IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2019 MTWCC 4

WCC No. 2018-4443

BARRY HEATH

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER GRANTING RESPONDENT SUMMARY JUDGMENT ON PETITIONER'S REQUEST FOR RELIEF FROM THIS COURT'S ORDER AND JUDGMENT DISMISSING WITH PREJUDICE DATED MARCH 10, 2014

Summary: During litigation in 2014, Petitioner and Respondent settled Petitioner's bilateral shoulder injury claim via a Stipulation for Entry of Judgment, which expressly states that this Court would enter a judgment and dismiss the case with prejudice. Petitioner now asserts that he and Respondent were operating under a mutual mistake of fact and asks this Court to set aside their settlement agreement. Respondent moves for summary judgment, asserting that Petitioner's request for relief from this Court's Order and Judgment Dismissing with Prejudice is time-barred under M.R.Civ.P. 60(b)(1) and (c)(1), which provide that a party seeking relief from a judgment or order on the ground of mistake must file for relief "no more than a year after the entry of the judgment or order." Petitioner asserts that Rule 60 does not apply because this Court did not enter an actual judgment; rather, Petitioner asserts that this Court merely approved a settlement agreement. Petitioner thus argues that contract law applies, under which he asserts his Petition for Hearing is timely. In the alternative, Petitioner argues that if Rule 60 applies, his 2018 Petition for Hearing is timely under Rule 60(b)(4), which applies when a judgment is void, and under Rule 60(b)(6), which provides that a party can obtain relief for any other reason that justifies relief. Petitioner also asserts that he may proceed under Rule 60(d)(1), which provides that Rule 60 "does not limit a court's power to . . . entertain an independent action to relieve a party from a judgment, order, or proceeding . . . ."

Held: Respondent is granted summary judgment on Petitioner's request for relief from this Court's Order and Judgment Dismissing with Prejudice. The Workers' Compensation Act grants this Court the power to enter judgments. The Montana Supreme Court has held that Rule 60 applies when a party seeks relief from a judgment of this Court. Rule 60(b)(1) and (c)(1) state that a party seeking relief from a judgment based on mistake must file for relief "no more than a year after the entry of the judgment or order." Because Petitioner did not file for relief within one year after this Court entered its Order and Judgment Dismissing with Prejudice, which is an actual judgment, and because Rule 60(b)(4) and (6), and (d)(1) do not provide him with avenues for relief under Montana law, Petitioner's request for relief is time-barred.

¶ 1 Respondent Montana State Fund (State Fund) moves for summary judgment, asserting that Petitioner Barry Heath's Petition for Hearing — in which he seeks relief from this Court's Order and Judgment Dismissing with Prejudice on the grounds of mutual mistake of fact — is time-barred under M.R.Civ.P. 60(b)(1) and (c)(1). Heath opposes State Fund's motion, asserting that Rule 60 is inapplicable or, in the alternative, that his request for relief is timely under Rule 60(b)(4), (b)(6), and (d)(1).

¶ 2 This Court grants State Fund summary judgment on Heath's request for relief from this Court's Order and Judgment Dismissing with Prejudice because it is time-barred under Rule 60(b)(1) and (c)(1) and because Rule 60(b)(4), (b)(6), and (d)(1) do not provide him with avenues for relief under established Montana law. Although State Fund filed a Motion for Summary Judgment, there is another claim pending in this case, that being Heath's claim that State Fund is liable for his bilateral carpal tunnel syndrome. State Fund has moved for summary judgment on that claim, which this Court will address in a separate order.

FACTS

¶ 3 Making all inferences in Heath's favor, the following are the facts for purposes of this ruling.[1]

¶ 4 On November 10, 2012, Heath suffered an accident in the course of his employment. Heath filed a First Report of Injury or Occupational Disease, stating that he injured his shoulders and describing his accident and alleged injury as follows: "Was shoveling heavy snow when I felt a sharp pain in my right shoulder[.] I switched hands to shovel taken [sic] pressure off right shoulder as day went on the left shoulder gave out."

[1] *See Lunday v. Liberty Northwest*, 2017 MTWCC 20, ¶ 31 (explaining that at the summary judgment stage, this Court makes all reasonable inferences in favor of the party opposing summary judgment).

¶ 5 State Fund insured Heath's employer. State Fund accepted liability for injuries to Heath's shoulders as a temporary aggravation of preexisting conditions, as Heath had preexisting shoulder problems and left-hand pain.

