IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-281

Filed 4 November 2026

Durham County, No. 24CV007942-310

ARNOL C. ENRIQUE, Plaintiff,

v.

EDWARDS WOOD PRODUCTS, INC., Defendant.

Appeal by Defendant from order entered 31 December 2025 by Judge Keith Gregory in Durham County Superior Court. Heard in the Court of Appeals 25 September 2026.

Law Offices of James Scott Farrin, by Kaitlyn E. Fudge and Coleman C. Cowan, for Plaintiff-Appellee.

Teague Campbell Dennis & Gorham, LLP, by J. Matthew Little and Daniel T. Strong; and Parker Poe Adams & Bernstein LLP, by Chip Holmes and Jessica Dixon, for Defendant-Appellant.

COLLINS, Judge.

Defendant appeals from the trial court's order granting Plaintiff partial summary judgment and denying it summary judgment. Defendant argues that the trial court erred by granting Plaintiff partial summary judgment because Defendant was Plaintiff's special employer such that the exclusivity provision of the Workers' Compensation Act divested the trial court of jurisdiction to adjudicate Plaintiff's claims. Defendant further argues that the trial court erred by failing to address its

arguments regarding contributory negligence and punitive damages.

The trial court did not err by granting Plaintiff partial summary judgment. We lack jurisdiction to consider Defendant's arguments regarding contributory negligence and punitive damages. Accordingly, we affirm in part and dismiss in part.

I. Background

Edwards Wood Products, Inc. ("Defendant") manufactures wood products and operates a sawmill in Laurinburg, North Carolina. Arnol Enrique ("Plaintiff") was employed by CDT HR, LLC ("CDT"), a full-service staffing agency that assigned Plaintiff to work as a mechanic for Defendant at its sawmill.

Defendant and CDT entered into a staffing agreement on 28 September 2021, which provided:

> 5. [CDT's] Obligations.
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> a) [CDT] shall recruit, interview, employ, ensure compliance with I-9 and E-Verify requirements, and otherwise use its customary screening procedures including background checks and drug testing when determining which Associates to assign to [Defendant].
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> b) [CDT] shall maintain all personnel and payroll records for each Associate as required by applicable law.
>
> c) [CDT] shall pay each Associate all wages owed and shall also provide each Associate with the benefits that [CDT] decides to offer to them, in its sole discretion, if any. [CDT] shall be responsible to pay, withhold, and transmit payroll taxes; provide unemployment insurance and workers' compensation benefits; and will oversee unemployment and workers' compensation claims involving its Associates.
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> 6. [Defendant's] Obligations.
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> a) All Associates will be directed and supervised on the job

> by [Defendant].
>
> b) [Defendant] will provide [CDT] with an accurate job description for the assignment. [Defendant] will not change the job description or the duties of the Associate without the prior written authorization of [CDT].
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> c) [Defendant] shall provide Associates with a safe working environment and with any necessary training or information needed to properly perform the tasks assigned to the Associates. In addition, [Defendant] shall properly supervise, control, and safeguard its premises, processes, and systems, and shall not permit Associates to operate any vehicle or mobile equipment, or entrust them with unattended premises, cash, checks, keys, credit cards, merchandise, confidential or trade secret information, negotiable instruments, or other valuables without [CDT's] express prior written approval or as strictly required by any job order provided to [CDT].
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> . . . .
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> g) [Defendant] will notify [CDT] of any problems or work performance issues it has with an Associate within twenty-four (24) hours of receiving notice of the problem. If [Defendant] requests an Associate be removed from the job site, it will provide [CDT] with a written statement setting forth the basis of its request.

Plaintiff began working for Defendant on 14 September 2023. At approximately 5:30 a.m. on 22 September 2023, Plaintiff was working as part of a three-man crew to change saw blades when a crane cable snapped and the steel blade holder fell and struck Plaintiff. Plaintiff was airlifted to UNC Hospital, where a 7:50 a.m. blood sample showed a .186 blood-alcohol level. Plaintiff was permanently paralyzed from the waist down as a result of his injuries.

