

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 50

WCC No. 2007-1794

ERENE BRIESE

Petitioner

vs.

MACo WORKERS' COMPENSATION TRUST

Respondent

and

JOANNE BRIESE

Respondent.

ORDER DENYING RICHARD H. RENN'S MOTION TO AWARD ATTORNEY FEES

Appealed to Montana Supreme Court December 22, 2008

Affirmed 2009 MT 259N

Summary: Petitioner's former attorney moves the Court for an order awarding attorney fees on death benefits payable to Petitioner's children during the period of time he represented Petitioner in a claim for death benefits.

Held: Petitioner's former attorney is not entitled to a fee on benefits awarded to the children because he did not represent the children and the benefits payable to the children under the Stipulation for Entry of Judgment were not due to the attorney's efforts.

Topics:

Attorney Fees: Fee Dispute. Where an attorney and claimant entered into an Attorney Fee Agreement entitling the attorney to a percentage of the claimant's recovery "due to the efforts of the attorney," the attorney

sought a determination that his client was the sole beneficiary of benefits arising from her estranged husband's death, the attorney argued that the children were not entitled to any benefits, and the claimant subsequently entered into a settlement agreement stipulating that her minor children shall receive 100 percent of any and all workers' compensation benefits payable, the Court concludes that the attorney is not entitled to an attorney fee on the benefits payable to the children.

¶ 1 Richard H. Renn, Petitioner's former attorney, moves the Court for an order awarding attorney fees. Specifically, Renn asserts a right to 25 percent of the benefits payable through May 28, 2008, the date on which his representation of Petitioner ceased.

Background

¶ 2 This case arises from the death of David LeRoy Briese, Jr. David was killed on November 3, 2006, while working as a Yellowstone County Sheriff's deputy. At the time of his death, David and Petitioner were estranged and in the process of divorcing. David and Petitioner had two minor children, both of whom were living with David at the time of his death. After David's death and until November 2007, the children resided with David's mother, Respondent Joanne Briese. In November 2007, Petitioner was given custody of the children.

¶ 3 On November 16, 2006, Petitioner retained Renn to represent her in a workers' compensation claim seeking benefits arising from David's death.¹ At the time Petitioner retained Renn to represent her, there was no dispute that death benefits were payable as a result of David's death. The central dispute concerned who should receive the benefit payments under the Workers' Compensation Act. Petitioner contended that she was the sole beneficiary of the benefits as the surviving spouse and that her two minor children were not beneficiaries.²

¶ 4 On October 30, 2008, Petitioner entered into a settlement agreement in which she stipulated and agreed that the minor children shall receive 100 percent of any and all workers' compensation benefits arising from David's death. Petitioner further agreed that the benefits would be paid into a trust account that would be administered by a conservator on behalf of the minor children.

¹ Exhibit A to Brief in Support of Petition for Declaratory Judgment by Briefing Schedule [Brief in Support] (Attorney Retainer Agreement), Docket Item No. 2.

² Exhibit B to Brief in Support (12/14/06 Letter from Richard H. Renn to Linda Harris).

Discussion

¶ 5 The Attorney Retainer Agreement between Petitioner and Renn provided that Renn would be entitled to a percentage of Petitioner's recovery that was "due to the efforts of the attorney." The retainer agreement is dispositive of Renn's entitlement to a fee in this case.³

¶ 6 At the time Petitioner retained Renn to represent her, she did not have custody of her minor children and she was seeking a determination that she was the sole beneficiary of the workers' compensation death benefits. In advancing Petitioner's position, Renn argued that the children were not entitled to any benefits. Essentially, Petitioner and her children were adversaries regarding their respective claims to the benefits at issue. It is therefore ironic, to say the least, that Renn would now claim a fee on the benefits payable to the children. Moreover, even if I was to assume, for the sake of argument, that Renn's representation could somehow be construed as being on behalf of the children, the fee agreement specifically provided that Renn was only entitled to a percentage of the benefits paid "due to the efforts of the attorney." The children's receipt of the benefits was, in fact, despite Renn's efforts to have Petitioner declared the sole beneficiary, to the exclusion of the children. For either of the foregoing reasons, Renn is not entitled to the fee he seeks.

ORDER

¶ 7 Renn's motion for attorney fees is **DENIED**.

DATED in Helena, Montana, this 24th day of November, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Kathryn S. Syth
Joe C. Maynard
Norman H. Grosfield
Patrick R. Sheehy
Richard H. Renn

Submitted: November 21, 2008

³ Exhibit A to Brief in Support (Attorney Retainer Agreement).