¶ 6 Heath treated with John D. Michelotti, MD, with complaints of bilateral shoulder pain and left-hand pain. Dr. Michelotti diagnosed bilateral shoulder biceps tendinitis and bilateral shoulder adhesive capsulitis. On September 19, 2013, Dr. Michelotti noted:

> For his left shoulder, as I explained to him multiple times, I think the best option at this point would be to have an injection under ultrasound guidance into the long head of the biceps of the left shoulder. I explained to him that we use that for diagnostic and treatment purposes. If a person gets significant relief with an injection into the long head of the biceps, there is good data that says that a person will get better clinically [with] either a biceps release or a biceps tenodesis. However, without that data we[']re never to[o] sure whether or not just going in for a scope will be beneficial for the shoulder.

¶ 7 On September 30, 2013, Heath filed a Petition for Hearing with this Court. Heath alleged, *inter alia*, that he had suffered a compensable injury or occupational disease on November 10, 2012, that State Fund owed him additional wage-loss and medical benefits, that State Fund did not correctly calculate his temporary total disability (TTD) rate, and that State Fund violated his constitutional rights to privacy and due process by conducting surveillance. Heath prayed for a judgment awarding him benefits, a penalty, his attorney's fees, and costs.

¶ 8 On December 12, 2013, Dr. Michelotti opined that surgery was not indicated:

> Unfortunately, he did not get any improvement from the injections into the long head of the biceps of either shoulder. He . . . also had injections into the subacromial space which really didn't help him.
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> He is wondering whether or not going in surgically to explore the area around the sensory nerve of the terminal branch of the axillary nerve and whether that would be beneficial. I explained to him multiple times today that I have never done this surgery, and I do not think that that would improve his current symptoms.
>
> . . . .
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> I do not think I can help him surgically, and at this point I think the best option after discussing this over a lengthy process with Mr. Heath would be to have him get an independent medical exam by someone like Dr. Kapps [sic] in Missoula. I think someone like that could make a determination of

one whether any surgical intervention could be beneficial and if not to whether any injections or further treatment could be beneficial for his shoulders.

¶ 9 On January 29, 2014, Heath saw Mark Rotar, MD, an orthopedic surgeon, for an examination under § 39-71-605, MCA. Dr. Rotar diagnosed bilateral shoulder capsulitis and neck pain. Dr. Rotar did not think shoulder surgery would be beneficial, noting that the injections did not provide Heath with any relief.

¶ 10 Thereafter, Heath and State Fund reached a settlement of Heath's claim in its entirety for a lump-sum payment of $27,500. They agreed that this Court would enter a judgment and dismiss Heath's case with prejudice. Thus, they filed with this Court a Stipulation for Entry of Judgment, which contained the terms of their agreement. In relevant part, the Stipulation for Entry of Judgment states:

> 2. Because of these disputes, the parties have agreed to resolve Petitioner's claims by way of a settlement. This settlement is based on an acknowledgement by the parties that significant disputes exist between them concerning Respondent's liability for additional benefits and a desire by the parties to resolve all of Petitioner's claims by means of a settlement rather than face the uncertainty of litigation.
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> 3. Pursuant to this agreement, the parties stipulate that judgment be entered in the Workers' Compensation Court resolving any and all claims by Petitioner for indemnity and medical benefits arising out of the industrial injury he suffered including, but not limited to, any claims for past or future temporary total disability benefits, permanent partial disability benefits, temporary partial disability benefits, permanent total disability benefits, death benefits, rehabilitation benefits, medical benefits and any claims for penalty, costs or attorney's fees pursuant to the Workers' Compensation Act or Occupational Disease Act.
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> 4. Petitioner understands that, by agreeing to entry of the judgment on the terms of this Stipulation for Judgment, he assumes the risk that his condition could worsen, the degree of impairment could increase, the nature and severity of the injury could worsen, his functional capacity could deteriorate, and he will not be entitled to any additional benefits. Petitioner, in signing and submitting this Stipulation to the Workers' Compensation Court, understands that if the Court approves this Stipulation for Judgment and Order of Dismissal with Prejudice, the insurer is forever released from payment of all compensation, rehabilitation and medical benefits under the Workers' Compensation and Occupational Disease Acts.

