

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2009 MTWCC 21**

**WCC No. 2009-2282**

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**BRAD STOKES**

**Petitioner**

**vs.**

**LIBERTY MUTUAL**

**Respondent/Insurer.**

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**ORDER DENYING RESPONDENT'S MOTION TO DISMISS**

**Summary:** Liberty moved to dismiss Stokes' petition, alleging that Stokes failed to state a claim for which relief could be granted. Stokes responded that Liberty has not paid medical benefits to which he is entitled under the settlement, and further discussed his dissatisfaction with the settlement, including allegations of mutual mistake of fact.

**Held:** In his petition, Stokes asked the Court to order Liberty to pay for medical expenses that he believes are related to his industrial injury, and further requested that his settlement be reopened "due to ongoing disability." His response to Liberty's motion further expounds upon these prayers for relief. While not perfectly pled, Stokes' petition states a claim for which relief could be granted. Liberty's motion is therefore denied.

**Topics:**

**Pleading: Statement of a Claim.** Where a pro sé claimant argued that his settlement should be reopened, contending among other allegations that some of his medical information was missing at the time of the settlement and that he suffered unforeseen complications from surgery, the insurer's motion to dismiss on the grounds that case law does not support the claim is denied. To determine whether the present case is factually distinguishable from past cases is premature and perhaps impossible to do, no matter how precisely pled.

**Procedure: Motion to Dismiss.** Motions to dismiss are granted only where the allegations of the petition or complaint either show that the claimant is not entitled to relief of any sort, or discloses an “insuperable bar” to recovery. Where a pro sé claimant’s prayer for relief can reasonably be construed as fitting within relief available under the WCA, the insurer’s motion to dismiss is denied.

¶ 1 Respondent Liberty Mutual moves this Court to dismiss Petitioner Brad Stokes’ Petition for Hearing, alleging that Stokes has failed to state a claim for which relief could be granted.<sup>1</sup> Stokes, appearing pro sé, objects to Liberty’s motion and argues that he is entitled to additional medical benefits and to have his settlement reopened.<sup>2</sup>

¶ 2 In *Fleming v. International Paper Company*, this Court noted:

Motions to dismiss are viewed with disfavor and will be granted only where the allegations of the petition or complaint either show that the claimant is not entitled to relief of any sort, or discloses an “insuperable bar” to recovery. . . . For purposes of the motion, all well pleaded allegations of the petition are deemed true.<sup>3</sup>

¶ 3 For purposes of the present motion, Stokes’ allegations as pled in his Petition for Hearing are deemed true. Stokes contends that he needs to have his settlement reopened “due to ongoing medical problems.”<sup>4</sup> In pursuing his quest for compensation, Stokes asked the Court for the following relief:

- 1) To maintain medical to original injury, be paid.
- 2) To re-open settlement due to ongoing disability.<sup>5</sup>

¶ 4 In its brief in support of the present motion, Liberty argues that while under ARM 24.5.301(1)(c), a petitioner need only file “a short, plain statement of petitioner’s contentions,” this rule is analogous to Mont. R. Civ. P. 8(a)(1), which requires “a short and

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<sup>1</sup> Liberty Mutual’s Brief in Support of Motion to Dismiss. Docket Item No. 5.

<sup>2</sup> Uncaptioned response brief of Petitioner Brad Stokes, dated June 30, 2009. Docket Item No. 13.

<sup>3</sup> *Fleming*, 2005 MTWCC 35, ¶ 4 (citations omitted).

<sup>4</sup> Petition for Hearing at 1, ¶ 3. Docket Item No. 1

<sup>5</sup> Petition for Hearing at 2.

plain statement of the claim showing the pleader is entitled to relief,” and that Stokes fails to meet this burden in his Petition for Hearing<sup>6</sup>.

¶ 5 Liberty relies on *Miller v. State Comp. Ins. Fund*,<sup>7</sup> in which the Court set forth grounds for reopening settlements, and argues that Stokes has pled none of these grounds and therefore this Court should dismiss his Petition. In its brief, Liberty does not address Stokes’ prayer for medical benefits. However, in its response to Stokes’ Petition for Hearing, Liberty stated that Stokes’ settlement reserved medical benefits.<sup>8</sup>

¶ 6 Stokes responded to Liberty’s motion in a narrative format, and while his argument is not a model of clarity, it is also not incoherent. Stokes alleges that: some of his medical information was missing at the time of the settlement; he had unforeseen complications from his surgery; he signed the settlement “under a great deal of protest”; that the job analyses which were created were for nonexistent jobs; and that \$69,000 of his \$100,000 in medical bills remains unpaid.

