

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 88

WCC No. 9505-7291

DARRELL J. CHIPPEWA

Petitioner

vs.

NORTH WEST PHONE SYSTEMS

Employer

and

MONTANA STATE COMPENSATION INSURANCE FUND

Insurer/Respondent

and

**CHILD SUPPORT ENFORCEMENT DIVISION,
Department of Family and Health Services**

Respondent.

ORDER DISMISSING PETITION

Summary: Child Support Enforcement Division of the Department of Family and Health Services obtained writs of attachment garnishing claimant's biweekly temporary total disability benefits for payment of his child support obligation. Claimant filed petition in the Workers' Compensation Court challenging the lawfulness of the garnishment. The insurer and the CSED argued this Court lacks jurisdiction over the petition.

Held: Workers' Compensation Court lacked subject matter jurisdiction over claimant's objection to garnishment of his biweekly temporary total disability benefits by Child Support Enforcement Division of the Department of Family and Health Services. Not only were the writs of execution on claimant's benefits were issued by the Montana District Court, not by

the WCC, and but the matter of garnishment is not a dispute “concerning benefits” over which the WCC has jurisdiction.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-2905, MCA (1985). Workers’ Compensation Court lacked subject matter jurisdiction over claimant’s objection to garnishment of his biweekly temporary total disability benefits by Child Support Enforcement Division of the Department of Family and Health Services. Not only were the writs of execution on claimant’s benefits issued by the Montana District Court, not by the WCC, but the matter of garnishment is not a dispute “concerning benefits” over which the WCC has jurisdiction.

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-2401 (1985). Workers’ Compensation Court lacked subject matter jurisdiction over claimant’s objection to garnishment of his biweekly temporary total disability benefits by Child Support Enforcement Division of the Department of Family and Health Services. Not only were the writs of execution on claimant’s benefits issued by the Montana District Court, not by the WCC, but the matter of garnishment is not a dispute “concerning benefits” over which the WCC has jurisdiction.

Benefits: Garnishment. Workers’ Compensation Court lacked subject matter jurisdiction over claimant’s objection to garnishment of his biweekly temporary total disability benefits by Child Support Enforcement Division of the Department of Family and Health Services. Not only were the writs of execution on claimant’s benefits issued by the Montana District Court, not by the WCC, and the matter of garnishment is not a dispute “concerning benefits” over which the WCC has jurisdiction.

Jurisdiction: Subject Matter. Workers’ Compensation Court lacked subject matter jurisdiction over claimant’s objection to garnishment of his biweekly temporary total disability benefits by Child Support Enforcement Division of the Department of Family and Health Services. Not only were the writs of execution on claimant’s benefits issued by the Montana District Court, not by the WCC, but the matter of garnishment is not a dispute “concerning benefits” over which the WCC has jurisdiction.

This petition, commenced by Darrell J. Chippewa (Chippewa), attacks the Child Support Enforcement Division's garnishment of his workers' compensation benefits. His Amended Petition for Hearing, filed July 25, 1995, alleges that he is receiving workers'

compensation benefits on account of an industrial injury he suffered on March 21, 1987, while working for North West Phone Systems. The State Compensation Insurance Fund has been paying benefits. However, his benefits have been garnished by the Child Support Enforcement Division (CSED). According to the Amended Petition for Hearing:

3. Respondent Child Support Enforcement Division ("CSCD") [sic] has obtained a Writ of Execution from a district court of the State of Montana and has levied upon Claimant's biweekly workers' compensation benefits in the past and continues to levy on his accruing biweekly temporary total disability benefits pursuant to said Writ of Execution. A dispute exists between the parties with respect to attaching and levying upon Claimant's workers' compensation benefits pursuant to a child support order. Claimant contends that the law in effect on the date of his injury prohibits such levy, § 39-71-743, MCA (1985). Claimant has demanded that said levies cease, but both the Insurer State Compensation Insurance Fund ("SCIF") and CSCD [sic] have refused the demand.

Chippewa seeks a determination that the garnishment is illegal under the Workers' Compensation Act. He also seeks assessment of a penalty, attorney fees and costs against the State Fund because it has honored the writ of execution garnishing his benefits.

Both the State Fund and the CSED move to dismiss the petition for lack of subject matter jurisdiction. They argue Chippewa's benefits are not at issue and that the Workers' Compensation Court is therefore without jurisdiction to determine the legality of the garnishment. They contend that the court which issued the writ of execution must decide the matter. This Court agrees.

Under Rule 12(h)(3), Mont.R.Civ.P., "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Rule 12(b)(1) permits a lack of subject matter defense to be raised in a motion to dismiss. While the Workers' Compensation Court has not adopted the Montana Rules of Civil Procedure, it has looked to the Rules of Civil Procedure for guidance where its own rules do not cover the procedural issue in question. That practice has been approved by the Supreme Court, *Murer v. State Compensation Mut. Ins. Fund*, 257 Mont. 434, 436, 849 P.2d 1036, 1037 (1993), and we will continue to follow the practice whenever appropriate. In this case, the Court will follow Rule 12 in disposing of the motion to dismiss.

