

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-797
NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2012

MARTY PARLIER, Employee,
Plaintiff

v.

North Carolina Industrial
Commission
I.C. No. W37359

BURKE COUNTY EMS, Employer,

and

SEDGWICK CMS, Carrier,
Defendants

Appeal by plaintiff from opinion and award entered 2 March 2011 by the North Carolina Industrial Commission. Heard in the Court of Appeals 16 November 2011.

Nancy P. Quinn, for plaintiff-appellant.

Teague Campbell Dennis & Gorham L.L.P., by Tracey L. Jones, for defendant-appellees.

CALABRIA, Judge.

Marty Parlier ("plaintiff") appeals an opinion and award by the Full Commission of the North Carolina Industrial Commission ("the Commission") dismissing plaintiff's claim for workers' compensation benefits. The Full Commission concluded that

plaintiff's claim was barred by plaintiff's 29 July 2009 settlement agreement with Burke County Emergency Medical Services ("BCEMS") and Sedgwick CMS (collectively "defendants"). We affirm.

I. Background

Plaintiff worked as a paramedic for BCEMS. During his employment, he suffered a compensable injury by accident to his right shoulder, neck, and back on 2 January 2007 ("the 2 January injury"). Plaintiff then received conservative treatment for his injuries during the next seven months that was compensated by defendants. On 4 September 2007, plaintiff was assaulted by a supervisor at work, causing a re-injury to his right shoulder ("the 4 September injury").

On 12 November 2007, plaintiff's doctor, Dr. Mark Brazinski ("Dr. Brazinski"), assigned a 3% permanent partial impairment rating ("PPI") to plaintiff's right arm and a 4% PPI to plaintiff's back. On 13 February 2008, plaintiff was released to return to full duty work by Dr. Ralph J. Maxy.

Plaintiff continued to receive medical treatment which was compensated by defendants until 15 October 2008. After that date, plaintiff paid for his own treatment. On 15 May 2009, Dr. Brazinski assigned plaintiff an 8% PPI to his right arm.

On 29 July 2009, the parties entered into a settlement agreement which purported to settle all claims arising from the 2 January injury. The settlement agreement discussed plaintiff's 4 September injury and his subsequent treatment. The Commission approved the settlement agreement on 18 August 2009.

On 20 August 2009, plaintiff filed a Form 18 notice of claim for the 4 September injury. Defendants denied plaintiff's claim. After a hearing, Deputy Commissioner George R. Hall entered an opinion and award dismissing plaintiff's claim on the basis of the settlement agreement. Plaintiff appealed to the Full Commission, which affirmed Commissioner Hall's opinion and award. Plaintiff appeals.

II. Standard of Review

This Court reviews an award from the Commission to determine: "(1) whether the findings of fact are supported by competent evidence, and (2) whether the conclusions of law are justified by the findings of fact." *Clark v. Wal-Mart*, 360 N.C. 41, 43, 619 S.E.2d 491, 492 (2005). "Where there is competent evidence to support the Commission's findings, they are binding on appeal even in light of evidence to support contrary findings." *Starr v. Gaston Cty. Bd. of Educ.*, 191 N.C. App. 301,

304-05, 663 S.E.2d 322, 325 (2008). The Commission's conclusions of law are reviewed *de novo*. *Griggs v. Eastern Omni Constructors*, 158 N.C. App. 480, 483, 581 S.E.2d 138, 141 (2003).

III. Settlement Agreement

Plaintiff argues that the Commission erred by concluding that the 18 August 2009 settlement agreement barred plaintiff's claim which arose from the 4 September injury. Specifically, plaintiff contends that the settlement agreement was only intended to compensate plaintiff for his original 2 January injury. We disagree.

"Compromise settlement agreements . . . are governed by general principles of contract law." *Lemly v. Colvard Oil Co.*, 157 N.C. App. 99, 103, 577 S.E.2d 712, 715 (2003) (internal quotations and citation omitted). "Under North Carolina law, [w]hen the language of the contract is clear and unambiguous, construction of the agreement is a matter of law for the court[,] and the court cannot look beyond the terms of the contract to determine the intentions of the parties." *Weaver v. St. Joseph of the Pines, Inc.*, 187 N.C. App. 198, 207, 652 S.E.2d 701, 709 (2007) (internal quotations and citation omitted).