> 5. As consideration for this settlement, the parties stipulate and agree that judgment shall be entered by this Court directing Respondent to pay Petitioner and his attorney the total sum of **TWENTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ($27,500.00)** in full satisfaction of all issues, claims, and entitlements. Petitioner is responsible for the payment of the attorney's fees and costs that are owed as a result of this settlement. The Judgment and Order of this Court shall dismiss this action with prejudice, each party to bear its own costs and attorney's fees.[2]

Heath signed the Stipulation for Entry of Judgment on February 28, 2014, below a sentence stating, "I, Barry Heath, hereby acknowledge that I have read the foregoing Stipulation, discussed its legal effect with my attorney, understand the contents thereof, and sign this Stipulation of my own free will and accord." Heath's attorney also signed the Stipulation for Entry of Judgment.

¶ 11 On March 10, 2014, this Court entered its Order and Judgment Dismissing with Prejudice, in which this Court ordered "that the stipulation filed by the parties is approved and adopted as the judgment of this Court and the above-entitled matter is hereby **DISMISSED WITH PREJUDICE**."[3]

¶ 12 More than four years later, Heath saw Richard N. Vinglas, MD, with complaints of bilateral shoulder pain, left greater than right. Heath attributed the pain to his November 10, 2012, industrial injury. After an MRI and an EMG, Dr. Vinglas confirmed Heath's prior diagnosis of left biceps tendinitis and diagnosed bilateral carpal tunnel syndrome. Dr. Vinglas opined that left shoulder surgery was a treatment option. Heath decided to undergo surgery. Dr. Vinglas' record from May 15, 2018, states, in relevant part:

> 50-year-old gentleman with moderate bilateral carpal tunnel syndrome as confirmed by 5/15/18 EMG. He also has left biceps tendinosis as shown on 4/12/18 MRI. I discussed the etiology of the conditions as well as possible treatment options including living with the symptoms, nocturnal bracing, cortisone injections, or surgical intervention. I reviewed the advantages and disadvantages of each. As he continues to have significant pain and has trialed conservative management without relief, Barry would like to pursue surgical intervention for both his left shoulder and left carpal tunnel. The risks and benefits were discussed in detail. . . . We will proceed with a left

[2] Emphasis in original.

[3] Emphasis in original.

> shoulder arthroscopy, biceps tenodesis, SAD, DCE, treatment as indicated and a left open carpal tunnel release.

¶ 13 Following surgery, Heath's left shoulder and wrist condition have markedly improved.

¶ 14 Heath intends on having Dr. Vinglas evaluate his right shoulder and wrist to determine if surgery is indicated.

¶ 15 On October 30, 2018, Heath filed a Petition for Hearing requesting this Court set aside his 2014 settlement with State Fund and reopen his claim. Heath alleges that at the time of the settlement, he and State Fund were operating under a mistake of fact. He alleges:

> Barry Heath and the Montana State Fund were told by both Dr. Michelotti and the Fund's IME doctor, Dr. Rotar, that surgery was not warranted and Barry's claim was settled on that mistaken belief. . . . In short, at the time of the settlement in the Claimant's case, there was a material misunderstanding of the full nature and extent of Barry's injuries and, under the authority of the *Harrison* [*v. Liberty Northwest Ins. Corp*. 2008 MT 102, 342 Mont. 326, 181 P.3d 590] case and the cases cited therein, the settlement of his workers' compensation claim must be set aside and his claim reopened.[4]

Heath seeks TTD benefits retroactive to the surgery on his left shoulder, medical benefits for his bilateral shoulder injuries, a determination of his correct TTD rate, a penalty, and his attorney fees. Heath also seeks an order that State Fund is liable for his bilateral carpal tunnel syndrome.

¶ 16 On November 13, 2018, Dr. Vinglas responded to a letter from Heath's attorney in which Dr. Vinglas opined that Heath's November 10, 2012, industrial accident caused a permanent aggravation to his preexisting left shoulder problem and that he operated on Heath's left shoulder to treat that condition. Dr. Vinglas also opined that Heath's bilateral carpal tunnel syndrome was not caused by Heath's industrial accident and that it was "[a]s likely as not as likely related to his employment." As for Heath's right shoulder, Dr. Vinglas stated he would need x-rays and an MRI to diagnose Heath's condition and to make treatment recommendations.

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[4] *See also Gamble v. Sears*, 2007 MT 131, 337 Mont. 354, 160 P.3d 537; *Kimes v. Charlie's Family Dining & Donut Shop*, 233 Mont. 175, 759 P.2d 986 (1988); *Weldele v. Medley Dev.*, 227 Mont. 257, 738 P.2d 1281 (1987); *Kienas v. Peterson*, 191 Mont. 325, 624 P.2d 1 (1980).

