

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2014 MTWCC 3A

WCC No. 2013-3193

TARA McCOY

Petitioner

vs.

TRAVELERS CASUALTY & SURETY COMPANY

Respondent/Insurer

and

DEPARTMENT OF LABOR AND INDUSTRY

Intervenor.

ORDER GRANTING INTERVENOR'S MOTION FOR LEAVE TO INTERVENE, MOTION TO INTERVENE, AND INTERVENOR'S MOTION TO AMEND, AND ORDER AMENDING SUMMARY JUDGMENT ORDER *NUNC PRO TUNC* AND DENYING INTERVENOR'S MOTION FOR RECONSIDERATION

Summary: After the Court issued an order granting summary judgment in this matter, Intervenor moved for leave to file a motion to intervene, and further moved to intervene, to amend the Court's decision, or alternatively for reconsideration. Intervenor asked the Court to remove certain language which discussed extraterritorial agreements which Intervenor argued was problematic to other matters, but did not affect the outcome of the summary judgment in this matter. Petitioner had no objection to Intervenor's motions. Respondent took no position, but reserved its right to object if the Court determined that the changes sought by Intervenor altered the Court's ultimate ruling.

Held: Intervenor's motions for leave to file a motion to intervene, to intervene, and to amend are granted. Since the motion to amend is granted, Intervenor's motion for reconsideration is moot. The Court orders the language Intervenor cited to be removed and replaced with new language *nunc pro tunc*.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.309. Where the Department admitted it filed its motion to intervene more than 30 days after the service of the petition, it requested leave of Court to file a motion to intervene, which the Court granted.

Procedure: Intervention. Where the Department admitted it filed its motion to intervene more than 30 days after the service of the petition, it requested leave of Court to file a motion to intervene, which the Court granted.

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Civil Procedure – by Section: Rule 24(b)(2). The Court agreed with the Department that, since it has the right to enter into reciprocal agreements with other states under § 39-71-402, MCA, it had clear justification to intervene in a matter in which this Court interpreted the 2007 Montana-North Dakota Reciprocal Agreement.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-402. The Court agreed with the Department that, since it has the right to enter into reciprocal agreements with other states under § 39-71-402, MCA, it had clear justification to intervene in a matter in which this Court interpreted the 2007 Montana-North Dakota Reciprocal Agreement.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.344. With no objection from the parties, and after granting the Department's motion to intervene, the Court amended its decision to remove language in which this Court ruled on the applicability of the 2007 Montana-North Dakota Reciprocal Agreement. Since the parties had stipulated that the Agreement did not apply, the Court agreed with the Department's representations that the Court's statements about the Agreement were dicta and had created confusion in other cases.

Employment: Montana Employment. With no objection from the parties, and after granting the Department's motion to intervene, the Court amended its decision to remove language in which this Court ruled on the applicability of the 2007 Montana-North Dakota Reciprocal Agreement.

Since the parties had stipulated that the Agreement did not apply, the Court agreed with the Department's representations that the Court's statements about the Agreement were dicta and had created confusion in other cases.

¶ 1 On February 6, 2014, this Court issued an Order Granting Respondent's Motion for Summary Judgment.¹ On February 26, 2014, the Department of Labor and Industry (Department) moved for leave to file a motion to intervene, to intervene, to amend, and to reconsider the Order.²

¶ 2 On March 5, 2014, Petitioner Tara McCoy responded to the Department's Motions, stating that she had no objections to any of the motions brought by the Department.³

¶ 3 On March 12, 2014, Respondent Travelers Casualty & Surety Company (Travelers) responded as well. Travelers stated that it would take no position on the Department's Motions. However, it reserved the right to oppose the motions "if this Court determines that the holding of the case is somehow altered by the Department's proposed modifications."⁴

Motion for Leave to File Motion to Intervene

¶ 4 ARM 24.5.309(2) states that motions to intervene must be served within 30 days of the service of the petition unless otherwise permitted by order of the Court. The Department admits that it filed its motion to intervene more than 30 days after the service of the petition and it therefore requests leave of the Court to file a motion to intervene. ARM 24.5.309(2) further provides that this Court will decide in its discretion whether to allow the intervention. In this case, I find that it is appropriate to permit the late filing of the motion to intervene. Therefore I am granting the Department's motion for leave to file a motion to intervene.

¹ 2014 MTWCC 3.

² Department of Labor and Industry Motion for Leave to Intervene, Motion to Intervene, Motion to Amend, and Motion to Reconsider (Department's Motions), Docket Item No. 24.

³ Petitioner's Stipulation, Docket Item No. 26.

⁴ Response to Department of Labor and Industry's Motion for Leave to Intervene, Motion to Intervene, Motion to Amend, and Motion to Reconsider, Docket Item No. 27, at 1.

