NO. COA09-1106

NORTH CAROLINA COURT OF APPEALS

Filed: 18 May 2010

MARGARET LAWSON,
Employee,
Plaintiff-Appellant,

v. Industrial Commission
I.C. Nos. 453801 and 576800

ELECTRONIC DATA SYSTEMS CORPORATION,
Employer,

ACE USA/ESIS,
Carrier,
Defendants-Appellees.

Appeal by Plaintiff from order entered 17 July 2008 by the North Carolina Industrial Commission. Heard in the Court of Appeals 10 February 2010.

Margaret Lawson, Plaintiff-Appellant, pro se.

Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by Elias W. Admassu, for Defendants-Appellees.

McGEE, Judge.

Margaret Lawson (Plaintiff) commenced this workers' compensation action against Electronic Data Systems Corporation and ACE USA/ESIS (Defendants) by filing a Form 18 on 1 November 2005. Plaintiff later obtained counsel and filed a second Form 18 on 11 November 2005. In the second Form 18, Plaintiff alleged that she had suffered injuries to her hands in the form of carpal tunnel

syndrome. Plaintiff asserted that she developed the condition as a result of the repetitive nature of her job with Electronic Data Systems Corporation.

The record is unclear as to subsequent events concerning Plaintiff's claim, but it does show that on 19 March 2007, Defendants filed a request that Plaintiff's claim be assigned for hearing. In their request, Defendants asserted that Plaintiff refused to sign a compromise settlement agreement (the Settlement Agreement) that had been "negotiated at mediation." Defendants sought to enforce the Settlement Agreement. Deputy Commissioner Phillip A. Holmes entered an opinion and award on 15 October 2007, finding as follows:

> 1. On August 30, 2006, [Plaintiff's] workers' compensation claims with [Defendants] were mediated at the office of her attorney[.]
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> . . .
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> 3. At the conclusion of the August 30, 2006 mediation, [Plaintiff], her attorney, . . . the Mediator, ... and Defendants' counsel . . . signed a Mediated Settlement Agreement.
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> . . .
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> 8. [Plaintiff's] former attorney . . . withdrew his representation.

Deputy Commissioner Holmes concluded that the Settlement Agreement was enforceable, and ordered compliance therewith.

Plaintiff, proceeding *pro se*, appealed Deputy Commissioner Holmes' decision to the Industrial Commission. The matter was heard by the Industrial Commission on 1 April 2008. In an opinion

and award filed 16 April 2008, the Industrial Commission directed the parties to submit the Settlement Agreement, along with supporting documents and medical expenses, for review. The Industrial Commission filed an order on 17 July 2008 finding the Settlement Agreement to be fair, just, and in the best interest of the parties. Plaintiff appeals.

Defendants' Arguments to Dismiss

Defendants seek dismissal of Plaintiff's appeal, arguing numerous violations of the N.C. Rules of Appellate Procedure. Because the record before us is lacking with respect to the specific instances alleged by Defendants, we recite the following facts as set forth in Defendants' brief. In their brief, Defendants first assert that the Industrial Commission, through Commissioner McDonald, issued an order on 2 December 2008 settling the record on appeal, thus requiring the settled record on appeal to be filed with the Court of Appeals no later than 17 December 2008. Plaintiff failed to file the settled record on appeal and, pursuant to N.C.R. App. P. 25(a), Defendants filed a motion to dismiss Plaintiff's appeal. Commissioner Staci T. Meyer granted Defendants' motion to dismiss Plaintiff's appeal on 9 March 2009. The Industrial Commission reversed and vacated that order on 10 August 2009, and granted Plaintiff an extension of time in which to file the record on appeal.

The record before us contains the Industrial Commission's 10 August 2009 order reversing and vacating the 9 March 2009 order dismissing Plaintiff's appeal. The 10 August 2009 order allowed

Plaintiff fifteen days within which to file the settled record on appeal with this Court. In the record, there is also a short, unsigned statement that "[t]his copy [of the 10 August 2009 order] and the Defendants-Appellees' Proposed Record on Appeal are being filed on Monday, August 24, 2009[,] which is within the 15 days allowed[,] by [Plaintiff] with the North Carolina Court of Appeals." However, we note that the record is silent as to any matter that occurred in this action between the date Defendants served their "Proposed Record on Appeal" on Plaintiff on 29 October 2008 and the Industrial Commission's 10 August 2009 order.

