

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2015 MTWCC 14

WCC No. 2015-3532

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CARL C. "CHRIS" YOUNG

Petitioner

vs.

NEW HAMPSHIRE INS. CO.

Respondent/Insurer.

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ORDER DISMISSING FOR LACK OF SUBJECT MATTER JURISDICTION

**Summary:** Respondent contended in its Response to Petition for Hearing that the parties had not completed the mandatory mediation process when Petitioner filed his Petition for Hearing (Injury). Petitioner concedes that the parties had not completed the mediation process when he filed his Petition for Hearing (Injury). However, relying on maxims of jurisprudence, such as "The law neither does nor requires idle acts," Petitioner argues that this Court has jurisdiction because the parties were entrenched in their positions and that the mediation process was therefore "a complete waste of time."

**Held:** This Court does not have subject matter jurisdiction and therefore this case is dismissed without prejudice. In 2004, the Montana Supreme Court held, "the Workers' Compensation Court does not have jurisdiction during the pendency of a statutorily-mandated mediation, given that a claimant may only petition the Workers' Compensation Court 'after satisfying dispute resolution requirements otherwise provided' in the Workers' Compensation Act—such as mandatory mediation." Thus, in 2005, this Court warned, "[I]n the future, all petitions which are filed before completion of mandatory mediation will be dismissed." This case is no exception.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2408.** In *Preston v. Transportation Ins. Co.*, 2004 MT 339, ¶ 36, the Montana Supreme Court held that mediation is mandatory under the Workers' Compensation Act and must be completed before a party can petition this Court for relief. Since *Preston*, this Court has strictly

construed the requirement that the mediation process be completed before a petition is filed. This case is no exception.

**Mediation: General.** In *Preston v. Transportation Ins. Co.*, 2004 MT 339, ¶ 36, the Montana Supreme Court held that mediation is mandatory under the Workers' Compensation Act and must be completed before a party can petition this Court for relief. Since *Preston*, this Court has strictly construed the requirement that the mediation process be completed before a petition is filed. This case is no exception.

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2408.** "Substantial compliance" with the mediation requirement of § 39-71-2408, MCA, is insufficient to confer jurisdiction on this Court. An incomplete mediation must be dismissed for lack of jurisdiction.

**Mediation: General.** "Substantial compliance" with the mediation requirement of § 39-71-2408, MCA, is insufficient to confer jurisdiction on this Court. An incomplete mediation must be dismissed for lack of jurisdiction. It would defeat the purpose of the mediation statutes to allow parties to circumvent the mediation process by simply stating they have no possibility of settling the dispute.

**Jurisdiction: Workers' Compensation Court: Mediation Requirement.** Parties must complete the mandatory mediation process before a party may petition this Court to resolve a dispute. It would defeat the purpose of the mediation statutes to allow parties to circumvent the mediation process by simply stating they have no possibility of settling the dispute.

¶ 1 On April 3, 2015, this Court ordered the parties to brief the issue of this Court's subject matter jurisdiction over this case due to questions surrounding the completion of the mediation process prior to the filing of Petitioner Carl C. "Chris" Young's Petition for Hearing (Injury).<sup>1</sup> The matter is now ripe for decision.

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<sup>1</sup> Order Setting Briefing Schedule (Briefing Schedule), Docket Item No. 6.

## Factual Background<sup>2</sup>

¶ 2 On February 28, 2012, Young filed a Petition for Mediation regarding the initial compensability of his claim.

¶ 3 On April 11, 2012, Young and Respondent New Hampshire Ins. Co. (New Hampshire) participated in a mediation conference. New Hampshire accepted Young's claim under a reservation of rights and began paying temporary total disability (TTD) benefits. It does not appear that the mediator issued a Report and Recommendation pursuant to § 39-71-2411(6), MCA.

¶ 4 On March 29, 2013, New Hampshire terminated Young's TTD benefits and denied further liability for his claim.

¶ 5 On August 29, 2013, Young filed a new Petition for Mediation regarding New Hampshire's termination of the TTD benefits it had paid Young under a reservation of rights.

¶ 6 On October 2, 2013, the parties participated in a mediation conference.

¶ 7 On February 19, 2015, the mediator issued a Notice of Reconvening the Telephone Mediation Conference.