LAW AND ANALYSIS

¶ 17 State Fund argues that Heath's request for relief from this Court's Order and Judgment Dismissing with Prejudice is time-barred under M.R.Civ.P. 60(b)(1) and (c)(1) which, when read together, provide that a party seeking relief from a judgment on grounds of mistake must seek relief "no more than a year after the entry of the judgment or order."[5]

¶ 18 Heath argues that Rule 60 does not apply. He asserts that this Court did not enter an actual judgment but was "merely approving a compromise settlement." Thus, he asserts that this Court should apply contract law, under which he asserts his Petition for Hearing is timely.[6] In the alternative, Heath argues that his claim is timely under the provisions of Rule 60 that only require that a party seek relief within a reasonable time, and under a provision that Heath contends does not have a time limitation.

¶ 19 The Workers' Compensation Act gives this Court the power to enter judgments, and this Court has rules regarding its judgments. ARM 24.5.344(1) states, in relevant part, "After a trial, the court issues an order or findings of fact, conclusions of law, and judgment setting forth the court's determination of the disputed issues." Indeed, this Court has been entering judgments since 1975.[7] Section 39-71-2901(2), MCA, states that this Court "has power to: . . . (c) compel obedience to its judgments, orders and process in the same manner and by the same procedures as in civil actions in district courts." Under ARM 24.5.329, this Court may issue summary judgments. Under ARM 24.5.348, when this Court certifies a decision as final, the "final certification is considered a notice of entry of judgment." Section 39-71-2910, MCA, provides that this Court, and the Montana

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[5] State Fund argues that this Court should either dismiss this case or treat it as a motion for relief from judgment under Rule 60, as Heath is attempting to obtain relief from a judgment in WCC Case No. 2013-3233. Heath asserts that this case is an independent action under Rule 60(d)(1) and that this Court can address his claim under Rule 60(b)(1) in this case. State Fund is correct that Heath should have filed a motion for relief from this Court's Order and Judgment Dismissing with Prejudice under Rule 60(b)(1) in WCC Case No. 2013-3233. *See, e.g.*, *Loney v. Milodragovich, Dale & Dye, P.C.*, 273 Mont. 506, 511, 905 P.2d 158, 161-62 (1995) (in an independent action, refusing to address plaintiff's argument that he was entitled to relief under Rule 60(b)(4) on the grounds that judgment was void because, "A party seeking relief from a final order or judgment can file either a motion for relief based on one of the subsections of Rule 60(b) or an independent action . . . ."). However, for reasons of judicial economy, this Court will address Heath's claim for relief under Rule 60(b)(1) in this case, as was done in *State Comp. Ins. Fund v. Chapman*, 267 Mont. 484, 885 P.2d 407 (1994). *See also* 7 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 60.31 (2d ed. 1985) ("[A] proceeding for relief under 60(b) may in an appropriate case be treated as an independent proceeding, and similarly an independent action may be treated as a proceeding under 60(b).").

[6] Heath states, "There is no time limit on reopening a settlement approved by [the] Department." However, this Court notes that § 27-2-203, MCA, states: "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 to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake." Section 27-2-203, MCA, applies to petitions to set aside workers' compensation settlements. *Whitcher v. Winter Hardware Co.*, 236 Mont. 289, 296-97, 769 P.2d 1215, 1219-20 (1989); *Hayes v. State Comp. Ins. Fund*, 1999 MTWCC 7, ¶ 8.

[7] *See, e.g.*, *Ross v. Peter Kiewitt & Sons Co.*, WCC No. 75-5 (Oct. 22, 1975).

Supreme Court in cases that have been appealed, may stay execution of this Court's judgments.

¶ 20 In *State Compensation Ins. Fund v. Chapman*,[8] the Supreme Court held that Rule 60 controls in cases in which a party seeks relief from a judgment of this Court. Relying in large part on Chapman's testimony that he could not work as a result of his industrial injury, this Court decided that he was entitled to permanent total disability benefits and entered judgment.[9] As part of its judgment, this Court awarded Chapman his attorney's fees and costs in the amount of $16,927.[10] However, nearly two years later, State Fund filed an Emergency Petition for Hearing with this Court, alleging that Chapman perjured himself during trial, as he was working on a regular basis at the time of trial.[11] This Court took judicial notice that Chapman pleaded no contest to theft of workers' compensation benefits.[12] This Court set aside its judgment on the grounds of fraud and ordered Chapman's attorney to reimburse State Fund for the $16,927 he received in fees and costs.[13]

