An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-376
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

JOSE GUADALUPE VARGAS MORALES, by and through his Guardian *Ad Litem*, JOSEPH W. HART,
Employee, Plaintiff,

v.

N.C. Industrial Commission
IC File No. 549768

GREENSBORO CONTRACTING CORPORATION,
Employer,

and

KEY RISK MANAGEMENT SERVICES, INC.,
Carrier,

THE CINCINNATI CASUALTY COMPANY and/or THE CINCINNATI INSURANCE COMPANY,
Carrier, Defendants.

Appeal by Carrier-Defendant from opinion and award entered 16 November 2010 and the order entered 23 December 2010 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 October 2011.

McAngus, Goudelock & Courie, PLLC, by John T. Jeffries and Jennifer M. Arno, for Defendant-Appellee.

Carruthers & Roth, P.A., by Jack B. Bayliss, Jr., for Defendant-Appellant.

BEASLEY, Judge.

Defendant-Carrier, The Cincinnati Casualty Company and/or The Cincinnati Insurance Company (Cincinnati), appeals an opinion and award and the denial of a motion for reconsideration of the Full Commission pursuant to N.C. Gen. Stat. § 97-86. For the following reasons, we reverse the award of the Full Commission.

Jose Guadalupe Vargas Morales (Plaintiff) was employed by Defendant Greensboro Contracting Corporation (GCC). On 5 August 2005, Plaintiff sustained serious injuries in the course of his employment. At the time of the injury, GCC was insured for injuries sustained under the Worker's Compensation Act by Defendant Key Risk Management Services, Inc. (Key Risk). Plaintiff was covered under this policy and Key First has paid all medical and indemnity compensation due to Plaintiff.

Cincinnati issued a worker's compensation insurance policy to GCC from 1 January 2005 through 1 January 2006. The policy contained a provision that allowed the insured to cancel at any time by written advance notice to Cincinnati. On 1 August 2005, Robert Isner (Isner), President and owner of GCC, faxed a letter to his insurance agents, Senn Dunn Marsh & Roland (Dunn) and specifically Larry Roland (Roland), and requested same day

cancellation of GCC's insurance coverage. An Agency Agreement existed between Dunn and Cincinnati.

Dunn received the cancellation request, but did not immediately inform Cincinnati of GCC's request. Per the agency agreement, Dunn advanced premiums to Cincinnati on behalf of its insured, including GCC, and later collected premiums from the insured. Premiums were billed on a quarterly basis and all four premium payments from 1 January 2005 through 1 January 2006 were paid to Cincinnati "on behalf" of GCC, even though GCC requested cancellation.

After the expiration of the 2005-06 policy, Cincinnati conducted an audit of the policy. The audit revealed that Dunn was still paying the premiums to Cincinnati on behalf of GCC, but GCC had not actually made any payments to Dunn or Cincinnati after the 1 August 2005 request for cancellation. Cincinnati did not have actual knowledge of GCC's intent to cancel the policy until 19 May 2006 when Dunn sent Cincinnati a request to cancel GCC's policy effective 1 August 2005. Subsequently, Cincinnati retroactively cancelled the policy on 26 June 2006, effective 1 August 2005 and credited Dunn with $10,000 pursuant to the audit of the 2005-06 policy.

On 5 August 2008, Key Risk filed a request for hearing with the Industrial Commission to determine whether or not Cincinnati provided concurrent coverage entitling Key Risk to contribution.

On 21 April 2010, Deputy Commissioner George T. Glenn filed an opinion and award which concluded that Cincinnati and Key First provided concurrent coverage. Cincinnati filed notice of appeal to the Full Commission and on 16 November 2010, the Full Commission concluded that Cincinnati and Key Risk provided concurrent coverage. On 23 December 2010, the Full Commission denied Cincinnati's motion for reconsideration. On 5 January 2011, Cincinnati gave notice of appeal to this Court.

Cincinnati argues that the Industrial Commission erred as a matter of law when it held that notice of cancellation to the insurance company's agent did not constitute notice to the insurance company. We agree.

"The standard of appellate review of an opinion and award of the Industrial Commission in a workers' compensation case is whether there is any competent evidence in the record to support the Commission's findings of fact and whether these findings support the Commission's conclusions of law." *Lineback v. Wake County Board of Commissioners*, 126 N.C. App. 678, 680, 486 S.E.2d 252, 254 (1997). "However, the Industrial Commission's conclusions of law are reviewable *de novo*." *Johnson v. Herbie's Place*, 157 N.C. App. 168, 171, 579 S.E.2d 110, 113 (2003).

Key First argues that the Commission's plain reading of the insurance policy constituted findings and not conclusions of law, and we should review the Commission's interpretation of the

insurance policy under the competent evidence standard. We disagree.

