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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-569

Filed: 18 December 2018

N.C. Industrial Commission, I.C. No. TA-26222

JONATHAN E. BRUNSON, Plaintiff,

v.

OFFICE OF THE 12<sup>TH</sup> JUDICIARY, OFFICE OF THE DISTRICT ATTORNEY FOR THE 12<sup>TH</sup> PROSECUTORIAL DISTRICT, NORTH CAROLINA DEPARTMENT OF JUSTICE, NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, and THE STATE OF NORTH CAROLINA, Defendants.

Appeal by Plaintiff from orders entered 13 June and 8 September 2017 by the North Carolina Industrial Commission. Heard in the Court of Appeals 26 November 2018.

*Jonathan E. Brunson, Plaintiff-Appellant, pro se.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Barry H. Bloch, for Defendants-Appellees.*

McGEE, Chief Judge.

Jonathan E. Brunson (“Plaintiff”) appeals from a 13 June 2017 order dismissing his claims against two county agencies under the North Carolina Tort Claims Act; and from an 8 September 2017 order denying his request for immediate

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review of the 13 June 2017 order by the full Industrial Commission. Because the 13 June 2017 order determined Plaintiff's claims as to only two of the five named Defendants, the order is interlocutory. Plaintiff has failed to sufficiently show why he is entitled to an appeal of an interlocutory order; therefore, Plaintiff's appeal must be dismissed.

I. Factual and Procedural History

Plaintiff filed a claim under the North Carolina Tort Claims Act, N.C. Gen. Stat. § 143-291 *et. seq.*, on 30 January 2017, alleging that the five above-named Defendants had negligently prosecuted Plaintiff and denied his application for a writ of habeas corpus. Plaintiff further alleged that Defendants' negligence was based upon Defendants' failure to turn over material evidence at trial in violation of *Pennsylvania v. Richie*, 480 U.S. 39, 94 L. Ed. 2d 40 (1987).

Plaintiff filed to proceed as an indigent before the North Carolina Industrial Commission on 30 January 2017, pursuant to N.C. Gen. Stat. § 1-110(b) (2017), which states:

Whenever a motion to proceed as an indigent is filed pro se by an inmate in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the motion to proceed as an indigent and the proposed complaint shall be presented to any superior court judge of the judicial district. This judge shall determine whether the complaint is frivolous. In the discretion of the court, a frivolous case may be dismissed by order.

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Special Deputy Commissioner Brian Liebman performed a review for frivolousness and, in the 13 June 2017 order, found that the Industrial Commission did not have jurisdiction over two of the named Defendants: the Office of the District Attorney for the Twelfth Prosecutorial District and the Office of the Twelfth Judicial District. The order held that the Tort Claims Act confers jurisdiction to the Industrial Commission to hear negligence claims against departments, institutions, and agencies of the State, but does not confer jurisdiction over claims against county agencies.

Special Deputy Commissioner Liebman made no determination as to whether Plaintiff's claims against the two county agencies were frivolous, but found that the Industrial Commission did not have jurisdiction to hear Plaintiff's claims against the two county agencies and dismissed those claims with prejudice. Plaintiff's claims against the remaining three Defendants were determined not to be frivolous. Plaintiff appealed to the full Industrial Commission.

The Industrial Commission acknowledged Plaintiff's Notice of Appeal in a letter dated 6 July 2017. In that letter, Plaintiff was invited to submit arguments and supporting authority within ten days showing why the appeal "implicates a substantial right that warrants immediate review by the Full Commission."

Plaintiff filed a statement in support of his right to an immediate appeal on 18 July 2017. However, Plaintiff's statement is not contained within the record on

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appeal. Defendants filed a response on 21 August 2017 and Defendants' response also is not contained within the record on appeal.

Commissioner Christopher C. Loutit entered an order on 8 September 2017 that deemed Defendants' response to Plaintiff's statement was not timely. The 8 September 2017 order also held that the 13 June 2017 order was interlocutory and that Plaintiff had failed to "set forth reasons or legal authority for why his appeal implicate[d] a substantial right warranting immediate review by the Full Commission." Therefore, Plaintiff's request for immediate appeal was denied. Plaintiff appeals.

II. Analysis

Plaintiff argues that the Industrial Commission had jurisdiction under N.C. Gen. Stat. § 143-291(a) (2017) to hear his claims against the two county agencies and it erred in dismissing his claims against those Defendants in its 13 June 2017 order.

Under the Tort Claims Act, either party may

appeal from the decision of the [Industrial] Commission to the Court of Appeals. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the [Industrial] Commission shall be conclusive if there is any competent evidence to support them.

N.C. Gen. Stat. § 143-293 (2017). "Parties have a right to appeal any final judgment of a superior court. Thus, an appeal of right arises only from a final order or decision of the Industrial Commission." *Cash v. Lincare Holdings*, 181 N.C. App. 259, 263,

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639 S.E.2d 9, 13 (2007) (quoting *Ratchford v. C.C. Mangum, Inc.*, 150 N.C. App. 197, 199, 564 S.E.2d 245, 247 (2002)). An order is not final if it fails to determine the entire controversy as to all the parties. *Veazey v. Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381, *reh'g denied*, 232 N.C. 744, 59 S.E.2d 429-30 (1950). However, immediate review of an interlocutory decision is proper where it affects a substantial right. *Cash*, 181 N.C. App. at 263, 639 S.E.2d at 13.

The Industrial Commission's 13 June 2017 order was clearly an interlocutory order as it did not dispose of Plaintiff's claims against all of the named Defendants. *See Veazey*, 231 N.C. at 361-62, 57 S.E.2d at 381. "[I]t is the appellant's burden to present appropriate grounds for this Court's acceptance of an interlocutory appeal and our Court's responsibility to review those grounds." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994). Plaintiff has failed to argue that his appeal of the 13 June 2017 order affects a substantial right.

Similarly, the Industrial Commission's 8 September 2017 order was interlocutory as it considered only whether Plaintiff was entitled to an immediate appeal of the 13 June 2017 order. Plaintiff also failed to argue that his appeal of the 8 September 2017 order would affect a substantial right. Instead, Plaintiff's brief focused exclusively on the merits of his appeal. Because Plaintiff failed to meet his burden to present appropriate grounds for this Court to review an interlocutory order, Plaintiff's appeal is dismissed.

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DISMISSED.

Judges HUNTER, JR. and INMAN concur.

Report per Rule 30(e).