THE Sumwalt LAW FIRM

List of Cases

Saunders v. ADP TotalSource FI XI, Inc., ___ N.C. App. ___, ___ S.E.2d ___ (2016)

Saunders looked at several procedural aspects of the Superior Court's review of fees on compensation for attendant care services under N.C. Gen. Stat. § 97-90(c).

Breath v. OrthoCarolina, ___ N.C. App. ___, 781 S.E.2d 532 (2016)

Breath considered a shoulder condition as an "occupational disease" and avoided the doctrine of *res judicata*, even though the Industrial Commission had earlier held that the shoulder condition was not an "injury" when the employee was not represented by legal counsel.

Edwards v. Reddy Ice, ___ N.C. App. ___, ___ S.E.2d ___, 2016 N.C. App. LEXIS 397 (2016)

Edwards reversed the Industrial Commission's findings of fact and conclusions of law on continuing disability, when the employee had multiple medical conditions that arose after an injury at work.

Rainey v. City of Charlotte, ___ N.C. App. ___, 785 S.E.2d 766 (2015)

Rainey considered the limitations period for filing "occupational diseases" under N.C. Gen. Stat. § 97-58.

Heglar v. Commissioners of the North Carolina Industrial Commission, P14-329 (order by the North Carolina Court of Appeals filed June 11, 2014)

Heglar was a mandamus action against the North Carolina Industrial Commission, whose rules at the time did not allow for a full evidentiary hearing on appeal from a medical motion. After *Heglar*, 04 NCAC 10A.0609A was changed to allow parties to appeal orders from medical motions to the Deputy Commissioner section for a hearing.

Wells v. Charlotte Mecklenburg Hospital Authority, ___ N.C. App. ___, 768 S.E.2d 201, 2014 N.C. App. LEXIS 1371 (2014)

Wells addressed the issues of a "compensable" injury and the "disability" resulting from that injury.

Haileab v. John Q. Hammons Hotels, Inc., ___ N.C. App. ___, 772 S.E.2d 265, 2015 N.C. App. LEXIS 286 (2015)

Haileab affirmed the Industrial Commission's determination that several parts of the employee's body, which her employer had not accepted, were also covered through her workers' compensation claim. The opinion also addressed a short period of time in which the employee was not entitled to periodic payments.

Gregory v. Pearson, 367 N.C. 315, 754 S.E.2d 416 (2014) (3-3 split), affirming *per curiam* without precedential value, 224 N.C. App. 580, 736 S.E.2d 577 (2012) (as *amicus curiae* for the North Carolina Advocates for Justice)

Gregory looked at the responsibility for workers' compensation in joint employment under N.C. Gen. Stat. § 97-51.

Ademovic v. Taxi USA, LLC, 237 N.C. App. 402, 767 S.E.2d 571 (2014)

Ademovic considered if a taxi driver who was shot by a passenger was an "employee" or an "independent contractor."

Burley v. U.S. Foods, Inc., 233 N.C. App. 286, 756 S.E2.d 84 (2014), *reversed*, 368 N.C. 315, 776 S.E.2d 832 (2015)

Burley asked if an amendment to an employment contract was enough to bring a workers' compensation case within North Carolina's jurisdiction under N.C. Gen. Stat. § 97-36.

Skoff v. U.S. Airways, Inc., 234 N.C. App. 329, 762 S.E.2d 2, 2014 N.C. App. LEXIS 588 (2014)

Skoff held that injuries to airline employees on the employee buses at the Charlotte Douglas International Airport occur "in the course" of employment and are covered through workers' compensation.

Miller v. Northeast Medical Center, 233 N.C. App. 342, 756 S.E.2d 54 (2014)

Miller looked at the reopening of a claim under N.C. Gen. Stat. § 97-25.1 and N.C. Gen. Stat. § 97-47 within two years after the last payment of "medical compensation."