Plaintiff filed a workers' compensation claim against CDT in the Industrial Commission. During those proceedings, CDT served discovery requests on Defendant, and Defendant moved for a protective order. The Industrial Commission granted the motion, relieving Defendant of any obligation to respond to CDT's discovery requests. Plaintiff then served a subpoena duces tecum on Defendant, seeking "[a]ny and all existing video footage, photographs, and/or other media depicting or otherwise showing the September 22, 2023 incident involving [Plaintiff]." Defendant filed a motion to quash and stated as follows in support of its motion:

> 1. [Defendant] is not a party to this proceeding, and an employer-employee relationship has never existed between [Defendant] and [P]laintiff.
>
> 2. Upon information and belief, [P]laintiff sustained an injury on September 22, 2023 while employed by [CDT] . . . at a facility owned by [Defendant].

The Industrial Commission denied Defendant's motion. Defendant subsequently filed a motion for a limited protective order and in camera review, seeking limitations on Plaintiff's subpoena and requesting an in camera review of the video evidence sought by Plaintiff. In support of its motion, Defendant stated as follows:

> 1. [Defendant] is not a party to this proceeding, and an employer-employee relationship has never existed between [Defendant] and [P]laintiff.
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> . . . .
>
> 5. [Defendant's] position in this matter has consistently been that the information originally requested by [CDT] was not to investigate a potential intoxication defense but to investigate a potential civil action against [Defendant]. It now appears this is [P]laintiff's same motivation. Under

> either scenario, "[t]he Industrial Commission is not a court of general jurisdiction. It is an administrative board with quasi-judicial function and has a special or limited jurisdiction created by statute and confined to its terms." Letterlough v. Akins, 258 N.C. 166, 168, 128 S.E.2d 215, 217 (1962) (citing Hart v. Thomasville Motors, 244 N.C. 84, 92 S.E.2d 673 (1956)). It is not the purpose of the Industrial Commission to assist in the advancement of potential third party claims outside the Workers' Compensation Act, and the Commission's "jurisdiction may not be enlarged or extended by act or consent of parties, nor may jurisdiction be conferred by agreement or waiver." Id. 258 N.C. 168, 128 S.E.2d at 217. The Commission should not try to expand its jurisdiction beyond the Workers' Compensation Act by delving into matters that are strictly within the jurisdiction of the civil courts.

Plaintiff filed a complaint against Defendant in superior court on 10 September 2024, asserting claims for negligence and gross negligence and seeking compensatory and punitive damages. Defendant answered, denying the substantive allegations and asserting defenses of contributory negligence and, in the alternative, the exclusivity provision of the North Carolina Workers' Compensation Act ("Act").

Plaintiff moved for partial summary judgment on Defendant's defense of the exclusivity provision of the Act. Defendant moved for summary judgment, arguing that Plaintiff's claims were barred by the exclusivity provision of the Act or, in the alternative, contributory negligence, and that Plaintiff failed to produce sufficient evidence to support his punitive damages claim.

Following a hearing, the trial court entered an order granting Plaintiff partial summary judgment on Defendant's exclusivity provision defense and denying Defendant summary judgment. Defendant appealed.

II. Discussion

A. Special Employee

Defendant argues that the trial court erred by granting Plaintiff partial summary judgment because Defendant was Plaintiff's special employer "for purposes of the North Carolina Workers' Compensation Act, which vests exclusive jurisdiction in the Industrial Commission (the 'Commission') and immunizes employers from tort liability for workplace injuries."

1. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2025). "In ruling on a motion for summary judgment, the trial court must view the evidence in the light most favorable to the non-moving party." *Foxx v. Davis*, 289 N.C. App. 473, 480 (2023) (quotation marks and citation omitted).

"The party moving for summary judgment bears the burden of establishing that there is no triable issue of material fact." *Badin Shores Resort Owners Ass'n v. Handy Sanitary Dist.*, 257 N.C. App. 542, 549 (2018). "This burden can be met by

proving: (1) that an essential element of the non-moving party's claim is nonexistent; (2) that discovery indicates the non-moving party cannot produce evidence to support an essential element of his claim; or (3) that an affirmative defense would bar the claim." *CIM Ins. Corp. v. Cascade Auto Glass, Inc.*, 190 N.C. App. 808, 811 (2008) (citation omitted).

We review a trial court's order granting summary judgment de novo. *Forbis v. Neal*, 361 N.C. 519, 524 (2007). Under de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower court. *Archie v. Durham Pub. Schs. Bd. of Educ.*, 283 N.C. App. 472, 474 (2022).