Our Court has previously held "[a]s a general rule, however, any determination requiring the exercise of judgment, or the application of legal principles, is more properly classified a[s] [a] conclusion of law. Any determination reached through logical reasoning from the evidentiary facts is more properly classified a[s] [a] finding of fact." *In Re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (internal quotation marks and internal citations omitted). Moreover, our Court has explicitly stated "[t]he interpretation of language used in an insurance policy is a question of law, governed by well-established rules of construction." *N.C. Farm Bureau Mut. Ins. Co. v. Mizell*, 138 N.C. App. 530, 532, 530 S.E.2d 93, 95 (2000). Therefore, we conclude that the Commission's interpretations of the language of the insurance policy are in fact conclusions of law that we review *de novo*.

We first address the issue of notice. In the Commission's Conclusion of Law Number 4, it determined

> Senn Dunn's notice/knowledge of the alleged cancellation on August 1, 2005 pursuant of Isner's letter is not imputed to Cincinnati as Senn Dunn was not acting within the scope of its authority at the time per the Agency Agreement.

The Full Commission based this conclusion on its interpretation of the general rule outlined in *Thomas-Yelverton Co. v.*

Insurance Co., 238 N.C. 278, 77 S.E.2d 692 (1953) that states, "knowledge of the agent when acting within the scope of the powers entrusted to him will be imputed to the company, though a direct stipulation to the contrary appears in the policy or the application for the same." *Id.* at 282, 77 S.E.2d at 694 (internal quotation marks omitted). The Full Commission determined that Dunn was not acting within the scope of its authority when he accepted Isner's cancellation because the agency agreement between Dunn and Cincinnati did not give Dunn express authority to cancel insurance contracts. We do not believe that the inquiry into Dunn's authority stops at a plain reading of the agency agreement.

We recognize the general rule that "[o]ne who is authorized or employed to procure insurance does not thereby acquire any authority to cancel the policies after being procured." *Urey v. Insurance Co.*, 197 N.C. 385, 387-88, 148 S.E. 432, 433 (1929). Our Supreme Court has also held "[t]he authority of agents of insurance companies,. . ., is controlled not so much by the terms of th[e] . . . policies, which they procure, as by the things which the principal permits them to do by the nature and extent of the business for which they are employed and permitted to carry on." *Hill v. Insurance Co.,* 200 N.C. 115, 122, 156 S.E. 518, 522 (1931).

Here, the parties to the initial insurance contract were Cincinnati and GCC. On 1 August 2005, Isner intended to cancel the policy by delivering written notice to Dunn, the insurance agent. Dunn was expressly authorized to "accept and bind contracts of insurance" and "sell and service our [Cincinnati's] products." Although not expressly granted in the policy, we believe, and *Hill* suggests, that an agent's authority is not wholly controlled by an express grant of authority from principal to agent.

"Powers possessed by agents of insurance companies are to be interpreted in accordance with the general law of agency." *Id.*

> The power of an agent, then, to bind his principal may include not only the authority actually conferred, but the authority implied as usual and necessary to the proper performance of the work [e]ntrusted to him, and it may be further extended by reason of acts indicating authority which the principal has approved or knowingly or, at times, even negligently permitted the agent to do in the course of his employment.

Morpul Research Corp. v. Hardware Co., 263 N.C. 718, 721, 140 S.E.2d 416, 418 (1965) (citations omitted).

In the case *sub judice*, Isner delivered the written cancellation to Dunn. Although cancellation may have exceeded Dunn's actual express authority under the agency agreement, Isner believed that cancellation was within the scope of Dunn's

authority. Moreover, Cincinnati, when it received actual knowledge of the written cancellation, accepted Isner's cancellation as valid even though Dunn did not have express authority to cancel contracts. Cincinnati approved of the extension of Dunn's authority, which surpassed that expressed in the agency agreement, when Cincinnati accepted the cancellation that was delivered to Dunn. On 19 May 2006, Dunn sent an email to Cincinnati with instructions to cancel GCC's policy with an effective date of 1 August 2005 and on 26 June 2006, Cincinnati retroactively cancelled the policy effective 1 August 2005. Under these circumstances, it is clear that although Dunn acted without express authority to cancel, all parties involved in the contract believed Dunn had authority to cancel the policy and the principal, Cincinnati, approved the cancellation. Therefore, we hold that Dunn acted within the scope of his employment when he accepted the cancellation from Isner and the general rule of notice outlined in *Thomas-Yelverton Co.*, is applicable. We conclude that Isner's 1 August 2005 notice to Dunn was imputed to Cincinnati, the principal.

