

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1011

Filed: 7 April 2020

North Carolina Industrial Commission, I.C. No. TA-27115

ERNEST NICHOLS, Plaintiff,

v.

ADMINISTRATIVE OFFICE OF THE COURTS-7TH JUDICIAL DISTRICT,
EDGECOMB COUNTY, Defendants.

Appeal by plaintiff from order entered 5 September 2019 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 17 March 2020.

Ernest James Nichols pro se.

Attorney General Joshua H. Stein, by Assistant Attorney General Barry H. Bloch, for the State.

ARROWOOD, Judge.

Ernest Nichols (“plaintiff”) appeals from order dismissing his Tort Claim Affidavit and granting a pre-filing injunction barring any such future claims unless it is verified by a licensed North Carolina attorney that the claim is not frivolous. Plaintiff contends the Full Commission erred in (1) dismissing his claim because the doctrine of judicial immunity does not apply, and (2) granting a pre-filing injunction

Opinion of the Court

where his claims were not frivolous and the legal elements for such injunction were not satisfied. For the following reasons, we affirm.

I. Background

Plaintiff is currently an inmate imprisoned with the North Carolina Department of Public Safety for a criminal conviction which is not the subject of this appeal. Following his conviction and subsequent imprisonment, plaintiff filed a Petition for Writ of Habeas Corpus (“Petition”) challenging the trial court’s jurisdiction over his criminal case. On 23 February 2018, Superior Court Judge Walter H. Godwin denied plaintiff’s Petition, concluding that the trial court did have competent jurisdiction and the allegations in the Petition were without merit. On 15 August 2018, plaintiff filed a Tort Claim Affidavit with the Industrial Commission against Judge Godwin under N.C. Gen. Stat. § 143-291 (the “Tort Claims Act”), which gives the Industrial Commission jurisdiction to hear such claims.

In his Affidavit, plaintiff alleged Judge Godwin was negligent in failing to provide proof of the trial court’s jurisdiction over the subject matter of his criminal case after plaintiff challenged jurisdiction in his Petition. On 18 September 2018, defendant filed an Answer and several Motions, including several Motions to Dismiss. In one motion to dismiss, defendant alleged plaintiff failed to state a claim for which relief could be granted under Rule 12(b)(6) because of the doctrine of judicial immunity. Defendant also moved to dismiss on the ground that plaintiff’s claim was

frivolous pursuant to 11 NCAC 23B.0103(e) and N.C. Gen. Stat. § 1-110(b). As part of the motion to dismiss based on frivolity, defendant also moved for a gatekeeping order. Defendant alleged that plaintiff had already filed a total of five claims with the Industrial Commission, including the present claim. Like the present claim, each of the prior four raised issues relating to plaintiff's criminal prosecution, though they named different defendants. Those claims were each summarily dismissed for failure to state a claim upon which relief can be granted. Defendant thus requested a gatekeeping order to bar plaintiff from filing future tort claims without certification from an attorney in good standing licensed to practice law in North Carolina that such claim is not frivolous.

On 25 January 2019, Special Deputy Commissioner Brian Liebman entered an order dismissing plaintiff's claims with prejudice and granting defendant's motion for a gatekeeping order. In granting defendant's motion to dismiss, Special Deputy Commissioner Liebman concluded that plaintiff failed to state a claim for negligence upon which relief may be granted and was not entitled to recover under the Tort Claims Act. Plaintiff appealed the decision to the Full Commission.

On 5 September 2019, the Full Commission entered an order affirming Special Deputy Commissioner Liebman's decision. The Full Commission concluded plaintiff's claim should be dismissed because judicial immunity protects North Carolina judges from "civil action for errors committed in the discharge of [their] official duties." The

Opinion of the Court

Full Commission further concluded the pre-filing injunction, or gatekeeping order, was necessary given plaintiff's pattern of repeatedly filing the same or identical tort claims challenging the subject matter jurisdiction of the criminal court which convicted him. Each of these claims had been dismissed for failure to state a claim for which relief can be granted, and plaintiff's repeated filing had wasted limited Industrial Commission resources and unfairly burdened the defendants forced to defend against the claims. Thus, the Full Commission concluded that a pre-filing injunction was warranted in order to prevent plaintiff from filing more meritless claims and to protect the judicial process. Plaintiff timely gave notice of appeal on 13 September 2019.

II. Discussion

On appeal, plaintiff contends the Full Commission erred in (1) dismissing his claim because the doctrine of judicial immunity does not apply, and (2) granting a pre-filing injunction where his claims were not frivolous and thus the legal elements for such injunction were not satisfied. We disagree.

1. Motion to Dismiss for Failure to State a Claim

This Court reviews an appeal from the Full Commission's decision under the Tort Claims Act "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 Commission shall be conclusive if there is any competent evidence to support them." N.C. Gen. Stat. § 143-

Opinion of the Court

293 (2019). We review a motion to dismiss for “‘whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory.’” *Meyer v. Walls*, 347 N.C. 97, 111, 489 S.E.2d 880, 888 (1997) (quoting *Harris v. NCNB Nat’l Bank of N.C.*, 85 N.C. App. 669, 670, 355 S.E.2d 838, 840 (1987)).

