *Rath v. St. Labre Indian School*, 249 Mont. 433, 439, 816 P.2d 1061, 1065 (1991)(citation omitted.) Rather, the limitations period commences when the claimant would have discovered the mistake had he exercised ordinary diligence. *Id*.

¶25 In this case, the claimant was aware within a year or two of his settlement that he could not physically work his ranch and cattle because of his back condition. In 1993 he tried once more to operate the ranch but found himself physically unable to do so. Further, he and his attorney were aware of the relationship between his back condition and his industrial injury at least as early as June 30, 1995, and were prepared to litigate the issue at that time if the State Fund refused to concede liability for the condition.

¶26 It is plain that no later than June 1995 claimant and his attorney had sufficient knowledge to request a reopening of the settlement agreement, however, the petition to do so was not filed until more than three years later. Since the petition was not brought within two years of when the claimant became aware of the alleged mistake, it is barred.

JUDGMENT

¶27 1. Petitioner's petition to reopen and set aside the Full and Final Compromise Settlement for Total Disability Benefits he entered into in 1988 is barred by the statute of limitations set forth in section 27-2-203, MCA. His petition is therefore **dismissed with prejudice**.

¶28 2. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

¶29 3. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 11th day of March, 1999.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Michael L. Miller - Certified Mail
Mr. Thomas E. Martello
Date Submitted: November 20, 1998