

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2009 MTWCC 40A

WCC No. 2009-2253

RITA M. WOMBOLD, Personal Representative of the Estate of
BLAINE LEE WOMBOLD

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENT

Summary: The Court denied Petitioner's motion for summary judgment in this matter. Although no material facts remained in dispute and the issue before the Court was purely an issue of law, the Court did not grant summary judgment in favor of Respondent because Respondent had not cross-motivated for summary judgment. The Court noted that while generally no formal cross-motion is necessary for a court to enter summary judgment in favor of a nonmoving party, Petitioner must be afforded an opportunity to be heard.

Held: Petitioner has informed the Court that she does not object to the Court's entry of summary judgment in favor of Respondent. For the reasons set forth in *Wombold v. Montana State Fund*, 2009 MTWCC 40, the Court concludes that summary judgment in favor of Respondent is appropriate and is therefore granted.

¶ 1 In response to this Court's Order denying her motion for summary judgment,¹ Petitioner Rita M. Wombold (Wombold), Personal Representative of the Estate of Blaine Lee Wombold, has responded and stated that she has no objection to this Court entering judgment in favor of Respondent Montana State Fund (State Fund).²

¹ *Wombold v. Montana State Fund*, 2009 MTWCC 40.

² Response to Order, Docket Item No. 26.

Procedural History

¶ 2 In *Wombold*, I denied Wombold's motion for summary judgment. Noting that no material facts remained in dispute and that the issue before the Court was purely an issue of law, I stated that it may be appropriate to enter judgment in favor of State Fund. In that regard, I noted the following caveat:

Generally, no formal cross-motion is necessary for a court to enter summary judgment in favor of the nonmoving party. However, Wombold must be afforded notice and an opportunity to be heard before the Court determines that this case warrants judgment in favor of State Fund. Therefore, the Court will reserve entering judgment in this matter until such time as Wombold has had the opportunity to be heard regarding entry of summary judgment in favor of State Fund.³

¶ 3 Since Wombold has responded that she has no objection to entry of summary judgment in State Fund's favor, I now do so.

Summary Judgment

¶ 4 For the reasons set forth in *Wombold v. Montana State Fund*, 2009 MTWCC 40, I conclude that State Fund is entitled to summary judgment as a matter of law.

JUDGMENT

¶ 5 Summary judgment in favor of Respondent Montana State Fund is **GRANTED**.

¶ 6 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED in Helena, Montana, this 15th day of January, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA

JUDGE

c: Sydney E. McKenna
Thomas E. Martello
Submitted: December 31, 2009

³ *Wombold*, ¶ 24. (Internal citations omitted.)