

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA 23-1029

Filed 17 September 2024

North Carolina Industrial Commission, No. X59853

RITA KOTSIAS, Employee, Plaintiff,

v.

FLORIDA HEALTH CARE PROPERTIES, Employer, ESIS, Carrier, Defendants.

Appeal by Plaintiff from Opinion and Award entered 28 June 2023 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 12 June 2024.

*Rita Kotsias, pro se Plaintiff-Appellant.*

*Teague Campbell Dennis & Gorham LLP, by Jason Shoemaker, and Mullen Holland & Cooper, PA, by D. Andrew Turman, for Defendant-Appellees.*

HAMPSON, Judge.

**Factual and Procedural Background**

Rita Kotsias (Plaintiff) appeals from an Opinion and Award filed by the North Carolina Industrial Commission on 28 June 2023 ordering Defendants pay partial disability for the period of 20 January 2014 through 28 March 2014 and denying Plaintiff's requests for medical treatment, compensation for past treatment, change

in treating physician, and future disability compensation, and sanctioning her in the amount of \$2,500.00 for “unreasonable conduct and stubborn, unfounded litigiousness.”

We note that our review of Plaintiff’s appeal is frustrated by substantial violations of our Rules of Appellate Procedure. Plaintiff’s principal brief is approximately 134 pages and over 43,000 words in length. Plaintiff has also failed to file with this court a verbatim transcript of the proceedings below, though both parties refer to the transcript and attached exhibits in their briefs. However, the Record on appeal tends to show the following:

Plaintiff worked for Florida Health Care Properties, LLC (Employer) as a physical therapist. On 17 August 2011, Plaintiff suffered an injury to her left thoracic spine while moving a patient. She sought medical care, was placed under a 5-pound lifting restriction, and on 22 August filed a Form 18 notice of accident. She was referred to physical therapy and in November 2011 received lumbar and thoracic MRI scans. Her treating physician diagnosed lumbothoracic strain exacerbating mild scoliosis, recommended continued work conditioning, and told Plaintiff she was not a surgical candidate.

Defendants accepted compensability for a mid-back injury on 30 December 2011, initiating temporary total disability benefits in the amount of \$836.00 per week.

In January 2012, Plaintiff’s treating physician assigned her a five percent permanent partial disability rating to the thoracic spine and a 55-pound lifting

restriction, noting that she could return to work if she did not lift over 55 pounds.

In July 2012, Plaintiff had not yet returned to work due to continuing pain and presented to her physician at Defendants' request. Her physician opined that additional physical therapy would not be beneficial and ordered a functional capacity evaluation (FCE), which indicated Plaintiff could return to work in the medium physical demand level, with frequent lifting of 20 pounds and occasional lifting of 40 pounds. On 23 August 2012 Plaintiff's physician released her to work in accordance with the FCE results.

In October 2012, without authorization from Defendants, Plaintiff underwent treatment with Dr. Andrew Rudins. She reported pain in her bilateral legs, lower back, and neck, with tingling down the arms. In January 2013 she reported continuing pain to Dr. Rudins, who noted from her MRI disc protrusions in the cervical spine and lower back indicative of degenerative disc disease rather than trauma from an injury. Dr. Rudins continued seeing Plaintiff, recommending physical therapy and noting that her symptoms were worse than her pathology. In January 2014, Dr. Rudins updated Plaintiff's work restrictions to lifting no more than 15 pounds and no more than three hours of computer use per day, no more than one hour at a time.

On 6 January 2014, Defendants offered Plaintiff a position as a chart audit and appeals specialist at the facility where she was working when she was injured, and they ceased paying disability compensation. The physical demands of this position

were within the restrictions assigned by the treating physician. However, Plaintiff presented to Dr. Rudins with increased pain after returning to work, and Dr. Rudins recommended additional accommodations, including reducing her work to half days. Plaintiff again returned to Dr. Rudins on 20 February 2014, who noted that she had not responded well to returning to work, writing “[e]xact reason for this is unclear, but suspect that psychosocial factors may be in play.”

