

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2014 MTWCC 9

WCC No. 2013-3216

CRISTITA MOREAU, as Personal Representative of the Estate of Edwin Moreau

Petitioner

vs.

TRANSPORTATION INS. CO.

Respondent/Insurer.

**APPEALED TO MONTANA SUPREME COURT – 05/06/14
REVERSED AND REMANDED FOR FURTHER PROCEEDINGS – 01/06/15**

ORDER ON STANDING AND JURISDICTION

Summary: Petitioner accepted Respondent's settlement offer, which included an agreement that Respondent would reimburse providers for certain medical expenses relating to the claimant's occupational disease. The Libby Medical Plan subsequently refused to accept Respondent's offer to reimburse it for medical bills it paid for the claimant's care. Petitioner argues that Respondent should not be allowed to retain those funds but rather should be required either to pay the funds to Petitioner or to a charity of Petitioner's choice. Upon order of the Court, the parties briefed issues of standing and jurisdiction which have arisen in this matter.

Held: This Court lacks the jurisdiction to hear Petitioner's case under § 39-71-2905, MCA, since no benefits remain in dispute. Petitioner lacks standing to bring this litigation since she has no personal stake in the outcome of the case.

Topics:

Benefits: Medical Benefits: Generally. Where the claimant had received medical services paid for by the Libby Medical Plan, and the Libby Medical Plan subsequently rejected Respondent's offer to reimburse it for the amount it expended for the claimant's care, the Court concluded that Petitioner, the personal representative of the claimant's estate, was

not entitled to receive the funds which the Libby Medical Plan rejected. The claimant received the value of the medical benefits because he actually received the medical services. To award his estate the cash value of the services received would be a double-recovery.

Benefits: Medical Benefits: Lockhart. *Lockhart* stands for the proposition that medical benefits have a value, and that the value of the medical benefits belong to the claimant. It does not stand for the proposition that a claimant is entitled to receive both the medical services and their cash value. Where the claimant received medical services paid for by the Libby Medical Plan, which later rejected Respondent's offer to reimburse it, the Court concluded that Petitioner was not entitled to receive those funds as this would be a double-recovery.

Remedies: Generally. Petitioner, the personal representative of the claimant's estate, is not entitled to receive the cash value of the medical care which the claimant received and which was paid for by the Libby Medical Plan, which refused Respondent's attempt to reimburse it. There is no indication that the Libby Medical Plan has sought or will ever seek reimbursement for the funds it spent on the claimant's case, and therefore awarding Petitioner the amount would allow a double-recovery.

Constitutional Law: Standing. In order for Petitioner to have standing in this matter, she must have a personal stake in the outcome of the litigation. Since the claimant received his medical benefits and his medical providers were paid for providing his care, and since there is no indication that Petitioner can be held liable for reimbursing the Libby Medical Plan for the funds it expended for the claimant's medical care, Petitioner has no personal stake in the outcome of litigation she filed against Respondent in an attempt to force Respondent to divest itself of those funds.

¶ 1 Pursuant to an Order of this Court,¹ the parties submitted a statement of agreed-upon facts and issues of law as well as simultaneous briefing on certain issues Petitioner Cristita Moreau, as Personal Representative of the Estate of Edwin Moreau (Moreau), raised in her Petition for Hearing.

¹ Order Setting Briefing Schedule, Docket Item No. 16.

Agreed Facts²

¶ 2 Edwin Moreau (Edwin) suffered and died from an occupational disease arising out of and in the course of his employment with W.R. Grace & Co. (W.R. Grace).

¶ 3 Respondent Transportation Ins. Co. (Transportation) is W.R. Grace's insurer under Plan 2 of the Montana Occupational Disease Act (ODA).

¶ 4 Edwin's last day of work for W.R. Grace was January 1, 1992.³

¶ 5 Transportation accepted liability for Edwin's occupational disease and his death due to cancer on March 28, 2013.

¶ 6 The parties mediated Transportation's liability for the medical bills Edwin incurred in the treatment of his occupational disease.

¶ 7 The parties have not satisfied the mediation procedure set forth in the Montana Workers' Compensation Act (WCA) regarding Moreau's claim that under the *cy pres* doctrine, Transportation should pay the Montana Justice Foundation for the medical bills the Liberty Medical Plan paid.

¶ 8 On March 28, 2013, Moreau wrote to Transportation and asked it to pay certain medical bills associated with Edwin's asbestos-related disease and cancer.