On its face, the Amended Petition for Hearing sets forth the facts necessary for a determination of jurisdiction. The most essential of those facts is CSED's on-going levy against Chippewa's biweekly workers' compensation benefits and the issuance of the writ of execution. A review of the Workers' Compensation Court records shows that it has not issued any writ or authorized any levy.

Additional facts appearing from documentation provided by CSED and State Fund, and not challenged by Chippewa, provide additional context. Those facts are as follows:

1. On December 16, 1986, CSED issued a Notice of Intent to Withhold Income. (Ex. 1 to Brief in Support of Respondents' Joint Motion to Dismiss for Lack of Subject Matter.) The Notice states that Chippewa was \$21,889.73 in arrears on his child support obligations. (*Id.* at 1.) The Notice was served on Chippewa on January 8, 1987. (*Id.* at 3.)
2. On October 30, 1991, CSED issued an Order to Withhold to the State Fund. The Order directed the State Fund to withhold from Chippewa's benefits and pay over to CSED the sum of \$225.00 monthly. (Ex. 2 to Brief in Support of Respondents' Joint Motion to Dismiss for Lack of Subject Matter.)
3. According to the petition, the State Fund has complied with the Order. A CSED worksheet prepared on October 7, 1993, reflects CSED's monthly receipt of between \$103.56 and \$236.40 commencing in December 1991. (Ex. 3 to Brief in Support of Respondents' Joint Motion to Dismiss for Lack of Subject Matter.)
4. On October 18, 1993, CSED applied to the Montana District Court for the Eighth Judicial District, Cascade County, for two writs of execution. (Exs. 3 and 4 to Brief in Support of Respondents' Joint Motion to Dismiss for Lack of Subject Matter.)
5. On October 19, 1993, the District Court issued writs directing the Sheriff of Lewis and Clark Count to levy \$345.00 against any lump sum claimant might receive from the State Fund. (Exs. 3 and 5 to Brief in Support of Respondents' Joint Motion to Dismiss for Lack of Subject Matter.)
6. The Sheriff levied on October 27, 1993, but no monies were available to satisfy the levies. (Exs. 4 and 6 to Brief in Support of Respondent's Joint Motion to Dismiss.)

Discussion

The jurisdiction of the Workers' Compensation Court is governed by sections 39-71-2905 and 39-71-2401, MCA. Those sections provide in relevant part:

39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a **dispute concerning any benefits** under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise

provided in this chapter. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. 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 chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71. [Emphasis added.]

39-71-2401. Disputes — jurisdiction — evidence — settlement requirements — mediation. (1) **A dispute concerning benefits** arising under this chapter or chapter 72, 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.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the division jurisdiction must be brought before the division. [Emphasis added.]

The dispute in this case does not concern benefits due the claimant or touch upon matters which affect his entitlement to benefits. There is no dispute alleged over the benefits owed by the State Fund. CSED has merely used legal process to garnish and intercept a portion of the benefits before they can reach Chippewa. The garnishment no more creates a dispute over benefits than does a garnishment of wages create a wage dispute between employer and employee.

The cases cited by Chippewa are inapposite. The question in *State v. Hunt*, 191 Mont. 514, 625 P.2d 539 (1981), was who was claimant's employer. That determination affected benefits since it concerned who would be chargeable for payment of those benefits. Other cases cited by Chippewa concern determinations regarding either medical benefits or the responsible insurer, matters which ultimately involve the payment of benefits.

I recognize that attachment and garnishment of workers' compensation benefits is regulated under Title 39, chapter 71, specifically by section 39-71-743, MCA. Chippewa relies on the 1985 version of the section. Under that version, attachment and garnishment was broadly prohibited. However, the section was amended in 1987 to permit attachment

and garnishment of both periodic and lump-sum benefits. 1987 Montana Laws, ch. 485, § 1. Since attachment and garnishment are legal remedies, the usual rule requiring application of the law in effect at the time of injury may not apply. See *Neel v. First Federal Savings and Loan Assoc. of Great Falls*, 207 Mont. 376, 675 P.2d 96 (1984). However, I need not determine which version applies. Under both sections 39-71-2905 and 39-71-240, MCA, the jurisdiction of the Workers' Compensation Court extends only to matters affecting benefits due under chapter 71. Garnishment and attachment are not matters concerning benefits, rather they are legal remedies to enforce money judgments.

The motion to dismiss is **granted**. The petition is **dismissed with prejudice** and this judgment of dismissal is certified as final for purposes of appeal.

Dated in Helena, Montana, this 2nd day of November, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Richard J. Martin
Ms. Ann E. Clark
Ms. April Armstrong
Mr. Joseph P. Mazurek - Courtesy Copy
Submitted: October 13, 1995