

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-228

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2003

KEITH LAMONT HILLSMAN,  
Plaintiff,

v.

Industrial Commission  
No. TA-16279

NORTH CAROLINA DEPARTMENT OF  
CRIME CONTROL AND PUBLIC  
SAFETY,  
Defendant.

Appeal by defendant from decision and order entered 5 December 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 17 November 2003.

*James E. Rogers for plaintiff-appellee.*

*Attorney General Roy Cooper, by Special Deputy Attorney General William H. Borden, for defendant-appellant.*

EAGLES, Chief Judge.

Plaintiff filed an action with the North Carolina Industrial Commission pursuant to the Tort Claims Act, N.C. Gen. Stat. § 143-291, et seq., alleging that Trooper Edward L. Melvin of the North Carolina Highway Patrol was negligent in failing to read a National Crime Information Center (NCIC) report and compare plaintiff's attributes with those attributes listed for a wanted fugitive, James Bernard Davis. Plaintiff further alleged that Trooper Melvin was negligent in contacting plaintiff's employer, which caused

plaintiff to lose his job and suffer emotional distress, among other things.

The relevant facts are as follows: On 21 August 1997, Trooper Melvin stopped a 1998 Dodge Caravan, driven by plaintiff, for speeding. Plaintiff did not have his driver's license with him, but provided Trooper Melvin with his business card, school identification, and a driver's license number. Trooper Melvin radioed the information to a telecommunications office in Greensboro. The operator informed Trooper Melvin that the driver's license number provided by plaintiff belonged to a Keith Lamont Hillsman, but the license plate was registered to a different vehicle. The operator also informed Trooper Melvin that the driver's true identity may be that of James Bernard Davis, a wanted fugitive.

Trooper Melvin arrested plaintiff and transported him to the magistrate's office, where Trooper Melvin completed a fugitive affidavit and plaintiff was placed under bond. The magistrate had a copy of the NCIC report providing a description of fugitive James Bernard Davis; however, Trooper Melvin did not read the report. Plaintiff was held in jail for two days until his release.

This matter came on for hearing before Deputy Commissioner George T. Glenn, II, on 8 March 2002. By order filed on 15 March 2002, Deputy Commissioner Glenn denied and dismissed plaintiff's action on grounds that plaintiff failed to show any negligence on the part of Trooper Melvin. On appeal and by order filed 5 December 2002, the full Commission reversed the 15 March 2002 order

and reopened the case for the taking of evidence as to plaintiff's damages. From this order, defendant appeals.

A party does not have the right to appeal an interlocutory order, "unless such order affects some substantial right claimed by the [party] and will work an injury to him if not corrected before an appeal from the final judgment." *Johnson v. N.C. Dept. of Transportation*, 70 N.C. App. 784, 785, 321 S.E.2d 20, 20-21 (1984). Furthermore,

"it is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order; instead, the appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits." Failure to make this showing subjects an appeal to dismissal.

*Rousselo v. Starling*, 128 N.C. App. 439, 444, 495 S.E.2d 725, 729 (quoting *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994))(citation omitted), *disc. review denied*, 348 N.C. 74, 505 S.E.2d 876 (1998).

In the instant case, the full Commission reversed the order of the Deputy Commissioner and reopened the case for the taking of evidence as to damages. The record does not contain any evidence that a final order has been filed with the Commission. Moreover, the parties have failed to address the interlocutory nature of the appeal. Accordingly, this appeal is dismissed.

Dismissed.

Judges BRYANT and LEVINSON concur.

Report per Rule 30(e).