

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-371
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

JAMES MICHAEL PARKER, Employee
Plaintiff,

v.

North Carolina Industrial
Commission
I.C. No. 49318

CHARLOTTE PIPE & FOUNDRY,
Employer, THE PHOENIX INSURANCE
COMPANY, Carrier,
Defendants.

Appeal by defendants and cross-appeal by plaintiff from an Amended Opinion and Award entered 7 November 2013 by the North Carolina Industrial Commission. Heard in the Court of Appeals 7 October 2014.

Poisson, Poisson & Bower, PLLC, by E. Stewart Poisson and Fred D. Poisson, Jr., for plaintiff.

Hedrick Gardner Kincheloe & Garofalo, LLP, by Neil P. Andrews, M. Duane Jones, and Amanda A. Johnson, for defendants.

HUNTER, Robert C., Judge.

Defendants appeal and plaintiff cross-appeals an Amended Opinion and Award awarding plaintiff temporary total disability from 31 July 2010 until 10 December 2010 and 12 February 2011 to

5 May 2011, vocational rehabilitation services, medical expenses, and attorney's fees.

After careful review, we dismiss the appeals as interlocutory.

Background

On 18 July 2008, plaintiff James Parker ("plaintiff") suffered an injury to his neck in the course and scope of his employment with Charlotte Pipe & Foundry ("defendant-employer"). Defendant-employer filed a form 60, admitting plaintiff's right to compensation. Plaintiff was paid temporary total disability benefits until 16 April 2010. After returning to work and being granted medical leave for his vascular condition, plaintiff was terminated on 5 May 2011 once his protective leave expired.

On 7 July 2011, plaintiff filed a form 33 requesting additional medical treatment and reinstatement of his workers' compensation benefits. Defendants filed a form 33R arguing that plaintiff had not been authorized out of work by his treating physicians for the accepted conditions. On 5 December 2013, the Full Commission entered an Amended Opinion and Award. In it, the Full Commission concluded that "any restrictions on [plaintiff's] ability to work during these periods were related, in part, to his admittedly compensable cervical and upper

extremity conditions and resulting pain." Furthermore, as to plaintiff's continuing benefits after the date of termination, the Full Commission made the following conclusion:

6. During the period after his termination from employment on May 5, 2011, Plaintiff had an obligation to look for suitable work, or show it would have been futile for him to look for work, in order to prove continuing disability. Plaintiff did not look for suitable work and has not proven at this time that it would have been futile for him to look for work.

Based on these conclusions, the Full Commission awarded plaintiff temporary total disability up until 5 May 2011 and vocational rehabilitative services to assist him in returning to work. Finally, the Full Commission stated that: "[t]he issue of plaintiff's disability after May 5, 2011 shall be reserved for subsequent determination." Defendants appealed and plaintiff cross-appealed.

Interlocutory Nature of Appeal

Initially, we must address the interlocutory nature of the appeal. This Court has noted:

An appeal from an opinion and award 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. Parties have a right to appeal any final judgment of a superior court. Thus, an appeal of right arises only from a final order or decision

of the Industrial Commission. A decision of the Industrial Commission is interlocutory if it determines one but not all of the issues in a workers' compensation case. A decision that on its face contemplates further proceedings or which does not fully dispose of the pending stage of the litigation is interlocutory.

Perry v. N.C. Dep't of Correction, 176 N.C. App. 123, 129, 625 S.E.2d 790, 794 (2006) (internal citations and quotation marks omitted).

Here, the Full Commission's Amended Opinion and Award expressly reserves the issue of plaintiff's disability after he was terminated on 5 May 2011 for future determination. On this issue, the Full Commission concluded that, during the period following termination, plaintiff did not look for suitable work and "has not proven at this time that it would have been futile for him to look for work." Thus, the issue of whether plaintiff is entitled to continuing disability after he was terminated will be determined at a later time. This Court has concluded that language reserving issues for future determination in Opinions and Awards renders them interlocutory. In *Thomas v. Contract Core Drilling & Sawing*, 209 N.C. App. 198, 200, 703 S.E.2d 862, 864 (2011), the Commission's Opinion and Award reserved the issue of compensation after the employee was supposed to return to work from surgery for a future

determination or agreement by the parties. At issue in *Thomas*, similar to the present case, was whether the plaintiff-employee was unable to obtain employment after a reasonable effort or whether it was futile for him to seek employment. *Id.* Consequently, the Court held that the Opinion and Award determined one, but not all, of the issues in the case and dismissed the appeal as interlocutory. *Id.* at 203, 703 S.E.2d at 866.

Similarly, in *Allison v. Wal-Mart Stores*, 212 N.C. App. 232, 234, 711 S.E.2d 475, 477, *disc. review denied*, 365 N.C. 359, 719 S.E.2d 20 (2011), this Court concluded that an Opinion and Award reserving the issue of an employee's continuing disability for a future determination was interlocutory and not immediately appealable. Specifically, the Commission held that "the record contain[ed] insufficient evidence regarding the extent of plaintiff-employee's continuing disability." *Id.* Consequently, the issue of the extent of the plaintiff's continuing disability "[wa]s RESERVED for future determination or agreement of the parties." *Id.* at 233, 711 S.E.2d at 476 (emphasis in original). Based on this language, the Court dismissed the appeal, concluding that the Opinion and Award did

not dispose of the matter completely but contemplated further proceedings. *Id.* at 234, 711 S.E.2d at 477.

As in *Thomas* and *Allison*, the Full Commission's Amended Opinion and Award specifically left unresolved the issue of plaintiff's continuing disability after he was terminated. There is nothing in the record to indicate that this issue has been resolved or that the parties have reached any agreement as to this issue. However, what is clear is that plaintiff specifically contends in his cross-appeal that the Full Commission's failure to award him continuing disability benefits after 5 May 2011 constituted a "misapprehension of the law," indicating that the issue of plaintiff's continuing disability will, most certainly, be addressed and resolved at a later hearing. Therefore, the Amended Opinion and Award is interlocutory because it does not fully dispose of the matter but contemplates further proceedings on the issue of plaintiff's continuing disability. Therefore, we dismiss both defendants' appeal and plaintiff's cross-appeal as interlocutory.

Conclusion

Based on *Thomas* and *Allison*, the Full Commission's Amended Opinion and Award is interlocutory because it specifically reserves the issue of plaintiff's continuing disability after 5

May 2011 for a subsequent determination. Accordingly, we dismiss the appeals.

DISMISSED.

Chief Judge McGEE and Judge DILLON concur.

Report per Rule 30(e).