2. Analysis

"[T]he superior court is a court of general jurisdiction and has jurisdiction in all actions for personal injuries caused by negligence, except where its jurisdiction is divested by statute." *Solis-Santos v. Lester*, 301 N.C. App. 439, 443 (2025) (cleaned up). "By statute[,] the [s]uperior [c]ourt is divested of original jurisdiction of all actions which come within the provisions of the Work[ers'] Compensation Act." *Morse v. Curtis*, 276 N.C. 371, 375 (1970) (citations omitted). The exclusivity provision of the Act provides:

> If the employee and the employer are subject to and have complied with the provisions of this Article, then the rights and remedies herein granted to the employee . . . shall exclude all other rights and remedies of the employee . . . as against the employer at common law or otherwise on account of such injury or death.

N.C. Gen. Stat. § 97-10.1 (2025). In other words, the Act "provide[s] certain limited benefits to an injured employee regardless of negligence on the part of the employer, and simultaneously [] deprive[s] the employee of certain rights he had at the common law." *Brown v. Motor Inns of Carolina, Inc.*, 47 N.C. App. 115, 118 (1980) (citations omitted).

"In exchange for these limited but assured benefits, the employee is generally barred from suing the employer for potentially larger damages in civil negligence actions and is instead limited exclusively to those remedies set forth in the Act." *Whitaker v. Town of Scotland Neck*, 357 N.C. 552, 556 (2003) (quotation marks and citations omitted). "However, this general rule of exclusivity only bars the employee from bringing additional claims against *his employer*, not separate entities." *Nelson v. Smith*, 299 N.C. App. 51, 56 (2025).

An employee is defined by the Act as "every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written[.]" N.C. Gen. Stat. § 97-2(2) (2025). A "special employee" may be treated the same as a worker who meet the Act's definition of "employee." *Collins v. James Paul Edwards, Inc.*, 21 N.C. App. 455, 459 (1974). "As such, special employees and employees are similarly subject to the jurisdictional limitations of the Act's exclusivity provision." *Solis-Santos*, 301 N.C. App. at 444 (citation omitted).

Under the special employment doctrine, known also as the lent employee doctrine, "a general employee of one [employer] can also be the special employee of

another [employer] while doing the latter's work and under his control[.]" *Brown v. Friday Servs., Inc.*, 119 N.C. App. 753, 759 (1995). When the special employment doctrine applies, the general employer and special employer have joint liability under the Act, which "provides the plaintiff-employee with two separate potential sources of workers' compensation benefits." *Taft v. Brinley's Grading Servs., Inc.*, 225 N.C. App. 502, 506 (2013) (citation omitted). "However, under the special employment doctrine, the employee's receipt of workers' compensation benefits from either employer bars the employee from proceeding at common law against either of the employers." *Id.* (citation omitted).

Our Court has applied the three-prong *Collins* test for determining whether a worker is a special employee under the employ of a special employer:

> (a) the employee has made a contract of hire, express or implied, with the special employer;
>
> (b) the work being done is essentially that of the special employer; and
>
> (c) the special employer has the right to control the details of the work.

Collins, 21 N.C. App. at 459 (cleaned up).

"As our Supreme Court has observed, employment . . . is a matter of contract." *Shelton v. Steelcase, Inc.*, 197 N.C. App. 404, 413 (2009) (cleaned up). Our Courts "have usually been vigilant in insisting upon a showing of a deliberate and informed consent by the employee before employment relation will be held a bar to common-law suit." *Anderson v. Demolition Dynamics, Inc.*, 136 N.C. App. 603, 607-08 (2000)

(quoting Larson's Workers' Compensation Law § 67.01[2]). This is because "the employee loses certain rights along with those gained when striking up a new employment relation. Most important of all, he or she loses the right to sue the special employer at common law for negligence[.]" *Id.* at 607.

"Employment contracts may be express or implied." *Archer v. Rockingham Cty.*, 144 N.C. App. 550, 557 (2001). An express contract is an "explicit agreement" between the parties "regarding the right of control." *Harris v. Miller*, 335 N.C. 379, 387 (1994) (citation omitted). "An implied contract refers to an actual contract inferred from the circumstances, conduct, acts or relations of the parties, showing a tacit understanding." *Archer*, 144 N.C. App. at 557 (citations omitted).

Defendant concedes that it did not have an express contract of hire with Plaintiff but argues that it had an implied contract such that the first prong of the *Collins* test has been met.

