

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-2  
NORTH CAROLINA COURT OF APPEALS

Filed: 16 August 2011

SANTOS TINAJERO  
Employee/Plaintiff,

v.

N.C. Industrial Commission  
I.C. No.: 091464

BALFOUR BEATTY INFRASTRUCTURE,  
INC.  
Employer,

ZURICH AMERICAN INSURANCE  
COMPANY,  
Defendants.

Appeal by Defendants and cross-appeal by Plaintiff from an opinion and award filed 16 July 2010 by the North Carolina Industrial Commission. Heard in the Court of Appeals 25 May 2011.

*R. James Lore, for Plaintiff-Appellant.*

*Stiles, Byrum & Horne, L.L.P., by Henry C. Byrum, Jr., for Defendant-Appellants.*

BEASLEY, Judge.

Defendants and Plaintiff appeal from an opinion and award of the North Carolina Industrial Commission. Because the

Industrial Commission's opinion and award is interlocutory, we dismiss both parties' appeal.

On 11 August 2008, Santos Tinajero ("Plaintiff"), an undocumented worker from Mexcio, was injured while working on a barge in New Bern, North Carolina. Plaintiff's injury occurred during the course of his employment with Balfour Beatty Infrastructure, Inc. ("Defendant-employer").<sup>1</sup> Immediately following the accident, Plaintiff was transported to Pitt County Memorial Hospital where he was treated surgically for his injuries.

On 15 August 2008, Plaintiff was transferred to Shepherd Center in Atlanta, Georgia for continuing treatment and rehabilitation. The "Shepherd Center provides rehabilitative services for patients with significant neurologic injuries and illnesses, predominately spinal cord and brain injuries." Plaintiff was diagnosed as an "ASIA A-B quadriplegic." Plaintiff's condition "requires attendant care 24-hours per day, seven days per week[.]"

Plaintiff remained at the Shepherd Center until 5 December 2008, when he was transferred to the Briarcliff Haven Healthcare

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<sup>1</sup> Defendant-employer and Zurich American Insurance Company ("Defendant-carrier") will be referred to collectively as "Defendants."

and Rehabilitation Center ("Briarcliff"). On 27 February 2009, Plaintiff filed an "Emergency Motion for Medical Treatment" with the North Carolina Industrial Commission. In the motion, Plaintiff asserted that his current placement in Briarcliff was not a suitable living environment and that any delay would unjustifiably jeopardize his health. Plaintiff requested that the Commission order Defendants to pay for his placement in a suitable apartment with 24 hour attendant care.

On 20 March 2009, the Commission issued an order in which it referred the case to the regular docket for an expedited evidentiary hearing. Before the scheduled hearing date, the parties submitted a "Pre-Trial Agreement guided by Rule 16 of the North Carolina Rules of Civil Procedure." In the pre-trial agreement, the parties set forth a number of issues to be determined at the subsequent hearing. Included amongst these issues, Plaintiff requested a determination as to whether Defendants were obligated to provide adaptive housing, and the specific type of housing and attendant care Defendants were required to provide.

Plaintiff's action came before the Deputy Commissioner for a hearing on 2 June 2009. In support of his position, Plaintiff submitted a life care plan created by Michael Fryar ("Fryar").

After reviewing Fryar's credentials, experience, and life care plan, the Deputy Commissioner determined that the report prepared by Fryar was not an objective and unbiased assessment of Plaintiff's need for an adaptive dwelling.

The Deputy Commissioner concluded that Plaintiff was entitled to lifetime workers' compensation benefits. However, the Deputy Commissioner also determined that "Defendants [were] not obligated to purchase, construct or lease adaptive housing for Plaintiff[.]" Defendants were already providing Plaintiff with suitable housing at Briarcliff and that the medical evidence presented at the hearing failed to establish that it was necessary for Plaintiff to leave the Briarcliff facility. On 29 March 2010, Plaintiff filed notice of appeal from the opinion and award of the Deputy Commissioner.

