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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1197

Filed: 16 May 2017

North Carolina Industrial Commission, No. TA-24351

MADLINE MOSES, Plaintiff,

v.

NORTH CAROLINA INDUSTRIAL COMMISSION and NORTH CAROLINA DEPARTMENT OF ADMINISTRATION, Defendants.

Appeal by plaintiff from Decision and Order entered 2 May 2016 by the Full North Carolina Industrial Commission. Heard in the Court of Appeals 4 May 2017.

Madeline Moses pro se.

Attorney General Joshua H. Stein, by Assistant Attorney General Alexander G. Walton, for defendant-appellees.

TYSON, Judge.

Madeline Moses (“Plaintiff”) appeals from an Order of the Industrial Commission, which awarded her \$3,500.00 in compensatory damages arising out of her Tort Claims Act against Defendants. We affirm the Commission’s Order.

I. Background

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In November 2011, Plaintiff filed a workers' compensation claim before the North Carolina Industrial Commission. On 1 March 2013, Plaintiff participated in a mediated settlement conference to resolve her claim. The parties reached an agreement regarding compensation to be paid on Plaintiff's claim at the mediated settlement conference, but Plaintiff later declined to sign the Compromise Settlement Agreement.

Deputy Commissioner Melanie Wade Goodwin conducted a hearing in Plaintiff's workers' compensation claim on 26 September 2013. After the hearing, Deputy Commissioner Goodwin returned to the Industrial Commission's offices, and placed Plaintiff's workers' compensation file, or a portion thereof, in a filing cabinet. At some point, the filing cabinet was placed with a collection of office furniture deemed to be surplus. The filing cabinet was sent to the North Carolina Department of Administration to be placed for sale to the public. Plaintiff's workers' compensation file, or a portion thereof, remained in the filing cabinet.

The filing cabinet was purchased at a State property surplus sale by a buyer from South Carolina. The buyer later found Plaintiff's workers' compensation file in the filing cabinet. On 29 April 2014, the buyer contacted Plaintiff by telephone and advised her that he was in possession of her workers' compensation file. Plaintiff drove to South Carolina from her home in Supply, North Carolina, to retrieve the file from the buyer.

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On 3 July 2014, Plaintiff filed a Claim for Damages in the Industrial Commission under the North Carolina Tort Claims Act against the Industrial Commission and the State Surplus Property Agency. Plaintiff claimed damages in the amount of \$225,000.00 from the public dissemination of her workers' compensation file. Plaintiff claims she suffered humiliation, depression, embarrassment, stress, nervousness, "paranoia about justice," and inability to sleep. Plaintiff also alleged that her social security number had not been redacted from documents within the file, which "could lead to identity theft."

This matter came before Deputy Commissioner J. Brad Donovan for an evidentiary hearing on 13 August 2015. Deputy Commissioner Donovan awarded Plaintiff nominal damages in the amount of \$500.00. Plaintiff appealed to the Full Commission. The Full Commission addressed any potential conflict of interest arising from the fact that the Industrial Commission was a named Defendant and the only forum for Plaintiff to bring her claim under the Tort Claims Act. *See* N.C. Gen. Stat. § 143-291(a) (2015). The parties stipulated the matter would be heard before three named members of the Full Commission Panel.

The Full Commission found Plaintiff was unable to identify any instance in which her personal information had been used by a third party to support her claim of identity theft. The Commission further found that Plaintiff presented no evidence of mental or physical injury resulting from the fact that her workers'

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compensation file inadvertently came into a buyer's possession. No evidence was presented tending to show Plaintiff did not receive her entire file that remained in the filing cabinet or that the buyer had disseminated any of the information contained in the file.

The Commission determined the Industrial Commission and North Carolina Department of Administration had failed to properly store and secure Plaintiff's personal information and had negligently allowed that information to be released into the public. As a result, the Commission determined Plaintiff was entitled to compensatory damages in the amount of \$2,000.00 for her pain and suffering and compensatory damages in the amount of \$1,500.00 for her inconvenience, and particularly her significant travel. Plaintiff appeals.

II. Jurisdiction

Jurisdiction lies in this Court from an Opinion and Award of the North Carolina Industrial Commission pursuant to N.C. Gen. Stat. § 7A-29(a) (2015).

III. Standard of Review

“The scope of review on appeal to this Court under the Tort Claims Act is limited to whether there was any competent evidence before the Commission to support the findings of fact and whether the findings support the legal conclusions and decision.” *Price v. N.C. Dep't of Corr.*, 103 N.C. App. 609, 613, 406 S.E.2d 906, 908 (1991) (citations omitted). “The Commission's findings of fact are conclusive on

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appeal if supported by any competent evidence, whether or not the evidence would support contrary findings.” *Id.*

IV. Damages

Plaintiff argues that she listed on her T-44 (Application for Review before the Full Commission) “that she is requesting Statutory, Contingency, and Punitive Damages,” and that the Full Commission erred by not considering and awarding these damages.

Under the North Carolina Tort Claims Act,

[i]f the Commission finds that there was negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority that was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, *the Commission shall determine the amount of damages that the claimant is entitled to be paid, including medical and other expenses*[.]