In *Solis-Santos*, this Court affirmed the dismissal of plaintiff's negligence claims, holding that an implied contract of hire existed between plaintiff and defendant and defendant was plaintiff's special employer such that the exclusivity provision of the Act divested the superior court of jurisdiction over plaintiff's claims. 301 N.C. App. at 452. There, a staffing agency entered into an agreement with the defendant demolition company, providing that the staffing agency would assign employees to defendant; pay the assigned employees' wages and provide benefits; and handle unemployment and workers' compensation claims involving assigned

employees. *Id.* at 441.

The Court concluded that the first prong of the *Collins* test was satisfied because "there [was] no contractual provision declaring that [p]laintiff was *solely* the employee of [the staffing agency]" and "the record contain[ed] ample other evidence that [p]laintiff and [defendant] had an implied employment contract." *Id.* at 446. The "ample other evidence" of the implied contract included an affidavit and testimony from the company's owner specifically acknowledging an implied contract with plaintiff:

> The owner/managing member of [defendant] provided an affidavit in which he stated: "On March 8, 2021, [p]laintiff was performing work for [defendant] at the Project pursuant to an implied contract with [defendant]. Additionally, in a deposition, [defendant's] owner/managing member answered affirmatively when asked: "Did you have any type of implied contract with [plaintiff]?" and again confirmed that "[defendant] had [an] implied contract with [p]laintiff . . . on those days for that work."

Id.

More recently, in *Jefferson v. Johnson Concrete Co.*, we reversed summary judgment in defendant's favor and remanded to the trial court for further proceedings where there was no genuine issue of material fact that no implied contract of hire existed between plaintiff and defendant such that defendant was not plaintiff's special employer and the exclusivity provision of the Act did not divest the trial court of jurisdiction over plaintiff's claims. No. COA26-41, slip op. at 13 (N.C. Ct. App. Oct.

7, 2026). In that case, a contract between a staffing agency and defendant provided that all temporary employees assigned by the staffing agency to defendant were employees of the staffing agency; plaintiff was assigned by the staffing agency to work for defendant; and plaintiff was paid by the staffing agency. *Id.* at 9-10. Furthermore, defendant's corporate representative specifically testified that plaintiff was an employee of the staffing agency, not defendant:

> Q. Okay. I'm going to read some of that. "All temporary employees assigned to [defendant] by [the staffing agency]" . . . ["]are employees of [the staffing agency]."
>
> Did I read that correctly?
>
> A. Yes.
>
> Q. And so what that meant was that [plaintiff] was an employee of [the staffing agency], not an employee of [defendant]. Is that right?
>
> A. Yes.

Id. at 11.

Here, the agreement between CDT and Defendant provides: CDT shall "recruit, interview, employ . . . and otherwise use its customary screening procedures . . . when determining which Associates to assign to [Defendant]"; CDT shall "pay each Associate all wages owed and . . . provide each Associate with the benefits that [CDT] decides to offer to them"; and CDT shall "provide unemployment insurance and workers' compensation benefits . . . and . . . oversee unemployment and workers' compensation claims involving its Associates." CDT contractually retained the fundamental responsibilities of an employer. Although, as in *Jefferson* and

Solis-Santos, there is no contractual provision here declaring that Plaintiff was *solely* CDT's employee, there is ample other uncontradicted evidence that Plaintiff was not Defendant's employee.

Contrary to the evidence of an implied contract in *Solis-Santos*, and even more compelling than the evidence of a lack of an implied contract in *Jefferson*, Defendant here expressly argued before the Industrial Commission that it was not subject to the Commission's jurisdiction because "an employer-employee relationship has never existed between [Defendant] and [P]laintiff" and that Plaintiff was injured "while employed by [CDT] at a facility owned by [Defendant]." Defendant further argued that the Industrial Commission should limit the evidence Plaintiff sought in his workers' compensation case against CDT because Plaintiff was "investigat[ing] a potential civil action against [Defendant]" and "[t]he Commission should not try to expand its jurisdiction beyond the Workers' Compensation Act by delving into matters that are strictly within the jurisdiction of the civil courts."

Defendant's corporate representative testified during his deposition that Plaintiff was CDT's employee at the time of the incident:

> Q. Okay. Did [Plaintiff] . . . come to work at [Defendant] through CDT Staffing?
>
> A. Yes.
>
> . . . .
>
> Q. . . . -- at the time of the incident, was [Plaintiff] an employee of CDT . . . ?
>
> . . . .