> "Pursuant to the North Carolina Rules of Appellate Procedure, our review is limited to the record on appeal . . . and any other items filed with the record in accordance with Rule 9(c) and 9(d)." . . . "The Court of Appeals can judicially know only what appears of record. . . . Matters discussed in a brief but not found in the record will not be considered by this Court."

North Carolina Concrete Finishers, Inc. v. North Carolina Farm Bureau Mut. Ins. Co., Inc., ___ N.C. App. ___, ___, 688 S.E.2d 534, 536 (2010) (citations omitted). In making their argument concerning the Industrial Commission's 10 August 2009 order, Defendants direct our attention to documents not included in the record. Because we can "judicially know only what appears of record[,]" we are therefore unable to address Defendants' argument concerning the 10 August 2009 order. *Id.*

Secondly, Defendants argue that we should dismiss Plaintiff's appeal because of Plaintiff's numerous violations of the N.C. Rules of Appellate Procedure. We are aware of the difficulties faced by

a *pro se* appellant, such as Plaintiff, but our Court has clearly held that the rules of appellate procedure "apply to everyone." *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999). Our Supreme Court provided thorough instructions regarding rules violations in *Dogwood Dev. & Mgmt. v. White Oak Transport*, 362 N.C. 191, 657 S.E.2d 361 (2008). In *Dogwood*, the Supreme Court enumerated three broad categories of rules violations: (1) jurisdictional violations, (2) non-jurisdictional violations, and (3) waiver. *Id.* at 194, 657 S.E.2d at 363. Non-jurisdictional violations "normally should not lead to dismissal of the appeal." *Id.* at 198, 657 S.E.2d at 365. Our Supreme Court further instructed that "[i]n most situations when a party substantially or grossly violates nonjurisdictional requirements of the rules, the appellate court should impose a sanction other than dismissal and review the merits of the appeal." *Id.* at 200, 657 S.E.2d at 366. In *Dogwood*, the Supreme Court cited to two rules as particular examples of non-jurisdictional violations:

> Two examples of such [non-jurisdictional] rules are those at issue in the present case: Rule 10(c)(1), which directs the form of assignments of error, and Rule 28(b), which governs the content of the appellant's brief. Noncompliance with rules of this nature, while perhaps indicative of inartful appellate advocacy, does not ordinarily give rise to the harms associated with review of unpreserved issues or lack of jurisdiction.

Id. at 198, 657 S.E.2d at 365.

We note that Defendants assign particular focus to Plaintiff's "more egregious violations of Rules 10 and 28." Defendants specifically contend that Plaintiff violated Rule 10(c)(1) and Rule

28(b). In light of our Supreme Court's direct focus on violation of those rules as not ordinarily warranting dismissal, we review the merits of Plaintiff's appeal.

Plaintiff's Argument

In a two-page argument, Plaintiff contends that Deputy Commissioner Holmes erred by finding the Settlement Agreement enforceable. Plaintiff contends this was error because "[n]o copy of [the Settlement Agreement] . . . was ever presented as any sort of evidence or proof that one was submitted and/or filed in a timely manner." We disagree.

We review the decisions of the Industrial Commission to determine whether the Commission's conclusions of law are supported by the findings of fact which, in turn, must be supported by competent evidence in the record. *Lemly v. Colvard Oil Co.*, 157 N.C. App. 99, 101-02, 577 S.E.2d 712, 714 (2003). The Industrial Commission's findings of fact are binding if supported by competent evidence, but we review its conclusions of law *de novo*. *Id.* at 102, 577 S.E.2d at 714.