Medlin v. Weaver Cooke Construction, LLC, 367 N.C. 414, 760 S.E.2d 732 (2014) (as *amicus curiae* for the North Carolina Advocates for Justice)

Medlin considered how "disability" had to be linked to an injury before an employee becomes eligible for workers' compensation.

Bethea v. U.S. Airways, Inc., 231 N.C. App. 713, 754 S.E.2d 258, 2014 N.C. App. LEXIS 48 (2014)

Bethea said that even short periods of disability after a period of permanent partial disability qualify as a "change of condition," allowing employees to reopen their workers' compensation claims under N.C. Gen. Stat. § 97-47.

Tinsley v. City of Charlotte, ___ N.C. App. ___, ___ S.E.2d ___, 2013 N.C. App. LEXIS 820, at *1 (2013).

Tinsley looked at the distribution of a third-party settlement under N.C. Gen. Stat. § 97-10.2(f)(1) when the parties agreed to the amount of the workers' compensation lien without applying N.C. Gen. Stat. § 97-10.2(f)(2).

Gonzalez v. Worrell, ___ N.C. App. ___, 739 S.E.2d 552 (2013) (amicus curiae for the North Carolina Advocates for Justice).

Gonzalez looked at the cancellation of a workers' compensation insurance policy under N.C. Gen. Stat. § 58-36-105(b). The Supreme Court filed a 3-3 opinion affirming the opinion by the Court of Appeals, consistent with the *amicus brief* submitted by the North Carolina Advocates for Justice. In 2013, the North Carolina General Assembly reacted to the result reached in *Gonzalez* by filing House Bill 639.

Anglin v. Dunbar Armored, ___ N.C. App. ___, 742 S.E.2d 205 (2013).

Anglin held that there is still a workers' compensation lien under N.C. Gen. Stat. § 97-10.2 against underinsured motorist proceeds under a South Carolina insurance policy, even though South Carolina law provides that those proceeds are not assignable or subject to subrogation.

Helfrich v. Coca-Cola Bottling Co., ___ N.C. App. ___, 741 S.E.2d 408 (2013).

In *Helfrich*, the Court of Appeals held that under N.C. Gen. Stat. § 97-34, an employee who has more than one injury is entitled to the compensation rate based on the injury that provides the greatest amount.

Cawthorn v. Mission Hosp., Inc., 365 N.C. 336, 718 S.E.2d 369 (2011), denying petition for discretionary review of 211 N.C. App. 42, 712 S.E.2d 306 (2011).

Cawthorn dealt with the compensability of an injury for a hospital employee.

Mehaffey v. Burger King, 367 N.C. 120, 749 S.E.2d 252 (2012), reversing 217 N.C. App. 720, 718 S.E.2d 720 (2011)

Mehaffey upheld the availability of retroactive payments to family members who provide home nursing and attendant care services to their injured relatives.

Yous v. Greif, Inc., 210 N.C. App. 492, 711 S.E.2d 207, 2011 N.C. App. LEXIS 485 (2011)

Yous looked at whether a worker had "bursitis," which is an occupational disease specifically identified by the Workers' Compensation Act. Also, Yous held that because bursitis is not controversial, consideration of a worker's symptoms is permissible on the issue of causation because the post hoc, ergo propter hoc fallacy, as discussed in Young v. Hickory Business Furniture, 353 N.C. 227, 538 S.E.2d 912 (2000), only discouraged consideration of those symptoms in the context of controversial medical conditions.

Cardwell v. Jenkins Cleaners, Inc., 365 N.C. 1, 704 S.E.2d 898 (2011) (as amicus curiae involvement for the North Carolina Advocates for Justice)

In *Cardwell*, the Supreme Court of North Carolina reversed the decision of the Court of Appeals involving the "coming and going" rule and remanded the case for more findings by the Industrial Commission. As amicus curiae of the Court, the North Carolina Advocates for Justice encouraged the Court to recognize a new exception to the "coming and going" rule called the "any means of ingress or egress" exception, which is recognized by other jurisdictions but not yet articulated in North Carolina.

