

*An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-625

NORTH CAROLINA COURT OF APPEALS

Filed: 4 March 2008

FRANCES JAMES,  
Employee-Plaintiff,

v.

North Carolina Industrial Commission  
I.C. File No. 985521

CAROLINA POWER AND LIGHT  
(now PROGRESS ENERGY),  
Employer-Defendant,

RSKCO,  
Servicing Agent-Defendant.

Appeal by defendants from opinion and award entered 16 February 2007 by Commissioner Christopher Scott for the Full Commission. Heard in the Court of Appeals 8 January 2008.

*Teague, Campbell, Dennis & Gorham, L.L.P., by Tamara R. Nance, Tara D. Muller, and Bruce Hamilton, for defendant.*

*Scudder & Hedrick, by Samuel A. Scudder and Alice Tejada, for plaintiff.*

ELMORE, Judge.

On 23 November 1999, Frances James (plaintiff) was injured while working in an admittedly compensable accident when a van struck her wheelchair as she crossed a street. Her employer, Carolina Power and Light, now known as Progress Energy (defendant), admitted liability and began paying temporary disability benefits of \$293.92 per week. At the time of the accident, plaintiff was a paraplegic as a result of a car accident that occurred in 1989. Plaintiff

saw a number of doctors following the 1999 accident. These doctors included some that were not approved by defendant. Plaintiff was uncooperative with her vocational rehabilitation counselor, and as a result, the Industrial Commission allowed defendant to suspend payments to her. On 11 August 2003, Deputy Commissioner Chrystal Stanback held a hearing in which plaintiff sought the reinstatement of her benefits and medical treatment. Deputy Commissioner Stanback entered an opinion and award in plaintiff's favor on 15 August 2005, which defendant appealed to the Full Commission. On 16 February 2007, the Full Commission affirmed the deputy commissioner's opinion and award with minor modifications. On 6 March 2007, plaintiff moved for reconsideration of the Full Commission's opinion and award. Defendant filed a response on 16 March 2007, opposing the motion for reconsideration. That same day, Defendant filed notice of appeal to this Court.

At the time of hearing, the Full Commission had yet to rule on the motion for reconsideration, despite this Court's extension of time for the parties to file their briefs, to this Court, and notice to the Full Commission.

As a preliminary matter we must determine whether the appeal is from an interlocutory order and therefore is subject to dismissal. An order or judgment is interlocutory if it is made during the pendency of an action and does not dispose of the case but requires further action by the trial court in order to finally determine the entire controversy. There is generally no right to appeal an interlocutory order. The purpose of this rule is to prevent fragmentary, premature and unnecessary appeals by permitting the trial court to bring the case to final judgment before it is presented to the appellate courts.

*Bob Timberlake Collection, Inc. v. Edwards*, 176 N.C. App. 33, 37, 626 S.E.2d 315, 320 (2006), *disc. review denied*, 360 N.C. 531, 633 S.E.2d 674 (2006)(quotations and citations omitted).

Because the Full Commission's opinion and award cannot be considered final until the Full Commission rules on plaintiff's motion for reconsideration, this appeal is interlocutory.

Notwithstanding this general rule, immediate appeal may be allowed “if the order or judgment is final as to some but not all of the claims or parties, and the trial court certifies the case for appeal pursuant to N.C. Gen. Stat. §1A-1, Rule 54(b),” or “if the trial court’s decision deprives the appellant of a substantial right which would be lost absent immediate review.” *Id.* We note that neither of these recognized exceptions apply in this case.

Accordingly, we hold that this appeal is interlocutory and does not qualify under either of the exceptions that would allow this Court to hear the matter. We therefore dismiss the appeal.

Dismissed.

Judges HUNTER and BRYANT concur.

Report per Rule 30(e).