An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-983
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

HENRY O. LINGERFELT,
Employee, Plaintiff,

v.

North Carolina Industrial Commission
I.C. Nos. 120154, PH-2200

ADVANCE TRANSPORTATION, INC., Employer, NONINSURED; and/or SUPERIOR TRANSFER, INC., Employer, NONINSURED, and RAYMOND CAMERO, CHRIS NORTH, JAMES L. NORTH, JR. and JERRYE NORTH, Individually, and/or SOUTHERN INSURANCE COMPANY, Carrier (FIRSTCOMP UNDERWRITERS GROUP, INC., Administrator/ Servicing Agent),
Defendants.

Appeal by plaintiff from Opinion and Award entered 8 April 2011 by the North Carolina Industrial Commission. Heard in the Court of Appeals 10 January 2012.

Law Office of Seth M. Bernanke, P.C., by Seth M. Bernanke, for plaintiff-appellant.

McAngus, Goudelock & Courie, P.L.L.C., by Sally B. Moran and Daniel L. McCullough, for defendants-appellees.

Roy Cooper, Attorney General, by Marc X. Sneed, Assistant Attorney General, for the State.

MARTIN, Chief Judge.

Plaintiff Henry O. Lingerfelt appeals from an Opinion and Award by the North Carolina Industrial Commission ("the Commission") awarding him temporary total disability compensation and medical compensation payable by defendant-employer Advance Transportation, Inc., and dismissing Southern Insurance Company ("Southern Insurance") and FirstComp Underwriters Group, Inc. ("FirstComp") from the action. We affirm.

The parties stipulate that, on 3 June 2008, plaintiff was in the course of his employment as a truck driver for defendant-employer when he was involved in a motor vehicle accident arising out of that employment near Lenoir, North Carolina. At the time of plaintiff's accident, defendant-employer regularly employed three or more persons, was licensed to conduct business in North Carolina, and was "subject to and bound by the provisions of the North Carolina Workers' Compensation Act." The parties further agree that defendant-employer's president and sole shareholder, Mr. James L. North, Jr., entered into a contract with Southern Insurance for workers' compensation insurance coverage, and that this policy was to be administered by FirstComp. The designated policy period for defendant-

employer's insurance coverage was from 18 March 2007 through 18 March 2008.

On 31 August 2007, FirstComp "attempted to cancel the policy prior to the original contract expiration date . . . due to nonpayment of premium payments by defendant-employer." However, the Commission found, and the parties do not dispute, that FirstComp did not "properly notif[y] defendant-employer of the early cancellation of its workers' compensation insurance" in accordance with the procedures set forth in N.C.G.S. § 58-36-105 for cancelling workers' compensation policies for nonpayment of premiums. *See* N.C. Gen. Stat. § 58-36-105(a)(1), (b) (2011) ("No policy of workers' compensation insurance or employers' liability insurance written in connection with a policy of workers' compensation insurance shall be cancelled by the insurer before the expiration of the term or anniversary date stated in the policy and without the prior written consent of the insured, except for any one of the following reasons[, including] . . . [n]onpayment of premium in accordance with the policy terms. . . . [However, a]ny cancellation permitted by subsection (a) of this section is not effective unless written notice of cancellation has been given by registered or certified mail, return receipt requested, to the insured not less than 15 days before the proposed effective

date of cancellation.”). Accordingly, the Commission determined that FirstComp’s “notice of cancellation was ineffective as a matter of law because cancellation was not undertaken by means of registered or certified mail, return receipt requested, pursuant to [N.C.G.S. §] 58-36-105(b),” and “[d]efendant-employer’s policy ended, as stated by the terms of the contract, at the end of the policy period, [on 18 March 2008].” The Commission further found that “[t]he policy at issue did not automatically renew . . . .” Accordingly, the Commission determined that defendant-employer had “no workers’ compensation insurance coverage for its employees,” in violation of N.C.G.S. § 97-93, at the time of plaintiff’s injury by accident on 3 June 2008.

