Dismissed

Ballance
Bynum
Riggsbee

NO. COA99-1325

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2000

ROBERT JAY MYERS,
Employee, Plaintiff

v.

SHERWOOD PARKER TRUCKING COMPANY,
Employer

NON-INSURED,
Defendant

North Carolina
Industrial Commission
I.C. File No. 512183

Appeal by defendant from order entered 9 June 1999 by the North Carolina Industrial Commission. Heard in the Court of Appeals 18 September 2000.

Brumbaugh, Mu & King, P.A., by Kenneth W. King, Jr., for plaintiff-employee.

Ludlum & Casteen, Attorneys, by J. Wesley Casteen, for defendant-employer.

TIMMONS-GOODSON, Judge.

Plaintiff Robert J. Myers filed a claim with the North Carolina Industrial Commission to recover benefits under the Workers' Compensation Act ("Act") for a back injury he suffered while working for defendant-employer Sherwood Parker Trucking Company. Defendant-employer denied plaintiff's claim on the grounds that plaintiff was an "independent contractor." A Deputy Commissioner of the North Carolina Industrial Commission conducted a hearing concerning plaintiff's claim and concluded that there was

"insufficient evidence of record from which to determine by the greater weight that defendant employed three [] or more regular employees" at the time of plaintiff's injury, and therefore, defendant-employer was not subject to the Act. Plaintiff filed a motion with the Full Commission to "[re]open the case for the taking of additional evidence."

In an order filed 9 June 1999, the Full Commission found that there were "good grounds to reopen the record for submission of additional evidence on the issue of whether defendant had three or more employees." The Full Commission stated that "whether defendant had three or more employees at the time of plaintiff's injury is a jurisdictional issue which should not be decided on the basis of insufficient evidence when the evidence needed can be obtained by reopening the record." The Full Commission ordered plaintiff's case be set for rehearing before the Commission "for the purpose of taking the additional evidence needed." From the order, defendant-employer appeals.

Initially, we must decide whether this appeal is interlocutory and should be dismissed. Defendant-employer assigns error to the Full Commission's order which set plaintiff's case for rehearing to take additional evidence. Because the Full Commission's order requires further action to settle the controversy, it is interlocutory, *see Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381, *reh'g denied*, 232 N.C. 744, 59 S.E.2d 429 (1950), and this Court has jurisdiction only if "'the order affects some substantial right and [the loss of that right] will work injury to

appellant if not corrected before appeal from final judgment,'" *see Goldston v. American Motors Corp.*, 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990) (quoting *Stanback v. Stanback*, 287 N.C. 448, 453, 215 S.E.2d 30, 34 (1975)). "[T]he appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994) (citation omitted).

Defendant-employer has not demonstrated that any substantial right is affected by this order. Furthermore, we conclude that no substantial right is involved which will be "lost, prejudiced, or less than adequately protected" if we do not review this appeal before final judgment. *See Miller v. Swann Plantation Development Co.*, 101 N.C. App. 394, 395, 399 S.E.2d 137, 138 (1991) (citations omitted). Our decision is consistent with the purpose behind the statutes governing appellate procedure which is to "prevent fragmentary, premature and unnecessary appeals by permitting the trial divisions to have done with a case fully and finally before it is presented to the appellate division." *Waters v. Personnel, Inc.*, 294 N.C. 200, 207, 240 S.E.2d 338, 343 (1978). Accordingly, defendant-employer's appeal is dismissed.

Dismissed.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).