

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-828
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

THOMAS SCOTCHIE,
Deceased Employee, Plaintiff,

v.

From the North Carolina
Industrial Commission
I.C. No. 889041

SCOTCHIE ENTERPRISES, INC. d/b/a
MOUNTAIN VALLEY WATER,
Employer,

and

BRIDGEFIELD CASUALTY INSURANCE
CO., 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 17 November 2011.

The Van Winkle Law Firm, by Allan R. Tarleton, for the plaintiff.

Teague Campbell Dennis & Gorham, L.L.P, by Matthew W. Skidmore and Leslie P. Lasher, for the defendants.

THIGPEN, Judge.

Thomas Scotchie ("Plaintiff"), an officer of Scotchie Enterprises, Inc. d/b/a/ Mountain Valley Water ("Employer"),

purchased a workers' compensation policy on behalf of Employer which specifically excluded officers of the corporation from coverage. Plaintiff was shot to death by a former employee of Employer. Plaintiff's estate appeals from an Opinion and Award by the Full Commission of the North Carolina Industrial Commission ("the Commission") denying its claim for compensation for Plaintiff's death under the North Carolina Workers' Compensation Act. Because we hold the Commission did not err by concluding Plaintiff was not an employee for purposes of the Workers' Compensation Act at the time of his death, we affirm.

At the time of Plaintiff's death, he was employed as the Vice President of Employer. The other two executive officers of Employer were Connie Scotchie, who served as President, and Andrew Scotchie, who served as Secretary. As part of his job duties as Vice President, Plaintiff was in charge of the day to day operations of Employer.

In March 2007, Plaintiff spoke with Mickey Freeman, an insurance agent, about purchasing workers' compensation insurance for Employer. On 14 March 2007, Plaintiff submitted an application to purchase workers' compensation insurance in Employer's name for the period 17 March 2007 through 17 March 2008. The application listed all three officers as "PARTNERS,

OFFICERS, RELATIVES" to be excluded from coverage. Plaintiff then signed the application in Ms. Freeman's presence. Also on 14 March 2007, the three executive officers each signed a Revocation of Coverage indicating that they "elect to be exempt from the workers' compensation coverage[.]"

On 21 March 2007, Bridgefield Casualty Insurance Company ("Insurer") issued a Workers Compensation and Employers Liability Insurance Policy ("the Policy") to Employer with effective dates of coverage from 17 March 2007 to 17 March 2008. The Policy included a "PARTNERS, OFFICERS AND OTHERS EXCLUSION ENDORSEMENT" which stated that "[t]he policy does not cover bodily injury to any persons described in the Schedule" and listed the three executive officers, including Plaintiff, in the Schedule.

Following the denial of the claim for compensation for Plaintiff's death under the North Carolina Workers' Compensation Act, Plaintiff's estate requested the claim be assigned for hearing. On 2 September 2010, the Deputy Commissioner filed an Opinion and Award denying the claim. Plaintiff's estate appealed to the Commission, which filed an Opinion and Award affirming the Deputy Commissioner on 2 March 2011. The Commission made the following relevant conclusion of law:

Defendant-Employer, through the authority given to Plaintiff as the Vice President, applied for an[d] obtained a workers' compensation insurance policy that excluded the officers of the Corporation. N.C. Gen. Stat. § 97-2(2). Pursuant to N.C. Gen. Stat. § 97-2(2), Plaintiff was not an employee of Defendant-Employer for purposes of the Workers' Compensation Act at the time of his death. Therefore, Plaintiff is not entitled to benefits under the Workers' Compensation Act. *Id.*

Plaintiff's estate appeals from the Opinion and Award of the Commission.

On appeal, Plaintiff's estate contends the Commission erred by denying the workers' compensation claim because Plaintiff was not exempt from Employer's workers' compensation insurance policy at the time of his death. We disagree.

