

COURT OF APPEALS OF NORTH CAROLINA

Smith v. The BDK Grp. Shallotte, LLC

No. COA25-738 · No. COA25-738 · Decided May 6, 2026

SUMMARY

The North Carolina Court of Appeals reviews the denial of defendants’ motions to dismiss negligence-related claims arising from an employee’s stroke at work. The majority holds that the Workers’ Compensation Act provides exclusive jurisdiction in the Industrial Commission because the pleadings showed an employer-employee relationship, coverage under the Act, an injury arising out of and in the course of employment, and no applicable exception. The court reverses and remands for dismissal, while Judge Flood dissents.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of North Carolina                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Judge John Tyson; Judge Griffin; Judge Flood                                                                                                                                                                                                                                              |
| JURISDICTION          | North Carolina Court of Appeals                                                                                                                                                                                                                                                           |
| DECIDED               | May 6, 2026                                                                                                                                                                                                                                                                               |
| DOCKET                | COA25-738                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Defendants appealed from an order denying their motions to dismiss under North Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(6). They argued that the Workers' Compensation Act vested exclusive jurisdiction over plaintiff's claims in the North Carolina Industrial Commission. |
| STANDARD OF REVIEW    | Whether a trial court has subject matter jurisdiction is a question of law reviewed de novo on appeal.                                                                                                                                                                                    |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                            |
| PARTIES               | The BDK Group Shallotte, LLC, The BDK Management Group, The BDK Group Bayshore Commons, LLC, The BDK Group Waterford, LLC, The BDK Group Independence, LLC, Deena Lynn Korman, Brad Korman v. Jeffrey Smith                                                                               |

TOPICS

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## PRACTICE AREAS

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## QUESTIONS PRESENTED

1. Whether the superior court had subject matter jurisdiction over plaintiff's negligence-based claims in light of the Workers' Compensation Act's exclusivity provision.
2. Whether the Act vested exclusive jurisdiction in the Industrial Commission where the pleadings showed an employer-employee relationship, the parties were subject to the Act, the injury arose out of and in the course of employment, and no recognized exception to exclusivity applied.
3. Whether the superior court erred by denying defendants' Rule 12(b)(1) and Rule 12(b)(6) motions to dismiss.

## HOLDINGS

1. The Industrial Commission has exclusive jurisdiction when the pleadings reveal an employer-employee relationship, the parties are subject to the Workers' Compensation Act, the injury arose out of and in the course of employment, and no recognized exception to the Act's exclusivity provision applies.
2. The superior court erred by denying defendants' Rule 12(b)(1) and Rule 12(b)(6) motions insofar as they were based on the Workers' Compensation Act's exclusivity provision and the Industrial Commission's exclusive jurisdiction.

## KEY QUOTATIONS

*“If the plaintiff-workers’ asserted pleadings reveal an employer-employee relationship exists between the parties, and neither of the two recognized exceptions apply, the exclusivity provisions of the Act in the Commission applies.” (at 16)*

*“We all agree the Industrial Commission’s jurisdiction is exclusive if the pleadings: (1) reveal an employer-employee relationship; (2) the parties are subject to the Workers’ Compensation Act; (3) the injury arose out of and in the course of the employment; and, (4) no specific exceptions to the exclusivity provision apply.” (at 17)*

## FACTUAL BACKGROUND

Jeffrey Smith was employed by defendants as a district manager and was working at a Tropical Smoothie Cafe location while preparing for a future store opening. On 14 April 2023, Smith suffered a stroke-related medical emergency in the restaurant restroom, and employees did not contact emergency personnel until approximately seven hours after his symptoms began. Smith sustained severe neurological injuries, required surgery and rehabilitation, and was unable to walk, independently perform daily living activities, or return to work. He asserted negligence-based claims against his employers and related defendants after the Industrial Commission dismissed his workers' compensation filing without prejudice.

## PROCEDURAL HISTORY

Plaintiff filed a Form 33 with the North Carolina Industrial Commission after suffering a stroke at work. The Commission dismissed the filing without prejudice. Plaintiff then filed negligence, gross negligence, corporate negligence, and administrative negligence claims in New Hanover County Superior Court. The superior court denied defendants' motions to dismiss, and defendants appealed.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The cause is remanded for the superior court to grant defendants' Rule 12(b)(1) and Rule 12(b)(6) motions based on the Workers' Compensation Act's exclusivity provision and the Industrial Commission's exclusive jurisdiction.

## CASES CITED

- Veazey v. Durham, 231 N.C. 357, 57 S.E.2d 377 (1950)
- Goldston v. American Motors Corp., 326 N.C. 723, 392 S.E.2d 735 (1990)
- Harris v. Matthews, 361 N.C. 265, 643 S.E.2d 566 (2007)
- Jeffreys v. Raleigh Oaks Joint Venture, 115 N.C. App. 377, 444 S.E.2d 252 (1994)
- Fagundes v. Ammons Dev. Grp., Inc., 251 N.C. App. 735, 797 S.E.2d 59 (2017)
- Blue Mountaire Farms, Inc., 247 N.C. App. 489, 786 S.E.2d 393 (2016)
- McKoy v. McKoy, 202 N.C. App. 509, 689 S.E.2d 590 (2010)
- Whitaker v. Town of Scotland Neck, 357 N.C. 552, 597 S.E.2d 665 (2003)
- Woodson v. Rowland, 329 N.C. 330, 407 S.E.2d 222 (1991)
- Jackson v. Timken Co., 265 N.C. App. 470, 828 S.E.2d 740 (2019)
- Marlow v. TCS Designs, Inc., 288 N.C. App. 567, 887 S.E.2d 448 (2023)
- Holliday v. Tropical Nut & Fruit Co., 242 N.C. App. 562, 775 S.E.2d 885 (2015)
- In re Civil Penalty, 324 N.C. 373, 379 S.E.2d 30 (1989)
- State v. Gonzalez, 263 N.C. App. 527, 823 S.E.2d 886 (2019)
- In re R.T.W., 359 N.C. 539, 614 S.E.2d 489 (2005)
- Pleasant v. Johnson, 312 N.C. 710, 325 S.E.2d 244 (1985)
- Cox v. Pitt County Transportation Co., 259 N.C. 38, 129 S.E.2d 589 (1963)
- Miller v. Roberts, 212 N.C. 126, 193 S.E. 286 (1937)
- Neal v. Clary, 259 N.C. 163, 130 S.E.2d 39 (1963)
- Plemmons v. White's Service, Inc., 213 N.C. 148, 195 S.E. 370 (1938)
- Askew v. Leonard Tire Co., 264 N.C. 168, 141 S.E.2d 280 (1965)
- Strickland v. King, 293 N.C. 731, 239 S.E.2d 243 (1977)