¶ 8 On March 5, 2015,<sup>3</sup> Young filed a Petition for Hearing (Injury). Young sought reinstatement of his TTD and medical benefits.<sup>4</sup>

¶ 9 On March 26, 2015, the parties participated in the "reconvened" mediation conference. New Hampshire denied liability for Young's claim.

¶ 10 On March 26, 2015, the mediator issued a Mediation Report and Recommendation.

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<sup>2</sup> Unless otherwise noted, facts taken from Petitioner's Brief; Re: Order Setting Briefing Schedule Dated April 3, 2015 (Opening Brief), Docket Item No. 8, which Respondent has not disputed. See Respondent's Answer Brief at 2, Docket Item No. 14.

<sup>3</sup> Young alleges in his Opening Brief that he filed the Petition for Hearing (Injury) on March 2, 2015, but it was actually filed with the Court on March 5, 2015.

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

## Analysis

¶ 11 The 2009 version of the Workers' Compensation Act (WCA) applies to this case as that was the law in effect on the date of Young's alleged injury.<sup>5</sup>

¶ 12 "Jurisdiction involves the fundamental power and authority of a court to determine and hear an issue. Accordingly, subject-matter jurisdiction can never be forfeited or waived."<sup>6</sup> "Subject matter jurisdiction is an issue that may be raised *sua sponte* and at any time."<sup>7</sup>

¶ 13 The plain language of the WCA establishes that this Court does not have subject matter jurisdiction until the mandatory mediation process is completed. Section 39-71-2401(1), MCA, states:

A dispute concerning benefits arising under this chapter, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

Likewise, § 39-71-2408(1), MCA, states:

Except as otherwise provided, in a dispute arising under this chapter, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

Finally, § 39-71-2905(1), MCA, states in relevant part:

After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under this chapter . . . .<sup>8</sup>

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<sup>5</sup> *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687 (citation omitted); § 1-2-201, MCA.

<sup>6</sup> *Thompson v. State of Montana*, 2007 MT 185, ¶ 28, 338 Mont. 511, 167 P.3d 867 (citations omitted).

<sup>7</sup> *Spurlock v. Montana State Fund*, 2003 MTWCC 49, ¶ 10.

<sup>8</sup> Briefing Schedule, ¶ 3.

¶ 14 In *Preston v. Transportation Ins. Co.*, the Montana Supreme Court held that, as set forth in §§ 39-71-2408(1) and -2905(1), MCA, mediation is mandatory under the WCA and must be completed before a party can petition this Court for relief. The court stated:

As § 39-71-2408(1), MCA, states, mediation is mandatory under the Workers' Compensation Act before a party can even petition the Workers' Compensation Court for relief. In addition, the Workers' Compensation Court does not have jurisdiction during the pendency of a statutorily-mandated mediation, given that a claimant may only petition the Workers' Compensation Court "after satisfying dispute resolution requirements otherwise provided" in the Workers' Compensation Act—such as mandatory mediation.<sup>9</sup>

¶ 15 Since *Preston*, this Court has strictly construed the requirement that the mediation process be completed before a petition is filed. In *Kutzler v. Montana State Fund*, this Court recognized that, although in the past it had held some petitions in abeyance until mediation was completed, it could no longer continue this practice given the Supreme Court's reasoning in *Preston*. Thus, this Court warned:

[I]n the future, all petitions which are filed before completion of mandatory mediation will be dismissed. While it may be more convenient to simply stay proceedings until mediation is completed, the failure to complete mediation is a jurisdictional defect and the appropriate remedy is dismissal. The mediation requirement is notorious and there is no excuse for failing to comply with it.<sup>10</sup>

¶ 16 Nonetheless, Young argues that this Court should find jurisdiction in spite of his failure to complete the mediation process before he filed his Petition for Hearing (Injury). Young alleges that the purpose of the statutory mediation procedure "is to afford the parties the opportunity to present their respective positions to a mediator with the hope that a settlement . . . may take place . . ."<sup>11</sup> He argues that in this case, the parties satisfied the purpose of the statutory provisions, and that further mediations will not change the parties' respective positions. Young states, "Respondent denied and

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<sup>9</sup> *Preston*, 2004 MT 339, ¶ 36, 324 Mont. 225, 102 P.3d 527.

