IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-838

Filed: 16 April 2019

N.C. Industrial Commission, I.C. No. TA-25986

JONATHAN BRUNSON, Plaintiff,

v.

OFFICE OF THE TWELFTH JUDICIARY, Defendant.

Appeal by plaintiff from order filed 12 October 2017 by Special Deputy Commissioner Brian Liebman and order filed 21 May 2018 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 8 April 2019.

Jonathan E. Brunson, plaintiff-appellant, pro se.

No brief filed for defendant-appellee.

ARROWOOD, Judge.

Jonathan E. Brunson ("plaintiff") appeals from orders from the North Carolina Industrial Commission ("Industrial Commission") dismissing his claims against defendant under the North Carolina Tort Claims Act ("Tort Claims Act"), N.C. Gen.

Stat. §§ 143-291, *et seq.*, and denying his motions for entry of default and default judgment. After careful review, we affirm.

I. Background

On 16 November 2016, plaintiff filed a claim with the Industrial Commission against the Office of the Twelfth Judiciary ("defendant") pursuant to the Tort Claims Act. Although the affidavit setting forth the substance of that claim is absent from the record, it appears plaintiff alleged that between 9 June 2011 and 10 May 2016, three Cumberland County Superior Court judges acted negligently against him in relation to his criminal cases, Nos. 08 CRS 63535-46, causing damages in the amount of $100,000,000.00. On 29 November 2016, defendant filed a motion to dismiss on the grounds of judicial and public officer immunity and sought to stay discovery. On 2 March 2017, plaintiff filed motions for entry of default and default judgment.

Plaintiff's and defendant's motions came on for hearing on 29 September 2017 before Special Deputy Commissioner Brian Liebman. By order filed 12 October 2017, the deputy commissioner denied plaintiff's motions for entry of default and default judgment and granted defendant's motion to dismiss, dismissing plaintiff's tort claim with prejudice. Plaintiff appealed that order to the Full Commission. In an order

filed 21 May 2018, the Full Commission affirmed the deputy commissioner's decision and order. On 31 May 2018, plaintiff filed notice of appeal.[1]

II. Analysis

Plaintiff argues that the Industrial Commission erred by denying his declaration for entry of default and motion for default judgment. Plaintiff contends that he was entitled to judgment by default where the record demonstrates defendant failed to answer the complaint within 30 days after service. We disagree.

Entry of default judgment and default judgment are reviewed for abuse of discretion. *N.C. Nat'l Bank v. McKee*, 63 N.C. App. 58, 61, 303 S.E.2d 842, 844 (1983). "Abuse of discretion exists when the challenged actions are manifestly unsupported by reason." *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004) (citation and internal quotation marks omitted). "In exercising its discretion the trial court should be guided by the consideration that default judgments are disfavored by the law." *N.C. Nat'l Bank,* 63 N.C. App. at 61, 303 S.E.2d at 844 (citation omitted).

N.C. Gen. Stat. § 143-297 provides that upon the filing of an affidavit per the Tort Claims Act,

[1] We note that plaintiff has given notice of appeal from both the deputy commissioner's decision and order and the Full Commission's order. However, this Court only reviews orders issued by the Full Commission, not the deputy commissioner, and only "for errors of law . . . under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the Commission shall be conclusive if there is any competent evidence to support them." N.C. Gen. Stat. § 143-293 (2017); *see also Coulter v. Catawba Cty. Bd. of Educ.*, 189 N.C. App. 183, 188, 657 S.E.2d 428, 432 (2008) (limiting review to the decision and order of the Full Commission).

> [t]he department, institution or agency of the State against whom the claim is asserted shall file answer, *demurrer* or other pleading to the affidavit within 30 days after receipt of copy of same setting forth any defense it proposes to make in the hearing or trial, and no defense may be asserted in the hearing or trial unless it is alleged in such answer, except such defenses as are not required by the Code of Civil Procedure or other laws to be alleged.

N.C. Gen. Stat. § 143-297 (2017) (emphasis added). In *Newgent v. Buncombe Cty. Bd. of Educ.*, this Court stated,

> [i]f, however, "the claim, upon its face, shows that the State department or agency sought to be charged is not liable, then the Commission may end the proceeding." Prior to the enactment of our Rules of Civil Procedure, the proper way to take advantage of this defect was by demurrer. Under our Rules of Civil Procedure, " '[a] motion to dismiss "for failure to state a claim upon which relief can be granted [pursuant to Rule 12(b)(6)]" is the modern equivalent of a demurrer.' "

Newgent v. Buncombe Cty. Bd. of Educ., 114 N.C. App. 407, 411, 442 S.E.2d 158, 160 (1994) (Orr, J., dissenting) (alternations in original) (citations omitted), *rev'd per curiam for reasons stated in dissent*, 340 N.C. 100, 455 S.E.2d 157 (1995). "A motion under Rule 12(b)(6) performs substantially the same function as a demurrer for failure to state facts sufficient to constitute a cause of action." *Hodges v. Wellons*, 9 N.C. App. 152, 157, 175 S.E.2d 690, 693 (1970).

In this matter, defendant filed a motion to dismiss pursuant to Rule 12(b)(6), which the appellate courts have deemed the modern day equivalent of a demurrer and the proper way to end the proceedings where the claim shows on its face that the

State agency or department cannot be liable, within the 30 days allowed by N.C. Gen. Stat. § 143-297, to "file answer, demurrer or other pleading . . . ." The trial court granted the motion. Thus, defendant was not required to file an answer.

This is also consistent with the North Carolina Rules of Civil Procedure. Pursuant to Rule 12(a)(1) of the Rules of Civil Procedure, a defendant is required to "serve his answer within 30 days after service of the summons and complaint upon him." N.C. Gen. Stat. § 1A-1, Rule 12(a)(1) (2017). However, a defendant may make a motion pursuant to Rule 12(b)(6) of the Rules of Civil Procedure for failure to state a claim upon which relief can be granted "before pleading if a further pleading is permitted." N.C. Gen. Stat. § 1A-1, Rule 12(b). When a defendant files such a motion, no responsive pleading is required until 20 days after notice of the Court's action in ruling on the motion. N.C. Gen. Stat. § 1A-1, Rule 12(a)(1)(a); *see also Pate v. N.C. Dep't of Transp.*, 176 N.C. App. 530, 533, 626 S.E.2d 661, 664 (stating "the North Carolina Rules of Civil Procedure apply in tort claims before the Commission, to the extent that such rules are not inconsistent with the Tort Claims Act, in which case the Tort Claims Act controls") (citation omitted), *disc. review denied*, 360 N.C. 535, 633 S.E.2d 819 (2006).

Plaintiff does not argue in his principal brief that the trial court erred by granting this motion, and thus he has abandoned any argument concerning the trial court's ruling on the motion. *See* N.C.R. App. P. 28(b)(6) (2019) ("Issues not presented

in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").[2]

Accordingly, we hold the Industrial Commission did not abuse its discretion by denying plaintiff's motions for entry of default and default judgment. The Industrial Commission's 21 May 2018 order is affirmed.

AFFIRMED.

Judges BRYANT and TYSON concur.

Report per Rule 30(e).

[2] We note that plaintiff has filed a reply brief. Rule 28(h) of the Rules of Appellate Procedure sets forth that the reply brief "shall be limited to a concise rebuttal of arguments set out in the appellee's brief and shall not reiterate arguments set forth in the appellant's principal brief." The appellee has filed no brief in this case. Thus, we decline to consider appellant's reply brief.