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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-279

No. COA20-659

Filed 15 June 2021

I.C. No. 18-728785

JOSEPH DUANE HEWETT, Plaintiff,

v.

CAROLINA TRACTOR & EQUIPMENT CO., PHOENIX INS. CO., Carrier,
(TRAVELER'S, Third-Party Administrator), Defendants.

Appeal by plaintiff from order entered 12 December 2019 by the North Carolina Industrial Commission. Heard in the Court of Appeals 11 May 2021.

Joseph Duane Hewett, pro se, for plaintiff.

Hedrick Gardner Kincheloe & Garofalo LLP, by M. Duane Jones and Neil P. Andrews, for defendant.

ARROWOOD, Judge.

¶ 1 Joseph Duane Hewett (“plaintiff”) appeals from a North Carolina Industrial Commission (“the Commission”) order denying plaintiff’s motion for summary judgment. Plaintiff contends that the Commission committed reversible error by not granting plaintiff’s motion for summary judgment in whole or in part, by “showing bias to defendants,” by not finding that defendants had waived their right to contest

plaintiff's claim, and by not determining plaintiff's temporary total disability weekly benefits, among other assignments of error. On 6 November 2020, Carolina Tractor & Equipment Company ("defendant") filed a motion to dismiss plaintiff's appeal as interlocutory, arguing that plaintiff was not appealing from a final judgment and had not shown that any right, substantial or otherwise, will be lost if this matter proceeds to trial. For the following reasons, we dismiss plaintiff's appeal.

I. Background

¶ 2 On 6 June 2018, plaintiff filed a Form 18, alleging that he injured his "whole" body, including his neck, brain, teeth, upper and lower back. The Commission sanctioned defendants \$400.00 on 3 October 2018 for failing to file a Form 60, 61, or 63 pursuant to N.C. Gen. Stat. § 97-18(j).

¶ 3 On 14 February 2018, plaintiff filed a motion for summary judgment in order to have his claim deemed compensable as a matter of law. On 22 February 2019, defendants filed a Form 60 accepting plaintiff's cervical spine/neck and head injuries. That same day, defendants filed a Form 61 denying that plaintiff had sustained compensable injuries to any other body parts, including the lumbar spine. Defendants also denied plaintiff's need for additional medical treatment for his head.

¶ 4 On 25 February 2019, defendants filed a response to plaintiff's motion for summary judgment. On 28 February 2019, Special Deputy Commissioner Alexandra Hagerty ("Special Deputy Commissioner Hagerty") filed an order for the Commission

denying plaintiff's motion for summary judgment. On 1 March 2019, plaintiff filed a Rebuttal of Defendants Response to his motion for summary judgment, which the Commission recognized as a motion for reconsideration. Defendants filed a response to plaintiff's motion for reconsideration on 14 March 2019. On 26 March 2019, Special Deputy Commissioner Hagerty denied plaintiff's motion for reconsideration.

¶ 5 On 2 April 2019, plaintiff filed a notice of appeal of the order denying his motion for reconsideration. On 6 June 2019, plaintiff filed a second motion for summary judgment.

¶ 6 In a telephone conference with defense counsel and Deputy Commissioner Kevin Howell ("Deputy Commissioner Howell"), plaintiff waived his right to a full evidentiary hearing and requested his claim be determined based on the filings. On 18 June 2019, Deputy Commissioner Howell entered an order denying plaintiff's motion for summary judgment and motion for reconsideration. On 26 June 2019, plaintiff appealed the order to the full Commission.

¶ 7 The Commission heard the matter on 22 October 2019 and denied plaintiff's motion for summary judgment by order entered 12 December 2019. The Commission stated that either "party may request the case be returned to the docket for a full evidentiary hearing on any disputed issues by filing a Form 33 Request that Claim be Assigned for Hearing."

¶ 8 Plaintiff filed a notice of appeal on 6 January 2020.

II. Discussion

¶ 9 Plaintiff raises nine issues on appeal asserting that the Commission committed reversible error. Before addressing plaintiff's arguments, we must address defendant's motion to dismiss plaintiff's appeal as interlocutory.

¶ 10 "Parties have a right to appeal any final judgment of a superior court. Thus, an appeal of right arises only from a final order or decision of the Industrial Commission.'" *Cash v. Lincare Holdings*, 181 N.C. App. 259, 263, 639 S.E.2d 9, 13 (2007) (quoting *Ratchford v. C.C. Mangum, Inc.*, 150 N.C. App. 197, 199, 564 S.E.2d 245, 247 (2002)). Accordingly, a "decision of the Industrial Commission is interlocutory if it determines one but not all of the issues in a workers' compensation case[.]" or if a decision facially contemplates further proceedings. *Perry v. North Carolina Dept. of Correction*, 176 N.C. App. 123, 129, 625 S.E.2d 790, 794 (2006) (internal citations and quotation marks omitted). However, immediate review of an interlocutory decision is proper where it affects a substantial right. *Cash*, 181 N.C. App. at 263, 639 S.E.2d at 13. To qualify, 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." *Perry*, 176 N.C. App. at 129, 625 S.E.2d at 794. "[I]t is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal and our Court's responsibility to review those grounds." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d

252, 253 (1994).

¶ 11 The Industrial Commission’s 12 December 2019 order was clearly an interlocutory order as it did not dispose of plaintiff’s claims, but instead contemplated further proceedings by providing that either “party may request the case be returned to the docket for a full evidentiary hearing on any disputed issues by filing a Form 33 Request that Claim be Assigned for Hearing.” Plaintiff has failed to argue that his appeal of the 12 December 2019 order affects a substantial right and has failed to meet his burden to present appropriate grounds to accept his interlocutory appeal. Accordingly, we grant defendant’s motion to dismiss plaintiff’s appeal as interlocutory.

III. Conclusion

¶ 12 For the forgoing reasons, we dismiss plaintiff’s appeal as interlocutory.

DISMISSED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).