

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-497

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

JULIUS BENTON,
Plaintiff-Appellant,

v.

New Hanover County
No. 00 CVS 03229

AMERICAN INTERNATIONAL
UNDERWRITERS, AIGSC,
Defendant-Appellees.

Appeal by plaintiff from order dated 15 February 2001 by Judge Russell J. Lanier, Jr., in Superior Court, New Hanover County. Heard in the Court of Appeals 23 January 2002.

Mako & Robinson, P.A., by Bruce H. Robinson, Jr., for plaintiff-appellant.

Anderson, Johnson, Lawrence, Butler & Bock, L.L.P., by Lee B. Johnson, for defendant-appellees.

McGEE, Judge.

Plaintiff filed a workers' compensation claim with the N.C. Industrial Commission on 4 April 2000. Plaintiff subsequently filed a complaint in Superior Court in New Hanover County, on 7 September 2000, alleging that defendants' 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. Defendants filed a motion to dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6). The trial

court granted defendants' motion to dismiss stating the exclusive remedy for this matter is provided in the Workers' Compensation Act through the Industrial Commission; therefore, the complaint did not state a claim for which the trial court could provide a remedy. Plaintiff appeals.

Plaintiff's sole assignment of error is that the trial court erred in granting defendants' motion to dismiss because plaintiff's claim did state a cause of action upon which relief could have been granted. Plaintiff contends that defendants' refusing to pay workers' compensation benefits within two weeks after plaintiff's claim was filed was outside the course and scope of employment. Therefore, plaintiff contends the Workers' Compensation Act does not apply in this case. See *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 defendants did not begin paying him workers' compensation benefits on time pursuant to N.C.G.S. § 97-18. As in *Deem*, this allegation is merely that defendants "did not appropriately handle [plaintiff's] workers' compensation claim[.]" *Deem*, 142 N.C. App. at 475, 543 S.E.2d at 210. 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); 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. While we agree the trial court was correct in dismissing the complaint, we note, however, that the motion to dismiss should have been properly brought pursuant to N.C.R. Civ. P. 12(b)(1), as the trial court did not have subject matter jurisdiction.

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

Affirmed.

Judges WALKER and BIGGS concur.

Report per Rule 30(e).