We now address whether the cancellation letter received by Dunn was sufficient to cancel the Cincinnati policy effective 1 August 2005.

"In interpreting a contract, the court's principle objective is to determine the intent of the parties to the

agreement." *Holshouser v. Shaner Hotel Grp. Props. One*, 134 N.C. App. 391, 397, 518 S.E.2d 17, 23 (1999). "In determining the intent of the parties to a contract, we must look to all circumstances surrounding the making of the agreement, including the language of the contract, its purposes and subject matter, and the situation of the parties at the time the contract was executed." *Crowder Const. Co. v. Kiser*, 134 N.C. App. 190, 201-02, 517 S.E.2d 178, 186 (1999). "The conduct of the parties in dealing with the contract indicating the manner in which they themselves construe it is important, sometimes said to be controlling in its construction by the court." *Preyer v. Parker*, 257 N.C. 440, 446, 125 S.E.2d 916, 920 (1962) (citation omitted).

The Full Commission concluded that the policy was not properly cancelled pursuant to the policy terms because GCC was required to give Cincinnati *advance* notice of cancellation. The Full Commission concluded that the letter from Isner dated 1 August 2005 requesting cancellation on the same day that he sent the letter did not constitute advance notice, and therefore did not cancel the contract. We disagree with this conclusion of law.

A review of the findings of fact shows that Isner sent a request to Dunn for cancellation on 1 August 2005 to be effective on the same day. GCC never paid any premiums after

the 1 August 2005 cancellation. Dunn, without the consent or knowledge of Isner, continued to pay advanced premiums to Cincinnati on behalf of GCC. After an audit, Cincinnati discovered that Dunn had continued paying on GCC's behalf without consent or authorization. Subsequently, Cincinnati refunded Dunn the advanced premiums and canceled GCC's contract with a retroactive date of 1 August 2005.

Here, the intentions of both parties to the contract are controlling. GCC intended to cancel the contract and Cincinnati, upon actual knowledge of GCC's intent to cancel, accepted GCC's request to cancel effective 1 August 2005, the date of the request. The Full Commission erred by limiting its inquiry to the express terms of the agreement and ignoring the actual intentions of the parties to the contract. In this instance, the conduct of the parties shows a clear intention to end their contractual relationship. Interpretation of the policy provisions are unnecessary where the intentions of the parties to the contract are not at issue. Key First, who was not a party to the original contract, argues that the cancellation was not effective because the same day notification did not constitute "advanced" notice. Key First is not a third party beneficiary to the contract, nor did it detrimentally rely on the contract between GCC and Cincinnati. Here, the only parties to the contract are GCC and Cincinnati and their

intentions are dispositive. Therefore, the Full Commission erred in concluding that Isner's 1 August 2005 letter was ineffective to cancel the contract where both parties to the contract agreed that the contract was canceled on 1 August 2005. We conclude that the contract was canceled on 1 August 2005.

Cincinatti also argues that there is no legal basis for quasi-estoppel under the facts found by the Full Commission, and its decision must therefore be reversed. We agree.

The Full Commission concluded that Cincinnati was

> estopped from denying coverage in this matter on the grounds that the policy was cancelled on August 1, 2005, as it continued to collect premiums for the policy after August 1, 2005, and renewed the policy on October 19, 2005, for the January 1, 2006 through January 1 2007 policy period.

The rule of estoppel "is grounded in the premise that it offends every principle of equity and morality to permit a party to enjoy the benefits of a transaction and at the same time deny its terms or qualifications." *Godley v. County of Pitt,* 306 N.C. 357, 360, 293 S.E.2d 167, 169 (1982). Here, Cincinnati received unauthorized premiums from Dunn on behalf of GCC. After the 2006 audit, Cincinnati retroactively canceled the policy and credited Dunn with the return of the unauthorized payments. Estoppel is not applicable because Cincinnati incurred no benefit where it returned the unauthorized premiums. Also, applying the rule of estoppel in this situation would be

contrary to equity where the Full Commission held Cincinnati responsible for one half of all medical and indemnity compensation for Plaintiff, although (1) GCC intended to cancel its policy; (2) GCC believed that the policy was cancelled; (3) GCC never paid any more premiums after 1 August 2005; and (4) the premiums that were paid "on behalf" of GCC were unauthorized and ultimately returned to Dunn. Estoppel is inapplicable in this situation and we reverse the Full Commission's conclusion of law.

For the forgoing reasons, we conclude that the Full Commission's findings of fact did not support its conclusions of law. Accordingly, we reverse the opinion and award of the Full Commission.

Reversed.

Judges HUNTER, JR. and THIGPEN concur.

Report per Rule 30(e).