

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-701

Filed: 21 August 2018

Wake County, No. 17-CVS-00144

NORTH CAROLINA AMBULATORY SURGICAL CENTER ASSOCIATION,  
SURGICAL CARE AFFILIATES, LLC, AND COMPASS SURGICAL PARTNERS,  
LLC, Plaintiffs,

v.

NORTH CAROLINA INDUSTRIAL COMMISSION, Defendant.

Appeal by Defendant from order entered 21 March 2017 by Judge G. Bryan  
Collins, Jr. in Wake County Superior Court.

*Parker Poe Adams & Bernstein LLP, by Matthew W. Wolfe and Renée J. Montgomery, for Plaintiffs-Appellees.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Bethany A. Burgon and Special Deputy Attorney General Amar Majmundar, for Defendant-Appellant.*

PER CURIAM.

The North Carolina Industrial Commission (the “Commission”) appeals from a summary judgment order invalidating a temporary rule. The Commission promulgated the temporary rule after the trial court invalidated a permanent rule as detailed in this Court’s decision in *Surgical Care Affiliates, LLC v. N. C. Indus.*

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*Comm'n*, \_\_\_ N.C. App. \_\_\_, 807 S.E.2d 679 (2017), *disc. rev. denied*, 370 N.C. 697, 811 S.E.2d 162 (2018). While the appeal in *Surgical Care* was pending before this Court, the Commission promulgated a temporary rule “to restore balance to the workers’ compensation system . . . in the event the [trial court’s] decision [in *Surgical Care*] is upheld on appeal.”

This Court’s decision in *Surgical Care* reversed the trial court and remanded for proceedings to declare the permanent rule valid. \_\_\_ N.C. App. at \_\_\_, 807 S.E.2d at 685. Plaintiff-Appellee in *Surgical Care* filed a petition for discretionary review with the North Carolina Supreme Court. Pending resolution of that petition, Plaintiffs-Appellees in the instant appeal filed a motion to hold it in abeyance, reasoning that “[i]f the North Carolina Supreme Court does not reverse the North Carolina Court of Appeals’ opinion in [*Surgical Care*], the temporary rule will not be necessary, and the [instant appeal] will become moot.” Plaintiffs-Appellees represented in the motion that the Commission did not object to the motion, and the Commission did not file a response. We granted the motion and held the appeal in abeyance pending final resolution of the appeal in *Surgical Care*.

The North Carolina Supreme Court denied the petition for discretionary review on 5 April 2018. 370 N.C. 697, 811 S.E.2d 162. Because the relief requested by the Commission in the instant appeal—reinstating the temporary rule—is obviated by the final appellate resolution of *Surgical Care*, the Commission’s appeal

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is moot. *See, e.g., Roberts v. Madison Cnty. Realtors Ass'n*, 344 N.C. 394, 398-99, 474 S.E.2d 783, 787 (1996) (“A case is ‘moot’ when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.” (citation omitted)); *In re Peoples*, 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978) (“Whenever, during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed[.]”(citations omitted)). As our courts will not “determine matters purely speculative, enter anticipatory judgments, . . . deal with theoretical problems, give advisory opinions, answer moot questions, adjudicate academic matters, provide for contingencies which may hereafter arise, or give abstract opinions[.]” *Little v. Wachovia Bank and Trust Co.*, 252 N.C. 229, 243, 113 S.E.2d 689, 700 (1960) (citations omitted), we dismiss the Commission’s appeal.

DISMISSED.

Panel Consisting of Judges HUNTER, INMAN and BERGER.

Report per Rule 30(e).