IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2015-3560

KAREN MONROE, as Personal Representative of the Estate of Dwane Monroe

Petitioner

vs.

MACO WORKERS COMP TRUST

Respondent/Insurer.

APPEALED TO MONTANA SUPREME COUNT – 05/30/17
DISMISSED – 03/05/18

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENT

¶ 1 Following this Court's determination that Respondent MACO Workers Comp Trust (MACO) was liable for Dwane Monroe's (Dwane) asbestos-related disease,[1] Petitioner Karen Monroe, as Personal Representative of the Estate of Dwane Monroe (Monroe), filed the present Petition after MACO refused to reimburse three entities who paid some of Dwane's medical bills. Monroe now moves for summary judgment in this matter. MACO opposes the motion.

ISSUE

¶ 2 This Court considers the following issue:

> Is Monroe entitled to $73,391.63 from MACO, which includes reimbursement of Dwane's medical bills that were paid by the Libby Medical

---

[1] *See Monroe v. MACO Workers Comp Trust*, 2014 MTWCC 7.

Plan ($55,457.83), the Libby Asbestos Medical Plan ($109.02), and Sterling Option 1 ($5,312.20)? [2]

FACTS

¶ 3 Dwane contracted an asbestos-related occupational disease (OD) that arose out of his employment with Lincoln County and caused his death.

¶ 4 Dwane's last day of work for Lincoln County occurred in March 2008. Dwane died from asbestos-related disease on September 29, 2010.

¶ 5 The Libby Medical Plan (LMP) paid some of Dwane's medical bills. W.R. Grace created and funded the LMP to assist Libby residents in paying for medical costs resulting from asbestos exposure from vermiculite mining in Lincoln County. On September 21, 2012, certain rights and duties of the LMP were transferred into the Libby Medical Plan Trust (Libby Trust) under the terms of a settlement agreement.

¶ 6 Two other entities – the Libby Asbestos Medical Plan (LAMP) and Sterling Option 1 – paid some of Dwane's medical bills.

¶ 7 On March 17, 2014, this Court adjudged MACO liable for Dwane's OD.[3] This Court further ruled that Monroe's claim for OD benefits was not time-barred and that Karen Monroe individually was entitled to widow benefits and reasonable burial expenses as Dwane's surviving spouse.[4]

¶ 8 On December 4, 2014, Monroe's counsel wrote to MACO's counsel requesting the payment of certain medical bills, which MACO had not paid subsequent to this Court's adjudging MACO liable. The letter stated, in relevant part:

> Mr. Monroe's cancer treatment from January 18, 2010, through the date of his death resulted in costs of $74,110.26. Of that amount, $55,457.83 was paid by the Grace Libby Medical Plan, $109.02 was paid by LAMP, $5,312.20 was paid by Sterling Option 1, and $718.63 was paid by the Claimant. . . .

---

[2] Although Monroe also argued that MACO acted unreasonably in this matter and she is therefore entitled to her attorney fees and a penalty, she has not prevailed in this matter and therefore MACO is not liable for her attorney fees nor a penalty pursuant to §§ 39-71-611, and -2907, MCA.

[3] *Monroe*, ¶ 59.

[4] *Monroe*, ¶¶ 60, 62.

> The purpose of this correspondence is to demand that the insurer reimburse the insurers and the Claimant the foregoing amounts and direct a 20% *Lockhart* fee to this office . . . .

¶ 9 On December 26, 2014, citing this Court's earlier ruling in *Moreau v. Transportation Ins. Co.*,[5] MACO refused to reimburse the LMP, LAMP, and Sterling Option 1 for Dwane's medical bills. MACO further requested documentation of medical bill payments Monroe made out-of-pocket.

¶ 10 On January 16, 2015, Monroe provided MACO with documentation of medical bill payments made out-of-pocket. Monroe's counsel further asked MACO to reconsider its refusal to reimburse the LMP, LAMP, and Sterling Option 1 in light of the Montana Supreme Court's reversal of *Moreau*.[6]

¶ 11 On February 13, 2015, MACO agreed to reimburse Monroe for out-of-pocket payments in the amount of $718.63. However, MACO refused to reconsider its refusal to reimburse the LMP, LAMP, and Sterling Option 1.

¶ 12 Neither the LMP, LAMP, nor Sterling Option 1 have demanded reimbursement in this matter.

