

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 113-A

WCC No. 9403-7030

VERNON L. INGEBRETSON

Petitioner

vs.

LOUISIANA-PACIFIC CORPORATION

Respondent.

AFFIRMED

***Ingebretson v. Louisiana-Pacific Corporation,
272 Mont. 294 (1995) (No. 94-622)***

ORDER GRANTING STAY OF EXECUTION AND JUDGMENT

Summary: Respondent, which is in the process of appealing the Court's decision in this case, applied for a stay of execution of judgment and requested the Court to waive the requirement of a supersedeas bond. The initial application was rejected because respondent provided no affidavits or other documentation showing respondent's financial condition and ability to pay the judgment. On renewed application, financial information was provided by affidavit. Claimant opposed any stay, arguing he is in dire financial straits, having been without benefits for over a year.

Held: While the Court is sympathetic to claimant's situation, respondent has the right to appeal and has convinced the Court that it has sufficient funds to pay the judgment. If the Court were to require respondent to pay benefits now, claimant may not be able to re-pay benefits were the Supreme Court to reverse this Court's decision. Unlike other situations, in which the Workers' Compensation Court has rejected requests for stay of payment of benefits, there is no indication that the self-insured employer has delayed the proceedings and every indication it will pursue this appeal expeditiously. Appellant is permitted to post a cash deposit of \$20,000 in lieu of bond.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: section 39-71-2910(2), MCA (1993). Initial application for stay of execution of judgment rejected where self-insured employer-respondent, who planned to appeal decision awarding claimant benefits, failed to submit affidavits or other documentation of employer's financial condition along with application.

Appeals (To Supreme Court): Supersedeas Bond. Self-insured employer which is appealing decision of WCC awarding benefits to claimant was allowed to make a cash deposit in lieu of supersedeas bond where claimant had no objection and section 25-10-401, MCA (1993), permits such substitution.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: section 25-10-401, MCA (1993). Self-insured employer which is appealing decision of WCC awarding benefits to claimant was allowed to make a cash deposit in lieu of supersedeas bond where claimant had no objection and section 25-10-401, MCA, permits such substitution.

Appeals (To Supreme Court): Stay of Execution of Judgment. Initial application for stay of execution of judgment rejected where self-insured employer-respondent, who planned to appeal decision awarding claimant benefits, failed to submit affidavits or other documentation of employer's financial condition along with application.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: section 39-71-2910(2), MCA (1993). Although the Workers' Compensation Court was sympathetic to claimant's dire financial situation, and his desire for commencement of payment of benefits awarded in that Court's decision, respondent self-insured employer has the right to appeal and statutory provisions authorize a stay of execution of judgment pending appeal. Where appellant has demonstrated through affidavit that it has sufficient finances to pay the judgment, and has offered to make a cash deposit in lieu of supersedeas bond, and claimant may have difficulty re-paying benefits should the Supreme Court overturn this Court's decision, the application for stay is granted on condition appellant post \$20,000 cash deposit.

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demonstrated through affidavit that it has sufficient finances to pay the judgment, and has offered to make a cash deposit in lieu of supersedeas bond, and claimant may have difficulty re-paying benefits should the Supreme Court overturn this Court's decision, the application for stay is granted on condition appellant post \$20,000 cash deposit.

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Respondent previously applied for a stay of execution of judgment and requested the Court to waive the requirement of a supersedeas bond. The Court denied the application because respondent failed to provide affidavits or other documentation demonstrating the respondent's financial condition and its ability to pay the judgment.

On January 11, 1995, the Court received a second motion requesting a stay. The motion requested the Court to reconsider its denial of a waiver of the supersedeas bond or, in the alternative, to accept a \$15,000 cash deposit in lieu of a bond. An affidavit and financial information accompanied the motion.

Upon receipt of the second motion the Court initiated a telephone conference call with Jerry W. Schuster and Starr Kelso, attorneys for the respondent, and Jon L. Heberling, attorney for the petitioner. After argument by both sides, the Court denied the renewed request to waive the bond requirement but granted the motion for a stay upon the condition that respondent post a cash deposit in the amount of \$20,000. The present Order will memorialize the rulings and my reasons for them.

