

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-289

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

BILLY JOSEPH WHISNANT,

Plaintiff-employee,

v

Industrial Commission
I.C. File No. 852673

IMAGES SIGN SERVICE,

Defendant-employer.

Appeal by defendant from opinion and award entered 17 October 2000 by the North Carolina Industrial Commission. Heard in the Court of Appeals 10 January 2002.

The Law Offices of John J. Cacheris, P.L.L.C., by John J. Cacheris, for plaintiff-appellee.

McAngus, Goudelock & Courie, P.L.L.C., by John T. Jeffries and Trula R. Mitchell, for defendant-appellant.

MARTIN, Judge.

Defendant appeals from an opinion and award of the North Carolina Industrial Commission holding that defendant is liable for an injury by accident sustained by plaintiff on 13 July 1998 and remanding the matter to a deputy commissioner for a determination regarding the benefits to which plaintiff is entitled. Plaintiff submitted a notice of accident to defendant on 28 July 1998. A deputy commissioner filed an opinion and award in this matter on 12 January 2000 denying plaintiff benefits because plaintiff was a

casual employee of defendant. Plaintiff appealed to the Full Commission, which reviewed the case on 23 August 2000. On 17 October 2000, the Full Commission reversed the deputy commissioner's conclusion of law that plaintiff was not entitled to benefits. The Commission held that although plaintiff was a casual employee of defendant, he was nevertheless entitled to benefits because plaintiff was "engaged in the course of defendant-employer's business or his duties were in furtherance of that business on 13 July 1998." The Full Commission remanded plaintiff's claim to a deputy commissioner to take further evidence necessary to render a final determination of benefits due plaintiff. Before the amount of compensation due plaintiff was established, however, defendant filed notice of appeal of the Full Commission's opinion and award to this Court.

Although the issue was not addressed by either party, defendant has appealed from an interlocutory order. Pursuant to G.S. § 97-86, appeals taken from an order of the Industrial Commission are subject to the same rules that govern appeals from the superior court in civil actions. A litigant has a right to appeal any *final* judgment of a superior court. N.C. Gen. Stat. § 7A-27. Interlocutory orders are not final judgments because they do not dispose of the entire controversy, but instead require further action by the trial court. See *Carriker v. Carriker*, 350 N.C. 71, 511 S.E.2d 2 (1999) (citing *Veazey v. City of Durham*, 231 N.C. 357, 57 S.E.2d 377 (1950)). In *Fisher v. E.I. Du Pont De*

Nemours, 54 N.C. App. 176, 282 S.E.2d 543 (1981), this Court dismissed the defendant's appeal because the Industrial Commission had not entered a final order in the case:

The question of the amount of compensation plaintiff is entitled to receive has not been determined in this case. No final award has been entered. Until a final award has been entered by the Commission, defendant has no right of appeal.

Id. at 178, 282 S.E.2d at 544 (citations omitted). *Accord*, *Plummer v. Kearney*, 108 N.C. App. 310, 423 S.E.2d 526 (1992).

Similarly in the present case, defendant has appealed from an order of the Industrial Commission which does not dispose of the entire controversy between the parties. The Full Commission remanded the case to a deputy commissioner for the taking of further evidence so as to make a final determination on the amount of compensation due plaintiff as a result of his injuries. Until a final award has been entered, defendant has no right of appeal.

Appeal dismissed.

Judges TIMMONS-GOODSON and BRYANT concur.

Report per Rule 30(e).