

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 19

WCC No. 2011-2843

McCONE COUNTY

Petitioner

vs.

STATE OF MONTANA, WC REGULATION BUREAU,
INDEPENDENT CONTRACTOR CENTRAL UNIT

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENT

Summary: Petitioner moves for summary judgment on its appeal of an Independent Contractor Central Unit Decision, finding its contract worker to be an employee rather than an independent contractor for the purposes of her unemployment insurance claim. Respondent opposes the motion and, as there are no material issues of fact, requests summary judgment in its favor as a matter of law.

Held: There being no material issues of fact remaining as to the status of a worker who contracted with Petitioner, this Court may grant summary judgment to the non-moving party as a matter of law. Solely for the purposes of Title 39, Chapter 51, MCA, and the contract worker's unemployment insurance claim, Petitioner's contract worker does not meet the definition of an independent contractor and is therefore an employee, as she had no workers' compensation insurance on herself and no independent contractor exemption certificate. As pertains to any issues beyond Chapter 51, any determination regarding the worker's status would be an advisory ruling, from which I am jurisdictionally constrained. As pertains to the July 12, 2011, Decision which is the subject of this *de novo* proceeding, the ICCU has conceded, and I agree, that Decision is vacated by operation of McCone County's appeal to this Court.

Topics:

Summary Judgment: Nonmoving Party. Where the dispute is purely an issue of law and no issues of material fact remain, it is appropriate to grant summary judgment to the non-moving party if that party is entitled to judgment as a matter of law; generally, no formal cross-motion is required.

Appeals (To Workers' Compensation Court): Generally. Appeals from ICCU determinations are within the jurisdiction of the Workers' Compensation Court, as provided for in § 39-71-415(2)(c), MCA. This Court reviews such determinations *de novo*, and that Decision appealed from is vacated by operation of the appeal.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-51-105. When determining employment status for purposes of an unemployment insurance claim, § 39-51-201(15), MCA, defines an independent contractor (IC) as someone "working under an independent contractor exemption certificate provided for in 39-71-417." Since the alleged IC had neither workers' compensation insurance nor an IC exemption certificate and did not perform service from a fixed business location so as to exempt her from a duty to apply for an IC exemption pursuant to § 39-71-417, MCA, solely for the purposes of Title 39, Chapter 51, MCA, the alleged IC does not meet the definition of an independent contractor and is, therefore, an employee.

Independent Contractor: Independent Contractor Exemption. When determining employment status for purposes of an unemployment insurance claim, § 39-51-201(15), MCA, defines an independent contractor (IC) as someone "working under an independent contractor exemption certificate provided for in 39-71-417." Since the alleged IC had neither workers' compensation insurance nor an IC exemption certificate and did not perform service from a fixed business location so as to exempt her from a duty to apply for an IC exemption pursuant to § 39-71-417, MCA, solely for the purposes of Title 39, Chapter 51, MCA, the alleged IC does not meet the definition of an independent contractor and is, therefore, an employee.

¶ 1 Petitioner McCone County (County) petitioned this Court, disputing the Decision by the Independent Contractor Central Unit (ICCU) that contract worker Dorothy M. Johnson was an employee rather than an independent contractor.

¶ 2 The County now moves this Court for summary judgment in its favor based on a Joint Statement of Uncontested Facts.

¶ 3 The ICCU opposes the motion and requests judgment in its favor, arguing no material facts remain in dispute and that the ICCU is entitled to judgment as a matter of law.

¶ 4 For the reasons set forth below, the County's motion is denied and summary judgment is granted in favor of the ICCU.¹

STATEMENT OF UNDISPUTED FACTS²

¶ 5 Johnson performed caretaking and maintenance work for the County on two cemeteries operated by the County since 2006 pursuant to contracts drafted by the County and signed by Johnson. The contract terms included a flat rate for a year of work and classified Johnson as an independent contractor.

¶ 6 The contracts did not specifically require Johnson to have an independent contractor exemption issued by the Montana Department of Labor and Industry, and Johnson did not have an exemption certificate issued to her pursuant to § 39-71-417, MCA, at any time she performed work for the County.

¶ 7 During the time she performed services at the cemeteries for the County, Johnson did not perform services under contract from her own fixed business location.

¶ 8 Johnson set her own work schedule and provided all the tools and equipment to perform the work.

¶ 9 Each year, the County provided Johnson a 1099 form, and tax records indicate Johnson reported the income as business income.

¶ 10 After Johnson lost her full-time employment, unrelated to the work she performed for the County, she applied for unemployment insurance benefits. As part of the application process for unemployment benefits, Johnson disclosed she had other income based upon her work for the County.

¹ On June 5, 2012, counsel for the parties personally appeared for oral argument on Petitioner's motion for summary judgment. After reviewing the file, reading the briefs, and hearing the arguments of each party, I informed the parties that, solely for the purposes of Chapter 51, Petitioner's contract worker does not meet the definition of an independent contractor and is, therefore, an employee (Minute Book Hearing No.4398). This written Order contains the facts and the Court's analysis in reaching its decision.

² Joint Statement of Uncontested Facts at 1-3, Docket Item No.15.

¶ 11 As a result of Johnson's disclosure of the income received from the County, the Department of Labor and Industry's Unemployment Insurance Division noted that Johnson's income had not been reported as wages. When the County responded that it considered Johnson to be an independent contractor and not an employee for purposes of unemployment insurance benefits, the Department referred the matter to the ICCU.

