

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 31

WCC No. 2008-2032

GAYLE PINNOW

Petitioner

vs.

HALVERSON, SHEEHY & PLATH, P.C.

Respondent

and

MONTANA STATE FUND

Intervenor.

ORDER GRANTING INTERVENOR'S MOTION FOR SUMMARY JUDGMENT,
DISMISSING INTERVENOR, AND CHANGING CAPTION

Summary: Intervenor moved for summary judgment on whether the Stipulation for Settlement is valid and enforceable. Respondent concurred with Intervenor's arguments. Petitioner did not file a response to Intervenor's motion.

Held: Under ARM 24.5.329(3), any party opposing a motion for summary judgment shall include in their opposition a brief statement of genuine issues, setting forth the specific facts which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party. Under ARM 24.5.316(4), failure to file briefs may subject the motion to summary ruling. Failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well-taken. Intervenor's motion for summary judgment is therefore well-taken.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.316. Under ARM 24.5.316(4), failure to file briefs may

subject the motion to summary ruling, and failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well-taken. Intervenor's motion for summary judgment on one of the issues in this case was granted where Respondent responded that Intervenor's motion was well-taken and Petitioner filed no response, leading the Court to conclude Intervenor's motion should be granted.

¶ 1 Intervenor Montana State Fund moved for summary judgment on one of the issues in this case pending before the Court.¹ Intervenor asks this Court to issue an order stating that the Stipulation for Settlement is a valid and enforceable contract and that Petitioner no longer has any claims against Intervenor.

¶ 2 In its brief, Intervenor asserts that Petitioner and Intervenor entered into a Stipulation for Settlement on February 17, 2005, that the Stipulation for Settlement was signed by Petitioner, and that this Court issued an Order and Judgment on February 22, 2005, approving the Stipulation for Settlement, and dismissing the case with prejudice. Petitioner then notified this Court on March 1, 2005, that she wished to repudiate the settlement. On April 20, 2005, this Court issued an order granting the motion to withdraw by Petitioner's previous counsel (now Respondent in this case). This Court also ordered Intervenor's counsel to hold the settlement checks pending Petitioner's decision on how she wanted to proceed. On November 10, 2005, Intervenor moved the Court for an order enforcing the Stipulation for Settlement. On November 22, 2005, Petitioner withdrew her objection to the stipulated settlement but reserved her dispute regarding her counsel's attorney fees. Petitioner subsequently accepted payment and signed a Satisfaction of Judgment in which she reserved her attorney fee issue but agreed to release Intervenor from liability.

¶ 3 Respondent Halverson, Sheehy & Plath, P.C., responded to Intervenor's motion, arguing that Intervenor's motion is well-taken and that Petitioner's ratification of the settlement is dispositive of the issue.²

¶ 4 Intervenor then replied in concurrence with Respondent's response.³

¹ Intervenor Montana State Fund's Motion for Summary Judgment, Docket Item No. 12, and Intervenor Montana State Fund's Brief in Support of Motion for Summary Judgment, Docket Item No. 13.

² Respondent's Response to Intervenor Montana State Fund's Motion for Summary Judgment, Docket Item No. 15.

³ Intervenor Montana State Fund's Reply to Respondent's Response to Intervenor's Motion for Summary Judgment, Docket Item No. 17.

¶ 5 Petitioner never responded to Intervenor's motion for summary judgment. Under ARM 24.5.329(3), any party opposing a motion for summary judgment shall include in their opposition a brief statement of genuine issues, setting forth the specific facts which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party. Under ARM 24.5.316(4), failure to file briefs may subject the motion to summary ruling. Failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well-taken. Therefore, I conclude that Intervenor's motion for summary judgment is well-taken. I further conclude that the Stipulation for Settlement is a valid and enforceable contract and that Petitioner no longer has any claims against Intervenor.

JUDGMENT

¶ 6 Intervenor's motion for summary judgment is GRANTED.

¶ 7 The Stipulation for Settlement is a valid and enforceable contract. Petitioner no longer has any claims against Intervenor.

¶ 8 Judgment is satisfied as to both of Petitioner's claims against Intervenor.

¶ 9 Intervenor is DISMISSED from this case and the caption shall be changed to reflect the same.

DATED in Helena, Montana, this 20th day of June, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Roy W. Johnson
J. David Slovak
Michael P. Heringer/William A. D'Alton
Submitted: May 19, 2008