"[O]n appeal from an award of the Industrial Commission, review is limited to consideration of whether competent evidence supports the Commission's findings of fact and whether the findings support the Commission's conclusions of law." *Richardson v. Maxim Healthcare/Allegis Group*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (citation omitted), *rehearing denied*, 363 N.C. 260, 676 S.E.2d 472 (2009). "[T]he Commission's findings of fact are conclusive on appeal when supported by any competent evidence, even though there be evidence that would support findings to the contrary and may be set aside only when

there is a complete lack of competent evidence to support them." *Nobles v. Coastal Power & Elec., Inc.*, __ N.C. App. __, __, 701 S.E.2d 316, 319 (2010) (citations and quotation marks omitted). "However, the Commission's conclusions of law are reviewed de novo." *Id.* (citation omitted). "Unchallenged findings of fact by the Commission are binding on appeal." *Davis v. Hospice & Palliative Care of Winston-Salem*, __ N.C. App. __, __, 692 S.E.2d 631, 638 (2010) (citation omitted).

Our Workers' Compensation Act provides as follows:

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract *by such corporation's specifically excluding such executive officer in such contract of insurance*, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

N.C. Gen. Stat. § 97-2(2) (2011) (emphasis added).

In this case, Plaintiff's estate recognizes that Plaintiff "acted for [Employer] when he applied for insurance[,] " but

contends that because "that application never became part of the policy," the attempt to exclude Plaintiff from the policy failed. However, the Commission made the following unchallenged findings of fact:

6. Plaintiff had the authority to exclude Defendant-Employer's corporate officers from coverage under Defendant-Employer's workers' compensation insurance policy. Mr. Scotchie and Ms. Scotchie agreed with Plaintiff's decision to exclude such coverage for the corporate officers. Both explained that revoking workers' compensation coverage for the officers was a cost-effective business decision; both confirmed that the corporate officers had been excluded in the past because coverage for them was too expensive.

7. Mr. Scotchie introduced Plaintiff to Ms. Mickey Freeman, an insurance broker, so that Plaintiff could secure workers' compensation insurance coverage for Defendant-Employer. On March 14, 2007, in his capacity as Vice President, on behalf of the Corporation, Plaintiff completed an application for workers' compensation insurance. The application lists the applicant as Mountain Valley Water. On page three of the application, signed and dated by Plaintiff, all three officers of Defendant-Employer were specifically named as excluded individuals. Only the salaries of drivers, storage, clerical, addressing, and mailing employees were listed in the "Rating Information Box" on the application. Plaintiff signed and dated the application on March 14, 2007, in Ms. Freeman's presence. Ms. Freeman relied upon Plaintiff's authority to act on behalf of and bind the corporation.

. . .

9. Torrin Durham, an underwriter with Defendant-Carrier, reviewed and approved Defendant-Employer's application and issued a workers' compensation insurance policy on March 17, 2007, incorporating the information contained in the application and revocations. In the policy, the named insured was Mountain Valley Water, and each of the officers was specifically named under the "Partners, Officers and Other Exclusion Endorsement," which stated that "the policy does not cover bodily injury to any person described in this Schedule. The premium basis for policy does not include remuneration of such persons." In the "Endorsement Summary", all three officers were specifically listed as being exempt from coverage beginning March 14, 2007. . .

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Because Plaintiff's estate does not challenge any of the above findings of fact they are binding on appeal. *See Davis*, __ N.C. App. at __, 692 S.E.2d at 638 ("Unchallenged findings of fact by the Commission are binding on appeal.") (citation omitted).

In light of the unchallenged findings of fact, Plaintiff has not established that Employer failed to exclude Plaintiff from the Policy pursuant to N.C. Gen. Stat. § 97-2(2). Accordingly, we hold the Commission did not err by concluding Plaintiff was not an employee of Employer for purposes of the Workers' Compensation Act at the time of his death, and,

furthermore, the Commission did not err by denying Plaintiff's estate's claim for compensation.

AFFIRMED.

Judges ERVIN and BEASLEY concur.

Report per Rule 30(e).