Kee v. Caromont Health, Inc., 209 N.C. App. 193, 706 S.E.2d 781 (2011)

Kee held that "side agreements" might not be appropriate in some workers' compensation settlements under the Industrial Commission's rules, and it upheld the Commission's decision to void a mediated settlement agreement due to the existence of a "side agreement." In reaction to *Kee*, the North Carolina legislature enacted N.C. Gen. Stat. § 97-17(e) in 2011.

Thomas v. Contract Core Drilling & Sawing, 209 N.C. App. 198, 703 S.E.2d 862 (2011)

Thomas looked at whether a decision by the Industrial Commission that did not resolve all of the issues in dispute was a "final" order subject to appellate review or an "interlocutory" order not yet ripe for appellate adjudication.

Thompson v. Aramark, Inc., 2010 N.C. App. LEXIS 1976 (filed Oct. 19, 2010)

Thompson also looked at the issue of whether an Industrial Commission order that did not resolve all issues was "final" or "interlocutory."

Hatley v. Continental General Tire NA, 2010 N.C. App. LEXIS 583 (filed Apr. 6, 2010)

Hatley considered the issue of disability under N.C. Gen. Stat. § 97-2(9) and N.C. Gen. Stat. § 97-30 and, more specifically, whether temporary partial disability was a more favorable remedy to the injured worker than permanent partial disability.

Nale v. Ethan Allen, 199 N.C. App. 511, 682 S.E.2d 231 (2009)

Nale dealt with the standard of review and causation.

Gesel v. Miller Orthopaedic Clinic, 2009 N.C. App. LEXIS 1122 (filed July 7, 2009)

Gesel concerned an employee who, after returning to work at several jobs that she found on her own, each of which paid less and less in earnings, was found to be disabled. The Court upheld the Commission's determination that further job search would be futile and that the employee was not obligated to return to a part-time job paying only 17.1% of her pre-injury earnings.

Meares v. Dana Corp., 172 N.C. App. 291, 615 S.E.2d 921 (2008)

Meares affirmed a penalty against an employer who tried to eliminate future benefits for an employee's dependents on a premature basis.

Starr v. Gaston County Board of Educ., 191 N.C. App. 301, 663 S.E.2d 322 (2008)

Starr dealt with the indemnification provisions of N.C. Gen. Stat. § 97-86.1, which applies when two or more insurance carriers may be liable for a compensable injury. In addition, *Starr* also clarified that equitable defenses are not available in workers' compensation cases when there is an adequate remedy at law, even if that remedy is unfavorable.

Roberts v. Dixie News, Inc., 189 N.C. App. 495, 658 S.E.2d 684 (2008)

Roberts dealt with the medical consequences of an original, compensable injury, holding that a flare-up of symptoms after a return to unsuitable employment was not an "independent, intervening event" that breaks the chain of proximate causation.

On another issue of first impression, *Roberts* held that a deputy commissioner's Opinion and Award is enforceable during an appeal to the Full Commission. Although the result in Roberts allowed an insurance carrier to stop payment of weekly benefits during appeal from an Opinion and Award that did not favor the injured employee, the holding extends to the converse situation, too—benefits payable under a deputy commissioner Opinion and Award, which is favorable to the injured employee, are due and payable notwithstanding an employer's or its insurance carrier's appeal to the Full Commission.

Davis v. Harrah's Cherokee Casino, 362 N.C. 133, 655 S.E.2d 392 (2008) (amicus curiae involvement for the North Carolina Academy of Trial Lawyers)

Using the "any competent evidence" standard of appellate review and in accordance with the result advocated by the *amicus curiae* brief, *Davis* upheld the Commission's factual determination of a compensable injury as well as Defendants' failure to show a break in proximate causation from an "independent, intervening event attributable to the employee's own intentional conduct."