¶ 9 On May 28, 2013, Moreau sent a second demand to Transportation for payment of the medical bills. Moreau's letter contained the following information regarding bills paid by the Liberty Medical Plan: (1) \$20,503.43 to St. John's Lutheran Hospital for treatment occurring between January 16, 2002, and December 2, 2009; (2) \$44,801.94 to Kalispell Regional Medical Center for treatment occurring between January 23, 2008, and November 17, 2009; (3) \$866 to Lance L. Ercanbrack, M.D., for treatment occurring between July 7, 2009, and August 27, 2009; (4) \$19,743.63 to The HealthCenter for treatment occurring between March 6, 2008, and December 18, 2009; and (5) \$7,834 to Gordon D. Stillie, D.O., for treatment occurring between May 14, 2008, and August 14, 2008, for a total of \$95,846.

¶ 10 On September 5, 2013, Transportation reimbursed Moreau for her out-of-pocket medical expenses and agreed to pay the medical bills paid by the other insurers and Medicaid.

² Taken from Statement of Agreed Facts and Issues of Law, Docket Item No. 17, unless otherwise noted.

³ Petition for Hearing, Docket Item No. 1, at 1; Response to Petition for Hearing, Docket Item No. 4, at 1.

¶ 11 On September 17, 2013, Moreau accepted Transportation's settlement offer. However, Moreau advised Transportation's counsel that if W.R. Grace did not want to be reimbursed for the funds paid for Edwin's treatment out of the Libby Medical Plan, "then the amount should be paid to Petitioner."

¶ 12 On September 18, 2013, Adam Paul, an attorney with Kirkland & Ellis, LLP, which represents W.R. Grace in connection with its bankruptcy, advised that W.R. Grace was not interested in pursuing reimbursement.

¶ 13 Moreau and Transportation have settled and resolved all the issues concerning the payment of medical bills with one exception: the \$95,846 paid by the Libby Medical Plan.

¶ 14 The payments the Libby Medical Plan made for Edwin's medical treatment originally emanated from funds deposited into the Libby Medical Plan by W.R. Grace.

¶ 15 Jay Flynn, M.D., medical director of the Libby Medical Plan, testified in his October 21, 2013, deposition that in 2001, W.R. Grace created the Libby Medical Plan to assist Libby residents in paying for medical costs resulting from asbestos exposure from vermiculite mining in Lincoln County, Montana. On September 21, 2012, the Libby Medical Plan was transferred into the Libby Trust Fund and the Libby Medical Plan ended. However, until September 21, 2014, medical providers may still submit claims to the Libby Medical Plan for payment, and the Libby Medical Plan continues to exist for the payment of such claims.

¶ 16 Dr. Flynn further testified that the Libby Medical Plan paid bills with funds deposited by W.R. Grace, and that the Libby Medical Plan never made any demand for reimbursement nor did it expect reimbursement. Dr. Flynn testified that the Libby Medical Plan paid bills with no strings attached. Dr. Flynn agreed that the bills the Libby Medical Plan paid on Edwin's behalf were for reasonable and necessary medical care related to Edwin's occupational disease.

¶ 17 William M. Corcoran, an executive from W.R. Grace, testified in his October 23, 2013, deposition that W.R. Grace is not making any claim for reimbursement. Corcoran stated that the amounts W.R. Grace deposited into the Libby Medical Plan were voluntary with no conditions. Corcoran stated that W.R. Grace is making no claim for reimbursement of Edwin's medical bills. Corcoran further testified that, regardless of the source of the funds, W.R. Grace would not accept reimbursement for bills paid by the Libby Medical Plan.

¶ 18 The parties submitted the depositions of Dr. Flynn and Corcoran into evidence without objection.⁴

Issues

¶ 19 The parties submit the following issues of law:⁵

Issue One: Whether Moreau has standing to request reimbursement for medical bills paid by the Libby Medical Plan when the Libby Medical Plan is not seeking reimbursement from Transportation.

Issue Two: Whether a dispute giving rise to the jurisdiction of this Court exists where the Libby Medical Plan paid medical bills and the Libby Medical Plan is not seeking reimbursement of those payments from Transportation.

Issue Three: Whether this Court has the jurisdiction to determine if medical bills paid by the Libby Medical Plan for which the Libby Medical Plan is not seeking reimbursement constitutes “unclaimed property” subject to payment under the *cy pres* doctrine by Transportation to the Montana Justice Foundation, or in the alternative, whether medical bills paid by the Libby Medical Plan for which the Libby Medical Plan is not seeking reimbursement should be paid to Moreau by Transportation.

