

1 WORKERS' COMPENSATION COURT

2 JOAN REEVES,

3 Claimant,

4 -vs-

WCC No. 9502-7242

5 LIBERTY MUTUAL FIRE
6 INSURANCE COMPANY,

ORIGINAL

7 Insurer.

8
9 PARTIAL TRANSCRIPT OF PROCEEDINGS.

FILED

10 Silver Bow County Courthouse

11 Butte, Montana

12 May 31, 1995

13 1:15 p.m.

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

JUN -5 1995

14 THE HON. MIKE McCARTER, PRESIDING

15 APPEARANCES:

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19 ON BEHALF OF THE CLAIMANT

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24 ON BEHALF OF THE INSURER

25 Ann Y. Wayrynen

Court Reporter

1 BE IT REMEMBERED THAT this matter came on regularly
2 for hearing at the time and place and with the appearances
3 of counsel hereinbefore noted before Ann Y. Wayrynen, a
4 Notary Public for the State of Montana. The following is
5 a partial transcript of proceedings:

6 The following proceedings were had:

7 THE COURT: Okay. I'm going to go ahead and
8 issue a bench ruling. I'm basically going to sort of
9 outline what my findings of fact will be and what my
10 conclusions of law will be.

11 I'll start out from the very beginning. Firstly, I
12 find that Ms. Reeves did go to work for U.P.S. with the
13 idea of earning money to retire her debt and to save money
14 for graduate school for a master's degree, and that job
15 was a means to an end. I don't see anything to contradict
16 that, and I think she's sincere in that regard.

17 I also find she had contended to go on to get a
18 master's and become a certified counselor. She's per-
19 suaded me of that, and I think that intent existed from
20 the time that she graduated from college.

21 I find that it's still her intent to do that. I don't
22 think she's wavered from that. I find that it's reason-
23 able to expect that she's capable of completing the
24 master's program and obtaining certification as a cert-
25 ified counselor.

1 Where I'm having a problem and I'm unpersuaded is that
2 her expectations initially regarding private counseling,
3 that those expectations are reasonable and realistic.
4 What I perceive is a very idealistic view of what counsel-
5 ing is all about and the kinds of people that she's going
6 to have, I think she needs to do some more investigation.
7 I don't know what all she would have.

8 In her direct testimony she pretty much limited the
9 kind of clientele that she wanted; and, she apparently
10 does not want very dysfunctional families with really
11 severe problems who may present a pessimistic prognosis
12 for outcome. She would rather deal with people who are
13 less dysfunctional with a much better diagnosis for out-
14 come. And I'm at least not persuaded that that's the kind
15 of clientele that are going to walk through a counselor's
16 door, particularly a new counselor's door.

17 I listened to her express a great reluctance and dis-
18 taste for working with truly dysfunctional families, the
19 kind of families that she would get if she went to work
20 for one of the social agencies, the kind of families that
21 she would have to deal with if she went to work for one of
22 those agencies, the families that have child abuse and
23 severe problems with alcoholism and that sort of thing.

24 I just heard that she doesn't want to do that kind of
25 work, and an expression that she really didn't want to be

1 in a position of being assigned those kinds of people as
2 being the reason that she hasn't really diligently pursued
3 something since she got her bachelor's degree and as basi-
4 cally her justification for wanting to get a master's
5 degree. So I just am not persuaded that private practice
6 is really an option here; that it's either realistic or
7 reasonable.

8 So that brings me to the next point as a factual mat-
9 ter, which I think is probably of more importance as far
10 as the ultimate result of this case; and, that is I'm not
11 persuaded that she would successfully set up a private
12 practice.

13 Her testimony that it's highly competitive; there are
14 lots of social workers moving in -- I think it's just like
15 attorneys. The field of attorneys is saturated with
16 attorneys, and an attorney coming out of law school who
17 puts up his shingle is taking a huge risk. Some may suc-
18 ceed and make lots of bucks, and others may go to a hand-
19 to-mouth type of existence.

20 There was nothing that I heard that told me that she's
21 going to be an exceptional counselor. She certainly
22 hasn't shown me or demonstrated to me that she's got the
23 kind of experience that would make her a successful coun-
24 selor, the kind of background that would make her a suc-
25 cessful counselor. We haven't heard from, you know, any

1 professors or any professional people in that field who
2 would indicate that she would make an exceptional coun-
3 selor or even a good counselor.

4 And I heard in her testimony a great deal of idealism.
5 So I'm not persuaded she could make a go in private ther-
6 apy. I'm not persuaded that she would rise to that level
7 where she would make a successful go in private therapy.

8 So I think what that leaves me with is going to work
9 for an agency but having a master's degree. And I heard
10 testimony that there are some jobs out there that there is
11 pay differential. It looks to me like that is somewhere
12 in the range of \$3 an hour. But that's only some jobs. A
13 lot of those jobs out there there is no pay differential.

14 So she may get work. She may be able to obtain one
15 that makes a little bit more. She may not. This may not
16 benefit her at all when she gets out into the job market.

17 But I think even much more impressive than that to me
18 again is she would be basically going into the agency work
19 that she's declined to go into now. I heard her say that
20 she would at least be able to do some more counseling.
21 But, again, given her distaste for the kinds of dysfunc-
22 tional people that she would be assigned with agency work,
23 I'm not persuaded that she's going to make a go of it or
24 that she's even going to like it.

25 I, quite frankly, think that, even though she

1 genuinely intends to get a master's degree, that she ought
2 to take another look at it and see what is really out
3 there; see what counselors do; see what the market is as
4 far as private therapy; and, see what those jobs are. I
5 think, if agency work is where it's going to be, she ought
6 to take a fling at that and find out whether or not she's
7 going to like it and want to even pursue it, even if she
8 gets a master's degree. That to me is the bottom line.