<sup>10</sup> *Kutzler*, 2005 MTWCC 5, ¶¶ 10-11 (quoting *Thompson v. Crow Tribe of Indians*, 1998 MT 161, ¶ 12, 289 Mont. 358, 962 P.2d 577, "Once a court determines that it lacks jurisdiction, then it can take no further action in the case other than to dismiss it.")

<sup>11</sup> Opening Brief at 3-4.

continues to deny the initial compensability of the claim.”<sup>12</sup> Thus, he explains that he filed his Petition for Hearing (Injury) before the mediation process was completed because he found the mediations to be “a complete waste of time.”<sup>13</sup> Young argues that it should make no difference whether the report and recommendation was issued “the day before, the day of or the day after” the filing of the petition.<sup>14</sup> Or presumably, as in Young’s case, three weeks after.<sup>15</sup> Young argues that dismissing his case on the grounds of subject matter jurisdiction would violate many of Montana’s Maxims of Jurisprudence,<sup>16</sup> such as, “The law neither does nor requires idle acts.”<sup>17</sup> He further argues that New Hampshire’s position regarding jurisdiction cannot be justified since New Hampshire has pursued discovery, thereby belying its concern regarding jurisdiction.<sup>18</sup>

¶ 17 This Court, however, has rejected the argument that substantial compliance with the mediation requirement is sufficient and since the mediation requirement is a jurisdictional requirement, it would be improper to do so.<sup>19</sup> In *Burke v. Roseburg Forest Products Co.*,<sup>20</sup> this Court concluded that it lacked subject matter jurisdiction in a case where the parties participated in mediation, but the mediator had not issued a report at the time the claimant filed a petition in this Court. This Court ruled that the mediation was incomplete and determined that it must dismiss the case for lack of jurisdiction. This Court noted that although the parties had completed the statutorily-mandated mediation process after the claimant filed the petition but prior to this Court’s ruling on jurisdiction, this Court could not entertain the case since the Court lacked jurisdiction at the time the petition was filed. This Court explained that if it proceeded:

[T]his case would be moving forward under a cloud of uncertainty as to whether the jurisdiction that had been lacking from the inception of this case and through the following two months, could now be retroactively

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<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> New Hampshire further notes that under *Burke*, ¶ 9, this Court held that not only must the mediator issue a report and recommendation, but the petitioning party must notify the mediator of the party’s acceptance or rejection of the mediator’s recommendations prior to filing a petition.

<sup>16</sup> See §§ 1-3-201 et seq., MCA.

<sup>17</sup> § 1-3-223, MCA.

<sup>18</sup> Opening Brief at 4.

<sup>19</sup> See *State v. Vickers*, 1998 MT 201, ¶ 24, 290 Mont. 356, 964 P.2d 756 (holding that substantial compliance with the procedures for appointing a substitute justice of the peace was insufficient to confer jurisdiction upon a substitute judge).

<sup>20</sup> *Burke*, 2009 MTWCC 32.

restored. As impractical as it may seem to dismiss the petition and restart the process at this juncture, it is much more impractical to proceed to trial with the specter of restarting the process after an appeal.<sup>21</sup>

¶ 18 The same reasoning applies here. This Court knows that there are many cases in which the parties are entrenched in their positions and a settlement during the mediation process is unlikely. Regardless, the mediation process must be completed before a party petitions this Court to resolve their dispute. It would defeat the purpose of the mediation statutes to allow parties to proceed to this Court without completing the mediation process by simply stating that there is no possibility of a settlement.<sup>22</sup> While New Hampshire has conducted discovery, it had no obligation to suspend its defense of Young's claim, nor does its defense constitute a waiver of its position that this Court lacks jurisdiction. Since Young filed his Petition for Hearing (Injury) before the mediation process was completed, this Court lacks jurisdiction over this case.

#### ORDER

¶ 19 Petitioner's Petition for Hearing (Injury) is **dismissed without prejudice**.

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

DATED this 18<sup>th</sup> day of June, 2015.

(SEAL)

/s/ DAVID M. SANDLER  
JUDGE

c: Thomas A. Marra  
Kelly M. Wills

Submitted: May 15, 2015

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<sup>21</sup> *Id.*, ¶¶ 2, 9-10.

<sup>22</sup> See *Buck v. Buck*, 2014 MT 344, ¶¶ 18-20, 377 Mont. 393, 340 P.3d 546 (citations omitted) (holding that in some circumstances, a jurisdictional defect can be cured by a supplemental pleading).