

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-557  
NORTH CAROLINA COURT OF APPEALS

Filed: 18 December 2012

COREY L. BARR,  
Employee-Plaintiff,

v.

North Carolina Industrial  
Commission  
I.C. No. X57228

THE GOODYEAR TIRE & RUBBER, CO.,  
Employer,

and

LIBERTY MUTUAL INSURANCE CO.,  
Carrier,  
Defendants-Appellees.

Appeal by plaintiff from order entered 16 February 2012 by the North Carolina Industrial Commission. Heard in the Court of Appeals 24 October 2012.

*Law Offices of Kathleen G. Sumner, by Kathleen G. Sumner, for plaintiff-appellant.*

*Young Moore and Henderson P.A., by Angela Farag Craddock, for defendants-appellees.*

HUNTER, Robert C., Judge.

Plaintiff-employee Corey Barr ("plaintiff") appeals from the Industrial Commission's order denying his motion for a

second opinion with a doctor of his choice pursuant to N.C. Gen. Stat. § 97-25. Based on this Court's prior decision in *Berardi v. Craven Cnty Sch.*, 202 N.C. App. 364, 688 S.E.2d 115, *disc. review denied*, 364 N.C. 239, 698 S.E.2d 74 (2010), we conclude that the Commission's order is interlocutory and does not affect a substantial right. Accordingly, we dismiss plaintiff's appeal.

#### Background

Plaintiff was injured 2 July 2011. On 8 August 2011, defendants filed a form 60 "Employer's Admission of Employee's Right to Compensation." For treatment of his injury, plaintiff had been seeing Dr. Barnes, who was authorized by defendants. However, unsatisfied with Dr. Barnes's treatment, plaintiff wanted to seek a second opinion. Although the insurance carrier authorized plaintiff to see another doctor, Dr. Barker, plaintiff requested to see a doctor of his own choosing, Dr. Dalldorf, who was not approved by the carrier. On 26 October 2011, plaintiff filed a form 33 requesting the Industrial Commission "approve Dr. Dalldorf for a 97-25 examination of his right knee." Additionally, on 27 October 2011, plaintiff filed an administrative motion with the Executive Secretary's office for an evaluation with Dr. Dalldorf pursuant to N.C. Gen. Stat.

§ 97-25 ("plaintiff's administrative motion"). Despite the fact that both plaintiff's form 33 request for a "97-25 examination by Dr. Dalldorf" and his administrative motion seem to seek the same relief and address the same request, only his administrative motion is at issue in this appeal. On 25 October 2011, defendants filed a form 24 "Application to Terminate or Suspend Payment of Compensation" since plaintiff was released to return to work without restrictions 24 October 2011.

On 7 December 2011, both matters, plaintiff's administrative motion and defendants' form 24, came on for an informal telephonic hearing before Emily M. Baucom, Special Deputy Commissioner. Special Deputy Commissioner Baucom denied defendants' form 24 and granted plaintiff's administrative motion. Defendants filed a form 33 request for a hearing appealing Special Deputy Commissioner Baucom's order. While defendants requested that "the issue of plaintiff's disability be addressed at the full evidentiary hearing pending for plaintiff's previously filed [f]orm 33[,]" they requested an expedited telephonic hearing to address plaintiff's administrative motion.

On 12 January 2012, plaintiff's "[e]xpedited [m]edical [m]otion[,]" as labeled by the Industrial Commission, came on

for hearing before Deputy Commissioner Theresa Stephenson. Because plaintiff did not indicate that his second opinion appointment with Dr. Barker was "incomplete" but only that he "preferred" another doctor, Deputy Commissioner Stephenson reversed Special Deputy Commissioner Baucom's order granting plaintiff's request for a second opinion with Dr. Dalldorf and denied it. Deputy Commissioner Stephenson did not address defendants' appeal of the denial of their form 24 stating that this aspect of the case required a full evidentiary hearing. However, her order specifically stated that "[i]f by the time of hearing the Deputy assigned to the case feels an additional medical opinion is needed . . . then [p]laintiff's request for the second opinion may be considered."

Plaintiff appealed Deputy Commissioner Stephenson's order to the Full Commission. The matter was heard 13 February 2012, and the Full Commission issued an order affirming Deputy Commissioner Stephenson's order and denying plaintiff's administrative motion ("Full Commission's order"). This order was labeled as "interlocutory" by the Full Commission. On 21 February 2012, plaintiff filed a form 33 request for hearing appealing the Full Commission's order. The Full Commission's

order denying plaintiff's administrative motion is also the basis of plaintiff's appeal to this Court.

#### Discussion

"A decision of the Industrial Commission is interlocutory if it determines one but not all of the issues in a workers' compensation case. A decision that on its face contemplates further proceedings or which does not fully dispose of the pending stage of the litigation is interlocutory." *Perry v. N.C. Dep't of Corr.*, 176 N.C. App. 123, 129, 625 S.E.2d 790, 794 (2006) (internal quotation marks and citations omitted). This Court has noted that the expedited medical motions procedure required the Industrial Commission to "implement a strategic plan for 'expeditiously resolving requests for, or disputes involving, medical compensation under G.S. 97-25, including selection of a physician, change of physician, the specific treatment involved, and the provider of such treatment.'" *Berardi*, 202 N.C. App. at 366, 688 S.E.2d at 117 (quoting N.C. Gen. Stat. § 97-78(f)(2)). A ruling issued pursuant to the medical motions procedure is "not a final ruling that determine[s] all issues in the case"; thus, it is "interlocutory." *Id.* However, interlocutory orders from the

Industrial Commission may be immediately appealable if they affect a substantial right. *Id.* at 365, 688 S.E.2d at 116.

Here, the order denying plaintiff's administrative motion is a ruling under the medical motions procedure because it is a request for a second opinion made pursuant to N.C. Gen. Stat. § 97-25 (2011). Thus, *Berardi's* holding is clear that an order addressing this type of request is interlocutory. Moreover, the record establishes that there are still unresolved issues pending in the Industrial Commission between these parties. The denial of defendants' form 24 "Application to Terminate or Suspend Payment of Compensation" was to be addressed at a full evidentiary hearing, and there was also a "full evidentiary hearing pending for plaintiff's previously filed [f]orm 33." Furthermore, Deputy Commissioner Stephenson's order specifically stated that plaintiff's request for a second opinion may be addressed at the full evidentiary hearing set for defendants' form 24. Thus, the Full Commission's order is interlocutory.

Additionally, the order does not affect a substantial right. To be able to immediately appeal an interlocutory order, the party must establish that "the right affected must be substantial, and the deprivation of that substantial right must potentially work injury if not corrected before appeal from a

final judgment." *Cash v. Lincare Holdings*, 181 N.C. App. 259, 263, 639 S.E.2d 9, 13 (2007) (internal quotation marks omitted). Here, there has been no deprivation of any right because, based on the record, plaintiff has been receiving medical care for his injury. In fact, plaintiff was authorized to get a second opinion with Dr. Barker. While the gist of plaintiff's argument seems to be based on his contention that he has a substantial right to medical care from any doctor of his choosing, we are not persuaded. Accordingly, we dismiss plaintiff's appeal because it is interlocutory, and plaintiff fails to establish that the order affects a substantial right. We also deny plaintiff's petition for writ of *certiorari* for the reasons discussed above.

DISMISSED.

Judges CALABRIA and HUNTER, JR., Robert N. concur.

Report per Rule 30(e).