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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1149

Filed: 3 May 2016

North Carolina Industrial Commission No. X06660

PRISILA GONZALEZ, Employee, Plaintiff,

v.

TIDY MAIDS, INC., Employer, and ERIE INSURANCE GROUP, Carrier,
Defendants.

Appeal by plaintiff from Orders entered 25 June 2015 and 24 July 2015 by the
North Carolina Industrial Commission. Heard in the Court of Appeals 9 March 2016.

Francisco J. Bricio for plaintiff-appellant.

*McAngus, Goudelock & Courie, P.L.L.C., by Laura Carter and Benjamin D.
Simpson, for defendants-appellees.*

ELMORE, Judge.

Prisila Gonzalez (plaintiff) appeals from the North Carolina Industrial
Commission's 25 June 2015 Order denying her motion for attorney's fees pursuant to
N.C. Gen. Stat. § 97-88 and 24 July 2015 Order denying her motion to reconsider.
After careful consideration, we affirm.

I. Background

The Full Commission of the North Carolina Industrial Commission (Full

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Commission) filed an opinion and award on 18 October 2013 awarding plaintiff wage and medical compensation under the Workers' Compensation Act. The opinion and award ordered Tidy Maids, Inc. and Erie Insurance Group (defendants) to pay plaintiff, in a lump sum, back temporary total disability compensation in the amount of \$155.00 per week from 1 August 2011 through the present. It also ordered defendants to continue to pay weekly temporary total disability compensation to plaintiff in the amount of \$155.00 until plaintiff returns to work or a new order is entered. Further, the Full Commission ordered defendants to deduct 25% of the lump sum amount and pay it directly to plaintiff's counsel, as well as make every fourth ongoing weekly temporary total disability check payable directly to plaintiff's counsel. Defendants appealed to this Court, and we affirmed the opinion and award. *Gonzalez v. Tidy Maids, Inc.*, ___ N.C. App. ___, 768 S.E.2d 886 (No. COA14-18) (Mar. 3, 2015).

On 12 May 2015, plaintiff filed a motion for attorney's fees pursuant to N.C. Gen. Stat. § 97-88, which the Full Commission denied in an order entered 25 June 2015. Plaintiff filed a motion to reconsider the denial of its motion for attorney's fees on 9 July 2015, which the Full Commission also denied in an order entered 24 July 2015. Plaintiff timely appeals from both orders.

II. Analysis

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Plaintiff first argues that the Full Commission failed to make adequate findings of fact and conclusions of law in its orders denying her motion for attorney’s fees and motion to reconsider. We disagree.

Pursuant to N.C. Gen. Stat. § 97-88 (2015), at a hearing on review, the Industrial Commission *may* order an insurer to pay reasonable attorney’s fees if it finds that (1) “such hearing or proceedings were brought by the insurer[,]” and (2) “the Commission or court by its decision orders the insurer to make, or to continue payment of benefits . . . to the injured employee[.]” Our Supreme Court has held that “the decision to grant or deny a request for such an award [of attorney’s fees] will not be disturbed in the absence of an abuse of discretion.” *Taylor v. J.P. Stevens Co.*, 307 N.C. 392, 399, 298 S.E.2d 681, 685 (1983).

Plaintiff argues that the Full Commission must make “essential” findings with respect to (1) the statutory basis for its decision, (2) an enumeration of factors it considered in exercising its discretion, (3) the amount of attorney’s fees related to the appeal, (4) whether the appeal was filed by the carrier, and (5) the party to be charged with payment of the attorney’s fees, citing *Swift v. Richardson Sports Ltd. Partners*, 188 N.C. App. 82, 87, 658 S.E.2d 674, 677 (2008). Plaintiff’s reading of our holding in *Swift*, and application of it to the facts here, is erroneous.