¶ 21 The Montana Supreme Court reversed, holding that while this Court has power to set aside its judgments, this Court erred because State Fund's Emergency Petition for Hearing was untimely under Rule 60(b).[14] The Supreme Court explained that this Court's power to set aside its judgments "is not without limitation and must be subject to predictable rules if the finality of judgments is to mean anything."[15] Because neither the Workers' Compensation Act nor this Court's rules provide the standards under which this Court can set aside its judgments, the Supreme Court held that Rule 60 applies to this Court's judgments.[16] At the time, Rule 60(b) provided that a party seeking relief from a judgment based upon fraud had to file for such relief within 60 days from entry of judgment.[17] Because State Fund filed its action for relief from this Court's judgment more

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[8] 267 Mont. 484, 885 P.2d 407 (1994).

[9] *Chapman*, 267 Mont. at 485-87, 885 P.2d at 408-09.

[10] *Chapman*, 267 Mont. at 485, 885 P.2d at 408.

[11] *Chapman*, 267 Mont. at 485-87, 885 P.2d at 408-09.

[12] *Chapman*, 267 Mont. at 487, 885 P.2d at 409.

[13] *Chapman*, 267 Mont. at 486-87, 885 P.2d at 408-09.

[14] *Id*.

[15] Chapman, 267 Mont. at 490, 885 P.2d at 411.

[16] *Chapman*, 267 Mont. at 490, 885 P.2d at 411. *See also* ARM 24.5.352(1) ("If no express provision is made in [the Rules of the Workers' Compensation Court] regarding a matter of procedure, the court is guided, where appropriate, by considerations and procedures set forth in the Montana Rules of Civil Procedure.").

[17] *Chapman*, 267 Mont. at 490, 885 P.2d at 411.

than 60 days after this Court entered its judgment, the Supreme Court held that State Fund's claim was time-barred.[18]

¶ 22 Currently, Rule 60(b) and (c) state, in relevant part:

> **(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
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> (1) mistake, inadvertence, surprise, or excusable neglect;
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> . . .
>
> (4) the judgment is void;
>
> . . . or
>
> (6) any other reason that justifies relief.
>
> **(c) Timing and Effect of the Motion.**
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> (1) *Timing*. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding. . . .

¶ 23 Under Rule 60(b)(1) and (c)(1), Heath's current Petition for Hearing — in which he seeks relief from this Court's Order and Judgment Dismissing with Prejudice on the ground of mutual mistake of fact — is time-barred. In Heath's first case, this Court entered its Order and Judgment Dismissing with Prejudice on March 10, 2014. Under Rule 60(b)(1) and (c)(1), the absolute deadline for Heath to file for relief from this judgment and order was March 11, 2015. However, Heath did not file the case at bar until October 30, 2018, more than three and a half years after the deadline.

Heath's Arguments that Rule 60 is Inapplicable

¶ 24 Heath makes four arguments in support of his claim that Rule 60 does not apply to this case. However, none have merit.

¶ 25 First, Heath argues that this Court's Order and Judgment Dismissing with Prejudice is not an actual judgment. He relies on § 39-71-2903, MCA, which states, in relevant part: "All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act." Heath also relies on ARM 24.5.333(1), which states, "In the discretion of the court, informal disposition may be made of a dispute or controversy by stipulation, agreed settlement, consent order, or default." Because this Court did not have a trial in

[18] *Id*.

his first case, Heath asserts that under this statute and rule, this Court's Order and Judgment Dismissing with Prejudice is "an informal disposition . . . by way of a stipulated agreement (a contract) to settle the matter before hearing." Thus, Heath asserts that contract law, and not Rule 60, governs this case.

¶ 26 This argument, however, is based on a false premise. Although this Court reviews settlement agreements in which the claimant and the insurer just ask this Court to approve their settlement agreement and dismiss the case,[19] that is not what occurred in Heath's first case. In Heath's first case, he and State Fund entered into a Stipulation for Entry of Judgment, the plain language of which states that the parties agreed that this Court would enter a judgment in Heath's favor for $27,500 and dismiss the case with prejudice, a process that parties frequently use in this Court.[20] Thus, there is no merit to Heath's claim that when this Court entered its Order and Judgment Dismissing with Prejudice, "it merely approved a compromise settlement." This Court went a step beyond that; it approved a compromise settlement ***and*** entered a judgment and dismissed Heath's pending case with prejudice. This judgment was an actual judgment. Thus, to reopen his claim, Heath must obtain relief from this Court's Order and Judgment Dismissing with Prejudice in accordance with Rule 60.

