

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2013 MTWCC 3

WCC No. 2011-2740

OLIN JENSEN

Petitioner

vs.

UNINSURED EMPLOYERS' FUND and MONTANA STATE FUND

Respondents

and

UNINSURED EMPLOYERS' FUND

Third-Party Petitioner

vs.

PAUL KESSLER, STEVEN KESSLER, and JEFF HUNTER, d/b/a/ ARTISTIC EXTERIORS, Jointly and Severally, and DANIEL CHRISTIANSON, Individually and/or Sole Proprietor

Third-Party Respondents

ORDER DENYING THIRD-PARTY RESPONDENT'S MOTION FOR LEAVE TO RE-FILE MOTION FOR SUMMARY JUDGMENT AND REQUIRING PARTIES TO STIPULATE TO AGREED FACTS OR AGREED RECORD TO FACILITATE SUBMISSION OF THIS MATTER ON BRIEFS

Summary: Third-Party Respondent Daniel Christianson moved for leave to re-file his motion for summary judgment, after his initial summary judgment motion was denied on grounds that further discovery was warranted. The parties now wish to submit this matter on briefs and stipulated facts regardless of whether Christianson's motion for leave is granted.

Held: The parties having contacted the Court and indicated their desire to submit this matter on briefs and stipulated facts, judicial economy dictates that Christianson's motion be denied and this matter now be submitted on briefs for full resolution of all issues, based upon a stipulated record or stipulated facts agreed to by all parties.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.329. The Court denied third-party respondent's motion for leave to re-file its motion for summary judgment. Since the parties agreed to submit this matter upon briefs and agreed facts, the Court concluded that following one briefing schedule with another, would be redundant and a waste of time and resources for both the parties and the Court.

¶ 1 On April 3, 2012, Third-Party Respondent Daniel Christianson filed a motion for summary judgment¹ with supporting brief² and affidavits,³ arguing that he had no profit motive in purchasing the property where Petitioner Olin Jensen was injured. The house was therefore not a "business" and he was not responsible for Jensen's injuries in accordance with *Weidow v. Uninsured Employers' Fund*.⁴

¶ 2 Following the filing of response briefs by Jensen⁵ and Respondents Uninsured Employers' Fund (UEF)⁶ and Montana State Fund (State Fund),⁷ Christianson filed a reply brief in support of his motion.⁸

¹ Daniel Christian's [sic] Motion for Summary Judgment, Docket Item No. 49.

² Third Party Respondent Daniel Christian's [sic] Brief in Support of Motion for Summary Judgment (Christianson's Initial Brief), Docket Item No. 50.

³ Affidavit of Daniel Christianson, Docket Item No. 51; Affidavit of James "Jim" Lochow, Docket Item No. 52.

⁴ 2010 MT 292, 359 Mont. 77, 246 P.3d 704; Christianson's Initial Brief at 3.

⁵ Petitioner's Response to Christianson's Motion for Summary Judgment, Docket Item No. 70.

⁶ Uninsured Employers' Fund[s] Response to Third Party Respondent Daniel Christianson's Motion for Summary Judgment, Docket Item No. 72.

⁷ Montana State Fund's Response to Third Party Daniel Christianson's Motion for Summary Judgment, Docket Item No. 74.

⁸ Third Party Respondent Daniel Christian's [sic] Reply Brief in Support of Motion for Summary [Judgment], Docket Item No. 75.

Order Denying Third-Party Respondent's Motion for Leave to Re-File Motion for Summary Judgment and Requiring Parties to Stipulate to Agreed Facts or Agreed Record to Facilitate Submission of this Matter on Briefs – Page 2

¶ 3 On July 10, 2012, oral argument was had on Christianson's motion, and on July 26, 2012, I issued my formal ruling denying Christianson's motion for summary judgment.⁹ I was not persuaded that all material facts and circumstances had been brought to light and agreed to by all parties at that juncture. I ordered the parties to adhere to the Order Resetting Scheduling Order, and provided that, upon completion of further discovery, Christianson may seek leave to re-file his motion for summary judgment.

¶ 4 On December 12, 2012, Christianson filed his Motion for Leave to Re-File Motion for Summary Judgment, attaching to it a copy of his deposition taken November 29, 2012, maintaining that "[i]t is clear from the deposition that Mr. Christianson never had a profit motive for his Anaconda, Montana home or any other property he owned."¹⁰

¶ 5 UEF responded to Christianson's motion, with a supporting affidavit,¹¹ asserting Christianson's deposition "led to further discovery requests" by UEF and Jensen, and that those discovery requests were still outstanding.¹²

¶ 6 Jensen responded to Christianson's motion by asserting no objection.¹³

¶ 7 In Christianson's reply to UEF's response, he agrees there are still outstanding discovery requests, but maintains the issues raised in UEF's response brief were not genuine issues of material fact.¹⁴

¶ 8 On December 12, 2012, UEF's counsel contacted the Clerk of Court and advised that the parties were in agreement to submit this matter on briefs but had not yet agreed

⁹ Order Denying Third-Party Respondent's Motion for Summary Judgment, Docket Item No. 82.

¹⁰ Docket Item No. 93 at 2.

¹¹ Affidavit of Leanora O. Coles in Support of UEF's Response to Third Party Respondent Daniel Christianson's Motion for Leave to Re-File Motion for Summary Judgment, Docket Item No. 96.

¹² Uninsured Employers' Fund[s] Response to Third Party Respondent Daniel Christianson's Motion for Leave to Re-File Motion for Summary Judgment, Docket Item No. 95, at 2.

¹³ Petitioner's Response to Daniel Christianson's Motion for Leave to Re-File Motion for Summary Judgment, Docket Item No. 97.

¹⁴ Reply in Support of Motion for Leave to Re-File Motion for Summary Judgment, Docket Item No. 98.

to a briefing schedule or a date for submission of an agreed statement of facts. The clerk then vacated the pretrial conference and trial date.¹⁵

¶ 9 On January 14, 2013, Jensen's counsel sent an e-mail to the Clerk of Court with copies to all parties, advising that the parties were in agreement to await the Court's decision on Christianson's Motion for Leave to Re-File Motion for Summary Judgment before discussing a briefing schedule.¹⁶

¶ 10 By Court rule, summary judgment motions are disfavored and this Court will decline to rule on such motions where it appears the issues would be more easily resolved by trial.¹⁷ As the parties have agreed to submit this matter upon briefs and agreed facts, to permit Christianson's motion to proceed at this juncture, following one briefing schedule with another, would be redundant and a waste of time and resources for both the parties and the Court.

¶ 11 Third-Party Respondent Christianson's Motion for Leave to Re-File Motion for Summary Judgment is **denied**.

¶ 12 Within thirty (30) days from the date of this Order, the parties shall submit to the Court an agreed statement of facts or an agreed stipulated record, followed by an agreed briefing schedule, to facilitate the submission of this matter on briefs.

SO ORDERED.

DATED in Helena, Montana, this 7th day of February, 2013.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

¹⁵ Telephone Memorandum from Wilson to Parties, Docket Item No. 94.

¹⁶ Docket Item No. 99.

¹⁷ ARM 24.5.329(1)(b).

c: Eric Rasmusson
Leanora O. Coles
William Dean Blackaby
Jeffrey W. Dahood
Paul Kessler, Steven Kessler, and Jeff Hunter, d/b/a Artistic Exteriors

Submitted: December 28, 2012