

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2024 MTWCC 1

WCC No. 2023-00281

MONTANA STATE FUND

Petitioner

IN RE: APPOINTMENT OF A GUARDIAN *AD LITEM* TO REPRESENT T.G., THE
ADULT CHILD (Disabled) OF BARON GRAY (Deceased)

AMENDED
ORDER CHANGING CAPTION
AND
ORDER DENYING MONTANA STATE FUND'S
MOTION FOR ORDER APPOINTING GUARDIAN *AD LITEM*

Summary: Petitioner moved for an order appointing a guardian *ad litem* to protect the interests and administer the beneficiary benefits of decedent's disabled adult child.

Held: This Court denied Petitioner's motion to appoint a guardian *ad litem* because this Court does not have jurisdiction to appoint a guardian *ad litem* when there is no dispute over benefits or to appoint a conservator at any time.

¶ 1 The caption in this matter is changed to protect the privacy of T.G., a disabled person.

¶ 2 T.G. is the adult child (disabled) of Baron Gray (deceased).

¶ 3 T.G.'s mother acted as T.G.'s guardian *ad litem* until her death on August 8, 2022.

¶ 4 At that time, Petitioner Montana State Fund (State Fund) suspended payment of bi-weekly beneficiary benefits.

¶ 5 State Fund now seeks the appointment of a replacement guardian *ad litem* to protect T.G.'s interests and administer her benefits.

¶ 6 State Fund owes \$19,046.19 in back-owed benefits and \$534.36 in bi-weekly benefits for the duration of T.G.'s life.

¶ 7 State Fund's motion is **denied** for two reasons.

¶ 8 First, this Court lacks jurisdiction to appoint a guardian *ad litem* in this case.

¶ 9 The Workers' Compensation Court is a court of limited jurisdiction, with "only such power as is expressly conferred by statute."¹

¶ 10 Under § 39-71-2905(1), MCA, this Court has exclusive jurisdiction over disputes concerning workers' compensation benefits.²

¶ 11 State Fund's motion presents no dispute concerning workers' compensation benefits because State Fund does not deny that T.G. is entitled to beneficiary benefits.

¶ 12 Second, whereas State Fund requests that this Court appoint a person to manage T.G.'s beneficiary benefits, which are part of her estate,³ it actually seeks the appointment of a conservator,⁴ rather than a guardian *ad litem*,⁵ and this Court cannot appoint a conservator.

¶ 13 This Court periodically deals with requests to appoint a guardian *ad litem* which cross over into the realm of a conservator. It seems this would be a logical addition to this Court's jurisdiction. The parties would be well served by the shorter timeline to decision available in the Workers Compensation Court, and it would relieve, in a small way, the workload placed on the district courts. The Legislature is invited to consider this opportunity. Nevertheless, until or unless it confers such power by statute, this Court does not have jurisdiction to appoint a conservator.

¶ 14 Section 72-5-405, MCA, provides, in pertinent part:

After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

.....
(2) exclusive jurisdiction to determine how the estate of the protected person that is subject to the laws of this state is managed, expended, or

¹ *Thompson v. State of Mont.*, 2007 MT 185, ¶ 24, 338 Mont. 511, 167 P.3d 867 (citation omitted). See also *Liberty Nw. Ins. Corp. v. State Comp. Ins. Fund*, 1998 MT 169, ¶ 11, 289 Mont. 475, 962 P.2d 1167 ("The jurisdictional parameters of the Workers' Compensation Court are defined by statute as interpreted, from time to time, by the decisions of this Court.").

² *Moreau v. Transp. Ins. Co.*, 2015 MT 5, ¶ 10, 378 Mont. 10, 342 P.3d 3 (citations omitted).

³ § 72-1-103(15), MCA (defining the "estate" of a person in T.G.'s position to include their "property"); § 72-1-103(40), MCA (defining the "property" of a person in T.G.'s position to include their "real and personal property or any interest in that property").

⁴ § 72-1-103(8), MCA (defining "conservator" to mean "a person who is appointed by a court to manage the estate of a protected person").

⁵ Black's Law Dictionary (11th ed. 2019) (defining "guardian *ad litem*" as "[a] guardian, usu[ally] a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party").

distributed to or for the use of the protected person or any of the person's dependents.

Such determinations do not involve a dispute over workers' compensation benefits.

¶ 15 State Fund relies on three cases in support of its request for this Court to appoint a guardian *ad litem* (or a person to administer T.G.'s beneficiary benefits). Each is distinguishable from the present matter.

¶ 16 In *Dixon v. State Comp. Ins. Fund*,⁶ the issue was not whether to appoint but how to compensate guardians *ad litem* in the case.⁷ Notwithstanding, this Court explained that the guardians *ad litem* were appointed to pursue claims for – not administer – benefits on behalf of children whose interests conflicted.⁸ Thus, at the time of the appointments, there was a dispute over benefits and, therefore, jurisdiction in this Court.

¶ 17 In *Simons-Tollefson v. State Comp. Ins. Fund*,⁹ the issue on the insurer's motion to dismiss was whether a claim for benefits filed by the mother of a deceased worker's minor child after the 12-month limitations period in § 39-71-601(1), MCA, was time-barred.¹⁰ Before addressing the merits of the motion to dismiss, this Court determined that the mother was not legally authorized to act on the minor child's behalf¹¹ and appointed her as guardian *ad litem* to pursue a claim for – not administer – benefits for the child.¹² Thus, at the time of the appointment, there was a dispute over benefits and, therefore, jurisdiction in this Court.

¶ 18 In *In Re: Benefits of Noonkester*,¹³ the insurer, which had been paying indemnity and medical benefits, sought guidance from this Court as to the manner of payment in light of the claimant reaching MMI.¹⁴ Since the claimant was still a minor, the insurer asked this Court to appoint a guardian *ad litem* to “assist in the determination” – not administer benefits.¹⁵ This Court granted the request and appointed a guardian *ad litem*.¹⁶

⁶ 2001 MTWCC 40.

⁷ *Dixon*, ¶ 1.

⁸ *Dixon*, ¶ 23.

⁹ 2000 MTWCC 7.

¹⁰ *Simons-Tollefson*, ¶ 2.

¹¹ *Simons-Tollefson*, ¶ 12.

¹² *Simons-Tollefson*, ¶¶ 12-13.

¹³ 2004 MTWCC 61, *aff'd in* 2006 MT 169, 332 Mont. 528, 140 P.3d 466.

¹⁴ *Noonkester*, 2004 MTWCC 61, Summary & ¶ 5

¹⁵ *Noonkester*, 2004 MTWCC 61, ¶ 5.

¹⁶ *Noonkester*, 2004 MTWCC 61, ¶ 6.

Thus, at the time of the appointment, there was a dispute over benefits and, therefore, jurisdiction in this Court.

¶ 19 For the foregoing reasons and because the cases cited by State Fund are not persuasive, this Court enters the following:

ORDER

¶ 20 State Fund's motion to appoint a guardian *ad litem* is **denied**.

DATED this 17th day of January, 2024.

(SEAL)

/s/ Lee Bruner
JUDGE

c: Melissa Quale
Edward Janecek, III
William Dean Blackaby (courtesy copy)
Frank J. Joseph, P.C. (courtesy copy)