On 24 March 2014, Plaintiff reported to Employer that she would not be coming to work because she had a note from Dr. Rudins. On 28 March 2014, Plaintiff received a letter from employer stating that her voluntary resignation was being accepted due to her failure to report to work.

On 25 March 2014, Defendants filed a Form 33 with the Industrial Commission requesting a determination of whether Plaintiff had suffered a loss of wage-earning capacity as a result of her work injury. Plaintiff filed a Form 33R alleging that Defendants failed to accommodate her work restrictions and requesting a change in authorized treating physicians.

The matter was initially heard on 24 October 2014 before Deputy Commissioner James C. Gillen, but was continued due to exceeding the time allotted. Plaintiff filed an interlocutory appeal in August 2014 and was allowed by the Full Commission to withdraw her appeal in October 2016, with the matter being referred back to Deputy Commissioner Gillen.

The matter was again scheduled to be heard by Deputy Commissioner Gillen

on 1 March 2019, but was continued when Plaintiff's counsel withdrew. The case was transferred to Deputy Commissioner Tyler Younts and heard on 28 January 2020, but due to time constraints the only issue addressed was Plaintiff's Motion to Show Cause. The matter was transferred to Deputy Commissioner Michael Silver, who heard the remainder of the testimony on 6 November 2020, with Deputy Commissioner Tiffany Smith ultimately entering an Opinion and Award on 12 August 2021.

The parties each appealed to the Full Commission, which heard arguments on 5 May 2022. The Full Commission entered its Opinion and Award on 28 June 2023, reviewing the matter *de novo* and finding that Plaintiff had reached maximum medical improvement on 8 March 2012, that she had failed to establish any loss of wage-earning capacity after 28 March 2014 stemming from her 17 August 2011 workplace injury, and that Plaintiff had throughout litigation of her claim "made multiple unfounded and reprehensible allegations against Defendants," including "assert[ing] to the Commission that Defendants are associated with the mafia." The Commission ordered Defendants pay temporary partial disability for the period from 20 January 2014 through 28 March 2014 and denied Plaintiff's requests for medical treatment, compensation for past treatment, change in treating physician, and future disability compensation. It also sanctioned Plaintiff in the amount of \$2,500.00. Plaintiff filed written notice of appeal.

**Analysis**

Our review of Plaintiff's appeal is substantially hampered by her violations of the Rules of Appellate Procedure, particularly the length of her principal brief. Briefs are limited by length: "A principal brief filed in the Court of Appeals may contain no more than 8,750 words." N.C. R. App. P., Rule 28(j) (2024). Plaintiff's brief contains over 43,000 words and is over 130 pages long. Parties are required to submit with the brief "a certification . . . that the brief contains no more than the number of words allowed by the rule." N.C. R. App. P. 28(j)(2). Rather than this certification, Plaintiff informs this Court that she was unsuccessful in adhering to the word limit. Plaintiff explains that the nature of her appeal necessitates the lengthy brief, but she did not at any time file a motion requesting this Court extend or waive the word count limit.

The word limit encourages appellants to limit their arguments before this Court to those with merit and allows both appellees in their responses and this Court in its opinions to focus attention upon issues actually in question. Plaintiff has asserted eleven separate issues on appeal, along with twenty-eight numbered and lettered sub-issues, many of which attempt to relitigate questions of fact determined by the Commission and are unaccompanied by supporting legal citation. This frustrates Defendants' ability to respond to Plaintiff's arguments and this Court's ability to review the appeal.

Plaintiff also has failed to file a verbatim transcript of the proceedings below, despite including a statement in the record designating that the testimonial evidence will be presented via transcript of the evidence under Rules 9(c)(2) and 9(c)(3) of our

Rules of Appellate Procedure. Each party in its briefing refers extensively to the transcript of the proceedings before the Industrial Commission as well as attached exhibits. The unavailability of the testimony below or accompanying documentary exhibits additionally frustrates our ability to review the decision of the Commission, particularly insofar as Plaintiff challenges its factual findings as unsupported by the evidence.