¶ 12 During the relevant period of July 1, 2006 through June 30, 2011, the ICCU Compliance Specialist found that, while performing services at the cemeteries for the County, Johnson met the "A" test for independent contractor status as being free from undue control by the hiring agent.

¶ 13 During the relevant period of July 1, 2006 through June 30, 2011, the ICCU Compliance Specialist found that, while performing services at the cemeteries for the County, Johnson met the "B" test for independent contractor status by performing work in an independent occupation, profession, or business.

¶ 14 However, the Compliance Specialist determined that Johnson was not an independent contractor during the period she performed services at the cemeteries for the County, because she did not have workers' compensation insurance on herself nor have an independent contractor exemption certificate issued by the Montana Department of Labor and Industry.

¶ 15 The County timely appealed the ICCU determination.

ANALYSIS AND DECISION

¶ 16 Appeals from ICCU determinations are within the jurisdiction of the Workers' Compensation Court, as provided for in § 39-71-415(2)(c), MCA. This Court reviews such determinations *de novo*.³

¶ 17 Summary judgment is appropriate where undisputed facts demonstrate that a party is entitled to judgment as a matter of law.⁴ Where the dispute is purely an issue of law and no issues of material fact remain, it is appropriate to grant summary judgment

³ § 39-71-415(2)(d), MCA; *Hallquist v. Indep. Contractor Central Unit*, 2010 MTWCC 16, ¶ 59.

⁴ *Lewis v. Nine Mile Mines, Inc.*, 268 Mont. 336, 340, 886 P.2d 912, 914 (1994).

to the non-moving party if that party is entitled to judgment as a matter of law.⁵ Generally, no formal cross-motion is required of the non-moving party.⁶

¶ 18 In this case, it is undisputed that Johnson had neither workers' compensation insurance nor an independent contractor exemption certificate pursuant to §§ 39-51-201(15) and 39-71-417, MCA.⁷

¶ 19 In determining employment status for purposes of unemployment insurance, § 39-51-201(15), MCA, defines an independent contractor as someone "working under an independent contractor exemption certificate provided for in 39-71-417."

¶ 20 Section 39-71-417, MCA , states, in part:

(1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

¶ 21 Petitioner cites to two cases in support of its contention that Johnson was an independent contractor: an unreported federal negligence case in which partial summary judgment was issued on the worker status of a deceased defendant;⁸ and *Hallquist v. Indep. Contractor Central Unit*.⁹ Neither is applicable to the present case.

¶ 22 The federal negligence suit to which Petitioner cites has no application to unemployment insurance claims under Title 39, Chapter 51, MCA. In *Hallquist*, I conducted a lengthy analysis of the employee versus independent contractor status of five mechanics, where all of them worked at the same fixed business location and

⁵ *Hereford v. Hereford*, 183 Mont 104, 107-108, 598 P.2d 600, 602 (1979).

⁶ *Wombold v. Montana State Fund*, 2009 MTWCC 40, ¶ 24, citing *In Re Estate of Marson*, 2005 MT 222, ¶ 9, 328 Mont. 348, 120 P.3d 382.

⁷ Joint Statement of Uncontested Facts, Ex. B at 7, ¶ IV.

⁸ *Croskey v. Estate of Cheyney and FedEx Corp.*, No. CV 09-44-M-DWM (D. Mont. 2011) (unreported).

⁹ *Hallquist, supra*.

therefore, “none of the mechanics had a statutory duty to apply for independent contractor exemption certificates.”¹⁰ Such is not the case here.

¶ 23 Here, the parties stipulated that Johnson did not perform service under the contracts from her own fixed business location. She performed her work at the two cemeteries operated by the County.

¶ 24 As noted above, when determining employment status for purposes of unemployment insurance, § 39-51-201(15), MCA, defines an independent contractor as someone “working under an independent contractor exemption certificate provided for in 39-71-417.” Johnson did not have an independent contractor exemption certificate when performing her duties for the County. Although she may have satisfied both parts of the independent contractor test, the statute does not invoke the independent contractor test for situations such as the present one, and it is not the province of this Court to redefine the statute.

¶ 25 Therefore, and solely for the purposes of Title 39, Chapter 51, MCA, Johnson does not meet the definition of an independent contractor and is, therefore, an employee, as she had no workers’ compensation insurance on herself and had no independent contractor exemption certificate.

¶ 26 Since no material issues of fact remain, the ICCU is entitled to summary judgment as a matter of law.¹¹

¶ 27 As pertains to any issues beyond Chapter 51, any determination regarding the worker’s status would be an advisory ruling; therefore, I make no determination regarding Johnson’s employment status beyond the parameters of Chapter 51. As pertains to the July 12, 2011, Decision which is the subject of this *de novo* proceeding, the ICCU has conceded, and I agree, that Decision is vacated by operation of the County’s appeal to this Court.

JUDGMENT

¶ 28 For the foregoing reasons, Petitioner’s motion for summary judgment is DENIED, and summary judgment is GRANTED in favor of Respondent.

¶ 29 Pursuant to ARM 24.5.348(2), this Order is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

¹⁰ *Hallquist, supra.*, ¶ 65.

¹¹ *Hereford, supra.*

DATED in Helena, Montana, this 19th day of June, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Jack A. Holstrom
Michael W. Sehestedt
Mark Cadwallader
Judy Bovington
Submitted: June 5, 2012