McCarver v. Hunter Motors, Inc., COA 07-346 (N.C. Ct. App. filed Jan. 15, 2008)

McCarver upheld the Commission's determination that a job exceeding the employee's restrictions was not "suitable" to his capacity.

Polston v. Six Star Economic Devel./ Golden Corral, 2007 N.C. App. LEXIS 1901 (filed Sept. 4, 2007)

Polston reaffirmed the Commission's exclusive duty to find facts and weigh evidence on the issue of medical causation.

Shaw v. U.S. Airways, Inc.,362 N.C. 457, 665 S.E.2d 449 (2008), *rev'g*, 186 N.C. App. 474, 652 S.E.2d 22 (2007)

As a case of first impression in North Carolina, *Shaw* looked at the issue of whether vested 401k contributions by an employer are a part of the employee's "earnings" for purposes of calculating "average weekly wage."

D'Aquisto v. Mission St. Joseph's Health Sys., 360 N.C. 567, 633 S.E.2d 89 (2006), affirming in part, reversing in part, 171 N.C. App. 216, 614, 583 (2005), appeal after remand, 198 N.C. App. 674, 680 S.E.2d 249 (2009)

The 2005 and 2006 decisions in *D'Aquisto* considered the "arising out of" element in the definition of an "injury," and specifically did so in the context of a workplace assault in a healthcare setting. The 2009 decision concerned attorneys' fees awarded under N.C. Gen. Stat. § 97-88.1 because of the employer's multiple and unsuccessful appeals, which necessitated additional time and expenses to defend and ultimately delayed the benefits awarded by several years.

Dodrill v. Jerry Rhyne's Collision Repair, 2006 N.C. App. LEXIS 1472 (filed July 5, 2006)

Dodrill was an occupational disease case involving bilateral bursitis and rotator cuff tears, and it evaluated the "last injurious exposure" rule in fixing liability when there was a dispute between different insurance companies as to which one bore the risk of that work-related exposure that caused the occupational diseases.

Silvers v. Mastercraft, Inc., COA No. 05-895 (filed June 5, 2006)

Silvers looked at the concept of "suitable" employment and the employee's right to ongoing disability compensation when there is no alternative, suitable employment available. *Silvers* also looked at the issue of improper communications between an employer's representative and a treating physician that were both ex parte and in violation of the physician-patient privilege of N.C. Gen. Stat. § 8-53

Montgomery v. Toastmaster, Inc., 174 N.C. App. 320, 620 S.E.2d 685 (2005)

Montgomery also looked at the concept of "suitable" employment, but it also considered the issue of whether an employee was still disabled even though she retired for injury-related reasons.

Meares v. Dana Corp./ Wixx Division, 172 N.C. App. 291, 615 S.E.2d 912 (2005)

Meares held that an insurance carrier could not set off its liability for workers' compensation by the amounts paid to the injured employee under a severance package.

Brooks v. Capstar Corp., 360 N.C. 60, 621 S.E.2d 170 (2005) (amicus curiae involvement for the North Carolina Academy of Trial Lawyers), dismissing petition for discretionary review as improvidently allowed, 168 N.C. App. 23, 606 S.E.2d 696 (2005)

Brooks considered whether an employee's poor vocational profile rose to the level of an intentional "refusal" of vocational rehabilitation services in an effort to suspend disability compensation.

Konrady v. U.S. Airways, Inc., 165 N.C. App. 620, 599 S.E.2d 593 (2004)

Konrady dealt with the elements of an "accident" and whether the accident caused the employee's disability. In doing so, Konrady held that North Carolina does not apportion disability between compensable and non-compensable causes when the basis of such apportionment is speculative.

Boney v. Winn Dixie, Inc., 163 N.C. App. 330, 593 S.E.2d 93 (2004)

Boney concerned the issue of how to calculate the "average weekly wage" of a retired employee injured in a part-time, supplemental job.