After concluding that plaintiff was disabled as a result of his compensable injury by accident, the Commission awarded plaintiff temporary total disability compensation and medical compensation payable by defendant-employer. The Commission also dismissed Southern Insurance and FirstComp as defendants in the action. Plaintiff moved the Commission to reconsider its Opinion and Award, which the Commission denied. Plaintiff appeals from the Commission’s Opinion and Award.

Plaintiff contends the Commission erred by finding that

defendant-employer's insurance policy with Southern Insurance "did not automatically renew" at the end of the policy period on 18 March 2008. While plaintiff does not contend the policy affirmatively states that it would renew at the end of the designated policy period, he argues that both the insurance policy and N.C.G.S. § 58-36-110 "clearly outline[] the expectation" that defendant-employer's policy with Southern Insurance would "be renewed unless affirmative action [wa]s taken by the carrier to give notice of nonrenewal." We disagree.

We first note that, in our review of the record, we found only one version of a document entitled, "Worker's Compensation and Employer's Liability Insurance Policy," listing defendant-employer as the insured and Southern Insurance as the insurer. While this unsigned copy of the policy indicates the original policy expiration date was 18 March 2008, the document also purports to terminate or cancel the policy effective 24 September 2007. Thus, it appears that this document was likely the version of defendant-employer's policy prepared by FirstComp in its attempt to cancel the policy prior to its original expiration date due to defendant-employer's nonpayment of the premium. Therefore, it is unclear whether this unsigned copy of the policy before us is the same version reviewed by the

Commission from which it determined, "The policy at issue does not contain any terms or language indicating policy renewal is automatic at the end of the initial policy term."

However, even assuming *arguendo* that the endorsements and schedules attached to this unsigned version of the policy are representative of the terms and conditions in defendant-employer's original insurance policy, we decline to adopt plaintiff's strained interpretation of the challenged policy language and statutory provisions. Without directing us to persuasive or relevant authority, plaintiff essentially urges this Court to declare that N.C.G.S. § 58-36-110(a) and (b) mandate that all workers' compensation insurance policies with a policy duration of one year or less will be renewed upon their expiration date as a matter of law——even in the absence of an express provision stating the same as a condition or term of the negotiated insurance policy contract——unless an insurer follows the notice requirements set forth in the statute.

In support of his assertion, plaintiff quotes the following language in N.C.G.S. § 58-36-110(a) and (b), which is closely mirrored by the language in one of the endorsements included in the copy of the policy before us:

> (a) No insurer shall refuse to renew a policy of workers' compensation insurance or employers' liability insurance written in connection with a

> policy of workers' compensation insurance except in accordance with the provisions of this section, and any nonrenewal attempted or made that is not in compliance with this section is not effective. This section does not apply if the policyholder has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal.
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> (b) An insurer may refuse to renew a policy that has been written for a term of one year or less at the policy's expiration date by mailing written notice of nonrenewal to the insured not less than 45 days prior to the expiration date of the policy.

N.C. Gen. Stat. § 58-36-110(a), (b) (2011). Plaintiff suggests that the "refuse to renew" language in the statute requires the interpretation that, "if the nonrenewal steps were not followed, the policy renewed." However, we are not persuaded, as plaintiff suggests, that N.C.G.S. § 58-36-110(a) and (b) are applicable to workers' compensation insurance policies for which the parties have not manifested a mutual assent to a term or condition specifically regarding renewal in the negotiated policy. Therefore, we conclude that the record supports the Commission's finding that defendant-employer's workers' compensation insurance policy with Southern Insurance "did not automatically renew" at the end of the policy period on 18 March 2008. *See Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) ("'The [C]ourt's duty goes no further than to

determine whether the record contains any evidence tending to support the finding.'" (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965))), *reh'g denied*, 350 N.C. 108, 532 S.E.2d 522 (1999). Accordingly, we further conclude that the Commission did not err when it concluded that "defendant-employer did not possess workers' compensation insurance coverage at the time of plaintiff's injury by accident on June 3, 2008."

We have reviewed and considered the remaining assertions in plaintiff's brief and conclude that they are without merit.

Affirmed.

Judges McGEE and CALABRIA concur.

Report per Rule 30(e).