Motion to Intervene

¶ 5 The Department further moves for the right to intervene in this matter.⁵ Under ARM 24.5.309(1), intervention in a pending proceeding is governed by M. R. Civ. P. 24(a) & (b). The Department sets forth several arguments by which it believes it should be granted the right to intervene under M. R. Civ. P. 24. Among the arguments the Department offers, it argues that it has the right to intervene under M. R. Civ. P. 24(b)(2), which states:

On timely motion, the court may permit a state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

¶ 6 The Department notes that under § 39-71-402(2), MCA, it has the right, with gubernatorial approval, to enter into reciprocal agreements with other states which allows workers' compensation insurance coverage to travel with a worker from state to state.⁶ In its supporting brief, the Department objected to *McCoy*, ¶ 47, which states:

Section 39-71-402, MCA, was amended with an effective date of March 20, 2013. McCoy was injured on April 22, 2013. Therefore, the 2013 version of § 39-71-402, MCA, was in effect on the date of McCoy's injury. At the outset of oral argument, therefore, I informed counsel that in light of the effective date of § 39-71-402, MCA, I believed the 2013 version of § 39-71-402, MCA, applies to McCoy's claim. I further advised counsel that applying the 2013 version of § 39-71-402, MCA, meant that the 2007 Montana-North Dakota Reciprocal Agreement (MNDRA) would not apply to McCoy's claim because the applicability provision of HB 82⁷ stated that the 2013 version of § 39-71-402, MCA, "applies to agreements entered into on or after [the effective date of this act]." Since the existing MNDRA

⁵ Department's Motions.

⁶ Department of Labor and Industry Memorandum in Support of Motion to Intervene, et al. (Opening Brief), Docket Item No. 25, at 3.

⁷ (Appears as footnote number "⁸" in original.) H.B. 82, 2013 Leg., 63rd Sess. (Mont. 2013). HB 82 is the bill which amended § 39-71-402, MCA.

was entered into prior to the effective date of the 2013 version of § 39-71-402, MCA, it does not apply to this claim. After a lengthy discussion, counsel for both parties agreed and stipulated that the 2013 version of § 39-71-402, MCA, applies to McCoy's claim and the 2007 MNDRA does not.⁸

¶ 7 The Department's interest in this Court's interpretation of § 39-71-402, MCA, provides clear justification for its motion to intervene in the present matter. Furthermore, as noted above, neither party objects to the Department's intervention. I am therefore granting the Department's motion to intervene.

Motion to Amend

¶ 8 Under ARM 24.5.344, a party may request amendment to this Court's findings of fact and conclusions of law. In the present matter, the Department has requested amendment to part of this Court's legal reasoning in its dispositive Order which granted summary judgment in Travelers' favor.⁹ The Department asserts that statements the Court made regarding the applicability of the 2007 Montana-North Dakota Reciprocal Agreement (MNDRA) to McCoy's case are dicta because McCoy and Travelers had stipulated that the MNDRA had no effect on her case.¹⁰ The Department argues that the language the Court used in stating the inapplicability of the MNDRA creates confusion among insurers and in other cases and asks the Court to modify its decision to remove this language.¹¹

¶ 9 In response to the Department's motion to amend, and in light of the other parties' lack of objection, the Department's motion to amend is granted. McCoy, ¶ 47, is amended to read as follows:

Section 39-71-402, MCA, was amended with an effective date of March 20, 2013. McCoy was injured on April 22, 2013. Therefore, the 2013 version of § 39-71-402, MCA, was in effect on the date of McCoy's injury. After discussing this matter during oral argument, counsel for both parties agreed and stipulated that the 2013 version of § 39-71-402, MCA, applies to McCoy's claim.

⁸ McCoy, ¶ 47.

⁹ Opening Brief at 7.

¹⁰ *Id.*; see McCoy, ¶ 47.

¹¹ Opening Brief at 7.

Motion for Reconsideration

¶ 10 In the alternative to its motion to amend, the Department moved for reconsideration of this Court's decision pursuant to ARM 24.5.337. Since I have granted the Department's motion to amend, its motion for reconsideration is denied as moot.

ORDER

¶ 11 The Department's motion for leave to file a motion to intervene is **GRANTED**.

¶ 12 The Department's motion to intervene is **GRANTED**.

¶ 13 The Department's motion to amend is **GRANTED**.

¶ 14 *McCoy*, 2014 MTWCC 3, ¶ 47, is **AMENDED**, *nunc pro tunc*, to read as follows:

Section 39-71-402, MCA, was amended with an effective date of March 20, 2013. McCoy was injured on April 22, 2013. Therefore, the 2013 version of § 39-71-402, MCA, was in effect on the date of McCoy's injury. After discussing this matter during oral argument, counsel for both parties agreed and stipulated that the 2013 version of § 39-71-402, MCA, applies to McCoy's claim.

¶ 15 The Department's motion for reconsideration is **DENIED AS MOOT**.

¶ 16 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.

DATED in Helena, Montana, this 7th day of April, 2014.

(SEAL)

/s/ JAMES JEREMIAH SHEA

JUDGE

c: Richard J. Martin
Dave Whisenand
Quinlan L. O'Connor
Submitted: March 12, 2014