¶ 27 Second, Heath argues that it would be inequitable and unconstitutional to apply Rule 60 because it has a shorter time limitation to file for relief from a judgment based on mistake than to set aside a settlement agreement under contract law. Heath quotes from the paragraph in *Chapman* in which the Supreme Court stated that this Court has "inherent equitable power" to set aside its judgments. Heath notes that under § 39-71-741, MCA, a claimant and an insurer may settle claims under which the insurer pays a lump sum, but that such settlements are "subject to department approval." Heath asks this Court to "exercise its inherent power to give [him] equal protection to what he would have if his settlement had been approved by the Department."

¶ 28 However, Heath simply ignores the rest of the paragraph he quotes from *Chapman*, in which the Supreme Court stated that this Court's "equitable power is not without limitation and must be subject to predictable rules if the finality of judgments is to

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[19] *See, e.g.*, *Johnson v. Hartford Accident & Indem. Co.*, WCC No. 2019-4571 (Feb. 28, 2019) (approving settlement and dismissing case without prejudice); *Reeves v. Liberty Mut. Fire Ins. Co*., WCC No. 2018-4372 (Aug. 16, 2018) (approving settlement and dismissing case with prejudice); *Lewis v. Wausau Underwriters Ins. Co.*, WCC No. 2018-4299 (May 25, 2018) (approving settlement and dismissing case with prejudice).

[20] From January 1, 2019, to the date of this Order, this Court has issued more than 50 judgments after parties have reached a settlement agreement which included a stipulation for entry of judgment.

mean anything." The Supreme Court then held that Rule 60 is the rule that provides predictability to this Court's judgments.[21]

¶ 29 Furthermore, because the parties' agreement was an arm's length transaction, there is nothing inequitable nor unconstitutional about enforcing the provisions under which Heath agreed that this Court would enter a judgment and dismiss his case with prejudice. In *Newlon v. Teck American, Inc*., the Supreme Court explained that parties to a workers' compensation claim have broad freedom of contract when entering into a settlement agreement because they "are in the best position to decide the contractual provisions based on their own interests."[22] Because Heath unequivocally agreed to have this Court enter judgment and dismiss his case with prejudice, a step beyond approving the settlement, he is not similarly situated to a claimant who negotiates a settlement to be submitted to the Department of Labor and Industry for approval; thus, applying Rule 60 does not violate equal protection.[23]

¶ 30 Third, Heath maintains that *Chapman* is distinguishable because *Chapman* involved a judgment after a trial while this case involves a judgment and a dismissal with prejudice entered pursuant to a Stipulation for Entry of Judgment. This distinction, however, does not make a difference. The Supreme Court has held that the effect of a stipulation for dismissal with prejudice "is the same as a judgment on the merits."[24] The Supreme Court has also held that the time limits in Rule 60 apply to requests for relief from stipulated judgments.[25]

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[21] *Chapman*, 267 Mont. at 490, 885 P.2d at 411.

[22] 2015 MT 317, ¶ 18, 381 Mont. 378, 360 P.3d 1134. *See also Liberty Mut. Fire Ins. Co. v. Warner*, 2004 MTWCC 24, ¶ 13 (explaining that this Court can approve settlements under which the insurer pays a lump sum that this Court could not award under § 39-71-741, MCA, because: "Settlements in disputed cases are encouraged, and once a petition is filed, the Court has jurisdiction to approve settlements which may fashion remedies the Court might not be able to otherwise impose under existing law. While statutes and case law may limit the remedies a court may impose, they do not limit the parties in fashioning their own solution to their dispute. Indeed, the remedies the parties fashion among themselves may in fact be superior to the remedies a court is required to impose if the matter is litigated to finality.").

[23] *See Benton v. Uninsured Employers' Fund*, 2009 MTWCC 37, ¶¶ 3-10 (holding that the different time limitations for claimants injured while working for an uninsured employer do not violate the guarantee of equal protection because such claimants are not similarly situated to a claimant injured while working for an insured employer.).

[24] *First Bank, (N.A.) Western Mont. Missoula v. Dist. Ct. (Harkin),* 226 Mont. 515, 520, 737 P.2d 1132, 1135 (1987) (citations omitted).

