

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 12

WCC No. 2006-1583

AUGUSTINA STURCHIO

Petitioner

vs.

WAUSAU UNDERWRITERS INSURANCE COMPANY

Respondent/Insurer.

ORDER DENYING STAY OF EXECUTION OF JUDGMENT AND
DENYING WAIVER OF SUPERSEDEAS BOND

Summary: Respondent has appealed the Court's decision regarding Petitioner's weekly TTD benefit rate to the Montana Supreme Court. Respondent now moves this Court for a stay of execution of judgment, and to waive posting of a supersedeas bond. Petitioner does not object to the stay of execution of judgment, but requests that the Court require Respondent to post the supersedeas bond or make a cash deposit.

Held: Respondent has provided no evidence to support its argument that the Court should allow it to waive the supersedeas bond requirement. Since a stay of execution of judgment pending appeal may only be had by either presenting a supersedeas bond or by waiver of the bond, Respondent's motion for stay of execution must also be denied.

Topics:

Judgments: Enforcement: Stays of Execution. In *Harrison v. Liberty Northwest Ins. Corp.*, 2006 MTWCC 24, ¶ 13, the Court stated that the decision whether to grant a stay rests within this Court's discretion, and that *Ingebretson v. Louisiana-Pacific Corp.*, 1994 MTWCC 113-A, established the criteria as "[b]alancing the interests of the parties." However, the balancing of the interests only comes into play *after* the statutory and regulatory requirements have been met.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.346. In a case in which the parties have not stipulated that no bond is required, in order to waive the bond requirement under ARM 24.5.346, it must be shown to the satisfaction of the Court that adequate security exists for payment of the judgment. Only then may the Court waive the bond requirement. In the present case, Respondent has provided no proof that adequate security exists and therefore the Court is not satisfied and Respondent's request to waive the supersedeas bond is denied.

Appeals (to Supreme Court): Supersedeas Bond. In a case in which the parties have not stipulated that no bond is required, in order to waive the bond requirement under ARM 24.5.346, it must be shown to the satisfaction of the Court that adequate security exists for payment of the judgment. Only then may the Court waive the bond requirement. In the present case, Respondent has provided no proof that adequate security exists and therefore the Court is not satisfied and Respondent's request to waive the supersedeas bond is denied.

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Appellate Procedure - by Section: Rule 7. Pursuant to Mont. R. App. P. 7(b), upon service of a notice of appeal, "if the appellant desires a stay of execution, the appellant must, unless the requirement is waived by the opposing party, present to the district court and secure its approval of a supersedeas bond" ARM 24.5.346 explains that, except as provided within the rule, the procedure to be followed is that set out in Mont. R. App. P. 7(a)-(b). In the case at hand, Petitioner has not waived the requirement of the bond, and since Respondent has not posted a supersedeas bond, the Court denies its motion for stay of execution of judgment.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.346. ARM 24.5.346 explains that, except as provided within the rule, the procedure to be followed is that set out in Mont. R. App. P. 7(a)-(b). Pursuant to Mont. R. App. P. 7(b), upon service of a notice of appeal, "if the appellant desires a stay of execution, the appellant must, unless the requirement is waived by the opposing party, present to the district court and secure its approval of a supersedeas bond" In the case at hand, Petitioner has not waived the requirement of the bond, and since Respondent has not posted a supersedeas bond, the Court denies its motion for stay of execution of judgment.

Appeals (to Supreme Court): Stay of Execution of Judgment. Where Respondent did not post a supersedeas bond nor show to the satisfaction of the Court that adequate security exists for payment of the judgment, and where Petitioner did not waive the requirement of the bond, this Court denies Respondent's motion for stay of execution of judgment.

Judgments: Enforcement: Stays of Execution. Where Respondent did not post a supersedeas bond nor show to the satisfaction of the Court that adequate security exists for payment of the judgment, and where Petitioner did not waive the requirement of the bond, this Court denies Respondent's motion for stay of execution of judgment.

¶1 Respondent moved this Court for an order staying the judgment in this matter and waiving posting of a supersedeas bond. Alternatively, Respondent requests that the Court issue an order requiring Petitioner to repay any monies paid pursuant to the Court's judgment if Respondent prevails on appeal.

¶2 Petitioner responded that, while she does not oppose the requested stay of execution of judgment, she objects to the waiver of the bond and requests that the Court require Respondent to either post the bond or make a cash deposit in the amount of \$15,187.26.

¶3 Respondent, relying upon *Harrison v. Liberty Northwest Ins. Corp.*,¹ argues that *Harrison* holds that the Court must balance the interests of the parties in deciding whether to grant a stay and waive the bond. Petitioner notes that in *Harrison*, since the stay of execution was denied, the Court did not address the issue of waiver of the supersedeas bond.

¶4 It is true that in *Harrison*, the Court, citing language from *Ingebretson v. Louisiana-Pacific Corp.*,² stated that the decision whether to grant a stay rests within this Court's discretion, and that *Ingebretson* established the criteria as "[b]alancing the interests of the parties."³ However, the balancing of the interests of the parties only comes into play *after* the statutory and regulatory requirements have been met.

¹ 2006 MTWCC 24

² 1994 MTWCC 113-A

³ *Harrison*, ¶ 13.

¶5 A motion for stay and waiver of bond is governed by § 39-71-2910(2), MCA, which provides:

(2) The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. . . . A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 7(b), Montana Rules of Appellate Procedure.

¶6 ARM 24.5.346 gives additional guidance for the waiver of the bond, explaining, "If the parties stipulate that no bond shall be required, or if it is shown to the satisfaction of the court that adequate security exists for payment of the judgment, the court may waive the bond requirement." The rule further provides that except as provided within the rule, the procedure to be followed is that set out in Mont. R. App. P. 7(a) and 7(b).

¶7 In the case at hand, the parties have not stipulated that no bond shall be required. Thus, to waive the bond requirement under ARM 24.5.346, it must be shown to the satisfaction of the Court that adequate security exists for payment of the judgment. Then – and only then – may the Court, in its discretion, waive the bond requirement. It is at that point that the Court, as it did in *Harrison*, makes a determination by balancing the interests of the parties. In the present case, Respondent has provided no proof that adequate security exists for payment of the judgment and this Court would be derelict if it were to simply presume that adequate security exists. Therefore, the Court is not satisfied that adequate security exists for payment of the judgment, and Respondent's request to waive the supersedeas bond is denied.

¶8 ARM 24.5.346 further explains that, except as provided within the rule, the procedure to be followed is that set out in Mont. R. App. P. 7(a) and 7(b). Pursuant to Mont. R. App. P. 7(b), upon service of a notice of appeal, "if the appellant desires a stay of execution, the appellant **must**, unless the requirement is waived by the opposing party, present to the district court and secure its approval of a supersedeas bond" ⁴ Petitioner has not waived the requirement of the bond, although Petitioner has offered to do so in the event that Respondent submits a cash deposit instead.

⁴ Mont. R. App. P. 7(b) (emphasis added).

¶9 Therefore, the Court denies Respondent's motion for stay of execution of judgment because Respondent has not posted a supersedeas bond. However, if, within fourteen days of the date of this Order, Respondent either posts a bond or submits a cash deposit in the amount of \$15,187.26, the Court will grant a stay of execution of the judgment.

SO ORDERED.

DATED in Helena, Montana, this 15th day of March, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: J. Kim Schulke
Larry W. Jones
Submitted: March 7, 2007