

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-376

Filed: 16 April 2019

Wake County, No. 15-CVS-5806 (I.C. No. 845311)

CHRISTOPHER S. REED, Plaintiff,

v.

CAROLINA HOLDINGS, Employer, and ACE USA, Carrier, Defendants.

Appeal by plaintiff from order entered 31 October 2017 by Judge Donald Stephens in Wake County Superior Court. Heard in the Court of Appeals 30 October 2018.

Lennon, Camak & Bertics, PLLC, by Michael W. Bertics, for plaintiff-appellant.

Hedrick Gardner Kincheloe & Garofalo LLP, by M. Duane Jones, Paul C. Lawrence, and Linda Stephens, for defendants-appellees.

DIETZ, Judge.

Plaintiff Christopher Reed appeals the trial court's order dismissing his request for review of the Full Commission's denial of attorney's fees "on future benefits allowed by the Commission, specifically attendant care services provided by a family member." In its dismissal order, the trial court relied on this Court's opinion in *Saunders v. ADP TotalSource Fi Xi, Inc.*, __ N.C. App. __, 791 S.E.2d 466 (2016).

In *Saunders*, we held that the superior court lacks jurisdiction to review the Industrial Commission’s decision denying attorney’s fees to “determine whether attorney’s fees can lawfully be deducted from an award of attendant care medical compensation” and that appeal on that issue must be made from the Commission to this Court, not to the trial court. __ N.C. App. at __, 791 S.E.2d at 477.

We held this appeal in abeyance while the Supreme Court reviewed this Court’s decision in *Saunders*. The Supreme Court issued its opinion in *Saunders* on 1 February 2019. *Saunders v. ADP TotalSource Fi Xi, Inc.*, __ N.C. __, 822 S.E.2d 857 (2019). The Supreme Court reversed this Court’s decision and held that “the superior court had jurisdiction to take and consider additional evidence not previously considered by the Commission” and to “exercise its ‘discretion’ in reviewing the reasonableness or setting the amount of attorney’s fees” under N.C. Gen. Stat. § 97-90(c). *Id.* at __, 822 S.E.2d at 858, 867.

Following the Supreme Court’s decision in *Saunders*, this Court invited the parties to submit supplemental briefing discussing the impact of the Supreme Court’s decision on this case. In their supplemental briefing, the parties agreed that, under *Saunders*, this Court must vacate the trial court’s order and remand this case for the trial court to correctly apply the law.

We agree with the parties that we must vacate and remand this matter to the trial court, so that the trial court can conduct proceedings consistent with the

REED V. CAROLINA HOLDINGS

Opinion of the Court

Supreme Court's decision in *Saunders*. See *Stanback v. Stanback*, 270 N.C. 497, 507, 155 S.E.2d 221, 229 (1967). Accordingly, we vacate the challenged order and remand for further proceedings.

VACATED AND REMANDED.

Judges BRYANT and INMAN concur.

Report per Rule 30(e).