Pursuant to Rules of Civil Procedure 12(b)(6), a claim may be dismissed for failure to state a claim upon which relief can be granted. N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2019).

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) (citing *Oates v. JAG, Inc.*, 314 N.C. 276, 278, 333 S.E.2d 222, 224 (1985)).

In the present case, plaintiff brought a negligence claim against Judge Godwin under the Tort Claims Act. A plaintiff bringing a claim under the Tort Claims Act must allege and prove 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” N.C. Gen. Stat. § 143-291 (2019). However, the Tort Claims Act

Opinion of the Court

represents a limited waiver of sovereign immunity that, “ ‘being in derogation of the sovereign right to immunity, must be strictly construed.’ ” *Walls*, 347 N.C. at 104, 489 S.E.2d. at 884 (quoting *Guthrie v. N.C. State Ports Auth.*, 307 N.C. 522, 537-38, 299 S.E.2d 618, 627 (1983)). In regards to allegations of negligence against judicial officials, under the doctrine of judicial immunity, “[a] judge of a court of this State is not subject to civil action for errors committed in the discharge of his official duties.” *Sharp v. Gulley*, 120 N.C. App. 878, 880, 463 S.E.2d 577, 578 (1995). “[Judicial] immunity is an absolute bar, available for individuals in actions taken while exercising their judicial function.” *Vest v. Easley*, 145 N.C. App. 70, 73, 549 S.E.2d 568, 572 (2001).

Plaintiff contends the Full Commission erred in dismissing his claim as barred by the doctrine of judicial immunity. He argues that judicial immunity does not apply to the instant case because he alleged Judge Godwin committed negligence, not error, and our holding in *Sharp* only specifies that judicial immunity applies to judges who commit error. Plaintiff asserts his interpretation of our case law is supported by differing definitions in Black’s Law Dictionary of “error” and “negligence.” However, plaintiff does not cite to any legal authority in support of his assertion, and his argument is thus deemed abandoned. *In re Foreclosure of Cain*, 248 N.C. App. 190, 200, 789 S.E.2d 835, 843 (2016) (“Since ‘[i]t is not the duty of this Court to supplement an appellant’s brief with legal authority or arguments not contained therein[.]’

Opinion of the Court

respondent has abandoned her arguments . . .”). Because judicial immunity poses an absolute bar to civil actions against judicial officials, the Full Commission properly dismissed plaintiff’s negligence claim against Judge Godwin for failure to state claim upon which relief can be granted.

Plaintiff further argues Judge Godwin is not protected by judicial immunity because he acted without jurisdiction. Plaintiff contends that though his Petition referenced the common law, Judge Godwin denied the Petition based on N.C. Gen. Stat. Ch. 17. However, Judge Godwin properly based his decision on N.C. Gen. Stat. Ch. 17, as it governs petitions for writs of habeas corpus. *See* N.C. Gen. Stat. § 17-4 (2019). In addition, there is no legal requirement that a judge must base his decision on the specific laws cited by the parties to the action. We therefore reject plaintiff’s arguments as meritless.

2. Pre-filing Injunction

Plaintiff next contends that the Full Commission erred in granting defendant’s motion for a pre-filing injunction, or “gatekeeping” order. He argues that the elements required for a pre-filing injunction have not been satisfied because his previous negligence claims were not frivolous. In support of his argument, he points to the fact that his Petition To Appeal As An Indigent Person was granted and deemed “not frivolous” by the Deputy Commissioner who signed the petition. Furthermore,

Opinion of the Court

he asserts his two latest tort claims were only dismissed because the Full Commission was biased towards the State. We disagree.

We first note that the Full Commission, as an appellate body, is not bound by the Deputy Commissioner's designation. The Full Commission may amend, set aside, or strike out the opinions and awards of Deputy Commissioners and issue its own findings and conclusions. N.C. Gen. Stat. § 143-292 (2019). Moreover, the Full Commission had adequate grounds to sanction plaintiff with a pre-filing injunction because plaintiff had repeatedly filed identical claims that were all dismissed for failure to state a claim upon which relief could be granted. Plaintiff's repeated filing of legally insufficient or meritless claims was unfair to the defendants, a waste of the Industrial Commission's resources, and an overall abuse of the judicial process. This Court previously determined that a gatekeeping order was appropriate where the *pro se* plaintiff forced the defendant to defend against meritless claims and the plaintiff's conduct was such that, if he had been an attorney, the court would have reported him to the State Bar. *Fatta v. M & M Properties Management, Inc.*, 224 N.C. App. 18, 29-30, 735 S.E.2d 836, 843-44 (2012). For similar reasons, we find the Full Commission did not err in granting the pre-filing injunction here. Lastly, because plaintiff failed to cite any facts and legal authority to support his claims of bias, this argument is deemed abandoned, and we do not address it.

III. Conclusion

NICHOLS V. ADMIN. OFF. OF THE COURTS

Opinion of the Court

For the foregoing reasons, we affirm.

AFFIRMED.

Judges Bryant and Tyson concur.

Report per Rule 30(e).