Initially, the Court is disinclined to revisit the motion for waiver of a supersedeas bond. The respondent failed to furnish necessary financial information in conjunction with its first motion. Now it wants a second bite at the apple and has furnished financial statements which would indicate at first glance that respondent is financially solvent. On the other hand, the good financial condition of respondent would also indicate that it will suffer no hardship should a waiver be denied. Since this matter was considered and decided, the Court finds no compelling reason to reconsider. The renewed motion for a waiver of the requirement for a supersedeas bond is **denied**.

The petitioner resists a stay of execution of judgment even if respondent were to post a supersedeas bond or its equivalent. His attorney has indicated that claimant is in dire financial straits. He has been without benefits for more than a year now.

While the Court is sympathetic to claimant's financial situation, it must balance that situation against respondent's right to appeal. If execution is granted and the decision of this Court is later overturned, petitioner's financial situation may prevent him from repaying the judgment, thus rendering any appeal meaningless. While claimant's attorney indicated during our telephone conference that claimant has some equity in a home, a homestead exemption might protect his equity. (The Court does not intend by this statement to decide whether a homestead exemption would or would not impede recovery of the judgment, only that the issue could be raised.)

A stay of execution of judgment during appeal is governed by section 39-71-2910 (2), MCA, which provides:

The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 7(b), Montana Rules of Appellant Procedure.

The claimant has directed the Court's attention to two prior cases in which the Supreme Court denied stays during appeal. Those cases, however, are distinguishable. In ***Carol Crittendon v. Terri's Restaurant & Lounge***, No. 90-254 (June 20, 1990), the Supreme Court denied a stay on account of the insurer's failure to post a supersedeas bond. At that time there was no provision for a waiver of a bond. In ***State Compensation Insurance Fund v. Joan C. Gaumer***, No. 90-043 (March 27, 1990), the Court denied a stay where there had already been a delay of benefits for two years and the State Fund opposed an expedited appeal and sought to extend the normal briefing period. The delay in this case is not as long and the respondent has indicated it will prosecute its appeal expeditiously.

Balancing the interests of the parties, the Court resolves this matter in favor of respondent. Respondent filed its appeal within days of the Court's original decision and did not attempt to prolong the present proceedings by post-trial motions. Its attorneys have indicated that respondent will pursue the appeal diligently and expeditiously. The issues

raised by respondent are not trivial ones. The motion to stay is therefore granted subject to the Court's receipt of a cash deposit as discussed hereinafter.

Respondent wishes to make a cash deposit in lieu of a supersedeas bond. Claimant has no objection to the substitution and there is express statutory provision for such a substitution. Section 25-1-401, MCA, provides:

Deposition of money in lieu of undertaking. In all cases where an undertaking or bond with sureties is required by the provisions of this code, the plaintiff or defendant may deposit with the clerk of the court or justice of the peace or city judge, as the case may be, a sum of money equal to the amount required by the undertaking or bond, which shall be taken as security in the place thereof. At any time such deposit may be withdrawn by the party making it upon giving the undertaking which sufficient sureties as required by law, approved by the clerk or justice or judge, upon notice to the adverse party or his attorney, who may object to the sufficiency of the sureties in the same manner as though the undertaking were filed in the first instance.

There remains the question of the amount of any deposit. Respondent argued that \$15,000 is sufficient. Claimant requested \$25,000. No specific determination as to the amounts due claimant has been made by the Court and the parties disagree over the date on which claimant reached maximum healing. Having considered the matter, the Court finds that \$20,000 should be sufficient.

THEREFORE, IT IS HEREBY ORDERED that upon receipt of a cash deposit in the amount of \$20,000, the execution for judgment shall be stayed during the pendency of the appeal.

Dated in Helena, Montana, this 12th day of January, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Jon L. Heberling
Mr. Jerry W. Schuster