IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-819

Filed: 17 February 2015

JEFFREY BOWDEN

v.

DWAYNE MAURICE YOUNG, COASTAL PLAINS RESTAURANT, AND FIRST LIBERTY INSURANCE CORPORATION

Wilson County
No. 14 CVS 314

Appeal by defendant from order entered 21 April 2014 by Judge Quentin T. Sumner in Wilson County Superior Court. Heard in the Court of Appeals 3 December 2014.

Anderson Law Firm, by Michael J. Anderson, for plaintiff-appellee.

Wall Templeton & Haldrup, P.A., by William W. Silverman, J. Mark Langdon, & Robin A. Seelbach, for defendant-appellant.

DIETZ, Judge.

Plaintiff Jeffrey Bowden was injured at work. While his workers' compensation claim was pending, he sued First Liberty Insurance Corporation, the insurer handling the claim, for intentional infliction of emotional distress and bad faith. Bowden alleged that First Liberty engaged in a host of intentionally wrongful conduct while handling his claim and that he suffered various emotional injuries as a result.

First Liberty moved to dismiss the claims on the ground that the Industrial Commission had exclusive jurisdiction. The trial court denied the motion and First Liberty appealed.

We reverse. This case is controlled by *Johnson v. First Union Corp.*, 131 N.C. App. 142, 143-44, 504 S.E.2d 808, 809 (1998) and *Deem v. Treadaway & Sons Painting & Wallcovering, Inc.*, 142 N.C. App. 472, 477-78, 543 S.E.2d 209, 212 (2001). In *Johnson* and *Deem*, this Court held that claims arising from an employer's or insurer's processing and handling of a workers' compensation claim—even intentional torts—fall within the exclusive jurisdiction of the Industrial Commission. We agree with First Liberty that the claims asserted in this case are indistinguishable from those we previously held to be within the exclusive jurisdiction of the Industrial Commission in *Johnson* and *Deem*. Accordingly, we reverse the trial court and remand for dismissal of the claims against First Liberty for lack of subject matter jurisdiction.

Facts and Procedural History

Jeffrey Bowden managed a fast food restaurant in Wilson, North Carolina. On 4 July 2013, Defendant Dwayne Maurice Young allegedly assaulted Bowden during an attempted armed robbery at the restaurant. Bowden later filed a workers' compensation claim for various physical and emotional injuries caused by the assault.

First Liberty Insurance Company handled Bowden's claim on behalf of Coastal Plains Restaurant, its insured. Bowden claims that First Liberty engaged in a pattern of improper conduct while processing his claim. He contends that First Liberty communicated with his doctors without his permission and wrongly sought a second opinion from "a professional witness for the defense in claims under the Workers Compensation Act, who opined in exactly the fashion for which he was paid." He also claims that First Liberty treated him belligerently over the phone, denied some of his requests for medical treatment via "form letter," improperly filed paperwork to suspend his compensation, and "insisted that [Bowden] needed to settle his Workers Compensation claim."

Based on this alleged conduct, Bowden sued First Liberty in Wilson County Superior Court while his workers' compensation case was still pending before the Industrial Commission. He alleged claims for bad faith and intentional infliction of emotional distress on the ground that First Liberty purposefully "create[d] an atmosphere of duress intended to force Plaintiff to settle his claim or be made to feel like a fraud or malingerer."

On 14 April 2014, First Liberty moved to dismiss all of Bowden's claims against it pursuant to N.C. R. Civ. P. 12(b)(1) (2013), arguing that the trial court lacked subject matter jurisdiction. The company argued that the Workers' Compensation Act vests exclusive jurisdiction over such claims with the Industrial Commission. The trial court denied this motion, and First Liberty timely appealed.

Analysis

I. Appellate Jurisdiction

We first address our own jurisdiction to hear this appeal. Ordinarily, the denial of a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable. *See, e.g.*, *Meherrin Indian Tribe v. Lewis*, 197 N.C. App. 380, 384-85, 677 S.E.2d 203, 207 (2009). However, the denial of a Rule 12(b)(1) motion to dismiss based on the exclusivity provision of the North Carolina Workers' Compensation Act is immediately appealable as affecting a substantial right. *Burton v. Phoenix Fabricators & Erectors, Inc.*, 362 N.C. 352, 661 S.E.2d 242 (2008); *Estate of Vaughn v. Pike Elec., LLC*, ___ N.C. App. ___, ___, 751 S.E.2d 227, 231 (2013). Accordingly, we have jurisdiction over this appeal.