In *Swift*, the Full Commission awarded the plaintiff’s counsel attorney’s fees of \$69,064.78 pursuant to N.C. Gen. Stat. 97-88. *Swift*, 188 N.C. App. at 85, 658

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S.E.2d at 676. On appeal, this Court concluded that the Full Commission’s “Opinion fail[ed] to include the specific finding required under § 97-88 ‘that such hearing or proceedings were brought by the insurer[.]’ ” *Id.* at 87, 658 S.E.2d at 677. Moreover, because the Full Commission ordered “defendants” to pay the plaintiff’s attorney’s fees, and there were three possible defendants, we concluded that the opinion failed to specify the identity of the entity ordered to pay the attorney’s fees. *Id.* Thus, we remanded for additional findings. *Id.* at 92, 658 S.E.2d at 680.

Here, in contrast, the Full Commission did not award plaintiff attorney’s fees. Unlike in *Swift*, the Full Commission was not required to find that the appeal was filed by the carrier, or name the entity to be charged with payment, as it did not charge defendants with payment. Although the findings plaintiff identifies from *Swift* may have been essential in that case—where an award was granted—we did not hold that such findings are required under N.C. Gen. Stat. § 97-88 in every case.

The Full Commission’s 25 June 2015 Order denying plaintiff’s motion recites the history of the case, the text of N.C. Gen. Stat. § 97-88, and a North Carolina Supreme Court case holding that an award of attorney’s fees under that statute “is not required to be granted” and the decision “is within the sound discretion of the Industrial Commission.” The Full Commission’s 24 July 2015 Order denying plaintiff’s motion to reconsider states that plaintiff’s motion “contains no new information except that it draws the Commission’s attention to the fact that the

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contract between Plaintiff and her counsel does not require counsel to pursue or defend an appeal, and that payment of an attorney [] by Plaintiff for the appeal to the Court of Appeals would place a financial burden on Plaintiff.” The order then states, “Plaintiff’s motion to reconsider is wholly without merit and is therefore DENIED.” In the above orders, the Full Commission adequately addressed its findings as well as its conclusions. Pursuant to N.C. Gen. Stat. § 97-88, the Full Commission was not required to make additional findings of fact.

Plaintiff next argues that the Full Commission abused its discretion in denying her motion for attorney’s fees. We disagree.

“The language of both G.S. 97-88 and G.S. 97-88.1 clearly indicates that an award of attorneys’ fees is not required to be granted. Such language places the decision of whether to award attorneys’ fees within the sound discretion of the Industrial Commission.” *Taylor*, 307 N.C. at 397, 298 S.E.2d at 684. “The test for abuse of discretion is whether a decision is manifestly unsupported by reason, or is so arbitrary that it could not have been the result of a reasoned decision.” *Cap Care Grp., Inc. v. McDonald*, 149 N.C. App. 817, 823, 561 S.E.2d 578, 582 (2002) (citing *Harrison v. Tobacco Transp., Inc.*, 139 N.C. App. 561, 533 S.E.2d 871 (2000)).

In *Taylor*, the plaintiff argued he was “entitled to recover attorneys’ fees for work done in defense of defendant-appellee’s appeals because the intent of the legislature was to avoid the situation in which an injured worker who has won an

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award of compensation is forced to bear the cost of defending his victory through subsequent appeals brought by the defendant.” *Taylor*, 307 N.C. at 398, 298 S.E.2d at 685. In response, our Supreme Court “point[ed] out that the language of the statute clearly shows the legislature did not intend to require that attorneys’ fees be awarded. Instead the statute was written to enable the Industrial Commission to award attorneys’ fees in those cases it deems proper.” *Id.*

Here, although plaintiff argues that she “did not have the capacity to pay for an attorney to defend against the carrier’s appeal at the time of the appeal,” N.C. Gen. Stat. § 97-88 authorizes, but does not require, the Full Commission to award attorney’s fees. Thus, we cannot say that the Full Commission abused its discretion in deciding not to award plaintiff attorney’s fees attributable to defendant’s appeal.

III. Conclusion

The Full Commission was not required to make additional findings of fact or conclusions in its orders denying plaintiff’s motion for attorney’s fees and motion to reconsider. Additionally, the Full Commission did not abuse its discretion in denying plaintiff’s motion for attorney’s fees.

AFFIRMED.

Judges HUNTER, JR. and DAVIS concur.

Report per Rule 30(e).