Q. Is that a yes?

A. CDT, yes.

Plaintiff similarly testified during his deposition that CDT was "the one[] who hired [him]."

Defendant argues that it was simply disavowing it was Plaintiff's *general* employer by its statement that "an employer-employee relationship has never existed between [Defendant] and [P]laintiff." We are not persuaded. Defendant cannot disclaim an employment relationship before the Industrial Commission and then rely upon that same relationship in superior court to invoke the exclusivity provision of the Act. As there was no express or implied contract of hire between Plaintiff and Defendant, the first prong of the *Collins* test has not been met.

Accordingly, the trial court did not err by granting Plaintiff partial summary judgment, and we need not address the remaining elements of the special employment doctrine. In light of this decision, we need not address Defendant's argument that it "is not estopped or otherwise prohibited from asserting that [Plaintiff's] claims are barred by the Workers' Compensation Act's exclusivity provision[.]"

B. Punitive Damages and Contributory Negligence

Defendant argues that the trial court erred "in entirely failing to address [Defendant's] arguments regarding [Plaintiff's] contributory negligence as a matter of law and failure to establish a requisite aggravating factor to support punitive

damages." We do not have jurisdiction to address these arguments on appeal.

"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." *Hanesbrands Inc. v. Fowler*, 369 N.C. 216, 218 (2016) (quotation marks and citations omitted). "It is well-settled that an order denying a motion for summary judgment is interlocutory, and not generally immediately appealable." *Anderson v. Atl. Cas. Ins. Co.*, 134 N.C. App. 724, 725 (1999) (citations omitted). This rule "prevent[s] fragmentary, premature[,] and unnecessary appeals by permitting the trial court to bring the case to final judgment before it is presented to the appellate courts." *Larsen v. Black Diamond French Truffles, Inc.*, 241 N.C. App. 74, 76 (2015) (quotation marks and citation omitted).

There are exceptions to this general rule, including "when the challenged order affects a substantial right." *Denney v. Wardson Constr., LLC*, 264 N.C. App. 15, 17 (2019) (citing N.C. Gen. Stat. § 7A-27(b)(3)(a)). "An interlocutory order affects a substantial right if the order deprives the appealing party of a substantial right which will be lost if the order is not reviewed before a final judgment is entered." *Suarez v. Am. Ramp Co.*, 266 N.C. App. 604, 608 (2019) (cleaned up). A substantial right is "a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which one is entitled to have preserved and protected by law: a material right." *Hanesbrands*, 369 N.C. at 219 (cleaned up).

"To confer appellate jurisdiction based on a substantial right, the appellant must include in its opening brief, in the statement of the grounds for appellate review, sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." *Doe v. City of Charlotte*, 273 N.C. App. 10, 21 (2020) (quotation marks and citation omitted); *see also* N.C. R. App. P. 28(b)(4). This Court "will not construct arguments for or find support for appellant's right to appeal from an interlocutory order on our own initiative." *Denney*, 264 N.C. App. at 17 (quotation marks and citation omitted). Thus, "if the appellant's opening brief fails to explain why the challenged order affects a substantial right, we must dismiss the appeal for lack of appellate jurisdiction." *Id.* (citation omitted).

Here, Defendant failed to acknowledge in its briefing that its contributory negligence and punitive damages arguments arise from the trial court's interlocutory order denying summary judgment on those issues. Defendant did not identify any statutory basis for immediate appellate review or explain how these rulings affect a substantial right. At oral argument, Defendant asked this Court to consider its opening brief a petition for discretionary review, to grant discretionary review, and to review these issues. In our discretion, we decline to do so. *See Luther v. Seawell*, 191 N.C. App. 139, 142 (2008).

Because the denial of a motion for summary judgment is interlocutory and Defendant has failed to establish our jurisdiction to reach the merits of its argument on these issues, we dismiss the remainder of Defendant's appeal.

III. Conclusion

As the trial court did not err by granting Plaintiff partial summary judgment, we affirm the trial court's order. Defendant's arguments regarding contributory negligence and punitive damages are dismissed for lack of jurisdiction.

AFFIRMED IN PART; DISMISSED IN PART.

Judges HAMPSON and FREEMAN concur.