II. Exclusive Jurisdiction of the Industrial Commission

The sole issue raised by First Liberty on appeal is whether the allegations in Bowden's complaint state any claims that fall outside the exclusive jurisdiction of the North Carolina Industrial Commission. This is a legal question that we review *de novo*. *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010).

The Workers' Compensation Act provides the exclusive remedy for work-related injuries. *Johnson*, 131 N.C. App. at 145, 504 S.E.2d at 810. The Act is intended "to provide a swift and certain remedy to an injured workman, but also to

insure a limited and determinate liability for employers." *Id.* at 144, 504 S.E.2d at 810 (internal quotation marks omitted).

The exclusive jurisdiction of the Industrial Commission includes not only work-related injuries but also any claims that are "ancillary" to the original compensable injury. *Deem*, 142 N.C. App. at 477-78, 543 S.E.2d at 212. These "ancillary" claims include claims that "defendants' mishandling of plaintiff's workers' compensation claim caused some type of tortious injury to the plaintiff for which the plaintiff seeks court sanctioned remedies." *Riley v. Debaer*, 149 N.C. App. 520, 526, 562 S.E.2d 69, 72, *aff'd per curiam*, 356 N.C. 426, 571 S.E.2d 587 (2002) (dismissing negligent infliction of emotional distress claim against injured worker's rehabilitation specialist for lack of jurisdiction). As this Court has explained, "the Industrial Commission, charged with administration of the Workers' Compensation Act, is better suited than the Court to identify and regulate alleged abuses, if any, by insurance carriers and health care providers in matters under the Workers' Compensation Act." *N.C. Chiropractic Ass'n, Inc. v. Aetna Cas. & Sur. Co.*, 89 N.C. App. 1, 9, 365 S.E.2d 312, 316 (1988).

Bowden acknowledges these legal principles but contends that, because his claims against First Liberty are intentional torts, they fall within an exception to the exclusive jurisdiction of the Industrial Commission. Bowden is correct that intentional torts generally fall outside the scope of the Workers' Compensation Act. *See Woodson v. Rowland*, 329 N.C. 330, 340-41, 407 S.E.2d 222, 228 (1991). But this

Court repeatedly has held that *all* claims concerning the *processing* and *handling* of a workers' compensation claim are within the exclusive jurisdiction of the Industrial Commission, whether the alleged conduct is intentional or not. *Johnson*, 131 N.C. App. at 143-44, 504 S.E.2d at 809; *Deem*, 142 N.C. App. at 477-78, 543 S.E.2d at 212.

In *Johnson*, two injured employees claimed that their workers' compensation carrier had fabricated evidence and engaged in other wrongful conduct while handling their claims. *Johnson*, 131 N.C. App. at 143, 504 S.E.2d at 809. The employees sued, "alleging fraud, bad faith refusal to pay or settle a valid claim, unfair and deceptive trade practices, intentional infliction of emotional distress and civil conspiracy." *Id.* This Court affirmed dismissal of the claims for lack of jurisdiction, holding that the Workers' Compensation Act "gives the North Carolina Industrial Commission exclusive jurisdiction over workers' compensation claims and all related matters, including issues such as those raised in the case at bar." *Id.* at 143-44, 504 S.E.2d at 809.

Several years later, in *Deem*, this Court reaffirmed the *Johnson* holding in even clearer terms. In that case, the employee alleged that his employer intentionally mishandled his workers' compensation claim to force him back to work "at a made up job." *Deem*, 142 N.C. App. at 477, 543 S.E.2d at 212. The employee brought claims for "fraud, bad faith, unfair and deceptive trade practices, intentional infliction of emotional distress and civil conspiracy *arising out of the handling of his workers' compensation claim*." *Id.* at 475, 543 S.E.2d at 210 (emphasis in original). When the

employer argued that those claims were within the exclusive jurisdiction of the Industrial Commission, the injured worker made the *identical* argument that Bowden makes here:

> [P]laintiff at bar argues that it matters not that his claims originally arose out of his compensable injury. Instead, he argues that the "intentional conduct" of defendants fails to come under the exclusivity provisions of the Act because that conduct did not arise out of and in the course of plaintiff's employment relationship.

