

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-343

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

ROY JEFFREY HOPKINS,  
Employee,  
Plaintiff,

v.

North Carolina  
Industrial Commission  
I.C. No. 346138

INDEPENDENT TROUBLE SHOOTING,  
INC., and DARRELL J. FREEMAN  
and ROBIN K. FREEMAN, individually  
and as officers of Independent  
Trouble Shooting, Inc.,  
Employer,  
Defendants.

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NORTH CAROLINA INDUSTRIAL COMMISSION,  
Petitioner,

v.

North Carolina  
Industrial Commission  
No. PH-1020

INDEPENDENT TROUBLE SHOOTING, INC.,  
Employer, non-insured,  
and  
DARRELL J. FREEMAN and ROBIN K.  
FREEMAN, individually and as officers  
of Independent Trouble Shooting, Inc.,  
Defendants.

Appeal by defendant from order filed 10 November 2005 by the  
North Carolina Industrial Commission. Heard in the Court of  
Appeals 16 April 2007.

*No brief filed on behalf of plaintiff-appellee.*

*Schiller & Schiller, PLLC, by David G. Schiller, for  
defendant-appellant Independent Trouble Shooting, Inc..*

GEER, Judge.

Defendant Independent Trouble Shooting, Inc. appeals from an order of the North Carolina Industrial Commission adding two defendants and remanding to the deputy commissioner for de novo hearings as to whether the new defendants are liable for workers' compensation benefits pursuant to a prior opinion and award. We conclude that defendant's appeal is interlocutory and, therefore, not properly before this Court. Accordingly, we dismiss defendant's appeal.

#### Facts

In June 2003, while working for defendant, plaintiff Roy Jeffrey Hopkins injured his ankle and bruised his left foot. These injuries eventually required significant surgeries and the amputation of portions of the foot. Following a hearing on plaintiff's claim for workers' compensation benefits, Deputy Commissioner George R. Hall, III entered an opinion and award on 10 August 2004. Deputy Commissioner Hall determined that plaintiff's ankle and foot injuries were compensable injuries by accident and that defendant did not have workers' compensation insurance. He, therefore, ordered defendant to pay plaintiff temporary total disability compensation and medical expenses.

Plaintiff subsequently filed a motion seeking to have defendant held in contempt for failing to comply with Deputy Commissioner Hall's opinion and award. Following a hearing on 25 January 2005, Deputy Commissioner Theresa B. Stephenson allowed plaintiff's motion. Defendant appealed Deputy Commissioner Stephenson's order to the Full Commission. On its own motion, the

Commission filed an order on 10 November 2005 adding as defendants Darrell J. Freeman and Robin K. Freeman, the president and vice-president of defendant Independent Trouble Shooting. The order then provided "that these matters are remanded to the Deputy Commissioner section of the Industrial Commission for a *de novo* hearing or hearings to determine whether these individual defendants may be liable for payment of workers compensation benefits and penalties as awarded in Deputy Commissioner George Hall's Opinion and Award filed on August 10, 2004." Defendant has appealed to this Court from the Commission's order.

#### Discussion

An appeal from a decision of the Industrial Commission is subject to the "same terms and conditions as govern appeals from the superior court to the Court of Appeals in ordinary civil actions." N.C. Gen. Stat. § 97-86 (2005). Thus, as in any other civil action, an appeal of right to the Court of Appeals arises only from a final order or decision. *Ledford v. Asheville Hous. Auth.*, 125 N.C. App. 597, 598-99, 482 S.E.2d 544, 545, *disc. review denied*, 346 N.C. 280, 487 S.E.2d 550 (1997). See also N.C. Gen. Stat. § 7A-27(b) (2005) (noting appeals from superior courts arise only from "final judgment[s]").

A final order or opinion and award of the Industrial Commission is one that determines the entire controversy and leaves nothing to be decided in that tribunal. *Ratchford v. C.C. Mangum, Inc.*, 150 N.C. App. 197, 199, 564 S.E.2d 245, 247 (2002). A decision of the Industrial Commission that on its face directs

further proceedings or does not dispose of all claims is interlocutory and is not immediately appealable unless it affects a substantial right. *Watts v. Hemlock Homes of the Highlands, Inc.*, 160 N.C. App. 81, 84-85, 584 S.E.2d 97, 99 (2003). The burden is upon the appellant to show that an interlocutory determination affects a substantial right. *Id.* at 85, 584 S.E.2d at 99.

Here, the Full Commission's order is interlocutory, as it adds two new defendants and directs the holding of de novo hearings. See *Riggins v. Elkay S. Corp.*, 132 N.C. App. 232, 233, 510 S.E.2d 674, 675 (1999) ("An opinion and award that settles preliminary questions of compensability but leaves unresolved the amount of compensation to which the plaintiff is entitled and *expressly reserves final disposition of the matter pending receipt of further evidence is interlocutory.*" (emphasis added)). Defendant makes no showing in its brief that the order affects a substantial right. As defendant has failed to demonstrate any jurisdictional basis for this appeal, we dismiss.

Dismissed.

Judges WYNN and ELMORE concur.

Report per Rule 30(e).