

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 41

WCC No. 2004-1129

DAN FRAZER

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

DECISION AND JUDGMENT DISMISSING PETITION

Summary: The claimant entered into a disputed liability settlement with the Montana State Fund after his employer reported that the claimant failed to timely notify it of his alleged injury. Several years later he petitioned the Workers' Compensation Court to rescind the settlement based on information he obtained from two co-employees supporting his assertion that he had in fact timely informed his employer of the injury. He alleged that the parties were therefore suffering from a mutual mistake of fact at the time of the settlement. The claimant also alleged that the settlement should be rescinded because he was under financial duress at the time he entered into the settlement.

Held: The claimant's request to reopen his settlement based on mutual mistake of fact is time-barred and in any event without substance. His allegations also fail to state a claim for reopening based on fraud, duress, or undue influence.

Topics:

Limitations Periods: Reopening of Settlements. Where a claim was denied for the claimant's alleged failure to timely report his industrial injury to his employer, the claimant then settled with the insurer on a disputed liability basis, and the claimant has consistently maintained since the time of the accident that he timely reported the accident to his employer, the limitations period for reopening the settlement began at the time the settlement was executed since the claimant had knowledge which should have led him to seek further evidence which would have supported his claim.

Prior to the settlement he should have identified and interviewed the supporting witnesses he now proffers in support of his request to reopen.

Settlements: Reopening. Mistake of Fact. Where a claim was denied for the claimant's alleged failure to timely report his industrial injury to his employer, the claimant then settled with the insurer on a disputed liability basis, and the claimant has consistently maintained since the time of the accident that he timely reported the accident, the claimant was not operating under a mistake of fact concerning the timeliness of his report of injury.

Settlements: Reopening. Duress and Undue Influence. Settlement agreements in workers' compensation cases may be rescinded (reopened or set aside) upon proof of duress or undue influence. § 28-2-1711, MCA (1999).

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: § 28-2-1711, MCA (1999). Since settlement agreements in workers' compensation cases are contracts, *Kienas v. Peterson*, 191 Mont. 325, 328, 624 P.2d 1, 2 (1980), they may be rescinded (reopened or set aside) for duress or undue influence as provided in section 28-2-1711, MCA (1999).

Settlements: Reopening. Duress and Undue Influence. To reopen a settlement on grounds of duress, the claimant must prove "(1) unlawful confinement of the person of the party, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife; (2) unlawful detention of the property of any such person; or (3) confinement of such person, lawful in form but fraudulently obtained or fraudulently made unjustly harassing or oppressive." § 28-2-402, MCA (1999).

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: § 28-2-402, MCA (1999). To reopen a settlement on grounds of duress, the claimant must prove "(1) unlawful confinement of the person of the party, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife; (2) unlawful detention of the property of any such person; or (3) confinement of such person, lawful in form but fraudulently obtained or fraudulently made unjustly harassing or oppressive."

Settlements: Reopening. Duress and Undue Influence. To reopen a settlement based on undue influence, the claimant must prove "(1) the use

by one in whom a confidence is reposed by another or who holds a real or apparent authority over him of such confidence or authority for the purpose of obtaining an unfair advantage over him; (2) taking an unfair advantage of another's weakness of mind; or (3) taking a grossly oppressive and unfair advantage of another's necessities or distress." § 28-2-407, MCA (1999).

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: § 28-2-407, MCA (1999). To reopen a settlement based on undue influence, the claimant must prove "(1) the use by one in whom a confidence is reposed by another or who holds a real or apparent authority over him of such confidence or authority for the purpose of obtaining an unfair advantage over him; (2) taking an unfair advantage of another's weakness of mind; or (3) taking a grossly oppressive and unfair advantage of another's necessities or distress."

Settlements: Reopening. Duress and Undue Influence. Where a claim is disputed based on an employer's report that it was not timely notified of an alleged industrial injury, the fact that the claimant agreed to settle his claim on a disputed liability basis because of financial pressures is not a basis for finding undue influence on the part of the insurer.

Settlements: Reopening. Duress and Undue Influence. Where a claim is disputed based on an employer's report that it was not timely notified of an alleged industrial injury, the fact that the claimant agreed to settle his case on a disputed liability basis because of financial pressures is not a basis for a finding that the claimant was acting under economic duress which entitles him to rescind (reopen or set aside) the settlement agreement. To prove economic duress, the claimant must show "(1) a wrongful act that; (2) overcomes the will of a person; (3) who has no adequate legal remedy to protect his interests." *Somersille v. Columbia Falls Aluminum Co.*, 255 Mont. 101, 108, 841 P.2d 483, 487 (1992).

