

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 29

WCC No. 2003-0840

CATHERINE E. SATTERLEE, et al.

Petitioners

vs.

LUMBERMAN'S MUTUAL CASUALTY COMPANY, et al.

Respondents/Insurers.

**ORDER GRANTING PETITIONERS' MOTION FOR RECONSIDERATION,
CONTINUING RESPONDENTS' CROSS-MOTION FOR SUMMARY JUDGMENT, AND
GRANTING PETITIONERS LEAVE TO FILE A MOTION AND BRIEF
PURSUANT TO MONT. R. CIV. P. 56(f)**

Summary: This Court erroneously certified the Order denying Petitioners' motion for partial summary judgment as final for purposes of appeal. Petitioners filed a motion for reconsideration asking the Court to remove final certification of the Order. In this same motion, Petitioners also request leave to conduct additional discovery before a final Order is entered.

Held: Petitioners' motion for reconsideration is granted to the extent that final certification is removed from the Order denying Petitioners' motion for partial summary judgment. The Court prematurely certified the Order as final in light of the fact that the Order was a denial of Petitioners' motion for summary judgment. Since the denial of Petitioners' motion did not constitute a final judgment, the Court was required to justify its certification pursuant to Rule 54(b), Mont. R. Civ. P. Also pending before this Court is a cross-motion for summary judgment by Respondent Montana State Fund. Before any final Order is entered in this matter, however, Petitioners request leave to conduct additional discovery. In their motion, Petitioners do not specify the nature or subject matter of the discovery they are seeking although the Court can infer it would pertain to the financial evidence adduced by Respondents. With respect to this request, the Court will temporarily reserve ruling on State Fund's motion for summary judgment and will entertain a motion, pursuant to Rule 56(f), Mont. R. Civ. P., in which Petitioners shall state specifically: (1) the discovery they

are seeking; and (2) how the proposed discovery could preclude summary judgment for Respondents.

Topics:

Summary Judgment: Motion for Summary Judgment. Since the Court's Order denying Petitioners' motion for summary judgment did not address Respondents' cross-motion for summary judgment, the Court erroneously certified the Order as final for purposes of appeal.

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Civil Procedure - by section: Rule 54(b). Although Rule 54(b), Mont. R. Civ. P., authorizes the Court to certify certain issues as final for purposes of appeal when remaining issues in the case have not been resolved, the Montana Supreme Court has stated that a court must justify such a certification when other issues remain unresolved. *Kohler v. Croonenberghs*, 2003 MT 260, 317 Mont. 413, 77 P.3d 531. In the present case, the Court must remove certification because it did not provide justification as required by Rule 54(b).

Appeals (to Supreme Court): Certification for Appeal. Although Rule 54(b), Mont. R. Civ. P., authorizes the Court to certify certain issues as final for purposes of appeal when remaining issues in the case have not been resolved, the Montana Supreme Court has stated that a court must justify such a certification when other issues remain unresolved. *Kohler v. Croonenberghs*, 2003 MT 260, 317 Mont. 413, 77 P.3d 531.

Summary Judgment: Disputed Facts. If the Court rules in Respondents' favor on the cross-motion for summary judgment without allowing Petitioners the opportunity to demonstrate how the discovery they seek may have impacted the Court's decision, the Court will inevitably be faced with addressing the same issue in another case involving a different petitioner in the same position as Petitioners in this case. In that event, the petitioner in the next case will simply seek the same discovery that Petitioners now seek. This procedural carousel only serves to negatively impact all the parties involved. It is in everyone's interest to have a final resolution of this matter based on a complete record.

Summary Judgment: Discovery. If the Court rules in Respondents' favor on the cross-motion for summary judgment without allowing Petitioners the opportunity to demonstrate how the discovery they seek may have impacted

the Court's decision, the Court will inevitably be faced with addressing the same issue in another case involving a different petitioner in the same position as Petitioners in this case. In that event, the petitioner in the next case will simply seek the same discovery that Petitioners now seek. This procedural carousel only serves to negatively impact all the parties involved. It is in everyone's interest to have a final resolution of this matter based on a complete record.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.329. The Court has wide discretion to order discovery in certain circumstances pursuant to ARM 24.5.329(8), which is identical to Rule 56(f), Mont. R. Civ. P. Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.329. A party may be granted leave under Rule 56(f), Mont. R. Civ. P., which is identical to ARM 24.5.329, consistent with the Montana Supreme Court's ruling in *Environmental Contractors, LLC v. Moon*, 1999 MT 178, 295 Mont. 268, 983 P.2d 390, to state specifically: (1) the discovery they are seeking; and (2) how the proposed discovery could preclude summary judgment in favor of the other party.