On 12 August 2010, Plaintiff's appeal was heard by the Full Commission. After reviewing the decision of the Deputy Commissioner and arguments by the parties, a majority of the Full Commission concluded that Defendants were obligated to pay the rental cost of the adaptive housing required by Plaintiff. Because the Full Commission also gave little credence to the life care plan submitted by Fryar, the Commission also ordered Defendants to pay for the preparation of a second life care plan

by a qualified life care planner. The Commission ordered the parties to confer and agree upon the selection of a qualified planner and for the planner to evaluate the specific circumstances surrounding Plaintiff's need for adaptive care, transportation, and attendant care, as originally set forth in the pre-trial agreement. Plaintiff and Defendants filed notice of appeal from the opinion and award of the Full Commission.

Motion to Dismiss

By motion, Plaintiff contends that this Court should dismiss Defendants' appeal because the opinion and award of the Full Commission was interlocutory. We agree.

An appeal from an opinion and award of the North Carolina Industrial Commission to the North Carolina Court of Appeals for errors of law is governed by "the same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions." N.C. Gen. Stat. § 97-86 (2009). Because parties in a civil action have the right to appeal from a final judgment of a superior court, "an appeal of right arises only from a final order or decision of the Industrial Commission." *Ratchford v. C.C. Mangum, Inc.*, 150 N.C. App. 197, 199, 564 S.E.2d 245, 247 (2002) (citations omitted).

"A final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court." *Veazey v. Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950). In contrast, "[a]n interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Id.*

Our Court has held that an opinion and award by the Industrial Commission that "'on its face contemplates further proceedings or which does not fully dispose of the pending stage of the litigation is interlocutory.'" *Perry v. N.C. Dep't of Corr.*, 176 N.C. App. 123, 129, 625 S.E.2d 790, 794 (2006) (citing *Watts v. Hemlock Homes of the Highlands, Inc.*, 160 N.C. App. 81, 84, 584 S.E.2d 97, 99 (2003)). However, "[e]ven where a decision [by the Industrial Commission] is interlocutory . . . immediate review of the issue is proper where the interlocutory decision affects a substantial right." *Cash v. Lincare Holdings*, 181 N.C. App. 259, 263, 639 S.E.2d 9, 13 (2007).

In this case, the Industrial Commission's opinion and award "contemplates further proceedings" following the conclusion of the order and is therefore interlocutory. In its opinion and

award, the Industrial Commission declined to accept the report and life care plan prepared by Fryar as an unbiased, objective, and fair assessment of Plaintiff's need for an adaptive dwelling. The Industrial Commission ordered the parties to select a "certified life care planner with long-standing experience dealing with catastrophic injuries and life care planning" to evaluate the specific manner in which Defendants were to provide an adaptive dwelling and attendant care for Plaintiff. Before the Commission could make further specific findings as to Plaintiff's needs for adaptive housing, the parties would need to prepare another life care plan. Because the decision of the Full Commission is not final, the opinion and award of the Full Commission is interlocutory.

Citing *Cash*, Defendants argue that this Court has held that "[a]ppeals regarding medical issues are not interlocutory." In *Cash*, the Industrial Commission made a final decision as to the medical compensation the plaintiff was entitled to following a work related injury. *Id.* at 264, 639 S.E.2d at 13. The defendants appealed from the Commission's opinion and award. The plaintiffs sought to dismiss the defendant's appeal, arguing that because similar medical payment issues could arise in the future, the Commission's opinion and award was interlocutory.

On appeal, this Court held that the opinion and award was not interlocutory because the Commission's order resolved "all issues surrounding the disputed medical treatment." *Id.* Our Court also explained that the Commission's order was not interlocutory simply because it addresses medical compensation without making a finding as to defendant's disability compensation, because "[n]either determination is a necessary prerequisite for the other." *Id.*

In this case, the decision of the Full Commission was not finalized until another life care plan was obtained from a qualified professional in the field. Accordingly, further proceedings were contemplated on the face of the Commission's order. The Commission's interlocutory order does not affect a substantial right held by Defendants.

Dismissed.

Judges BRYANT and GEER concur.

Report per Rule 30(e).