Settlements: Reopening. Duress and Undue Influence. Where a claim was denied for the claimant's alleged failure to timely report his industrial injury to his employer and the claimant then settled with the insurer on a disputed liability basis, the claimant is not entitled to reopen his settlement based on allegations that he entered into the settlement agreement based on financial hardship since financial hardship does not constitute legal duress or undue influence.

¶1 The petitioner, Dan Frazer (claimant), seeks to rescind (reopen or set aside) a disputed liability settlement agreement on grounds of fraud or duress. The respondent, Montana State Fund (State Fund), moves for summary judgment and to dismiss.

¶2 The respondent initially filed a motion for summary judgment. However, that motion was based in part on a Combined Motion and Brief to Reopen Claim that the claimant sent to the Court prior to the filing of his present petition. Since no petition was pending, the Court returned it to the claimant's counsel and it was not resubmitted in conjunction with the summary judgment motion.

¶3 Because the combined motion was not on file, and because there was a question on the Court's part as to whether the claimant intended to allege fraud and/or duress in connection with the settlement, the claimant was permitted to file an amended petition. The procedural history that followed is outlined in an Order Regarding Further Proceedings, 2005 MTWCC 31, and will not be repeated here. As set out in that Order, the Court notified the parties that it intended to treat the respondent's Reply to Motion for More Definite Statement as a motion to dismiss fraud and duress claims.

I. Undisputed Facts

¶4 For purposes of the motion for summary judgment,¹ the basic undisputed facts, are as follows:

¶4a The claimant alleges he suffered an industrial injury on February 9, 2001, while working for Ted's Western Appliance, Incorporated in Park County, Montana. (Amended Petition for Hearing, ¶ 1.)

¶4b At the time of the alleged injury, Ted's Western Appliance, Incorporated was insured by the State Fund. (Amended Petition for Hearing, ¶ 2.)

¶4c The claimant signed a First Report of Injury on April 12, 2001, and submitted it to the State Fund. (Amended Petition for Hearing, ¶ 3; Affidavit of Cindy Hawkins; Ex. 1 to State Fund's Motion for Summary Judgment and Supporting Brief.)

¹The undisputed facts set out by the State Fund in its original motion for summary judgment were not disputed by the claimant. Other facts are simply allegations the claimant sets out in his Amended Petition for Hearing, his Combined Motion and Brief to Reopen Claim, and his Response to Motion for More Definite Statement, which are accepted as true for purposes of the outstanding motions.

¶4d The employer reported that it had not received timely notice of the injury and the State Fund denied the claim on the ground that the claimant had failed to notify his employer of his alleged injury within thirty days as required by section 39-71-603, MCA (1999). (Amended Petition for Hearing, ¶ 3; Ex. 1 to the claimant's Combined Motion and Brief to Reopen Claim.)

¶4e The claimant and the State Fund then entered into a disputed liability settlement which the claimant now seeks to set aside. (Amended Petition for Hearing, ¶ 3.)

¶4f At the time of the settlement, the claimant asserted that he had in fact given notice of his injury to his employer within thirty days. In his Combined Motion and Brief to Reopen Claim, the claimant's attorney states:

Mr. Frazer [claimant] knew that he had verbally told his boss about his injury within 30 days. However, he believed that his report was insufficient.

(Combined Motion and Brief to Reopen Claim, 2, n.1.)

¶4g "In October of 2003, [claimant] contacted an attorney to see if there was anything that could be done to revisit his workers' compensation claim. His attorney obtained two affidavits from Mr. Frazer's co-workers indicating that he had reported his injury in February of 2001 to his employer." (Amended Petition for Hearing, ¶ 3.)²

II. Mistake of Fact Claim

¶5 Initially, the State Fund urges that the claimant's request to reopen based on an alleged mistake of fact is barred by the two-year statute of limitations applicable to actions based on fraud or mistake. § 27-2-203, MCA (1999). The running of the limitations period begins to run when the party bringing the action would have discovered the mistake had he or she exercised ordinary diligence:

Actual knowledge of the mutual mistake is not required to start the running of the statute of limitations. Rather, the statute of limitations begins

²The allegation is cited in the State Fund's motion (Motion for Summary Judgment and Supporting Brief at 2), and the Court assumes the allegation is true for purposes of the motion.

to run when the facts are such that the party bringing the action would have discovered the mistake had he or she exercised ordinary diligence.