In the instant case, plaintiff contends that the plain language of the settlement agreement demonstrates that it was not intended to encompass the 4 September injury. The relevant portion of the settlement agreement is contained within the Commission's findings of fact:

13. The July 29, 2009 settlement agreement contains release language that explicitly insulates Defendant-Employer from any further liability arising out of the right shoulder and neck injuries suffered by Plaintiff. Specifically, the agreement provides that the parties

... have decided that it is in the best interest of all concerned to enter into an agreement whereby all matters and things in controversy arising out of the January 2, 2007 accident would be settled with the payment to employee of TWENTY TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$22,500), in one lump sum, without commutation, *in settlement of all claims whatsoever under the North Carolina Workers' Compensation Act arising prior to the date of this agreement, whether asserted or unasserted.* This sum ... is in lieu of any disability or other workers' compensation benefits, including but not limited to those which might otherwise have been claimed for a change in condition or progression of any condition which might develop in the future, medical, death or any other benefits, which are or may be due

employee, his dependents, his estate, or any other representative of employee now or at any time in the future pursuant to the North Carolina Workers' Compensation Act.

The settlement agreement further reads that Plaintiff

. . . represents to the North Carolina Industrial Commission that by execution of this agreement, *he knowingly and intentionally waives his right to further benefits under the North Carolina Workers' Compensation Act*, but it is agreed that no rights other than those arising under the Act are compromised or released thereby . . . Employee further acknowledges that his condition may be progressive and that recovery therefrom is uncertain and indefinite. Accordingly, employee, employer, and servicing agent agree that they will not seek to set aside this settlement agreement in the future on the basis that any party, in entering into this agreement, relied on incorrect statements or opinions from physicians or diagnosis or prognosis of any injury, whether known or unknown, resulting from the January 2, 2007 accident. . .

It is further understood that the rights and remedies of employee against employer and/or servicing agent as a result of Plaintiff's employment and his January 2, 2007 accident are governed and

controlled by the North Carolina Workers' Compensation Act, and that all such rights are being compromised, adjusted, and forever resolved.

14. As part of the settlement agreement, Plaintiff agreed to accept the sum of \$22,500 . . .

. . . together with medical expenses agreed to be paid, in full, final, and complete satisfaction of any and all claims under the North Carolina Workers' Compensation Act which employee, his dependents, estate or other representatives may have against employer and/or servicing agent now or in the future by reason of the January 2, 2007 accident, or any injury, reinjury, condition, change in condition or progression of any condition which might develop in the future, medical expenses or other claims resulting therefrom ... Employee further expressly represents that the consideration being paid to him is made in full accord and satisfaction of any and all claims hereafter alleged or asserted that the settlement described in this agreement is in any way invalid based upon incorrect statements or opinions of any physician or medical provider.

(Emphasis added). Based upon the language of the settlement agreement, the Commission concluded that "the fact that the assault was referenced in the settlement agreement and the

language of the agreement releases all claims asserted and unasserted clearly indicates that the parties were settling all incidents related to Plaintiff's shoulder, including the September [4],¹ 2007 incident."

Contrary to plaintiff's contentions, the Commission's conclusion that plaintiff had settled all claims relating to the 4 September injury is consistent with the plain language of the settlement agreement. Under the terms of the settlement agreement, plaintiff accepted \$22,500 "in settlement of all claims whatsoever under the North Carolina Workers' Compensation Act arising prior to the date of this agreement, whether asserted or unasserted." The broad language of the agreement does not contain any exception for plaintiff's 4 September injury. Instead, as the Commission noted, that incident was explicitly referenced in the settlement agreement. Since the 4 September injury occurred almost two years prior to the execution of the settlement agreement on 29 July 2009, it was clearly covered by the plain language of the settlement agreement. Therefore, the Commission correctly concluded that plaintiff's claim based upon the 4 September injury was barred by the settlement agreement. This argument is overruled.

¹ The Commission's opinion and award contains a clerical error in that it incorrectly listed this date as "September 7, 2007."

IV. Conclusion

The Commission correctly concluded that the settlement agreement entered into by plaintiff and defendants, by its plain language, settled any claims plaintiff may have had as a result of his 4 September 2007 injury. Accordingly, the Commission properly dismissed plaintiff's claim for that injury which was filed after the settlement agreement had been finalized. The Commission's opinion and award is affirmed.

Affirmed.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).