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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-216

Filed: 19 May 2020

Industrial Commission, No. TA-26049-51

JONATHAN E. BRUNSON, Plaintiff,

v.

OFFICE OF THE MAGISTRATE FOR THE 12TH JUDICIAL DISTRICT, et al.,
Defendants.

Appeal by Plaintiff from order entered 21 December 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 14 April 2020.

Jonathan E. Brunson, pro se.

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

BROOK, Judge.

Jonathan E. Brunson (“Plaintiff”) appeals from orders by the North Carolina Industrial Commission (“Industrial Commission”) dismissing his claims for lack of subject matter jurisdiction. We affirm.

I. Background

Plaintiff is currently imprisoned for committing a sex offense. On 19 December 2016, he filed three Tort Claim Affidavits with the Industrial Commission, alleging

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that numerous Cumberland County and state governmental entities and employees had injured him through negligence. A motion to dismiss these claims for lack of subject matter jurisdiction was filed in the Industrial Commission on 13 January 2017.

The matter came on for a hearing before Special Deputy Commissioner Brian Liebman (“Deputy Commissioner Liebman”) on 25 October 2017. On 16 November 2017, Deputy Commissioner Liebman entered an order dismissing Plaintiff’s claims for lack of subject matter jurisdiction. Deputy Commissioner Liebman also denied Plaintiff’s request for entry of default and a default judgment. Plaintiff timely appealed to the Full Commission, and the Full Commission concluded, on 21 December 2018, as Deputy Commissioner Liebman had, that it lacked subject matter jurisdiction over Plaintiff’s claims.

Plaintiff entered timely written notice of appeal from the order of the Full Commission on 10 January 2019.

II. Analysis

Plaintiff raises a number of arguments on appeal related to the jurisdiction of the Industrial Commission to adjudicate claims against the Cumberland County Department of Social Services and numerous judicial and quasi-judicial officials employed by Cumberland County (“County Defendants”) and alleged constitutional violations by various state actors (“State Defendants”). Because we agree that the

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Industrial Commission lacked subject matter jurisdiction over these claims, we affirm its order dismissing them.

“Our standard of review of a motion to dismiss for lack of subject matter jurisdiction is *de novo*.” *Hunt v. Dept. of Public Safety*, 260 N.C. App. 40, 44, 817 S.E.2d 257, 260 (2018) (internal marks and citation omitted).

North Carolina General Statutes § 143-291(a) establishes the Industrial Commission as “a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State.” N.C. Gen. Stat. § 143-291(a) (2019). Section 143-291(a) thus “provides a limited waiver of immunity for negligence claims against all departments, institutions, and agencies of the State.” *Meyer v. Walls*, 347 N.C. 97, 104, 489 S.E.2d 880, 884 (1997). This waiver of sovereign immunity “must be strictly construed.” *Id.* (citation omitted).

However, “[t]he only claim authorized by [N.C. Gen. Stat. § 143-291(a)] is a claim against the State agency.” *Wirth v. Bracey*, 258 N.C. 505, 507, 128 S.E.2d 810, 813 (1963). Thus, “recovery, if any, must be based upon the actionable negligence of an employee of such agency while acting within the scope of his employment.” *Id.* at 507-08, 128 S.E.2d 813. Section 143-291(a) does not authorize claims against counties, county agencies, or their employees. *See Meyer*, 347 N.C. at 105, 489 S.E.2d at 884. Finally, “[t]he Industrial Commission . . . is prohibited from ruling on

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constitutional questions.” *In re Davis*, 256 N.C. App. 436, 444, 808 S.E.2d 369, 374 (2017).

Plaintiff’s claims in this case stem from the Cumberland County Department of Social Services’ investigation of reports that he sexually abused his stepdaughter, the entry of an ex parte domestic violence protection order by the Cumberland County Clerk of Court, the issuance of a warrant for his arrest by a Cumberland County magistrate, and his prosecution by the Cumberland County District Attorney’s office. Plaintiff argues that the County Defendants, as well as the State Defendants, discharged their duties negligently during this process. Plaintiff thus casts as negligence claims what in essence are alleged violations of his constitutional rights: to wit, his right under the Sixth Amendment to confront his accuser and his right under the Fourteenth Amendments to due process of law.

In his appellate brief, Plaintiff argues that N.C. Gen. Stat. § 143-291(a) gives the Industrial Commission “original jurisdiction” over the claims he asserted there. However, as noted above, the jurisdiction of the Industrial Commission is limited. *See Meyer*, 347 N.C. at 104, 489 S.E.2d at 884. It is not the proper venue to assert claims sounding in negligence against counties, county agencies, or their employees, such as the County Defendants in this case. *See id.* at 105, 489 S.E.2d at 884. Nor is it the proper venue in which to seek redress for constitutional violations. *In re Davis*, 256 N.C. App. at 444, 808 S.E.2d at 374. Relatedly, Plaintiff’s arguments regarding

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his entitlement to a default judgment because of the failure of certain of Defendants to respond to his claims filed with the Industrial Commission fail; that body lacked jurisdiction over Plaintiff's claims for the reasons stated above.

III. Conclusion

We therefore affirm the order of the Industrial Commission dismissing Plaintiff's claims for lack of subject matter jurisdiction.

AFFIRMED.

Chief Judge McGEE and Judge MURPHY concur.

Report per Rule 30(e).