

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-157

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2004

PEARLENE ROZIER,
Employee,
Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 680073

HAWORTH, INC.,
Employer,

and

THE HARTFORD,
Carrier,
Defendants.

Appeal by defendants from opinion and award entered 28 October 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 January 2004.

Brumbaugh, Mu & King, P.A., by Angela D. Vandivier, for plaintiff.

Cranfill, Sumner & Hartzog, L.L.P., by Kirk D. Kuhns and Jaye E. Bingham, for defendants.

WYNN, Judge.

Defendant-employer Haworth, Inc. and its insurer, The Hartford, appeal from the Opinion and Award of the Full Commission vacating the deputy commissioner's dismissal of Plaintiff's workers' compensation claim with prejudice. Because we conclude this appeal does not arise from a final judgment, we dismiss Defendants' appeal as interlocutory.

An appeal from an Order of the Full Commission is subject to the “same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions.” N.C. Gen. Stat. §97-86 (2001). Parties have the right to appeal “any final judgment of a superior court . . . , including any final judgment entered upon review of a decision of an administrative agency.” N.C. Gen. Stat. §7A-27. “Thus, an appeal of right arises only from a final order or decision of the Industrial Commission.” *Ratchford v. C.C. Mangum, Inc.*, 150 N.C. App. 197, 199, 564 S.E.2d 245, 247 (2002). “An order is not final, and therefore interlocutory, if it fails to determine the entire controversy between all the parties.” *Plummer v. Kearney*, 108 N.C. App. 310, 312, 423 S.E.2d 526, 528 (1992). However,

[t]wo avenues do exist ... whereby an interlocutory order may be immediately appealed. First, the order may be certified by the trial court as immediately appealable pursuant to N.C.G.S. §1A-1, Rule 54(b). An equivalent procedure to certification exists in N.C.G.S. §97-86, whereby the Commission may, upon its own motion, certify questions of law to this Court for determination. Second, an interlocutory order may be appealed pursuant to N.C.G.S. §7A-27(d) or N.C.G.S. §1-277 if it: (1) determines the action; (2) discontinues the action; (3) grants or refuses a new trial; or (4) affects a substantial right of the appellant.

108 N.C. App. at 313; 423 S.E.2d at 529.

In this case, Defendants, acknowledging its appeal is interlocutory, contend the Commission’s order vacating the dismissal of Plaintiff’s claim is immediately appealable because they have been deprived of their substantial right to have the claim be prosecuted in the time and manner provided by the rules of the Industrial Commission and statutory rules of appeal. We disagree.

“For an interlocutory order of the Commission to be immediately appealable under the substantial right analysis it must: (1) affect a substantial right of the appellant; and (2) have the potential to work injury if not appealed before final judgment.” *Plummer*, 108 N.C. App. at 313,

423 S.E.2d at 529. As defined by our Supreme Court, a substantial right is “a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which a man is entitled to have preserved and protected by law: a material right.” *LaFalce v. Wolcott*, 76 N.C. App. 565, 569, 334 S.E.2d 236, 239 (1985)(quoting *Oestreicher v. Amer. Nat’l Stores, Inc.*, 290 N.C. 118, 130, 225 S.E.2d 797, 805 (1976)).

In support of its contention that a substantial right has been affected, Defendants reference Plaintiff’s failure prosecute her case by not preparing the pre-trial agreement, not providing Defendants with medical records, and not taking any action to have the case recalendared. Defendants also state that “equity requires that defendants should not be made to return to discovery and a hearing before this matter is determined, when plaintiff so clearly has violated the workers’ compensation rules and has procedurally gotten to this point in the case with no statutory or legal basis.” However, as stated in *LaFalce v. Wolcott*, 76 N.C. App. 565, 334 S.E.2d 236 (1985) in its discussion of several principles that have emerged from interlocutory appeals considered by this Court:

the mere avoidance of a rehearing on a motion or the avoidance of a trial when summary judgment is denied is not a “substantial right.” *Waters v. Qualified Personnel, Inc.*, 294 N.C. 200, 208, 240 S.E. 2d 338, 344 (1978); *Blackwelder v. Dept. of Human Resources*, 60 N.C. App. 331, 336, 299 S.E. 2d 777, 781 (1983) (“avoidance of a portion of an administrative hearing is not a ‘substantial right’”). Similarly, an order granting a partial new trial is not immediately appealable, despite the language of N.C. Gen. Stat. Sec. 1-277(a) (“An appeal may be taken from every judicial order or determination [which] . . . grants or refuses a new trial.”). *Johnson v. Garwood*, 49 N.C. App. 462, 463, 271 S.E. 2d 544, 545 (1980); *Unigard Carolina Ins. Co. v. Dickens*, 41 N.C. App. 184, 186-87, 254 S.E. 2d 197, 198 (1979) (jury verdict on liability allowed; grant of new trial on damages not immediately appealable); accord *Bailey v. Gooding*, 301 N.C. 205, 210, 270 S.E. 2d 431, 433-34 (1980) (order forcing plaintiffs to undergo full trial rather than trial on damages only, not appealable); *Tridyn Indus., Inc. v. Amer. Mutual Ins. Co.*, 296 N.C. 486, 251 S.E. 2d

443 (1979) (trial judge granted summary judgment on issue of liability only).

In this case, Defendants essentially contend the avoidance of discovery and hearing in this matter is the substantial right affected by the Commission's Order vacating the order dismissing Plaintiff's claim. As stated, the mere avoidance of a rehearing or trial does not constitute a substantial right. Furthermore, Defendants' contentions regarding the propriety of the Commission's Order can be properly reviewed by this Court in an appeal from a final judgment in this matter.

Dismissed.

Judges TIMMONS-GOODSON and McCULLOUGH concur.

Report per Rule 30(e).