¶ 7 In reply, Liberty argues that Stokes’ petition should be dismissed because Stokes failed to sufficiently plead the facts and elements of his claim in that document, and further argues that even if Stokes had pled the facts which he set forth in his response brief, his Petition for Hearing would still be properly dismissed. Liberty interprets Stokes’ argument to be that “the future severity of his injuries was underestimated,” and argues that this argument was rejected by the Montana Supreme Court in *Kruzich v. Old Republic Ins. Co.*<sup>9</sup>

¶ 8 In relying on *Kruzich*, Liberty overlooks *Gamble v. Sears*,<sup>10</sup> in which the Montana Supreme Court reached a different result on a similar, but distinguishable, set of facts. In *Kruzich*, the injured worker contracted Parkinson’s or a similar disease likely as a sequela of his industrial injury many years after he settled his claim.<sup>11</sup> In that case, the Montana Supreme Court held that the injured worker did not have grounds to reopen his settlement because the disease did not exist at the time the parties entered into the settlement, and “a failure to predict the future is not a mistake of fact as contemplated by the mutual

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<sup>6</sup> Liberty Mutual’s Brief in Support of Motion to Dismiss at 2.

<sup>7</sup> *Miller*, 2000 MTWCC 72.

<sup>8</sup> Liberty Mutual’s Response to Petition at 1-2. Docket Item No. 3.

<sup>9</sup> Liberty Mutual’s Reply Brief in Support of Motion to Dismiss at 1; *Kruzich*, 2008 MT 205, 344 Mont. 126, 188 P.3d 983.

<sup>10</sup> *Gamble*, 2007 MT 131, 337 Mont. 354, 160 P.3d 537.

<sup>11</sup> *Kruzich*, ¶ 12.

mistake-of-fact doctrine.”<sup>12</sup> However, in *Gamble*, the injured worker apparently fractured her odontoid in her industrial accident, but it was not diagnosed until after she settled her claim.<sup>13</sup> In that case, the Montana Supreme Court upheld rescinding the settlement agreement when it determined that Gamble fractured her odontoid in the industrial accident, asserting that the parties were mutually mistaken as to a material fact regarding her physical condition.<sup>14</sup>

¶ 9 In the present case, it is premature for this Court to decide that Stokes’ claim is more like *Kruzich* than *Gamble*. Such a determination would be impossible to make from the contentions in almost any petition, no matter how precisely pled. Furthermore, Stokes’ allegation that Liberty has failed to pay medical benefits to which he is entitled under the terms of his settlement agreement is likewise an allegation which allows Stokes to seek relief in this Court.

¶ 10 In *Miller*, the Court examined the pro sé claimant’s petition, and while acknowledging that it was “not as clear as it could be,” interpreted the claimant’s prayer for relief in a manner which reasonably restated it to fall within relief available under the Workers’ Compensation Act (WCA).<sup>15</sup> In the present case, Stokes’ prayer for relief can also be reasonably construed as fitting within relief available under the WCA. As this Court noted in *Fleming*, as stated above, motions to dismiss will be granted only where the allegations of the petition or complaint either show that the claimant is not entitled to relief of any sort, or discloses an “insuperable bar” to recovery. Liberty has not proven this to be the case in the present situation and its motion is therefore denied.

#### ORDER

¶ 11 Liberty’s motion to dismiss is **DENIED**.

DATED in Helena, Montana, this 16th day of July, 2009.

(SEAL)

JAMES JEREMIAH SHEA  
JUDGE

c: Brad Stokes  
Leo S. Ward  
Submitted: July 6, 2009

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<sup>12</sup> *Kruzich*, ¶¶ 22-23 (citing *Gamble*, ¶ 46).

<sup>13</sup> *Gamble*, ¶¶ 14-15.

<sup>14</sup> *Gamble*, ¶¶ 28, 44-47.

<sup>15</sup> *Miller*, ¶ 3.