Atkins v. Kelly Springfield Tire Co., 358 N.C. 540, 597 S.E.2d 128 (2004) (per curium) (amicus curiae involvement for the North Carolina Academy of Trial Lawyers), dismissing petition for discretionary review as improvidently allowed, 154 N.C. App. 512, 571 S.E.2d 865 (2002)

Atkins addressed the issue of what constitutes a "full and complete medical report," which should accompany agreements before the Commission can approve them. *Atkins* also gave rise to the Industrial Commission Form 25A.

Willey v. Williamson Produce, 357 N.C. 41, 577 S.E.2d 622 (2003) (per curium) (amicus curiae involvement for the North Carolina Academy of Trial Lawyers), reversing 149 N.C. App. 74, 562 S.E.2d 1 (2002)

Willey addressed the intoxication defense to workers' compensation claims under N.C. Gen. Stat. § 97-12 and refused to apply a "presumption of impairment" in North Carolina, which is the law in several other states. In 2006, the North Carolina legislature modified section 97-12 to provide for a rebuttable presumption of impairment after *Willey* clarified that no such impairment previously existed in the statute.

Osmond v. Carolina Concrete Specialties, 151 N.C. App. 541, 568 S.E.2d 204 (2002)

Osmond involved the "special errand" exception to the "coming and going" rule for determining compensability.

Bridwell v. Golden Corral Steak House, 149 N.C. App. 338, 561 S.E.2d 298 (2002)

Bridwell dealt with the issue of "disability" under N.C. Gen. Stat. § 97-2(9).

Ruiz v. Belk Masonry, 148 N.C. App. 675, 559 S.E.2d 249 (2002)

Ruiz announced that undocumented aliens are "employees" for purposes of receiving workers' compensation benefits when they are injured at work. More specifically, *Ruiz* determined that the Federal Immigration Reform Control Act of 1986 did not preempt state-law definitions of the word "employee" for workers' compensation purposes, which would have precluded undocumented aliens from receiving compensation despite their injuries. The case also dealt with compensating family members for providing attendant care to injured workers.

Groves v. Travelers Insurance Co., 354 N.C. 206, 552 S.E.2d 141 (2001) (per curium) (amicus curiae involvement for the North Carolina Academy of Trial Lawyers), reversing 139 N.C. App. 795, 535 S.E.2d 105 (2000)

Groves looked at the exclusivity remedy of workers' compensation, which N.C. Gen. Stat. § 97-10.1 establishes.

Shah v. Howard Johnson, 140 N.C. App. 58, 535 S.E.2d 577 (2000)

Shah included the value of lodging into the employee's "average weekly wage" and looked at the concept of "suitable" employment.

London v. Snak-Time Catering, 136 N.C. App. 473, 525 S.E.2d 203 (2000)

London held that insurance carriers had to reimburse an injured employee's family members for attendant care services, or medically necessary and unskilled nursing services, provided when an insurance carrier did not provide those services.

In re Harrington v. Adams-Robinson Enterp., 349 N.C. 218, 504 S.E.2d 786 (1998) (amicus curiae involvement for the North Carolina Academy of Trial Lawyers), affirming 128 N.C. App. 496, 495 S.E.2d 377 (1998)

Harrington addresses the concept of maximum medical improvement in the context of ongoing disability.

Southern Watch Supply Co. v. Regal Chrysler-Plymouth, Inc., 69 N.C. App. 164, 316 S.E.2d 318 (1984), appeal after remand, 82 N.C. App. 21, 345 S.E.2d 453 (1986)

Southern Watch Supply involved the issue of proximate cause and the "reasonable person" standard in negligence claims. The case was appealed again after an initial remand, at which time it addressed the present sense impression and excited utterance exceptions to the hearsay rule.

Nassif v. Southern Wholesale, Inc., 73 N.C. App. 608, 327 S.E.2d 64 (1985)

Nassif considered the inclusion and exclusion of evidence based on its credibility.