Analysis and Decision

¶ 20 For the Court to grant summary judgment, the moving party must establish that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.⁶ The material facts necessary for disposition of this case are undisputed. Accordingly, this case is appropriate for summary disposition.

¶ 21 This case is governed by the 1991 version of the WCA and the Montana Occupational Disease Act since those were the laws in effect on Edwin’s last day of work for his time-of-injury employer.⁷

¶ 22 Section 39-71-2905, MCA, sets forth the jurisdiction of this Court:

⁴ Exs. 1 and 2 to Statement of Agreed Facts and Issues of Law.

⁵ Statement of Agreed Facts and Issues of Law at 3-4.

⁶ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

⁷ *Grenz v. Fire & Cas. of Conn.*, 278 Mont. 268, 271, 924 P.2d 264, 266 (1996).

A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71.

¶ 23 Moreau contends that jurisdiction to hear her claim properly rests in this Court because a dispute concerning benefits exists, thereby meeting the requirements of § 39-71-2905, MCA. Specifically, she argues:

The fact that the [Libby Medical Plan] refused to accept reimbursement for the medical bills it paid for Edwin Moreau's treatment does not erase the fact that there remains a dispute over those medical benefits. [Moreau] has asserted that she is entitled to be paid the medical benefits, or that the unclaimed benefits should be directed to an appropriate charity. [Transportation] . . . asserts that it is entitled to keep the \$95,846 in medical benefits.⁸

¶ 24 Transportation notes that under § 39-71-2905, MCA, no jurisdiction rests in this Court if no dispute concerning benefits exists.⁹ Transportation contends that since the Libby Medical Plan is not seeking reimbursement of the medical payments it made for Edwin's care, there is neither a "dispute concerning benefits under this chapter" nor "benefits due" so as to invoke the Court's jurisdiction under § 39-71-2905, MCA.¹⁰

¶ 25 Moreau argues that Transportation has incorrectly categorized the medical benefits owed to the Libby Medical Plan as belonging to the Libby Medical Plan.

⁸ Petitioner's Brief Regarding Standing and Jurisdiction (Moreau's Opening Brief), Docket Item No. 19, at 5.

⁹ Respondent's Brief Re: Statement of Agreed Facts and Issues of Law (Transportation's Opening Brief), Docket Item No. 18, at 5.

¹⁰ Transportation's Opening Brief at 5-6.

Moreau argues that under *Lockhart v. New Hampshire Ins. Co.*, the Montana Supreme Court determined that medical benefits constitute “compensation” and are therefore benefits belonging to the claimant.¹¹ Moreau offers the following passage from *Lockhart* in support of her argument:

We agree with *Lockhart* and Petak that **medical benefits are not the property of the medical providers** simply because the medical providers are the actual recipients of the money. Nor do we believe that the medical benefits are simply an obligation of the insurer. **The benefits are the individual claimant’s**¹²

Moreau therefore argues that this Court has jurisdiction over the present dispute because a dispute exists between the parties as to whom those benefits should be paid.¹³

¶ 26 Transportation disagrees with Moreau’s interpretation of *Lockhart*. Transportation argues that the issue in *Lockhart* concerned whether attorneys’ liens could attach to medical benefits. Transportation asserts that the holding does not stand for the proposition that claimants can keep funds which are intended to pay medical providers. Transportation notes that the sentence from *Lockhart* which Moreau truncated in her brief reads in full: “The benefits are the individual claimant’s and as such, the claimant should be allowed to pay the attorney fees out of his or her medical benefits.”¹⁴ Transportation argues that the *Lockhart* holding only allows a claimant to pay his or her attorney’s fees out of the awarded medical benefits, and does not give a claimant the right to a windfall in the form of a monetary award for the amount of medical benefits owed.¹⁵ Transportation argues that it would be inappropriate for the Court to extend the *Lockhart* holding beyond the issue of attorney fee liens in order to allow claimants to obtain windfalls of reimbursement for medical benefits when the medical provider does not wish for reimbursement.¹⁶

¶ 27 Moreau replies that under *Lockhart*, medical benefits are compensation “payable to the claimant,” and that she could and did demand that Transportation pay the medical

¹¹ Moreau’s Opening Brief at 5 (citing *Lockhart*, 1999 MT 205, ¶ 24, 295 Mont. 467, 984 P.2d 744).