Discovery: Generally. A party may be granted leave under Rule 56(f), Mont. R. Civ. P., which is identical to ARM 24.5.329, consistent with the Montana Supreme Court's ruling in *Environmental Contractors, LLC v. Moon*, 1999 MT 178, 295 Mont. 268, 983 P.2d 390, to state specifically: (1) the discovery they are seeking; and (2) how the proposed discovery could preclude summary judgment in favor of the other party.

¶ 1 At the outset, it would be disingenuous of this Court to fail to acknowledge the magnitude of the issues at stake in this particular case. Indeed, such was highlighted by State Fund during oral argument as follows:

[W]e believe that this is the most important case that's been presented to this Court. . . .

. . . .

. . . We believe it will fundamentally determine the course of the system of workers compensation for years to come

I'm struck by the sheer magnitude of it all, and the responsibility that we all have, because I do think it's that important. I think we all would agree we're going to the very core of the system as we work through this case. . . .¹

¶ 2 Although this Court firmly believes that all cases, subject to appropriate procedural and evidentiary parameters, should be decided on their merits, the exceptional circumstances in the present case make this all the more so. The Court believes it is in the interests of all parties to this case and, indeed, all participants in the workers' compensation system, that the constitutionality of § 39-71-710, MCA, as it relates to permanent total disability (PTD) benefits, be decided on a complete record. A final determination on the merits benefits not only those workers who will be impacted by this decision, but employers and insurers who conduct business in Montana as well. Nobody's interests are served by an ambiguous decision on a theoretically incomplete record. It is against this backdrop that this Court enters the following Order.

I. THE COURT ERRONEOUSLY CERTIFIED AS FINAL THE ORDER DENYING PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT.

¶ 3 In the December 12, 2005, Order Denying Motion for Partial Summary Judgment, this Court erroneously certified the Order as final for purposes of appeal. Since the Court's Order dealt solely with Petitioners' motion for summary judgment, there was no judgment to certify as final for purposes of appeal since this motion was denied. Therefore, the Court's certification for appeal was procedurally premature.

¶ 4 Although Rule 54(b), Mont. R. Civ. P., authorizes the Court to certify certain issues as final for purposes of appeal when remaining issues in the case have not been resolved, the Montana Supreme Court has stated that a court must justify such a certification when other issues remain unresolved.² In setting forth that justification, the Supreme Court has identified three guiding principles:

(1) the burden is on the party seeking final certification to convince the district court that the case is the "infrequent harsh case" meriting a favorable exercise of discretion; (2) the district court must balance the competing factors present in the case to determine if it is in the interest of sound judicial administration and public policy to certify the judgment as final; (3) the district

¹ Transcript of Proceedings, 24:3 - 25:3, Oct. 7, 2005.

² *Kohler v. Croonenberghs*, 2003 MT 260, 317 Mont. 413, 77 P.3d 531.

court must marshal [sic] and articulate the factors upon which it relied in granting certification so that prompt and effective review can be facilitated.³

¶ 5 In the present case, this Court did not provide any justification for certification of its Order as final for purposes of appeal. Consequently, the Court did not comport with Rule 54(b), Mont. R. Civ. P. The Court, therefore, must remove certification from the Court's Order Denying Motion for Partial Summary Judgment dated December 12, 2005.