In the present case, the Industrial Commission's 17 July 2008 order contained the following language:

> This matter was reviewed before the Full Commission on April 1, 2008, upon appeal of [P]laintiff from an Opinion and Award by Deputy Commissioner Phil[l]ip A. Holmes filed October 15, 2007. On April 16, 2008, the Full Commission filed an Opinion and Award enforcing the Mediated Settlement Agreement signed August 30, 2006, according to *Lemly v. Colvard Oil Company*, 157 N.C. App. 99, 577 S.E.2d 712 (2003), instructing the parties to submit to the Full Commission a copy of the settlement agreement and any supporting

> medical documentation. Plaintiff submitted a letter and supporting documentation dated May 16, 2008 and [D]efendants filed a response by letter dated June 3, 2008. The matter is now ready for decision.
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> . . .
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> After giving due consideration to all matters involved in this case in accordance with Chapter 97, G.S. 97-17 as amended June 15, 2001, and Commission Rules, and upon the [D]efendants' stated or implied representation that all pertinent medical reports have been submitted with the Agreement to the Commission as required by Rule 502(3)(a), the compromise settlement agreement is deemed by the Commission to be fair and just, and in the best interest of all parties. . . . The agreement is incorporated herein by reference[.]

The 16 April 2008 opinion and award referenced above contains the following language:

> FINDINGS OF FACT
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> 1. On August 30, 2006, [P]laintiff and [D]efendants mediated [P]laintiff's workers' compensation claims at the office of [P]laintiff's former attorney, Michael Brown. At the time of the mediation, [P]laintiff was capable of reading and writing, and had taken some college courses.
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> 2. At the conclusion of the August 30, 2006 mediation, [P]laintiff, her attorney, the mediator, and [D]efendant[s'] counsel Paul Lawrence signed a Mediated Settlement Agreement. Mr. Brown confirmed and the commission finds that the parties signed the Mediated Settlement Agreement on August 30, 2006, and that all portions of the Mediated Settlement Agreement were on the document at the time the parties affixed their signatures thereto.

Despite the findings in both the 16 April 2008 opinion and

award set forth above, and the 17 July 2008 order, Plaintiff contends that the Industrial Commission erred by "not confirming that the said mediated settlement agreement had been properly submitted, timely filed and approved and all partie[s] notified before making a decision." Plaintiff directs our attention to Workers' Compensation Rules 502(1) and (5).

Workers' Compensation Rule 502(1) provides that "[a]ll compromise settlement agreements must be submitted to the Industrial Commission for approval. Only those agreements deemed fair and just and in the best interest of all parties will be approved." Workers' Comp. R. of N.C. Indus. Comm'n 502(1), 2010 Ann. R. (N.C.) 1030. Rule 502(5) provides that, "[o]nce a compromise settlement agreement has been approved by the Industrial Commission, the employer or the carrier/administrator shall furnish an executed copy of said agreement to the employee or his attorney of record, if any." Workers' Comp. R. of N.C. Indus. Comm'n 502(5), 2010 Ann. R. (N.C.) 1031. Plaintiff asserts that "[n]o copy of the said compromised settlement agreement with approval by North Carolina Industrial Commission was ever presented as any sort of evidence or proof that one was submitted and/or filed in a timely manner." We disagree.

Reviewing the order from which this appeal is taken, and the opinion and award referenced in that order, it is clear that the Industrial Commission found as fact that the parties entered into the Settlement Agreement. Following the Industrial Commission's opinion and award of 16 April 2008, the Settlement Agreement was

submitted, along with letters and medical records, to the Industrial Commission. The Settlement Agreement was incorporated, by reference, into the Industrial Commission's order finding that the Settlement Agreement was "deemed by the Commission to be fair and just, and in the best interest of all parties." We find no violation of Workers' Compensation Rule 502. Rather, it appears that, in the very order from which Plaintiff appeals, the Industrial Commission made the determination required under Rule 502(1) – that the Settlement Agreement was "fair and just and in the best interest of all parties." Plaintiff's argument that the Industrial Commission erred by not receiving and reviewing the Settlement Agreement pursuant to Rule 502 is therefore overruled.

Affirmed.

Judges STEELMAN and BEASLEY concur.

Report per Rule 30(e).