Rath v. St. Labre Indian Sch., 249 Mont. 433, 439, 816 P.1d 1061, 1065 (1991) (citations omitted). Thus, if the claimant had information that should have triggered a further, diligent investigation into the true state of affairs, and such investigation would have led to discovery of the mistake, the State Fund is entitled to summary judgment with respect to any claim based on fraud or mistake.

¶6 In this case, the claimant asserts that he reported the injury to his employer within thirty days. While the employer disputed his assertion, the claimant could have taken the matter to trial rather than settle his claim. He could and should have conducted a diligent investigation **prior** to any settlement to determine whether there were other witnesses who would support his recollection. Thus, the statute of limitations began running on the day of the settlement. Any claim based on fraud or mutual mistake of fact is therefore time-barred.

¶7 Moreover, the claimant's assertion of mistake of fact fails on its merits. To reopen or set aside a settlement based on mistake of fact, the claimant must prove that "the parties were laboring under a mutual mistake regarding a material fact at its inception." *South v. Transportation Ins. Co.*, 275 Mont. 397, 401, 913 P.2d 233, 235 (1996), citing *Wray v. State Comp. Ins. Fund*, 266 Mont. 219, 879 P.2d 725 (1994). By his own admission, the claimant was not operating under any mistake of fact regarding notice to his employer. He maintained at the time of the settlement, and still maintains, that he gave timely notice to his employer. He could have litigated the issue if he had chosen to do so, but settled instead.

III. Duress or Undue Influence Claim

¶8 As I noted in my minute entry of February 15, 2005, the claimant's initial response to the State Fund's motion for summary judgment raised a question as to whether the claimant was attempting to also allege fraud, duress, or undue influence as further grounds for his request to reopen his settlement. It was for that reason that at that time I granted the claimant leave to file an amended petition. (Order Regarding Amended Petition and Amended Motion for Summary Judgment.)

¶9 An Amended Petition for Hearing was filed thereafter; however, the State Fund found it lacking in sufficient details and moved for a more definite statement. (Motion for More Definite Statement.) The claimant did not respond to the motion and I granted it, noting that the Amended Petition for Hearing was indeed vague. (Order Granting Motion for More Definite Statement and Vacating Trial.) The claimant then filed his Response to Motion for More Definite Statement which in substance was his more definite statement;

however, it was late. The Court accepted the late filing but issued an order finding that the State Fund's Reply to Motion for More Definite Statement was in substance a motion to dismiss any fraud or duress claim for failure to state a claim. (Order Regarding Further Proceedings.) I granted the parties leave to file supplement briefs regarding both the motion for summary judgment and the implicit motion to dismiss. (*Id.*) I also ordered the claimant to file the original Combined Motion and Brief to Reopen Claim referred to in the State Fund's motion for summary judgment. (*Id.*) The original of the combined motion and a supplemental brief by the State Fund were filed. The claimant did not file a supplemental brief.

¶10 Motions to dismiss are viewed with disfavor and will be granted only where the allegations of the petition or complaint either show that the claimant is not entitled to relief of any sort, *Steele v. McGregor*, 1998 MT 85, ¶ 9, 288 Mont. 238, 956 P.2d 1364, or discloses an "insuperable bar" to recovery, *Varco-Pruden v. Nelson*, 181 Mont. 252, 255, 593 P.2d 48, 49 (1979), such as the running of the applicable statute of limitations, *Beckman v. Chamberlain*, 673 P.2d 480, 482 (Mont. 1983). For purposes of the motion, all well-pleaded allegations of the petition are deemed true. *Cape v. Crossroads Correctional Cent.*, 2004 MT 265, ¶ 10, 323 Mont. 140, 99 P.3d 171.

¶11 The allegations concerning duress or undue influence are set forth in the claimant's Response to Motion for More Definite Statement and the Combined Motion and Brief to Reopen Claim. In essence, the claimant alleges that financial pressures led him to agree to the settlement. He states:

Petitioner therefore alleges and states, as further clarification of his petition, that Respondent insured and represented Ted Williams, the employer. Ted Williams falsified his reporting by misrepresenting that Mr. Frazer had not notified him when he had in fact been taken off work and sent for medical care as a result of the injury that he sustained on-the-job. Mr. Williams, the employer, paid for the visit to the doctor. And, the secretary was not allowed to give Petitioner a work injury form.

Mr. Frazier [sic] specifies that representations by the State Fund to him regarding the requirement to settle this claim were made at a time when he needed immediate, expensive treatment leading to surgery. And petitioner did not have sufficient funds to take care of that surgery, and was told that this was all he would receive because he had not reported the claim.

