

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-812  
NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2012

BRUCE D. TAYLOR,  
Employee,  
Plaintiff,

v.

From the North Carolina  
Industrial Commission  
IC No. 931701

HOWARD TRANSPORTATION, INC.,  
Employer/Defendant,  
and TRAVELERS INDEMNITY COMPANY OF  
AMERICA,  
Carrier/Defendant

Appeal by defendants from the Opinion and Award entered 11 March 2011 by the North Carolina Industrial Commission. Heard in the Court of Appeals 15 November 2011.

*Holt, Longest, Wall, Blaetz & Moseley, PLLC by W. Phillip Moseley for plaintiff-appellee.*

*Hedrick, Gardner, Kincheloe & Garofalo, L.L.P. by Neil P. Andrews & M. Duane Jones for defendant-appellants.*

STEELMAN, Judge.

The order of the Industrial Commission denying defendants' motion to dismiss for lack of subject matter jurisdiction is a non-appealable interlocutory order. Defendants' appeal is

dismissed.

I. Factual and Procedural Background

Howard Transportation, Inc. (defendant) is a trucking company headquartered in the State of Mississippi. Bruce D. Taylor (plaintiff) was at all relevant times a resident of North Carolina. From December 2002 until 13 June 2003, plaintiff worked as a truck driver for defendant. Plaintiff then resigned his employment and went to work for another trucking company. On 14 May 2004, defendant's recruiter, Michelle King, sent a letter to plaintiff, inviting him to re-apply for employment. Plaintiff called King and expressed a willingness to return to work for defendant upon several conditions. King discussed these conditions with Suzanne Skipper and Larry Knight, who had hiring authority. After receiving approval from Skipper and Knight, King called plaintiff at his residence in North Carolina, and advised him that defendant agreed to his conditions of employment.

Plaintiff then resigned his employment with the other trucking company. His re-hire date with defendant was 16 August 2004. Defendant subsequently transported plaintiff to its headquarters in Laurel, Mississippi for re-orientation, which included a physical examination and driving test. Plaintiff was

on defendant's payroll for the entire orientation period.

On 6 October 2006, plaintiff was making a run for defendant. He stopped his truck at a truck-stop in Centreville, Maryland and was walking to the truck-stop when he was struck by a pick-up truck, and was injured. Plaintiff filed a workers' compensation claim in Mississippi and received benefits. On 3 June 2008, plaintiff filed a form 18 with the North Carolina Industrial Commission. On 12 August 2008, defendant filed a form 61 with the Industrial Commission, denying the claim based upon lack of jurisdiction. On 11 March 2011, the Industrial Commission entered an Opinion and Award holding it had jurisdiction over plaintiff's claim, and remanding the matter for assignment to a Deputy Commissioner for a full evidentiary hearing.

Defendant appeals.

## II. Interlocutory Appeal

The opinion and award of the Industrial Commission in this case is not a final order or decision of the Commission, and is interlocutory. *Cash v. Lincare Holdings*, 181 N.C. App. 259, 263-65, 639 S.E.2d 9, 13-14 (2007). N.C. Gen. Stat. § 97-86 provides that an appeal from a decision of the Commission to the Court of Appeals shall be "under 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 (2011). Appeals in civil actions are controlled by N.C. Gen. Stat. § 1-277 and N.C. Gen. Stat. § 7A-27. N.C. Gen. Stat. § 1-277 provides for an appeal from an order "which affects a substantial right claimed in any action or proceeding[.]" N.C. Gen. Stat. § 1-277 (2011). Subsection (b) further provides that a party "shall have the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant[.]" N.C. Gen. Stat. § 1-277(b) (2011).

The issue decided by the Commission was whether it had subject matter jurisdiction over this case. The Commission answered this question in the affirmative. While N.C. Gen. Stat. § 1-277(b) provides for an appeal from the denial of a motion to dismiss for lack of personal jurisdiction, it does not apply to the denial of a motion challenging subject matter jurisdiction. *Duke University v. Bryant-Durham Electric Co.*, 66 N.C. App. 726, 727, 311 S.E.2d 638, 639 (1984) (citing *Shaver v. Construction Co.*, 54 N.C. App. 486, 487, 283 S.E.2d 526, 527 (1981)). The Commission's denial of defendants' motion to dismiss for lack of subject matter jurisdiction is a non-appealable interlocutory order. Defendants' appeal is dismissed.

DISMISSED.

Judges MCGEE and McCULLOUGH concur.

Report per Rule 30(e).