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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-190

Filed: 15 December 2015

North Carolina Industrial Commission, I.C. No. TA-23744

CLOREY E. FRANCE, Plaintiff

v.

N.C. DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by plaintiff from order entered 15 October 2014 by the North Carolina Industrial Commission. Heard in the Court of Appeals 21 September 2015.

*Clorey E. France, pro se, for plaintiff-appellant.*

*Roy Cooper, Attorney General, by Zachary Padget, Associate Attorney General, for the State.*

DAVIS, Judge.

Clorey E. France (“Plaintiff”) appeals from the order of the Industrial Commission (“the Commission”) granting the motion to dismiss of the North Carolina Department of Public Safety (“NCDPS”) as to his claim under North Carolina’s Tort Claims Act (“the Act”). After careful review, we affirm.

**Factual Background**

On 28 June 2013, Plaintiff filed with the Commission a “Claim for Damages Under Tort Claims Act” form alleging that while he was incarcerated at the

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Alexander Correctional Institution in Alexander County, North Carolina he suffered \$21,600.00 in damages as a result of the acts of Superintendent Keith Whitener (“Superintendent Whitener”) and Disciplinary Hearing Officer Matthew Pennell (“Officer Pennell”). On the affidavit portion of the form, Plaintiff stated that Superintendent Whitener and Officer Pennell committed certain procedural violations in connection with a disciplinary hearing concerning his alleged violation of prison regulations.<sup>1</sup> Specifically, Plaintiff alleged that he was not (1) provided with 24-hour advance written notice of the charges against him; (2) allowed to call witnesses at the hearing; (3) given assistance in preparing for the hearing; or (4) provided with a “fair and impartial decision-maker . . . [or] disciplinary process.”

Plaintiff was ultimately found guilty. As a result, he was confined in segregation for 610 days, lost \$60.00 from his prison commissary account, and suffered a “loss of liberty interests,” an “unjustifiable loss of privileges,” “undue hardships,” and a “loss of sentence credits.”

On 3 July 2013, NCDPS filed a motion to dismiss Plaintiff’s claim pursuant to Rules 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure. On 11 March 2014, Deputy Commissioner Scott Goodson issued a decision and order granting NCDPS’s motion to dismiss. Plaintiff appealed to the Commission.

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<sup>1</sup> The record is unclear as to both the actual disciplinary charges brought against Plaintiff and the factual circumstances underlying those charges.

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On 15 October 2015, the Commission issued an Order granting NCDPS's motion to dismiss on the grounds that (1) Plaintiff had failed to state a negligence claim under the Act; (2) the Commission lacked subject matter jurisdiction over Plaintiff's claim; and (3) Plaintiff's claim constituted a collateral attack on his convictions for violation of prison regulations. On 23 October 2014, Plaintiff filed a notice of appeal to this Court.

**Analysis**

In his sole argument on appeal, Plaintiff argues that the Commission erred in granting NCDPS's motion to dismiss. We disagree.

On a Rule 12(b)(6) motion to dismiss, the question is whether, as a matter of law, the allegations of the complaint, treated as true, state a claim upon which relief can be granted. Dismissal under Rule 12(b)(6) is proper when one of the following three conditions is satisfied: (1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim.

*Wood v. Guilford Cty.*, 355 N.C. 161, 166, 558 S.E.2d 490, 494 (2002) (internal citations omitted). "On appeal of a [Rule] 12(b)(6) motion to dismiss, this Court conducts a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct." *Podrebarac v. Horack, Talley, Pharr, & Lowndes, P.A.*, \_\_ N.C. App. \_\_, \_\_, 752 S.E.2d 661, 663-64 (2013) (citation omitted).

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“The Tort Claims Act was enacted in order to enlarge the rights and remedies of a person who is injured by the negligence of a State employee who was acting within the course of his employment. Pursuant to the statute, the Commission has exclusive jurisdiction to hear claims falling under this Act.” *Russell v. N.C. Dep’t of Env’t & Nat. Res.*, 227 N.C. App. 306, 309, 742 S.E.2d 329, 332 (citation and quotation marks omitted), *disc. review denied*, 367 N.C. 253, 749 S.E.2d 856 (2013).

