

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2009 MTWCC 9

WCC No. 2007-1955

MONTANA STATE FUND

Petitioner/Insurer

vs.

RANDALL SIMMS

Respondent/Claimant.

ORDER DENYING RESPONDENT'S MOTION
FOR GRANT OF USE IMMUNITY AND DERIVATIVE USE IMMUNITY

Summary: Respondent moved this Court for an Order granting use and derivative use immunity for himself and his wife. Petitioner and the Office of the Attorney General for the State of Montana both objected to Respondent's motion.

Held: This Court lacks the authority to grant the immunity Respondent seeks. His motion is denied.

Topics:

Jurisdiction: Subject Matter Jurisdiction. The Montana Supreme Court's holding in *Pinnow v. Montana State Fund*, 2007 MT 332, made it clear that the Workers' Compensation Court has the powers enumerated in § 39-71-2901(2), MCA, and elsewhere in Title 39, Chapter 71, of the Montana Code Annotated, but does not automatically have the powers granted to other courts without express authority. No statutory authority within Title 39, Chapter 71, supports a grant of immunity as being within the power of this Court, and therefore the Court lacks the jurisdiction to grant the immunity Respondent seeks.

Jurisdiction: Workers' Compensation Court. The Montana Supreme Court's holding in *Pinnow v. Montana State Fund*, 2007 MT 332, made it clear that the Workers' Compensation Court has the powers enumerated in § 39-71-2901(2), MCA, and elsewhere in Title 39, Chapter 71, of the Montana Code Annotated, but does not automatically have the powers granted to other courts without express authority. No statutory authority within Title 39, Chapter 71, supports a grant of immunity as being within the

power of this Court, and therefore the Court lacks the jurisdiction to grant the immunity Respondent seeks.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2901. The Workers' Compensation Court has the powers enumerated in § 39-71-2901(2), MCA, and elsewhere in Title 39, Chapter 71, of the Montana Code Annotated, but does not automatically have the powers granted to other courts without express authority. No statutory authority within Title 39, Chapter 71, supports a grant of immunity as being within the power of this Court, and therefore the Court lacks the jurisdiction to grant the immunity Respondent seeks.

Witnesses: Immunity. The Workers' Compensation Court has the powers enumerated in § 39-71-2901(2), MCA, and elsewhere in Title 39, Chapter 71, of the Montana Code Annotated, but does not automatically have the powers granted to other courts without express authority. No statutory authority within Title 39, Chapter 71, supports a grant of immunity as being within the power of this Court, and therefore the Court lacks the jurisdiction to grant the immunity Respondent seeks.

¶ 1 Respondent Randall Simms moves this Court for an Order granting use and derivative use immunity for himself and his wife Carol Simms for any evidence they provide in this matter. Respondent wants this Court to order that any testimony or evidence he or his wife provides may not be used against either of them in any criminal proceeding except a prosecution for perjury.¹

¶ 2 Respondent asserts that Petitioner Montana State Fund wants him to provide evidence and testimony pertaining to the dispute in the present case. Respondent states that Assistant Attorney General Deborah Butler has stated that the Office of the Attorney General does not intend to prosecute Respondent for theft of workers' compensation benefits; however, Butler's statement of intent is not a grant of immunity and is likely not binding upon the Office of the Attorney General. Respondent argues that without a grant of immunity, he will be forced to choose between equally undesirable courses of action. He and his wife may invoke their rights under the Federal Constitution and the Montana State Constitution and refuse to answer questions or written discovery which may tend to be self-incriminating, or he and his wife may opt to defend against Petitioner's claim on the merits and risk the possibility of future criminal prosecution.²

¶ 3 Respondent argues that under § 46-15-331, MCA, this Court has the statutory authority to grant immunity, and furthermore alleges that a grant of immunity is found within the inherent powers of this Court. Section 46-15-331(1), MCA, states:

¹ Claimants' Motion for Grant of Use Immunity and Derivative Use Immunity, Docket Item No. 53.

² Brief in Support of Claimants' Motion for Grant of Use Immunity and Derivative Use Immunity at 2-3, Docket Item No. 54.

Before or during trial in any judicial proceeding, a judge of the district or municipal court, upon request by the prosecutor or defense counsel, may require a person to answer any question or produce any evidence, even though personally incriminating, following a grant of immunity.

Respondent further argues:

Even in the absence of this statute the Court has the authority to grant such immunity through its inherent power “to control discovery;” its inherent power to control matters before it; its inherent “authority to control trial administration;” its inherent power “to take such precautions as are necessary to afford a fair trial for all parties;” and its “inherent authority to control trial administration in the interest of fairness and justice.”³

¶ 4 Petitioner responds and objects to Respondent’s request for immunity in this Court. Petitioner argues that no grounds justify a grant of immunity to Respondent and his wife because they face no pending charges, investigations, or proceedings. Petitioner further argues that Montana law does not authorize this Court to grant immunity, and that § 46-15-331, MCA, relied upon by Respondent, grants authority only to district and municipal court judges and not to the judge of the Workers’ Compensation Court.⁴ Petitioner further argues that case law which affirms this Court’s inherent power to control its docket and provide fair and orderly trials cannot be stretched to include substantial rights such as grants of immunity, which go beyond the Court’s inherent powers for docket control and trial procedure.⁵

¶ 5 The Attorney General has also filed an objection to Respondent’s request for immunity.⁶

¶ 6 In support of its argument regarding this Court’s alleged lack of jurisdiction to grant Respondent’s request for immunity, Petitioner relies on *Pinnow v. Montana State Fund*,⁷ in which the Montana Supreme Court, noting that jurisdiction is conferred on courts only by the Constitution or statutes adopted pursuant to the Constitution, found that this Court had no statutory authority to substitute a judge. The Supreme Court relied in part on § 39-71-2901(2), MCA, which enumerates the powers of this Court:

The workers’ compensation court has power to:
(a) preserve and enforce order in its immediate presence;

³ *Id.* at 3. (Citations omitted.)

⁴ Montana State Fund’s Response/Objection to Claimants’ Motion for Grant of Use Immunity and Derivative Use Immunity at 1-2, Docket Item No. 57.

⁵ *Id.* at 2-3.

⁶ Notice of Objection to Claimant’s Motion and Order for Grant of Use Immunity and Derivative Use Immunity, Docket Item No. 55.

⁷ 2007 MT 332, ¶¶ 20-23, 340 Mont. 217, 172 P.3d 1273.

- (b) provide for the orderly conduct of proceedings before it and its officers;
- (c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;
- (d) compel the attendance of persons to testify; and
- (e) punish for contempt in the same manner and by the same procedures as in district court.

¶ 7 The Montana Supreme Court's holding in *Pinnow* made it clear that this Court has the powers enumerated in § 39-71-2901(2), MCA, and elsewhere in Title 39, Chapter 71, of the Montana Code Annotated, but does not automatically have the powers granted to other courts without express statutory authority. I find no statutory authority within Title 39, Chapter 71, to support a grant of immunity as being within the power of this Court. I therefore conclude that this Court lacks the jurisdiction to grant the immunity Respondent seeks. His motion is therefore denied.

ORDER

¶ 8 Respondent's motion for immunity is **DENIED**.

DATED in Helena, Montana, this 9th day of March, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Thomas E. Martello
Bradley J. Luck
Gene R. Jarussi
Michael G. Eiselein
Lawrence A. Anderson
Deborah F. Butler (courtesy copy)
Submitted: February 6, 2009