

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA10-18

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

WENDY LANGDON,
Plaintiff,
Employee,

v.

North Carolina
Industrial Commission
I.C. No. 860398

AMERICAN VINYL,
Employer,

ERIE INSURANCE,
Carrier,
Defendants.

Appeal by defendants from order entered 6 October 2009 by the North Carolina Industrial Commission. Heard in the Court of Appeals 25 May 2010.

Scudder & Hedrick, PLLC, by John A. Hedrick, for plaintiff-appellee.

Hedrick, Gardner, Kincheloe, & Garofalo, L.L.P., by Justin D. Robertson, Kari A. Lee, and M. Duane Jones, for defendants-appellants.

HUNTER, Robert C., Judge.

Defendant-employer American Vinyl and defendant-carrier Erie Insurance appeal from the Industrial Commission's order, entered pursuant to the Commission's expedited medical motions procedures, authorizing a change in plaintiff Wendy Landgon's treating physician and authorizing further medical treatment. Based on this Court's prior decision in *Berardi v. Craven County Schools*, __ N.C.

App. ___, 688 S.E.2d 115 (2010), we conclude that the Commission's order is interlocutory and does not affect a substantial right. Accordingly, we dismiss defendants' appeal.

Facts

While driving to a job site on 7 September 2007, plaintiff was involved in a motor vehicle accident, injuring her cervical spine and left knee. By executing a Form 60, defendants admitted that plaintiff's injuries are compensable and have paid for her medical treatment and temporary total disability benefits. Under the Commission's expedited medical motions procedure, plaintiff filed a motion on 2 February 2009 to compel authorization for medical treatment, requesting an order authorizing transfer of plaintiff's treatment to Dr. Ralph Liebelt and authorizing a cervical MRI as recommended by Dr. Liebelt. Defendants opposed plaintiff's motion to change her authorized treating physician. The deputy commissioner denied plaintiff's motion in an administrative proceeding, noting that "the issues raised would be most appropriately addressed before a Deputy Commissioner upon the filing of a Form 33 Request for Hearing." The parties subsequently requested a hearing.

After conducting a telephone conference on 13 March 2009, the deputy commissioner entered an order on 7 April 2009 granting plaintiff's motion to change her authorized treating physician to Dr. Liebelt as well as granting her motion for further medical treatment. Defendants appealed the deputy commissioner's order to the Full Commission. The Full Commission vacated the deputy

commissioner's order and remanded the matter with instructions to take additional evidence consisting of the depositions of Dr. Liebelt as well as plaintiff's current authorized treating physicians. After receiving the doctors' depositions, the deputy commissioner filed a second order granting plaintiff's motions on 22 June 2009. Defendants again appealed the deputy commissioner's decision to the Full Commission, which entered a "Second Interlocutory Order" on 6 October 2009, granting plaintiff's motions and ordering defendants to authorize treatment by Dr. Liebelt within 10 days. On 2 November 2009, defendants filed a notice of appeal to this Court from the Commission's 6 October 2009 order. On 7 December 2009, Commissioner Staci T. Meyer entered an order denying defendants' "request for an immediate appeal," concluding that the Commission's 6 October 2009 order is "interlocutory and does not affect a substantial right of the parties."

Discussion

An appeal from a decision of the Industrial 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 (2009); *Cash v. Lincare Holdings*, 181 N.C. App. 259, 263, 639 S.E.2d 9, 13 (2007). Consequently, "an appeal of right lies only from a final order or decision of the Industrial Commission, one that determines the entire controversy between the parties." *Riggins v. Elkay Southern Corp.*, 132 N.C. App. 232, 233, 510 S.E.2d 674, 675 (1999). "A

decision of the Industrial Commission that determines one but not all of the issues in a case is interlocutory, as is a decision which on its face contemplates further proceedings or 'does not fully dispose of the pending stage of the litigation.'" *Berardi v. Craven County Schools*, __ N.C. App. __, __, 688 S.E.2d 115, 116 (2010) (quoting *Cash*, 181 N.C. App. at 263, 639 S.E.2d at 13). Immediate review of an interlocutory decision is appropriate, however, "where it affects a substantial right." *Id.*

In *Berardi*, this Court addressed for the first time the nature of appeals under the Industrial Commission's newly adopted expedited medical motion procedure. Observing that the Commission's expedited medical motion procedure was intended to "implement a strategic plan for 'expeditiously resolving requests for, or disputes involving, medical compensation under G.S. 97-25, including selection of a physician, change of physician, the specific treatment involved, and the provider of such treatment[,]'" this Court concluded that the Commission's "rulings [under the expedited medical motions procedure] must necessarily be expedited, are *interlocutory*, and entered without prejudice to the subsequent resolution of the contested issues in the case." *Berardi*, __ N.C. App. at __, 688 S.E.2d at 117 (quoting N.C. Gen. Stat. § 97-78(f) (2) (2009)) (emphasis added).

Here, the Commission's order designating Dr. Liebelt as plaintiff's authorized treating physician is interlocutory as it does not fully resolve the entire controversy between the parties. *See id.* at __, 688 S.E.2d at 117 (concluding that Commission's

order under expedited medical motions procedure authorizing additional medical procedures "was not a final ruling that determined all issues in the case and was therefore interlocutory.").

Nor does the Commission's order affect a substantial right. In addressing this issue, the *Berardi* Court observed:

The enactment of N.C. Gen. Stat. § 97-78(f) and (g) by the General Assembly mandates that medical treatment issues be handled expeditiously. In order to comply with these statutory amendments, rulings must necessarily be expedited, are interlocutory, and *entered without prejudice to the subsequent resolution of the contested issues in the case.*

Id. at ___, 688 S.E.2d at 117 (emphasis added). Accordingly, we dismiss defendants' appeal.

Dismissed.

Judges Wynn and Calabria concur.

Report per Rule 30(e).