¹² *Id.* (quoting *Lockhart*, ¶ 24). (Emphasis Moreau’s.)

¹³ Moreau’s Opening Brief at 6.

¹⁴ Respondent’s Reply Brief Re: Statement of Agreed Facts and Issues of Law (Transportation’s Reply Brief), Docket Item No. 20, at 9 (quoting *Lockhart*, ¶ 24).

¹⁵ Transportation’s Reply Brief at 9.

¹⁶ *Id.*

benefits to her, and therefore this Court has jurisdiction because a dispute over benefits exists.¹⁷

¶ 28 I do not find the facts underlying the present case to be analogous to the facts in *Lockhart*. *Lockhart* stands for the proposition that medical benefits have a value, and that the value of the medical benefits belong to the claimant. In the present case, Edwin received the value of the medical benefits insofar as he actually **received** the medical services at issue. Moreover, the Libby Medical Plan fully compensated his medical providers for those services. Had Edwin's claim been litigated and found non-compensable, Moreau would not have owed reimbursement to Edwin's medical providers as they have been paid. Furthermore, she would not have been obligated to reimburse the Libby Medical Plan. Therefore, Moreau has no further entitlement to these funds, and so long as a claim for reimbursement cannot be made against her or against Edwin's estate, she has no legal interest in where those funds go. *Lockhart* does not stand for the proposition that an injured worker is entitled to receive both medical services **and** the cash value for those medical services. If I were to award the \$95,846 reimbursement to Moreau, she would receive a double-recovery as Edwin already received \$95,846 in medical services for which his estate owes nothing.

¶ 29 Moreau further contends that the facts of this case are similar to those of *Schmill v. Liberty Northwest Ins. Corp.*, in which the Montana Supreme Court concluded that this Court has the jurisdiction to award common fund attorney fees.¹⁸ In *Schmill*, the insurer argued that the claimant had no standing to seek the enforcement of common fund benefits or attorney fees asserted against those benefits because her claims were resolved by earlier litigation.¹⁹ The Montana Supreme Court concluded that the insurers had misidentified the legal nature of the common fund attorney fee lien and that previous decisions in *Schmill* had established not only the entitlement to benefits, but the entitlement to payment of the benefits owed.²⁰ The court concluded that the attorney fee lien did not attach only to Schmill's benefits, but to the entire common fund.²¹

¶ 30 Transportation responds that the court's reasoning in *Schmill* does not extend beyond common fund actions. Transportation argues that *Schmill* is further distinguished from the present case because Schmill's attorney initiated a common fund

¹⁷ Petitioner's Reply Brief Regarding Standing and Jurisdiction, Docket Item No. 21, at 2.

¹⁸ Moreau's Opening Brief at 7 (citing *Schmill*, 2009 MT 430, ¶19, 354 Mont. 88, 223 P.3d 842).

¹⁹ *Schmill*, ¶ 18.

²⁰ *Schmill*, ¶ 19.

²¹ *Schmill*, ¶ 20.

action to benefit other claimants, whereas in the present case, no separate action to benefit other claimants exists.²²

¶ 31 Moreau claims that when the Libby Medical Plan refused to accept reimbursement of the \$95,846 it spent on Edwin’s medical care, a “pool of benefits” was created, and that under *Schmill*, this Court has the jurisdiction to resolve this dispute.²³ Moreau further argues that the Court has the jurisdiction to award this “pool of benefits” to a charity because in *Murer v. State Comp. Mut. Ins. Fund*, the Montana Supreme Court held that attorney fees could be paid from a common fund.²⁴

¶ 32 In *Murer*, the Montana Supreme Court characterized common fund cases as “unique litigation.”²⁵ The court noted:

These common fund doctrine cases provide that when a party has an interest in a fund in common with others and incurs legal fees in order to establish, preserve, increase, or collect that fund, then that party is entitled to reimbursement of his or her reasonable attorney fees from the proceeds of the fund itself.²⁶

¶ 33 *Murer* held that the claimants’ attorneys were entitled to reasonable attorney fees pursuant to the common fund doctrine, noting that the underlying litigation was “complex, lengthy, and expensive” and that the claimants established a legal precedent which directly benefitted a substantial number of claimants.²⁷ These facts are not present in Moreau’s case. Although I do not agree entirely with Transportation’s position that the court’s reasoning in *Schmill* and *Murer* cannot be considered in the present case simply because they are common fund cases, I nonetheless conclude that it is a stretch to find the award of attorney fees in common fund cases to be analogous to requiring an insurer to donate an unwanted reimbursement of medical payments to a charitable organization. When the Libby Medical Plan refused reimbursement of the \$95,846 expenditure, it did not create a common-fund type pool of benefits. If the facts in this case were such that Moreau’s counsel was being denied attorney fees for that

²² Transportation’s Reply Brief at 9-10.