¶ 13 On March 20, 2015, Monroe informed MACO that Monroe had been authorized by Francis McGovern, Trustee of the Libby Trust, to recover the outstanding medical bills paid by the LMP on behalf of Dwane. Regardless, MACO has maintained its refusal to pay Monroe her demand of $73,391.63.

¶ 14 Monroe's demand of $73,391.63 includes $60,879.23 – the amount of the medical bills paid by the LMP, LAMP, and Sterling Option 1, plus $12,512.40. A spreadsheet summarizing Dwane's medical bills, attached to Monroe's brief in support of her motion for summary judgment, delineates $12,512.40 as the "AMOUNT ADJ" on the billing from Dwane's healthcare providers. There is no evidence that this amount remains to be paid to a provider, or that any of Dwane's medical bills remain unpaid.

¶ 15 On November 17, 2015, this Court heard oral argument on this matter, in conjunction with oral argument on similar issues in *Moreau*.

---

[5] 2014 MTWCC 9, *rev'd*, 2015 MT 5, 378 Mont. 10, 342 P.3d 3.

[6] *See* 2015 MT 5, 378 Mont. 10, 342 P.3d 3 (*Moreau I*).

///

///

LAW AND ANALYSIS

¶ 16 Summary judgment is appropriate where undisputed facts demonstrate that a party is entitled to judgment as a matter of law.[7] Where the dispute is purely an issue of law and no issues of material fact remain, it is appropriate to grant summary judgment to the non-moving party if that party is entitled to judgment as a matter of law.[8] Generally, no formal cross-motion is required of the non-moving party.[9]

¶ 17 This case is governed by the 2007 version of the Montana Workers' Compensation Act (WCA) since that was the law in effect on Dwane's last day of work for his time-of-injury employer.[10]

Is Monroe entitled to $73,391.63 from MACO, which includes reimbursement of Dwane's medical bills that were paid by the Libby Medical Plan ($55,457.83), the Libby Asbestos Medical Plan ($109.02), and Sterling Option 1 ($5,312.20)?

¶ 18 Monroe argues that, since MACO has been adjudged liable for Dwane's OD, under § 39-71-704, MCA, MACO has a statutory duty to pay benefits and this Court should therefore order MACO to pay her the value of the medical bills Dwane incurred. MACO objects, arguing that under *Shepard v. Midland Foods, Inc.*,[11] Monroe is not entitled to these funds.

¶ 19 This case is factually on point with *Moreau v. Transportation Ins. Co*., in which this Court concluded that the claimant was not entitled to receive funds from the insurer as reimbursement for medical bills paid by another entity.[12] There, this Court concluded that, pursuant to § 39-71-704, MCA, and *Shepard*, the insurer was required to provide reasonable medical services to the injured worker, but had no obligation to pay Moreau

---

[7] *Lewis v. Nine Mile Mines, Inc.*, 268 Mont. 336, 340, 886 P.2d 912, 914 (1994).

[8] *Hereford v. Hereford*, 183 Mont 104, 107-08, 598 P.2d 600, 602 (1979).

[9] *Wombold v. Montana State Fund*, 2009 MTWCC 40, ¶ 24 (citing *In re Estate of Marson*, 2005 MT 222, ¶ 9, 328 Mont. 348, 120 P.3d 382).

[10] *Hardgrove v. Transp. Ins. Co.*, 2004 MT 340, ¶ 2, 324 Mont. 238, 103 P.3d 999 (citation omitted); *Nelson v. Cenex, Inc.*, 2008 MT 108, ¶ 33, 342 Mont. 371, 181 P.3d 619.

[11] 219 Mont. 124, 710 P.2d 1355 (1985).

[12] 2017 MTWCC 7 (*Moreau II*).

the value of medical services already paid by another entity, as such payment would not constitute "furnishing medical services."[13] This Court explained:

> As interpreted in *Shepard*, § 39-71-704, MCA, requires the insurer . . . only to furnish reasonable medical services, and paying Moreau the value of medical expenses already paid by another entity is not furnishing medical services. Moreau has no exposure for Edwin's medical bills since no entity has sought reimbursement from her. Accordingly, pursuant to *Shepard* and its interpretation of § 39-71-704, MCA, Transportation is not liable to Moreau for the $95,846 in medical services which Edwin received and which were paid for by the LMP.[14]

¶ 20 Like *Moreau*, the present case falls squarely under *Shepard*, and Monroe's arguments to the contrary are unpersuasive.

