

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-401

NORTH CAROLINA COURT OF APPEALS

Filed: 18 May 2004

BRIAN PELTIER,
Employee-Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 875751

GREYHOUND LINES, INC.,
Employer-Defendant

and

CIGNA-ACE USA,
Carrier-Defendant

Appeal by plaintiff from opinion and award entered 21 August 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 3 May 2004.

Brian Peltier, pro se, for plaintiff-appellant.

Hedrick, Eatman, Gardner & Kincheloe, L.L.P., by Erin D. Eveson, for defendants-appellees.

CALABRIA, Judge.

Plaintiff appeals the Industrial Commission's order denying plaintiff's request to set aside a settlement agreement. We affirm.

Defendants have filed with this Court a motion to dismiss the appeal, or in the alternative, strike portions of the assignment of error referencing material expressly excluded from the record by Commissioner Renee Riggsbee. We deny the motion to dismiss but grant defendants'

motion to strike. In addition, we deny plaintiff's motion to strike defendants' motion to dismiss and motion for a new trial.

This Court reviews opinions and awards of the Industrial Commission to determine whether any competent evidence exists to support the Commission's findings of fact and whether the findings support the Commission's conclusions of law. *Cross v. Blue Cross/Blue Shield*, 104 N.C. App. 284, 285-86, 409 S.E.2d 103, 104 (1991). If supported by competent evidence, the Commission's findings are binding on appeal even when there exists evidence to support findings to the contrary. *Allen v. Roberts Elec. Contr'rs*, 143 N.C. App. 55, 60, 546 S.E.2d 133, 137 (2001). The Commission's conclusions of law are reviewed *de novo*. *Id.* at 63, 546 S.E.2d at 139.

In the instant case, plaintiff failed to assign as error any of the findings of fact, therefore, these findings are presumed supported by competent evidence. *Watson v. Employment Security Comm.*, 111 N.C. App. 410, 412, 432 S.E.2d 399, 400 (1993) (stating that findings not assigned as error are "presumed to be supported by the evidence and are binding on appeal"). Moreover, this Court is not at liberty to re-weigh the evidence. *Baker v. City of Sanford*, 120 N.C. App. 783, 787, 463 S.E.2d 559, 562 (1995).

A settlement agreement, once approved by the Commission, is binding on the parties in the same manner as an opinion and award. *Brookover v. Borden, Inc.*, 100 N.C. App. 754, 756, 398 S.E.2d 604, 606 (1990). In order to have the agreement set aside, a party must produce evidence that the agreement was secured by fraud, misrepresentation, undue influence, or mutual mistake. *See* N.C. Gen. Stat. §97-17 (2003); *Brookover*, 100 N.C. App. at 756, 398 S.E.2d at 606. Plaintiff claims his agreement was secured by misrepresentation, undue influence, and mutual mistake.

The Commission found that plaintiff's attorney advised plaintiff that the evidence presented before the Deputy Commissioner and later gathered from deposition testimony, did not support his claim for compensation; and therefore, it was possible that plaintiff would recover nothing. Plaintiff's attorney negotiated a settlement agreement for a lump sum payment of \$2,700.00. Plaintiff questioned entering into the agreement; therefore, plaintiff's attorney had a South Carolina attorney review the claim and provide a second opinion. The South Carolina attorney recommended that plaintiff accept the agreement because his case would likely be unsuccessful if litigated.

On 6 January 2000, plaintiff executed the agreement. Before its execution, plaintiff's attorney reviewed the agreement with plaintiff, explained the terms of the agreement and the consequences of entering into the agreement.

On 7 February 2000, the Deputy Commissioner approved the agreement. The Deputy Commissioner had before him the plaintiff's trial testimony, deposition testimony, and plaintiff's medical records when he approved the agreement.

The Commission found plaintiff understood the terms of the agreement and the nature and consequences of its execution. Plaintiff presented no evidence that either his or defendants' counsel made any misrepresentations or committed fraud in procuring the execution or approval of the agreement. Additionally, plaintiff failed to present evidence of undue influence or of a mutual mistake.

Based on these findings the Commission concluded that plaintiff failed to meet the burden necessary to set aside the settlement agreement. We conclude that the Commission's findings of fact support its conclusion, which, in turn, support the order denying plaintiff's request to set aside the settlement agreement. Accordingly, this assignment of error is overruled.

Affirmed.

Judges TIMMONS-GOODSON and ELMORE concur.

Report per Rule 30(e).