

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA01-1309

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

MICHAEL R. DAVIS,
Plaintiff-Appellant,

v.

Person County
No. 95 CVS 45

HARTFORD ACCIDENT &
INDEMNITY CO.,
Defendant-Appellee.

Appeal by plaintiff from order entered 14 August 2001 by Judge Osmond Smith, III in Superior Court, Person County. Heard in the Court of Appeals 12 June 2002.

Alan S. Hicks, P.A., by Alan S. Hicks, for plaintiff-appellant.

Cranfill, Sumner & Hartzog, L.L.P., by Kari R. Johnson, for defendant-appellee.

McGEE, Judge.

Plaintiff sustained a work-related injury to his back while employed as a truck driver for Worldmark Corporation on 5 October 1990. Worldmark Corporation's workers' compensation insurance carrier was Hartford Accident & Indemnity Co. (defendant). Plaintiff filed a workers' compensation claim with the N.C. Industrial Commission. Plaintiff subsequently filed a complaint on 6 February 1995 in Superior Court, Person County, alleging that defendant's refusal to begin paying plaintiff workers' compensation

benefits within two weeks of plaintiff's filing a claim for benefits was a willful violation of N.C. Gen. Stat. § 97-18. Plaintiff also alleged that defendant's agent advised plaintiff that defendant's private investigator let the air out of plaintiff's tire in order to videotape plaintiff changing the tire. Plaintiff further alleged that defendant employed coercion, threats, and intimidation in dealing with plaintiff. Plaintiff alleges defendant's actions constituted unfair trade practices.

Defendant filed a motion to dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(1) and N.C. Gen. Stat. § 97-10.1. In a joint motion, both parties moved for a continuance of the action until the resolution of the companion workers' compensation claim, and this motion was granted in an order dated 8 April 1996. In a motion dated 19 April 2000, defendant moved to lift the stay of the proceedings. The motion was granted in a consent order filed 1 June 2000. The trial court heard defendant's motion to dismiss on 6 August 2001. The trial court granted defendant's motion to dismiss stating the exclusive remedy for this matter is provided in the Workers' Compensation Act through the Industrial Commission; therefore, the trial court lacked subject matter jurisdiction. Plaintiff appeals.

Plaintiff's sole assignment of error is that the trial court erred in granting defendant's motion to dismiss. Plaintiff contends plaintiff's claim for unfair trade practices was within the jurisdiction of the trial court because the exclusivity provision of the Workers' Compensation Act only covers actions

which occur by accident. Plaintiff contends defendant's actions were outside the course and scope of plaintiff's employment and were not accidental. Therefore, plaintiff contends the Workers' Compensation Act does not apply in this case. See *Woodson v. Rowland*, 329 N.C. 330, 407 S.E.2d 222 (1991) (holding Industrial Commission does not have jurisdiction over intentional misconduct of employers); *Hogan v. Forsyth Country Club Co.*, 79 N.C. App. 483, 340 S.E.2d 116 (1986) (holding a claim for intentional infliction of emotional distress is outside the exclusivity provision of the Workers' Compensation Act).

In general, our Court has held the Workers' Compensation Act "gives the North Carolina Industrial Commission exclusive jurisdiction over workers' compensation claims and all related matters[.]" *Johnson v. First Union Corp.*, 131 N.C. App. 142, 143-44, 504 S.E.2d 808, 809 (1998); see also *Carpenter v. Tony E. Hawley, Contractors*, 53 N.C. App. 715, 718, 281 S.E.2d 783, 785, *disc. review denied*, 304 N.C. 587, 289 S.E.2d 564 (1981) (holding the "Industrial Commission has exclusive original jurisdiction of the rights and remedies afforded by North Carolina's Workers' Compensation Act").

We conclude plaintiff's complaint is similar to the complaint filed in *Deem v. Treadaway & Sons Painting and Wallcovering, Inc.*, 142 N.C. App. 472, 543 S.E.2d 209, *disc. review denied*, 354 N.C. 216, 553 S.E.2d 911 (2001). In *Deem*, the plaintiff filed a complaint alleging the "defendants committed fraud, bad faith, unfair and deceptive trade practices, intentional infliction of

emotional distress and civil conspiracy *arising out of the handling of his workers' compensation claim.*" *Id.*, 142 N.C. App. at 475, 543 S.E.2d at 210 (emphasis in original). Our Court concluded the "plaintiff's complaint is nothing more than an allegation that defendants did not appropriately handle his workers' compensation claim, and thus he was injured because he did not receive his entitled benefit." *Id.*, 142 N.C. App. at 477, 543 S.E.2d at 212.

In the case before us, plaintiff alleges defendant delayed plaintiff's workers' compensation benefits, let the air out of plaintiff's tire in order to videotape plaintiff changing the tire, and employed coercion, threats, and intimidation in dealing with plaintiff. As in *Deem*, these are allegations that defendant "did not appropriately handle [plaintiff's] workers' compensation claim[.]" *Deem*, 142 N.C. App. at 477, 543 S.E.2d at 212. Not only does plaintiff's right to relief arise under the Workers' Compensation Act, but the Act provides investigative and punitive mechanisms for the Industrial Commission to properly handle allegations like those plaintiff has alleged. See N.C. Gen. Stat. § 97-18(g) (1999) and N.C. Gen. Stat. § 97-88.2 (1999). We therefore hold plaintiff's complaint is "ancillary to his original compensable injury" and within the exclusive jurisdiction of the Industrial Commission. *Deem*, 142 N.C. App. at 477, 543 S.E.2d at 212. We overrule this assignment of error.

We affirm the trial court's dismissal of plaintiff's complaint.

Affirmed.

Judges McCULLOUGH and BRYANT concur.

Report per Rule 30(e).