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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-245

Filed: 6 November 2018

North Carolina Industrial Commission, I.C. No. 15-711274

DEBRA JONES, Employee, Plaintiff

v.

WELLS FARGO BANK, NA, Employer, and OLD REPUBLIC INSURANCE COMPANY, Carrier, Defendants

Appeal by plaintiff from order entered 9 November 2017 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 17 September 2018.

Perry & Associates, by Cedric R. Perry, for plaintiff-appellant.

McAngus Goudelock & Courie, PLLC, by H. George Kurani and Veronica S. Fleury, for defendant-appellees.

CALABRIA, Judge.

Debra Jones (“plaintiff”) appeals from the North Carolina Industrial Commission’s order denying her motion to set aside pursuant to N.C. Gen. Stat. § 1A-1, Rule 60(b). After careful review, we affirm.

I. Background

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In February of 2015, plaintiff filed a claim for workers' compensation benefits alleging that she suffered depression and bipolar disorder arising from her employment as a Personal Banker II with Wells Fargo Bank, NA ("Wells Fargo"). Wells Fargo and its insurance carrier, Old Republic Insurance Company (collectively, "defendants"), determined that the claim was not compensable and denied plaintiff's claim. On 27 April 2015, plaintiff filed a Form 33 *Request That Claim Be Assigned For Hearing* with the North Carolina Industrial Commission. Following a hearing, on 31 May 2016, Deputy Commissioner Thomas Perlungher issued an Opinion and Award denying plaintiff's workers' compensation claim.

Plaintiff did not appeal to the Full Commission. However, on 8 December 2016, plaintiff filed a motion to set aside the Opinion and Award due to newly discovered evidence, pursuant to N.C. Gen. Stat. § 1A-1, Rules 60(b)(2) and (6). Plaintiff alleged that she was disabled as a result of defendants' "sub-human" employment practices, evidence of which "only came to light in September 2016, much too late for a new trial"

On 1 February 2017, Deputy Commissioner Perlungher entered an order denying plaintiff's motion. Plaintiff appealed to the Full Commission. Following a hearing, on 9 November 2017, the Full Commission entered an order denying plaintiff's motion to set aside the Opinion and Award.

Plaintiff appeals.

II. Discussion

The Industrial Commission’s inherent power “to set aside former judgments is analogous to that conferred upon the courts by N.C.R. Civ. P. 60(b)(6) and the remedy the Commission may provide is related to that traditionally available at common law and equity and codified by Rule 60(b).” *Jenkins v. Piedmont Aviation Servs.*, 147 N.C. App. 419, 424, 557 S.E.2d 104, 107-08 (2001). “[A] motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion.” *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975).

Here, plaintiff fails to show that the Commission abused its discretion by denying her Rule 60(b) motion. The majority of plaintiff’s arguments on appeal concern the denial of her workers’ compensation claim. However, those arguments are not properly before this Court.

For example, plaintiff asserts that the Full Commission erred by concluding as a matter of law that no medical expert testified that plaintiff’s conditions were causally related to, or exacerbated by, her employment with Wells Fargo, nor opined that plaintiff was at an increased risk of developing a mental illness as compared to members of the general public. However, those conclusions were not made by the Full Commission, but rather by the Deputy Commissioner in the 31 May 2016 Opinion and Award.

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Moreover, in improperly attacking the evidence supporting the Deputy Commissioner's Opinion and Award, plaintiff has abandoned the arguments supporting her Rule 60(b) motion to set aside. It is well established that "a contention not raised and argued in the trial court may not be raised and argued for the first time in the appellate court." *Wood v. Weldon*, 160 N.C. App. 697, 699, 586 S.E.2d 801, 803 (2003); *see also* N.C. R. App. P. 10(a)(1) (2017). Similarly, issues raised below but "not presented and discussed in a party's brief are deemed abandoned" on appeal. N.C. R. App. P. 28(a).

In her motion, plaintiff asserted that "new evidence" of defendants' employment practices was discovered in September 2016, when the Chairman and CEO of Wells Fargo testified before Congress. Plaintiff alleged that Wells Fargo employees "committed crimes" to protect their positions, and that she was personally subjected to "sub-human" performance goals, such as the requirement "to open up eight new accounts for each existing account holder, while banking industry standards were at two to three accounts per existing account holder[.]"

On appeal, however, plaintiff abandons these arguments and instead attacks the sufficiency of the evidence supporting the Deputy Commissioner's Opinion and Award. But that issue was not before the Full Commission on appeal from the denial of plaintiff's Rule 60(b) motion to set aside. As noted in the 9 November 2017 order,

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since “neither party filed an appeal of Deputy Commissioner Perlungher’s Opinion and Award[,]” that decision “constitutes a final judgment of the Commission.”

Accordingly, plaintiff has failed to show that the Commission abused its discretion by denying her Rule 60(b) motion to set aside the Deputy Commissioner’s Opinion and Award. We affirm.

AFFIRMED.

Chief Judge McGEE and Judge DIETZ concur.

Report per Rule 30(e).