For the purpose of hearing tort claims against State Agencies, the North Carolina Industrial Commission is “constituted a court” charged with determining:

whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina.

N.C. Gen. Stat. § 143-291(a) (2013).

*Gentry v. Dep’t of Health & Human Servs.*, \_\_ N.C. App. \_\_, \_\_, 775 S.E.2d 878, 880 (2015).

“It is well-settled that the Tort Claims Act does not permit recovery for intentional injuries. Only claims for negligence are covered. Therefore, the Commission does not have jurisdiction over claims arising from intentional acts[.]” *Fennell v. N.C. Dep’t of Crime Control & Pub. Safety*, 145 N.C. App. 584, 592, 551

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S.E.2d 486, 492 (2001) (internal citations omitted), *cert. denied*, 355 N.C. 285, 560 S.E.2d 800 (2002).

Based on our reading of Plaintiff's statement of his claim and supporting affidavit, it is clear that the essence of his allegations is that he was deprived of certain procedural safeguards afforded to inmates in connection with disciplinary actions imposed in response to violations of prison regulations. While Plaintiff's supporting affidavit at one point uses the phrase "failed to exercise proper care in the performance of their legal duties" when referring to Superintendent Whitener and Officer Pennell, his allegations are not actually grounded in negligence and are instead more appropriately characterized as a claim alleging a denial of his constitutional right to due process. Such a claim is beyond the scope of the Act.

"The scope of the Tort Claims Act may not be enlarged beyond the meaning of its plain and unambiguous terms. . . . [T]he Tort Claims Act allows a suit against the State *only* for ordinary negligence in the forum of the Industrial Commission." *Collins v. N.C. Parole Comm'n*, 118 N.C. App. 544, 548, 456 S.E.2d 333, 336 (1995) (emphasis added), *aff'd as modified*, 344 N.C. 179, 473 S.E.2d 1 (1996). Thus, the Commission correctly determined that "to the extent that plaintiff's claim is based upon alleged violations of state and/or federal constitutional rights, the Industrial Commission does not have jurisdiction over said claim(s)." *See Carolinas Med. Ctr. v. Emp'rs. & Carriers Listed In Exhibit A*, 172 N.C. App. 549, 553, 616 S.E.2d 588,

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591 (2005) (explaining that Commission is not court of general jurisdiction and lacks jurisdiction to adjudicate constitutional questions).

While Plaintiff cites to our Supreme Court's holding in *Medley v. N.C. Dep't of Corr.*, 330 N.C. 837, 412 S.E.2d 654 (1992), *Medley* does not support his argument that he has stated a valid claim for relief under the Act. In *Medley*, an inmate filed a claim under the Act alleging that he had been injured as a result of negligent treatment by a physician hired as an independent contractor by the Department of Corrections, and the Commission dismissed the claim. *Id.* at 838, 412 S.E.2d at 655.

In holding that the inmate had stated a claim under the Act, our Supreme Court expressly noted that his claims were not constitutional in nature.

We do not hold that plaintiff has alleged facts to support a claim that DOC has violated his state or federal constitutional rights. We hold that the duty to provide adequate medical care to inmates, imposed by the state and federal Constitutions, and recognized in state statute and case law, is such a fundamental and paramount obligation of the state that the state cannot absolve itself of responsibility by delegating it to another.

*Id.* at 844, 412 S.E.2d at 659.

Thus, *Medley* involved a traditional negligence claim falling within the scope of the Act. Here, conversely, Plaintiff's claim lies outside the Act's coverage. Accordingly, dismissal of this action was proper.

**Conclusion**

For the reasons stated above, we affirm the order of the Commission.

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AFFIRMED.

Chief Judge McGEE and Judge ELMORE concur.

Report per Rule 30(e).