II. RESPONDENTS' CROSS-MOTION FOR SUMMARY JUDGMENT.

¶ 6 The Court must next turn to the issue of whether a grant of summary judgment in favor of Respondents is appropriate. Although the Court is entitled to grant summary judgment for a nonmoving party,⁴ the Court did not do so in its original Order. Rather, it merely denied Petitioners' motion for summary judgment. Likewise, the Court's original Order did not address Respondent Montana State Fund's cross-motion for summary judgment.⁵ In order for the Court to grant partial summary judgment in favor of Respondents, it must determine that no material facts are in dispute and that Respondents are entitled to judgment as a matter of law.⁶

¶ 7 In that regard, Petitioners argue that material facts set forth by Respondents in support of the cross-motion for summary judgment are in dispute. Specifically, Petitioners stated in their reply brief in support of their motion for summary judgment:

[I]f this Court is going to consider the "sky is falling" economic argument set forth by the Respondents, then Petitioners request this Court allow them to discover the basis of Respondents' claims about the financial impact of Satterlee. See Rule 56(d), M.R.Civ.P., and Rule, 24.5.328(8), MWCCR. Petitioners moved for summary judgment without discovery because

³ *Id.*, ¶16, citing *Roy v. Neibauer*, 188 Mont. 81, 87, 610 P.2d 1185, 1189 (1980).

⁴ *Hereford v. Hereford*, 183 Mont. 104, 107, 598 P.2d 600, 602 (1979).

⁵ State Fund was joined in the filing of its brief by the Montana Contractor Compensation Fund, Allstate Insurance Company, State Farm Fire & Casualty, State Farm Insurance Company, and State Farm Mutual Automobile Insurance Company. See Montana State Fund's Answer Brief in Opposition to Petitioners' Motion for Partial Summary Judgment and Brief in Support of Cross-Motion for Partial Summary Judgment at 28.

⁶ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285; *Moore v. Does*, 271 Mont. 162, 895 P.2d 209 (1995).

Petitioners' facts cannot be reasonably controverted, and *Reesoris* clear that PTD benefits and rehabilitation benefits cannot be distinguished from PPD benefits in §39-71-710, MCA. However if the Court intends to consider the economic impact of this case, Petitioners' [sic] will challenge the "uncontroverted facts" because Petitioners cannot agree they are accurate. Therefore, the State Fund's Cross-Motion for Partial Summary Judgment should not be granted without discovery being undertaken.⁷

¶ 8 In the Court's view, Petitioners adequately expressed their disagreement with economic data set forth by Respondents. Moreover, at oral argument, State Fund also recognized the importance the economic data may have on the Court's ruling. Specifically, counsel for the State Fund stated:

We believe [Respondent's economic figures are] solid. The data is there. We filed a clarification that responded to the expert hired by the claimant. But if there's any question about that data, we'll bring those people in for the Court for an evidentiary hearing, and they can say the exact same thing on the record, because it's so pivotal. ***We can't have this case move forward without that information being part of the record, because it's pivotal that that be part of the consideration.***⁸

¶ 9 Contrary to the arguments of the parties on both sides of this matter, this Court is not entirely convinced that the specific economic projections advanced by either party will significantly impact the Court's final analysis as to whether § 39-71-710, MCA, is constitutional. The fundamental crux of the Court's opinion denying the Petitioners' motion for summary judgment was not grounded in the ***degree*** of financial impact to the workers' compensation system a finding of unconstitutionality may bring. Rather, the Court's determination that a rational basis exists for terminating PTD benefits upon a claimant's eligibility for Social Security or a comparable retirement system is primarily grounded in a finding that such a statutory scheme is rationally related to ensuring that PTD benefits: (1) compensate an injured worker for his or her "work life"; and (2) do not become the "pension program" the legislature specifically intended ***not*** to create in enacting § 39-71-710, MCA.

¶ 10 That being said, Petitioners are correct in pointing out that the Court's analysis did consider the financial impact in reaching its decision. Indeed, a fair reading of paragraphs

⁷ Petitioners' Reply Brief in Support of Motion for Partial Summary Judgment at 15.

⁸ Transcript of Proceedings, 48:1-10, Oct. 7, 2005 (emphasis added).

21 through 23 can lead to no other conclusion.⁹ In light of that fact, therefore, and out of an abundance of caution, the Court believes it is in the interest of all parties that this case is decided with all relevant evidence before the Court. Otherwise, this matter will proceed through the appellate process with an air of uncertainty as to whether the ultimate outcome and consequent impact on the Montana workers' compensation system will be resolved with this case.