²³ Moreau’s Opening Brief at 7.

²⁴ *Id.* (citing *Murer*, 283 Mont. 210, 942 P.2d 69 (1997)).

²⁵ *Murer*, 283 Mont. at 222, 942 P.2d at 76.

²⁶ *Id.*

²⁷ *Murer*, 283 Mont. at 223, 942 P.2d at 76.

\$95,846 because of the Libby Medical Fund's refusal to accept the reimbursement, then the logic of *Schmill* might apply. However, that is not the situation before the Court.

¶ 34 Moreau further argues that she has standing to pursue this claim in this Court because she has alleged a personal stake in the outcome of the controversy.²⁸

¶ 35 Transportation responds that Moreau has no personal stake in the outcome of this case, and that she cannot interject herself into the issue simply by asserting that Transportation should pay the \$95,846 to her if the Libby Medical Plan does not want it. Transportation argues that since no demand for payment or reimbursement has been made against Moreau, she lacks the standing to bring this issue before the Court.²⁹

¶ 36 A party has no standing when there is no personal stake in the outcome of the controversy.³⁰ Standing is one of several justiciability doctrines which limit Montana courts to deciding only "cases" and "controversies." A court lacks power to resolve a case brought by a party without standing – i.e., a personal stake in the outcome – because such a party presents no actual case or controversy.³¹ To meet the constitutional case-or-controversy requirement, the plaintiff must clearly allege a past, present, or threatened injury to a property or civil right.³²

¶ 37 In *Liberty Northwest Ins. Corp. v. Behr*, this Court held that a workers' compensation insurer had no standing to bring a claim in this Court where it had no stake in the outcome of a claimant's tort action against the insurer's insured.³³ In that case, the insurer filed a petition in this Court after the claimant filed a tort action against the insured and waived her entitlement to workers' compensation benefits. This Court reasoned that no case or controversy existed between the claimant and the insurer after the claimant waived her claim for workers' compensation benefits.³⁴

²⁸ Moreau's Opening Brief at 4.

²⁹ Transportation's Opening Brief at 4.

³⁰ *In re Paternity of Vainio*, 284 Mont. 229, 235, 943 P.2d 1282, 1286 (1997). (Citation omitted.)

³¹ *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 29, 360 Mont. 207, 255 P.3d 80. (Citation omitted.)

³² *Heffernan*, ¶ 33. (Citations omitted.)

³³ *Behr*, 1998 MTWCC 56, ¶ 6.

³⁴ *Behr*, ¶¶ 2, 5.

¶ 38 Relying on *Behr*, Transportation argues that where a claimant has no personal stake in the outcome of a controversy, the claimant should not be able to force the insurer to action.³⁵

¶ 39 Contrary to Moreau's contention, Transportation has not refused to pay Edwin's medical benefits. Edwin actually received the benefits in the form of medical care. As I held above, Moreau has not proven why she should receive a double recovery – both the medical care and the cash value of that medical care. In this case, the Libby Medical Plan has rejected the reimbursement it was offered. There is no indication that the Libby Medical Plan has sought or ever will seek reimbursement for the funds it spent on Edwin's medical care.

¶ 40 In order for Moreau to have standing in this matter, she must, as noted above, have a personal stake in the outcome of this litigation. Since Edwin received his medical benefits and his medical providers were paid for providing that care, and since there is no indication that Moreau can be held liable for reimbursing the Libby Medical Plan for paying for Edwin's care, Moreau has no personal stake in the outcome of this litigation, and therefore lacks standing to pursue this suit.

ORDER

¶ 41 Petitioner has no standing to pursue this action against Respondent. The Court therefore has no jurisdiction over this matter.

¶ 42 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 8th day of April, 2014.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Laurie Wallace
Jon Heberling
Ethan Welder
Todd A. Hammer

Submitted: December 6, 2013

³⁵ Transportation's Opening Brief at 3.