¶ 21 Similar to Moreau, Monroe first argues that she has been authorized by the Trustee of the Libby Trust to recover payments made by the LMP on Dwane's behalf.[15] Monroe contends that both she and the Libby Trust, as successor-in-interest to the LMP, have made demand on MACO for payment of the funds the LMP paid for Dwane's medical treatment. However, as in *Moreau*, as of the date of this Order, the Libby Trust has not brought a claim in this Court against MACO for reimbursement. In *Moreau*, this Court ruled that it did not have jurisdiction to order the insurer to pay the Libby Trust because the Libby Trust was not a party to the case.[16] This Court further explained that it has no authority to issue an advisory opinion as to whether the insurer must reimburse the Libby Trust if the Libby Trust brings a claim.[17] The same holds true here.

¶ 22 Monroe further argues that unlike the insurer in *Moreau*, who only failed to reimburse the LMP, here, MACO has also failed to reimburse LAMP and Sterling Option 1. However, as this Court noted in *Moreau*, if any of these entities seek reimbursement from Monroe, then, like Shepard – and Moreau – she could petition this Court for relief. Therefore, this Court's ruling is the same as its ruling in *Moreau*: MACO

---

[13] *Moreau II*, ¶ 23.

[14] *Id*.

[15] *See Moreau II*, ¶ 13.

[16] *Moreau II*, ¶ 30.

[17] *Id*.

is not liable to Monroe for the medical services which Dwane received and which were paid for by the LMP – and in this case, by LAMP and Sterling Option 1 as well.

¶ 23 Thirdly, like Moreau, Monroe also argues that under *Lockhart v. New Hampshire Ins. Co.*,[18] medical benefits belong to the injured worker and are thus directly payable to the injured worker. This Court rejected this argument in *Moreau*, finding *Lockhart* inapplicable because it applies only if there are medical benefits remaining for the insurer to pay.[19] Here, as in *Moreau*, there are no remaining medical benefits to pay, and therefore *Lockhart* does not apply.

¶ 24 Finally, Monroe argues that the payment of Dwane's medical bills has not made her whole, and raises the same subrogation argument as Moreau, similarly relying upon *Blue Cross and Blue Shield of Montana, Inc. v. Montana State Auditor*,[20] *Diaz v. State of Montana*,[21] and *State Compensation Ins. Fund v. McMillan.*[22] In *Moreau*, this Court explained that the case was not a subrogation case because W.R. Grace had no legal obligation to fund the LMP, and the LMP had no legal obligation to pay Edwin Moreau's medical bills.[23] Furthermore, the insurer in *Moreau* was not exercising a right of subrogation under § 39-71-414, MCA, because the funds used to pay the medical bills were not a recovery from a tort claim.[24] The same is true here: W.R. Grace had no legal obligation to fund the LMP, and the LMP had no legal obligation to pay Dwane's bills. Nor were those funds a recovery from a tort claim.[25]

///

---

[18] 1999 MT 205, 295 Mont. 467, 984 P.2d 744.

[19] *Moreau II*, ¶ 27.

[20] 2009 MT 318, 352 Mont. 423, 218 P.3d 475.

[21] 2013 MT 331, 372 Mont. 393, 313 P.3d 124.

[22] 2001 MT 168, 306 Mont. 155, 31 P.3d 347.

[23] *Moreau II*, ¶ 39.

[24] *Id*.

[25] Although LAMP and Sterling Option 1 also paid some of Dwane's medical bills, Monroe has offered no evidence regarding these entities, and has made no subrogation arguments about the funds paid by either of them. Therefore, she has not met her burden of proving her entitlement to the funds paid by these entities.

¶ 25 Therefore, this Court rules that Monroe has not met her burden of proving an entitlement to the amount she has demanded from MACO. Although MACO is the non-moving party, the issue here is purely an issue of law and no material facts remain in dispute. Therefore, it is appropriate to grant summary judgment in MACO's favor.

ORDER

¶ 26 Petitioner's motion for summary judgment is **DENIED**.

¶ 27 Summary judgment is **GRANTED** in favor of Respondent.

¶ 28 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 15th day of May, 2017.

(SEAL)

/s/ David M. Sandler
JUDGE

c: Jon L. Heberling
Dustin Leftridge
Allan M. McGarvey
Laurie Wallace
Ethan Welder
Norman H. Grosfield

Submitted: November 17, 2015