N.C. Gen. Stat. § 143-291(a) (emphasis supplied). “The burden of proving damages is on the party seeking them.” *Olivetti Corp. v. Ames Business Systems, Inc.*, 319 N.C. 534, 547-48, 356 S.E.2d 578, 586 (1987) (citation omitted). “The amount of damages awarded is a matter within the discretion of the Commission.” *Jackson v. N.C. Dep’t of Crime Control and Pub. Safety*, 97 N.C. App. 425, 432, 388 S.E.2d 770, 774, *disc. review denied*, 326 N.C. 596, 393 S.E.2d 878 (1990).

A. General Damages

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“Compensatory damages include both general and special damages.” *Iadanza v. Harper*, 169 N.C. App. 776, 779, 611 S.E.2d 217, 221, *disc. review denied*, 360 N.C. 63, 621 S.E.2d 624 (2005). General damages “include such matters as mental or physical pain and suffering, inconvenience, or loss of enjoyment which cannot be definitively measured in monetary terms,” while special damages “are usually synonymous with pecuniary loss.” *Id.* (citation omitted).

The Full Commission found and concluded Plaintiff suffered “at least some level of emotional distress as a result of defendants’ negligence. However, there is insufficient evidence to separate any resulting mental anguish from plaintiff’s admittedly pre-existing mental health conditions.” The Commission awarded to Plaintiff a total of \$3,500.00 in general compensatory damages for pain and suffering and inconvenience due to Defendants’ negligence. The Commission did not award any special damages, because Plaintiff failed to present any evidence of pecuniary loss due to identity theft or loss of earnings, or evidence of any claim-related medical expenses.

B. Punitive Damages

Plaintiff asserts she is entitled to punitive damages, because the act of leaving her file folder in a filing cabinet later sold at a public surplus auction was egregious. The Commission determined Defendants were negligent in permitting Plaintiff’s personal and confidential information to be released into the public. The

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Commission did not find, and the evidence does not support, a finding of gross negligence by Defendants to support any award of punitive damages. *See Parish v. Hill*, 350 N.C. 231, 239, 513 S.E.2d 547, 551-52 (1999) (“[G]ross negligence has been defined as wanton conduct done with conscious or reckless disregard for the rights and safety of others. Further, an act is wanton when it is done of wicked purpose, or when done needlessly, manifesting a reckless indifference to the rights of others.” (internal citations and quotation marks omitted)).

Plaintiff further argues she has “more expenses than she was compensated for by the Full Commission,” but the Commission would not allow her to present evidence of these damages. Plaintiff makes this argument without any statutory or case law support, and without stating or tendering more specific information about these damages. We are unable to consider this argument and it is dismissed. Plaintiff has failed to show the Commission abused its discretion by awarding her \$3,500.00 in general compensatory damages. *See Brown*, 269 N.C. at 671, 153 S.E.2d at 339. This argument is without merit and is overruled.

V. Conflict of Interest

Plaintiff argues the Commission erred by hearing and ruling upon this case where the Commission is a named defendant, which created a “potential conflict of interest.” We disagree.

The North Carolina Industrial Commission has exclusive jurisdiction over

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suits filed against State agencies under the Tort Claims Act. N.C. Gen. Stat. § 143-291(a); *Guthrie v. State Ports Auth.*, 307 N.C. 522, 539-40, 299 S.E.2d 618, 628 (1993). The North Carolina Industrial Commission and the North Carolina Department of Administration are State agencies, and the only available forum to hear and adjudicate Plaintiff's claim is before the Industrial Commission. *Guthrie*, 307 N.C. at 539-40, 299 S.E.2d at 628.

Furthermore, Plaintiff acknowledged in writing the potential conflict and stipulated the three named members of the Full Commission Panel would hear Plaintiff's claim. The Full Commission found negligence by the Commission for allowing Plaintiff's file to be released to a member of the public. Plaintiff has failed to show any prejudice by the potential conflict of interest and her stipulation.

VI. Amendment of Defendant's Name

Plaintiff brought suit against the North Carolina Industrial Commission and the "North Carolina State Surplus Agency." Plaintiff argues the Full Commission erred by allowing the name of "North Carolina State Surplus Agency" to be amended to "North Carolina Department of Administration," and this amendment caused "the State Surplus Store not to be liable for neglig[en]ce[ce]."

Pursuant to N.C. Gen. Stat. § 143-64.01 (2015), "[t]he Department of Administration is designated as the State agency for State surplus property, and with respect to the acquisition of State surplus property the agency shall be subject

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to the supervision and direction of the Secretary of Administration.” The State Surplus [Property] Agency is under the authority of the Department of Administration. The change of the named Defendant was proper. Plaintiff has failed to show how she was prejudiced.

VII. Conclusion

Plaintiff has failed to show the Commission abused its discretion in its award of compensatory damages, or that she was prejudiced by any potential conflict of interest in the Industrial Commission. The Industrial Commission is the sole tribunal to hear and adjudicate claims against State agencies under the Tort Claims Act. N.C. Gen. Stat. § 143-291(a). Plaintiff has also failed to show that the change of the named Defendant from “North Carolina State Surplus Agency” to “North Carolina Department of Administration” was either error or prejudicial.

Plaintiff makes numerous other claims in her brief related to her workers’ compensation case, financial status, family relationships, and allegations of harassment to herself and family members. Plaintiff has failed to show how these issues have any causal connection to her lost file negligence claim. The Order of the North Carolina Industrial Commission is affirmed.

AFFIRMED.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).