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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-435

No. COA20-587

Filed 17 August 2021

North Carolina Industrial Commission, I.C. No. TA-26231

JAMES LOMICK, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by Plaintiff from order entered 23 April 2020 by the North Carolina Industrial Commission. Heard in the Court of Appeals 25 May 2021.

*Alston & Bird LLP, by Michael R. Hoernlein, Rebecca L. Gauthier, and Caitlin Van Hoy, for Plaintiff-Appellant.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Elizabeth B. Jenkins, for Defendant-Appellee.*

GRIFFIN, Judge.

¶ 1 Plaintiff James Lomick appeals from an order of the North Carolina Industrial Commission vacating an order of Deputy Commissioner Kevin Howell and remanding the case for a full evidentiary hearing. Upon review, we dismiss Plaintiff's appeal as interlocutory.

**I. Factual and Procedural History**

¶ 2 On 19 April 2017, Plaintiff filed a *pro se* Complaint with the Commission

against Defendant North Carolina Department of Public Safety (“DPS”). On 18 January 2019, an order was filed by Deputy Commissioner Kevin Howell for Entry of Default in favor of Plaintiff. DPS then appealed Deputy Commissioner Howell’s order to the full Industrial Commission. On 23 April 2020, the Commission vacated the order of Deputy Commissioner Howell and remanded the matter for a full evidentiary hearing on the merits.

¶ 3 Plaintiff filed written notice of appeal from the Commission’s order on 22 May 2020. DPS subsequently filed a Motion to Dismiss Plaintiff’s appeal as interlocutory.

## II. Analysis

¶ 4 Plaintiff argues on appeal that the Commission’s order is not interlocutory. Plaintiff contends “[t]he order did not just resolve some of the issues between the parties—it resolved them all.” We disagree.

¶ 5 “An appeal does not lie from an interlocutory order of the North Carolina Industrial Commission.” *Brown v. Booker*, 121 N.C. App. 366, 368, 465 S.E.2d 75, 76 (1996). “An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.” *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950). “A decision that on its face contemplates further proceedings or . . . 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 citations and quotation marks omitted). “An order setting aside a default judgment is interlocutory as ‘it does not finally dispose of the case and requires further action by the trial court.’” *Horne v. Nobility Homes, Inc.*, 88 N.C. App. 476, 477, 363 S.E.2d 642, 643 (1988) (quoting *Bailey v. Gooding*, 301 N.C. 205, 209, 270 S.E.2d 431, 434 (1980)).

¶ 6 The Commission’s 23 April 2020 order vacated Deputy Commissioner Howell’s Entry of Default and remanded the matter for a full evidentiary hearing. “Because the Full Commission set aside the default judgment, the instant action has not been disposed of and requires further action, that is, a hearing on the merits of the case.” *Brown*, 121 N.C. App. at 368, 465 S.E.2d at 76.

¶ 7 Plaintiff additionally has failed to argue that the Commission’s order affects any substantial right warranting immediate review of his appeal. *See Cash v. Lincare Holdings*, 181 N.C. App. 259, 263, 639 S.E.2d 9, 10 (2007) (“Even where a decision is interlocutory, however, immediate review of the issue is proper where the interlocutory decision affects a substantial right.”). “[T]he appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.” *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994).

¶ 8 Because Plaintiff’s appeal is interlocutory and Plaintiff provides no argument

supporting immediate review of his appeal, we grant DPS's Motion to Dismiss Plaintiff's appeal.

### **III. Conclusion**

¶ 9 For the foregoing reasons, we dismiss Plaintiff's appeal as interlocutory.

DISMISSED.

Chief Judge STROUD and Judge HAMPSON concur.

Report per Rule 30(e).