[25] *Hopper v. Hopper*, 183 Mont. 543, 556, 601 P.2d 29, 36 (1979) (in case in which decree of dissolution included an agreed upon property settlement and support agreement that was incorporated into the decree of dissolution, holding that time limitations in Rule 60 applied to husband's motion under Rule 60(b) for relief from the decree of dissolution). *See also In re Mucci*, 488 B.R. 186, 193 (Bankr. D.N.M. 2013) ("To seek relief from the Stipulated Judgment on the ground of fraud contained in subsection (b)(3), Defendant was required to seek such relief from the Stipulated Judgment within the one year period provided under Rule 60(c)(1).").

¶ 31 Fourth, Heath argues that because § 39-71-2903, MCA, states that this Court's proceeding are to be in accordance with "appropriate provisions of the Administrative Procedure Act," Rule 60 is inapplicable because none of the Montana Rules of Civil Procedure are applicable in this Court. However, Heath ignores *Chapman* and the Rules of the Workers' Compensation Court, which state, in relevant part, "If no express provision is made in these rules regarding a matter of procedure, the court is guided, where appropriate, by considerations and procedures set forth in the Montana Rules of Civil Procedure."[26] And, there is no "appropriate provision" in the Administrative Procedure Act regarding the time a party has to seek relief from a judgment of this Court. Again, Rule 60 applies.

Heath's Alternative Arguments that His Request for Relief is Timely under Rule 60

¶ 32 Heath argues in the alternative that if Rule 60 applies, then his request for relief is timely for three reasons. Here again, none of his arguments have merit.

¶ 33 First, Heath asserts that if a mutual mistake of fact existed at the time he entered into the Stipulation for Entry of Judgment, then his settlement with State Fund is void. He reasons that this Court's Order and Judgment of Dismissal is also void, which he asserts allows him to obtain relief under Rule 60(b)(4).[27]

¶ 34 However, Heath's argument is unsupportable under Montana law. As State Fund points out, a contract based upon a mutual mistake of fact is not absolutely void; rather, it is voidable.[28] The Supreme Court has held that Rule 60(b)(4) does not apply when the judgment is voidable.[29] Moreover, the Supreme Court has held that a judgment is void under Rule 60(b)(4) "only if the court which rendered it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process of law."[30] This Court had subject matter jurisdiction over Heath's first case and personal jurisdiction

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[26] ARM 24.5.352(1).

[27] Heath asserts that there is "no time limit" to file a claim under Rule 60(b)(4) or (6). However, Rule 60(c)(1) provides that a party must seek relief under Rule 60(b)(4) and (6) "within a reasonable time." In this case, it is unnecessary for this Court to determine whether Heath filed this case within a reasonable time.

[28] § 28-2-302, MCA ("A consent which is not free is nevertheless not absolutely void but may be rescinded by the parties in the manner prescribed by part 17 of this chapter.") *See also Wolfe v. Webb*, 251 Mont. 217, 227-28, 824 P.2d 240, 246 (1992) (citation omitted) ("Section 28-2-409, MCA, requires that before a contract is voidable based upon mistake of fact, the mistake must be material; and we have previously held that a mistake about the nature or extent of the claimant's physical condition is a "material" mistake of fact when applied to a workers' compensation settlement agreement.").

[29] *Sowerwine v. Sowerwine*, 145 Mont. 81, 86, 399 P.2d 233, 235 (1965) (holding that Rule 60(b)(4) had "no application here, inasmuch as the judgment . . . was merely voidable.")

[30] *In re Marriage of Wendt*, 2014 MT 174, ¶ 11, 375 Mont. 388, 329 P.3d 567 (citation omitted).

over Heath and State Fund,[31] and clearly afforded Heath due process when it entered judgment and dismissed his case with prejudice, as this Court did exactly what Heath asked it to do. Thus, Rule 60(b)(4) does not provide Heath with an avenue for relief.

¶ 35 Second, while Heath sets forth no ground for relief other than mistake, he argues that he can obtain relief under Rule 60(b)(6) which provides that a party can obtain relief for "any other reason that justifies relief."

¶ 36 However, in *DeTienne v. Sandrock*, the Supreme Court explained that Rule 60(b)(6) is inapplicable if the party relies on another subsection of Rule 60(b):

> We have frequently held that relief under Rule 60(b)(6) is appropriate only upon a showing that subsections (1) through (5) of Rule 60(b) do not apply. "It is generally held that if a party seeks relief under any other subsection of Rule 60(b), it cannot also claim relief under 60(b)(6)." Here, Sandrock is erroneously attempting to obtain relief under both subsections (1) and (6). Relief under Rule 60(b)(6) is not and was not available to him.[32]

Likewise, because Heath relies on Rule 60(b)(1) in his Petition for Hearing and on Rule 60(b)(4) in his opposition to State Fund's summary judgment motion, relief under Rule 60(b)(6) is not available to him.