Defendants have moved to dismiss Plaintiff's appeal based on her violation of Rule 28(j). While Plaintiff's violations are nonjurisdictional, this Court may impose sanctions upon a party based on violations of nonjurisdictional rules when the party's noncompliance rises to the level of a "substantial failure" or "gross violation." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co., Inc.*, 362 N.C. 191, 199, 657 S.E.2d 361, 366 (2008); N.C. R. App. P., Rule 34. The nonjurisdictional requirements of our appellate rules are designed to keep the appellate process "flowing in an orderly manner." *Craver v. Craver*, 298 N.C. 231, 236, 258 S.E.2d 357, 361 (1970). In determining if violations are substantial or gross, we consider, "among other factors, whether and to what extent noncompliance impairs the court's task of review and whether and to what extent review on the merits would frustrate the adversarial process." *Id.* In particular, we are discouraged from reviewing an appeal on the merits when doing so would leave the appellee "without notice of the basis upon which [the] appellate court might rule." *Viar v. N.C. Dept. of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361.

Upon determining a party's violations merit sanctions, we must consider whether lesser sanctions should be imposed before dismissing the appeal. *Dogwood*, 362 N.C. at 201, 657 S.E.2d at 367. For example, in other cases in which a party's brief violated the length limit we have declined to consider the portion of the brief exceeding that limit. *D'Aquisto v. Mission St. Joseph's Health Sys.*, 171 N.C. App. 216, 225 n. 3, 614 S.E.2d 583, 589 n.3 (2005), *rev'd in part on other grounds*, 360 N.C. 567, 633, S.E.2d 89 (2006). Even if we determine that dismissal is an appropriate sanction, we may invoke Rule 2 "to prevent manifest injustice to a party, or to expedite decision in the public interest." *Id.*; N.C. R. App. P. 2.

Plaintiff's arguments begin on page 41 of her brief, well outside the word limit, and thus imposing even the lesser sanction we applied in *D'Aquisto* would prevent any review and function as a dismissal of the appeal. Instead, we elect to review Plaintiff's appeal and resolve this case, first filed with the Industrial Commission over a decade ago, upon its merits. However, because Plaintiff's violations are substantial we impose the sanction of taxing her with the entire costs of this appeal.

Plaintiff argues that the Commission's listing of exhibits "accepted into evidence by the Deputy Commissioner" is incomplete and indicates that it did not make its decision "based upon the preponderance of the evidence in view of the entire record." N.C. Gen. Stat. § 97-84. Several of Plaintiff's disagreements with the Commission's description of the evidence apparently involve disputes over labeling: the Commission lists Plaintiff's Exhibits 1, 2, 4, and 5, which Plaintiff argues is in



error because “these exhibits are actually sub-exhibits 1, 2, 4, and 5 of Plaintiff’s Exhibit #1.” Plaintiff’s briefing on this issue is at times difficult to understand, as she lists exhibits missing from the Commission’s list of evidence but does not identify their relevance to the findings and conclusions made by the Commission: she states only that the failure to properly list evidence “demonstrates reversible error, a dereliction in duty, impermissible disregard for evidence and failure to consider crucial facts upon which the question of plaintiff’s right to compensation depends.” She cites no legal precedent regarding errors in cataloguing evidence. Our review is further frustrated by Plaintiff’s failure to file a transcript allowing us to examine the exhibits in question.

Critically, Plaintiff does not indicate how any of these exhibits were material to the outcome of the case. Even assuming (1) the exclusion of exhibits from the list indicates that the Commission failed to consider those exhibits and (2) failure to consider these exhibits was error, we cannot identify any way in which consideration of the exhibits could have changed the result reached by the Commission. Therefore, any error by the Industrial Commission was not prejudicial and does not merit reversal. *See Lowe v. Branson Automotive*, 240 N.C. App. 523, 534, 771 S.E.2d 911, 918 (2015).

Plaintiff also argues that the Commission should have allowed her joinder of additional parties that she alleges are entities related to Employer-Defendant Florida Health Care Properties (FHCP), despite the apparent pretrial stipulation by the

parties identifying FHCP as the proper Employer-Defendant. Plaintiff again does not identify how the alleged error prejudiced her, except by implying that FHCP is an unfunded shell company unable to pay judgments against it. However, there is no indication from the record that FHCP has failed to make any disability payments due to Plaintiff, nor are there any other outstanding judgments related to this case beyond the amount ordered in the Opinion and Award that is the subject of this appeal.