This all happened shortly after the claim was made and he was under tremendous duress and tension and anxiety over this situation and needed medical care. His own medical insurance had a \$2,000 deductible and he had a 50/50 co-pay thereafter. He did not have the means to take care of this

imminent physical care and need without accepting the representations made by the State Fund. The representative, in particular Katie Herrera, was the person who told him words to the affect that she was doing him a favor by providing him any money towards this claim since his claim had not been timely filed.

The State Fund representative, Ms. Herrera, at the time was acting on behalf of the employer as the insurance company for the employer and the employer was misrepresenting to her the facts regarding the injury. She had the opportunity to investigate the claim and confirm or deny the authenticity of the employer's statements. The employer knew that this injury was sustained on-the-job and the insurance company did not talk adequately to or tell the Petitioner that they could investigate further the relatedness of this injury to the work place.

Ms. Herrera failed and refused to conduct further investigation and said the only amount that would be paid was this disputed \$8,500.00. This duress was based on false information which was not properly investigated and the pressing medical needs noted above.

(Response to Motion for More Definite Statement at 1-2.)

¶12 A settlement agreement is a contract. *Kienas v. Peterson*, 191 Mont. 325, 328, 624 P.2d 1, 2 (1980). Section 28-2-1711, MCA (1999), governs the circumstances when a contract can be rescinded, providing in relevant part:

28-2-1711. When party may rescind. A party to a contract may rescind the same in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with him was given by mistake or obtained through **duress**, menace, fraud, **or undue influence** exercised by or with the connivance of the party as to whom he rescinds or of any other party to the contract jointly interested with such party

(Emphasis added.) Thus, a settlement agreement may be rescinded (set aside or reopened) not only for mistake but also for duress and undue influence.

¶13 Duress is statutorily defined in section 28-2-402, MCA (1999), which provides:

28-2-402. What constitutes duress. Duress consists in:

- (1) unlawful confinement of the person of the party, of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;
- (2) unlawful detention of the property of any such person; or
- (3) confinement of such person, lawful in form but fraudulently obtained or fraudulently made unjustly harassing or oppressive.

Obviously, none of the criteria for duress are met in this case.

¶14 “Undue influence” also has a statutory definition. Section 28-2-407, MCA (1999), provides:

28-2-407. What constitutes undue influence. Undue influence consists in:

- (1) the use by one in whom a confidence is reposed by another or who holds a real or apparent authority over him of such confidence or authority for the purpose of obtaining an unfair advantage over him;
- (2) taking an unfair advantage of another's weakness of mind; or
- (3) taking a grossly oppressive and unfair advantage of another's necessities or distress.

The claimant's allegations, if true, do not satisfy any of the criteria. He was admittedly aware that his claim was being denied based on the employer's report that he had not notified the employer of his injury within thirty days. He was thus aware that the State Fund's position regarding his claim was adversarial to his own position. Under such circumstances, he cannot claim that the State Fund had a confidential relationship with him and took advantage of that relationship; thus, subsection (1) of section 28-2-407, MCA (1999), is not satisfied. Similarly, there is no allegation that the claimant is suffering from weakness of mind. Finally, there is no allegation which could be interpreted as showing that the insurer took grossly oppressive or unfair advantage of the claimant. The claimant's financial distress was no different from that suffered by claimants in other cases of denied claims.

¶15 In substance, the claimant alleges that he was under “economic duress” when he settled his case. The Supreme Court has laid out specific criteria applicable to claims of economic duress. There must be “(1) a wrongful act that; (2) overcomes the will of a person; (3) who has no adequate legal remedy to protect his interests.” *Somersille v. Columbia Falls Aluminum Co.*, 255 Mont. 101, 108, 841 P.2d 483, 487 (1992). The claimant has failed to identify any wrongful act on the part of the State Fund. He also had an adequate remedy to protect his interest – he could have petitioned the Workers’

Compensation Court for benefits instead of agreeing to a settlement. Therefore, the elements required for economic duress are lacking.

¶16 In sum, assuming the claimant's allegations concerning duress and undue influence are true, he has failed to set forth any legal basis for reopening his settlement. On the face of his pleadings, he is not entitled to relief.

ORDER AND JUDGMENT

¶17 Based on the forgoing discussion, it is ORDERED AND ADJUDGED that the petition in this matter be, and is hereby, **dismissed with prejudice**.

¶18 This Judgment is certified as final.

DATED in Helena, Montana, this 20th day of July, 2005.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Richard J. Pyfer
Mr. Thomas E. Martello
Submitted: June 14, 2005