¶ 11 If the Court rules in Respondents' favor on the cross-motion for partial summary judgment without allowing Petitioners the opportunity to demonstrate how the discovery they seek may have impacted the Court's decision, the Court will inevitably be faced with addressing this issue in another case involving a different petitioner in the same position as the Petitioners in this case. In that event, the petitioner in the next case will simply seek the same discovery that Petitioners seek in the present case. This procedural carousel only serves to negatively impact all the parties involved. It is in everyone's interest to have a final resolution of this matter based on a complete record. In the Court's opinion, the time to decide the materiality of the evidence Petitioners seek in discovery is now.

¶ 12 The Court has wide discretion to order discovery in certain circumstances pursuant to ARM 24.5.329(8), which is identical to Rule 56(f), Mont. R. Civ. P. The rule reads:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.¹⁰

¶ 13 In discussing the Court's discretion under Rule 56(f), Mont. R. Civ. P., the Montana Supreme Court has stated:

District courts have inherent discretionary power to control discovery. *J.L. v. Kienenberger* (1993), 257 Mont. 113, 119, 848 P.2d 472, 476. This discretionary power extends to deciding whether to deny or to continue a motion for summary judgment pursuant to Rule 56(f), M.R.Civ.P. *Howell v. Glacier General Assur. Co.* (1989), 240 Mont. 383, 386, 785 P.2d 1018, 1019. A district court does not abuse its discretion in denying a Rule 56(f), M.R.Civ.P., motion where the party opposing a motion for summary judgment

⁹ Order Denying Motion for Partial Summary Judgment at 8, 9.

¹⁰ Mont. R. Civ. P. 56(f).

does not establish how the proposed discovery could preclude summary judgment. *Howell*, 240 Mont. at 386, 785 P.2d at 1020.¹¹

¶ 14 The Court believes it is in the interest of all the parties to grant Petitioners leave to file a motion and brief pursuant to Rule 56(f), Mont. R. Civ. P. Consistent with the Supreme Court's holding in *Environmental Contractors*, Petitioners shall state specifically: (1) the discovery they are seeking; and (2) how the proposed discovery could preclude summary judgment in favor of Respondents.

¶ 15 In arguing whether the proposed discovery could preclude summary judgment, Petitioners should bear in mind that this Court's analysis of the constitutionality of § 39-71-710, MCA, as it relates to PTD benefits was not based on the specific economic analyses proffered by Respondents. In fact, the specific economic figures were neither considered nor referenced in the Court's Order. Rather, insofar as the financial impact of the constitutionality factored into the Court's analysis, the Court recognized that providing PTD benefits to injured workers beyond the time they were eligible for retirement benefits had a general negative economic impact on the workers' compensation system. Against that framework, the Court will entertain Petitioners' arguments that the disputed economics may preclude summary judgment.

ORDER

¶ 16 Petitioners' motion for reconsideration is **GRANTED** to the extent that final certification is removed from the Court's December 12, 2005, Order Denying Motion for Partial Summary Judgment.

¶ 17 Respondents' cross-motion for summary judgment is **CONTINUED** pursuant to Rule 56(f), Mont. R. Civ. P.

¶ 18 Petitioners are **GRANTED** leave to file a motion and brief pursuant to Rule 56(f), Mont. R. Civ. P. Within this motion and brief, Petitioners shall state specifically: (1) the discovery they are seeking; and (2) how the proposed discovery could preclude summary judgment in favor of Respondents.

¶ 19 Petitioners shall have twenty (20) days from the date of this Order to submit their motion and brief in support of their Rule 56(f) motion. Respondents' briefs in opposition and Petitioners' reply brief shall be filed within the time set forth in ARM 24.5.316.

¹¹ *Environmental Contractors, LLC v. Moon*, 1999 MT 178, ¶19, 295 Mont. 268, 983 P.2d 390.

DATED in Helena, Montana, this 12th day of July, 2006.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: E-Mailed to Satterlee Distribution List July 12, 2006.
Submitted: March 2, 2006