¶ 37 Finally, Heath maintains that he can obtain relief under Rule 60(d)(1), which provides that Rule 60 "does not limit a court's power to . . . entertain an independent action to relieve a party from a judgment, order, or proceeding." Heath asserts that this case is an independent action under Rule 60(d)(1).

¶ 38 The Supreme Court has explained, "Such an action is a narrow avenue for relief, reserved for those unusual circumstances where a case of injustice is deemed sufficiently gross to demand disturbing a final judgment."[33]

¶ 39 This case is far outside of Rule 60(d)(1)'s avenue of relief because there is no injustice in enforcing this Court's judgment. Heath has presented no evidence from which this Court could find that the terms of the Stipulation for Entry of Judgment are

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[31] § 39-71-2905, MCA. *See also Moreau v. Transp. Ins. Co*., 2015 MT 5, ¶ 10, 378 Mont. 10, 342 P.3d 3 ("The Workers' Compensation Court is a court with limited but exclusive jurisdiction to hear and determine disputes concerning workers' compensation benefits.").

[32] *DeTienne v. Sandrock*, 2017 MT 181, ¶ 41, 388 Mont. 179, 400 P.3d 682 (citation omitted).

[33] *Tucker v. Tucker*, 2014 MT 115, ¶ 18, 375 Mont. 24, 326 P.3d 413 (citation omitted). *See also United States v. Beggerly,* 524 U.S. 38, 47, 118 S.Ct. 1862, 1868, 141 L.Ed.2d 32 (1998) (explaining that an independent action for relief from a judgment is "available only to prevent a grave miscarriage of justice.").

unconscionable.[34] At the time Heath and State Fund agreed to settle Heath's claim via the Stipulation for Entry of Judgment, they had several disputes, including whether State Fund had ongoing liability for Heath's claim, a dispute that was legitimate given Heath's preexisting shoulder conditions and the medical evidence.[35] Dr. Vinglas's opinion that surgery was a treatment option for Heath's left shoulder condition[36] proves nothing more than that Dr. Vinglas has a difference of medical opinion regarding a treatment option with Dr. Michelotti and Dr. Rotar. The Montana Supreme Court has recognized the public interest in the finality of judgments, noting, "There must be some point at which litigation ends and the respective rights between the parties are forever established."[37] The strong policy favoring finality of judgments does not allow a claimant to obtain relief from a judgment of this Court under Rule 60(d)(1) more than four years after the judgment with nothing more than a difference of medical opinion regarding a treatment option.

Conclusion

¶ 40 In sum, Rule 60 applies to Heath's request for relief from this Court's Order and Judgment Dismissing with Prejudice and, under Rule 60(b)(1) and (c)(1), his request for relief on the ground of mistake is time-barred. Accordingly, this Court now enters the following:

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[34] *See, e.g., Handy v. Montana State Fund*, 2016 MTWCC 15, ¶¶ 41-43 (ruling that disputed liability settlement with unrepresented claimant was not unconscionable because claimant could have litigated the dispute, because insurer did not pressure or leverage claimant into hasty settlement, and because there was a legitimate dispute over whether insurer was liable for the claim).

[35] *See, e.g., Fleming v. Mont. Sch. Grp. Ins. Auth.*, 2010 MTWCC 13, ¶¶ 42-50 (in case where insurer paid benefits for temporary aggravation of preexisting back condition but denied ongoing liability on basis that claimant returned to baseline, ruling that insurer was liable for claimant's ongoing back problems because she suffered a permanent aggravation to a preexisting back condition).

[36] Contrary to Heath's contention, Dr. Vinglas did ***not*** determine that surgical intervention was "necessary to correct the injuries sustained by the Claimant in the industrial injury." *See* ¶ 12 above.

[37] *In re Marriage of Hopper*, 1999 MT 310, ¶¶ 28-29, 297 Mont. 225, 991 P.2d 960 (quoting *Karlen v. Evans*, 276 Mont. 181, 184, 915 P.2d 232, 235 (1996)).

ORDER

¶ 41 This Court **grants** State Fund summary judgment on the issue of whether Heath timely filed for relief from this Court's March 10, 2014, Order and Judgment Dismissing with Prejudice.

DATED this 14th day of March, 2019.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Andrew J. Utick/Andrea J. Utick Fox
Nick Mazanec

Submitted: January 14, 2019