Plaintiff argues that the Commission failed to address the issue of late disability payments she raised before the Deputy Commissioner and on appeal to the Full Commission. She alleges that Defendants were late in transferring payments between 31 October and 4 December 2013, as well as for 26 December 2013 through 1 January 2014. Although each of those payments ultimately were made, she alleges that Defendants did not pay the late fee required by statute. Under N.C. Gen. Stat. § 97-18(g):

If any installment of compensation is not paid within 14 days after it becomes due, there shall be added to such unpaid installment an amount equal to ten per centum (10%) thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the Commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

Defendants argue that because they accepted liability and made the disability payments pursuant to a Form 60 Admission of Employee's Right to Compensation, the compensation amount was not determined and awarded by the Commission and

therefore the compensation paid to Plaintiff was not “due and payable” within the meaning of the statute. However, payment made pursuant to Sections 97-18(b) or 97-18(d), when an employer admits the employee’s right to compensation or declines to contest compensability and liability, is considered an award of the Commission. N.C. Gen. Stat. § 97-82(b). Voluntary payment of compensation pursuant to a Form 60, thus, continues until the terms of the award have been satisfied, and late payment is subject to penalty. *Fonville v. General Motors Corp.*, 200 N.C. App. 267, 273, 683 S.E.2d 445, 449 (2009). While we cannot determine the validity of Plaintiff’s claim, the Commission erred by failing to address it: “the full Commission has the duty and responsibility to decide all matters in controversy between the parties.” *Perkins v. U.S. Airways*, 177 N.C. App. 205, 215, 628 S.E.2d 402, 408 (2006). Because Plaintiff raised the issue in her Form 44 Application for review, she was entitled to have the Full Commission address it. *Payne v. Charlotte Heating & Air Conditioning*, 172 N.C. App. 496, 501, 616 S.E.2d 356, 360 (2005).

The remainder of Plaintiff’s arguments attempt to relitigate the arguments made before the Industrial Commission, requesting that we substitute our own findings of fact and conclusions for those made by the Commission. We review an opinion and award of the Industrial Commission to determine whether there is any competent evidence in the record to support the Commission’s findings of fact and whether these findings support the conclusions of law. *Lineback v. Wake County Board of Commissioners*, 126 N.C. App. 678, 680, 486 S.E.2d 252, 254 (1997). The

Commission's findings of fact "are conclusive on appeal when supported by competent evidence even if there is evidence to support a contrary finding and may be set aside on appeal only when there is a complete lack of competent evidence to support them." *Johnson v. Herbie's Place*, 157 N.C. App. 168, 171, 579 S.E.2d 110, 113 (2003).

Plaintiff does not argue that no evidence supports each of the findings that she contests. Rather, she identifies evidence that she alleges conflicts with the findings of the Commission. For example, she argues that Defendants did not file certain forms with the Commission, although the parties stipulated to their filing. She likewise contests the Commission's finding that she "failed to establish that she sustained injuries . . . or developed such conditions or a pain condition as a result of her August 17, 2011, compensable mid-back injury" by arguing that the Commission's findings "impermissibly disregard evidence" and presenting that evidence to this Court in her brief. Each of Plaintiff's remaining arguments similarly identify evidence presented at trial and ask that we upset the decision of the Industrial Commission. This we will not do: N.C. Gen. Stat. § 97-85 "places the ultimate fact-finding function with the Commission." *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 413 (1998). Parties may not relitigate contested factual issues on appeal, and we will not reverse factual findings unless no evidence supports those findings.

### **Conclusion**

For the foregoing reasons, we remand this case to the Industrial Commission for consideration of the issue of late payments and affirm the Opinion and Award as

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to all other issues. As sanction for violation of Rule 28, all costs of this appeal are taxed to Plaintiff-Appellant.

AFFIRMED IN PART, REMANDED IN PART, ALL COSTS TAXED TO APPELLANT.

Judges MURPHY and WOOD concur.

Report per Rule 30(e).