

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA18-597

Filed: 16 April 2019

N.C. Industrial Commission, I.C. No. 845311

CHRISTOPHOR S. REED, Employee, Plaintiff,

v.

CAROLINA HOLDINGS, WOLSELEY MANAGEMENT, Employer, and ACE
USA/ESIS, Carrier, Defendants.

Appeal by Plaintiff from the Opinion and Award entered 17 April 2015 by the
Full Commission of the North Carolina Industrial Commission. Heard in the Court
of Appeals 30 October 2018.

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

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

INMAN, Judge.

Plaintiff Christopher Reed (“Plaintiff”) appeals from an order from the North
Carolina Industrial Commission (the “Industrial Commission”) denying the claim for
payment of attorney’s fees based on a percentage of future attendant care payments.

REED V. CAROLINA HOLDINGS

Opinion of the Court

Because jurisdiction for this appeal properly rests in the superior court, we dismiss Plaintiff's appeal.

This Court heard this case concurrently with a companion case, *Reed v. Carolina Holdings*, COA18-376 (the “companion case”), in which Plaintiff appealed from a Wake County Superior Court order dismissing his request for review of the Industrial Commission order. In its dismissal order, the trial court relied on this Court's opinion in *Saunders v. ADP TotalSource Fi Xi, Inc.*, 249 N.C. App. 361, 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. 249 N.C. App. at 375, 791 S.E.2d at 477.

We held this appeal and the companion case in abeyance while the Supreme Court reviewed our 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

REED V. CAROLINA HOLDINGS

Opinion of the Court

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 in the companion case. In their supplemental briefing, the parties agreed that, following *Saunders*, the Wake County Superior Court's dismissal order was in error because it had jurisdiction to hear Plaintiff's appeal. Accordingly, concurrently with this opinion, we have vacated that order and remanded the companion case for further proceedings.

As appeal from the Industrial Commission's order properly lies to the superior court, we dismiss Plaintiff's appeal in this case for lack of subject matter jurisdiction.

DISMISSED.

Judges BRYANT and DIETZ concur.

Report per Rule 30(e).