Id. at 477, 543 S.E.2d at 211. This Court rejected that argument, holding that "plaintiff's claims are ancillary to his original compensable injury and thus, are absolutely covered under the Act and this collateral attack is improper." *Id.* at 477, 543 S.E.2d at 212.

We distill from *Johnson* and *Deem* a straightforward rule: all claims arising from an employer's or insurer's processing and handling of a workers' compensation claim fall within the exclusive jurisdiction of the Industrial Commission, regardless of whether the alleged conduct was intentional or merely negligent.

Here, all of Bowden's factual allegations against First Liberty involve the company's handling of his worker's compensation claim. He alleges that First Liberty wrongly sought a second opinion from "a professional witness for the defense"; that First Liberty denied some of his requests for medical treatment via "form letter"; that First Liberty contacted his doctors without his permission; that First Liberty's

representatives were rude and aggressive with him during phone calls; that First Liberty improperly filed paperwork to suspend his compensation; and that First Liberty "insisted that [Bowden] needed to settle his Workers Compensation claim."

After careful review of Bowden's complaint, we conclude that every allegation supporting his tort claims against First Liberty arises out of the company's processing and handling of his workers' compensation claim. Accordingly, those claims fall within the exclusive jurisdiction of the Industrial Commission. As this Court concluded in *Johnson* and *Deem*, the Industrial Commission "is better suited than the Court to identify and regulate alleged abuses, if any, by insurance carriers" in the handling of workers' compensation claims. *N.C. Chiropractic Ass'n*, 89 N.C. App. at 9, 365 S.E.2d at 316.

CONCLUSION

The allegations against First Liberty Insurance Corporation in Plaintiff's complaint all arise out of First Liberty's processing and handling of Plaintiff's workers' compensation claim. Those claims fall within the exclusive jurisdiction of the Industrial Commission. We reverse the trial court's denial of First Liberty's Rule 12(b)(1) motion and remand this case for entry of an order dismissing Bowden's claims against First Liberty for lack of subject matter jurisdiction.

REVERSED.

Judge BRYANT concurs.

Judge DILLON concurs by separate opinion.

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Judge DILLON, concurring by separate opinion.

I concur in the majority's holding. I write separately, however, because I do not agree with the majority's conclusion that "*all* claims arising from an employer's or insurer's processing and handling of a workers' compensation claim fall within the exclusive jurisdiction of the Industrial Commission[.]" (Emphasis added.) Rather, I believe an employee can pursue a civil action against his insurer, as he can against his employer, where the insurer "'intentionally engages in misconduct knowing it is substantially certain to cause serious injury or death' and that conduct causes injury or death[.]" *Trivette v. Yount*, 366 N.C. 303, 306, 735 S.E.2d 306, 308-09 (2012), (quoting *Woodson v. Rowland*, 329 N.C. 330, 340, 407 S.E.2d 222, 228 (1991)). Indeed, in *Deem v. Treadaway & Sons Painting & Wallcovering, Inc.,* a case relied upon in the majority's analysis, the Court appears to recognize a *Woodson* exception to the exclusivity of the Workers' Compensation Act in claims against the insurer. 142 N.C. App. 472, 477-78, 543 S.E.2d 209, 212, *disc. review denied*, 354 N.C. 216, 553 S.E.2d 911 (2001). However, in concluding that the claim of the plaintiff in that case did not rise to the level of a *Woodson* claim, the *Deem* Court noted that "it is also well established that the [*Woodson*] exception is extremely narrow[.]" *Id.* at 478, 543 S.E.2d at 212.

In any event, I do not believe that Plaintiff in this case has set forth allegations which, if true, rise to the level of extreme and outrageous conduct necessary to state

a claim for intentional infliction of emotional distress. Accordingly, I concur in the holding reached by the majority.