9 I don't need to decide whether or not the fact that
10 she's got a college education is disqualifying. I'm not
11 persuaded that it is disqualifying. I think, you know,
12 that the best case that she could make is she took this
13 job basically to save money. If that was the criteria, I
14 think I would have awarded benefits. But I don't think
15 that is the statutory criteria.

16 The statutory criteria is whether or not the plan is
17 reasonable. That's an overall thing. I have to consider
18 those factors that the statute talks about: Her work
19 history; her education; her physical abilities; her age;
20 and, those sorts of things and look at whether or not this
21 is a realistic and a reasonable plan.

22 Basically what I'm seeing here is that it's not. I'm
23 not persuaded that a master's degree in this case is going
24 to significantly enhance her earning power. At least I'm
25 not persuaded of that. Whether or not she goes forward

1 with it -- I mean we have to sit here at this day at this
2 time and make some sort of prognostication. And prognos-
3 tication isn't perfect; and, she may very well go out and
4 prove me absolutely wrong. But at least based on what I
5 heard today, I'm just not persuaded that it is going to
6 improve her earnings significantly and that it is a rea-
7 sonable plan.

8 She's basically at this point earning in the area of
9 what she would with a bachelor's degree, in any event,
10 even though she's not in her field.

11 So my ultimate conclusion is that I'm not persuaded
12 that this is a reasonable rehabilitation plan, and I deny
13 the petition.

14 That's it. I don't think I need anything further from
15 you. If you wish, I will give you written findings; but,
16 it's pretty much going to be right down what I just did.

17 I guess the first thing I would ask for as far as what
18 my concern is is whether you want written findings or
19 whether you are satisfied with what I've said and what has
20 gone on during the trial as adequately covering it.

21 MR. SAND: Judge, what you are saying is your
22 verbal findings would substitute for your written find-
23 ings?

24 THE COURT: Yes. If you want written findings,
25 I'll give you written findings. My question to you is

1 whether you want those. We can always get these tran-
2 scribed.

3 I think I have been fairly detailed with these and
4 have pretty much covered it so that written findings won't
5 be too much more detailed. On the other hand, it won't be
6 too difficult for me to do them, either.

7 MR. SAND: I don't have any problems just having
8 transcribed what is on the record, if that's agreeable.

9 THE COURT: Mr. Jones.

10 MR. JONES: Your Honor, if you were to issue
11 written findings, there would be a conclusions of law
12 section citing case law?

13 THE COURT: Yes. We have the statutes, and I
14 would go through that for sure.

15 MR. JONES: My only concern would be if the case
16 were appealed. The factual conclusions that you made are,
17 I think, very clear, very detailed. My concern would be
18 that, if the decision were appealed based upon this tran-
19 script alone, without the benefit of the legal reasoning,
20 citation of statute and case law, the Supreme Court would
21 really not have a complete picture of the reasoning pro-
22 cess in this case.

23 THE COURT: Well, basically, as far as conclu-
24 sions of law are concerned, I think what I have to do is
25 find whether or not this is a reasonable plan for her.

1 And what I've concluded as a factual matter is it is not a
2 reasonable plan because I'm not persuaded that there is a
3 reasonable expectation that it will improve her position
4 in the job market.

5 MR. JONES: Your conclusion is based on Section
6 2001 of the Act, the rehabilitation statute?

7 THE COURT: Yes. All this stuff, you know, about
8 the education and the back-to-work option, the part about
9 returning them to work, that is not really something that
10 plays in this decision.

11 MR. JONES: With that clarification, I certainly
12 have no objection to leaving it, Your Honor.

13 MR. SAND: That's fine.

14 MR. JONES: The respondent would order a copy of
15 that part of the transcript, this last section.

16 THE COURT: What if we just attach that portion
17 to a judgment and incorporate that as the findings of fact
18 and conclusions of law?

19 MR. JONES: That is agreeable, Your Honor.

20 THE COURT: I appreciate both of you. I think
21 you both did a good job. You both did the best job you
22 could. I have to decide these cases as I see them.

23 MR. SAND: Well, I appreciate your efforts,
24 Judge.

25 THE COURT: But really, Joan, if I were you, I

1 would go back and look awful hard at what you want to do.
2 I really would. You know, I may be dead wrong, but I
3 think you really need to go back and look at it. Good
4 luck.

5 MS. REEVES: Thanks.

6 THE COURT: Okay. We'll be adjourned.

7 (Whereupon, a brief discussion is held off the
8 record.)

9 THE COURT: Counsel have expressed some concern
10 about the running of the appeal period. And I would indi-
11 cate that the judgment will not be final until I enter a
12 written judgment, which is written and signed.

13 MR. JONES: That would also be the date the 20-
14 day period for petition for rehearing would run?

15 THE COURT: That will be the date of the final.

16 MR. JONES: Thank you, Judge.

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C E R T I F I C A T E

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ANN Y. WAYRYNEN, a Notary Public for the State of Montana, hereby certifies:

That the foregoing proceedings were reported by her at the time and place stated in the caption hereto;

That the proceedings were taken in machine shorthand by her and subsequently reduced to writing by her by means of computer-aided transcription; and,

That the foregoing nine (9) pages of typewritten material contain a full, true, and correct transcript of the proceedings.

She further certifies that she is not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with this action, or otherwise interested in the event thereof.

DONE AND DATED at Butte, Montana, this 2nd day of June, 1995.

Ann Y. Wayrynen
Ann Y. Wayrynen

(Notarial Seal)