An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-257

No. COA21-570

Filed 5 April 2022

North Carolina Industrial Commission, No. TA-26735

NATHANIEL R. WEBB, Plaintiff,

v.

NORTH CAROLINA STATE HIGHWAY PATROL, Defendant.

Appeal by plaintiff from order entered 16 April 2021 by the North Carolina Industrial Commission. Heard in the Court of Appeals 9 March 2022.

Nathaniel R. Webb pro se.

Attorney General Joshua H. Stein, by Assistant Attorney General Lisa M. Taylor, for the State Highway Patrol.

TYSON, Judge.

¶ 1 Nathaniel R. Webb ("Plaintiff") appeals from an order filed 16 April 2021 by the North Carolina Industrial Commission ("Commission"). We affirm.

I. Background

¶ 2 Plaintiff observed four North Carolina State Highway Patrol troopers at a Sheetz, Inc. gas station in Youngsville on 24 June 2015. Plaintiff approached the troopers on his motorcycle and gestured at them with his middle finger. As Plaintiff

left the parking lot on his motorcycle, he gestured a second time with his middle finger at the troopers.

¶ 3 The troopers followed and pulled Plaintiff over onto the side of Highway U.S. 1 and placed him under arrest. The troopers "handcuffed him as he straddled the motorcycle." Plaintiff alleges he lost his balance and fell, while the troopers were removing him from the motorcycle. The fall purportedly resulted in injuries to his right ankle, both wrists, and right arm.

¶ 4 Plaintiff was arrested and jailed for disorderly conduct. The disorderly conduct charge was dismissed on 15 March 2016. Plaintiff filed a State Tort Claim Affidavit with the Commission on 31 January 2018. He alleged the troopers had negligently arrested, handcuffed him behind his back, and he fell and was injured, while being assisted off the motorcycle.

¶ 5 Plaintiff alleges he was falsely arrested, unlawfully imprisoned, suffered public humiliation, incurred expenses, lost wages, and suffered damages to his reputation. Plaintiff sought $1,000,000 in damages.

¶ 6 Defendant filed its Answer, Motion to Dismiss, Motion to Strike, and Motion to Stay Discovery. By order entered 2 July 2019, the special deputy commissioner dismissed Plaintiff's claim with prejudice, holding the Commission lacked subject matter jurisdiction. Plaintiff appealed to the Full Commission. The Full Commission found it lacked subject matter jurisdiction over Plaintiff's allegations of federal

constitutional violations and intentional torts and affirmed the dismissal by order entered 1 October 2020.

¶ 7 Plaintiff filed a "Notice of Removal of Civil Action From State Court" on 9 October 2020 and an "Amended Notice of Removal" on 12 April 2021 to the United States District Court. Plaintiff filed a motion for reconsideration on 12 November 2020 and by order dated 16 April 2021, the Full Commission denied Plaintiff's motion for reconsideration. Plaintiff appeals.

II. Jurisdiction

¶ 8 An appeal lies with this Court from the Commission pursuant to N.C. Gen. Stat. § 97-86 (2021).

III. Issues

¶ 9 Plaintiff argues the Full Commission erred by: concluding it lacked subject matter jurisdiction; staying discovery; deciding issues of disputed material fact absent a record to find them; and concluding false arrest is an intentional tort. Plaintiff further argues the Full Commission erred in concluding the troopers had intentionally injured him, where such allegations were not asserted, and Defendant had not admitted doing so.

IV. Subject Matter Jurisdiction of the Commission

¶ 10 Plaintiff argues the Commission erred by concluding it did not possess subject matter jurisdiction over Plaintiff's claims.

A. Standard of Review

¶ 11 "Our review is to determine whether the Commission's findings of fact are supported by competent evidence and whether those findings support the Commission's conclusions of law." *McAllister v. Wellman, Inc.*, 162 N.C. App. 146, 148, 590 S.E.2d 311, 312 (2004) (citation omitted). The Commission's conclusions of law are reviewed *de novo*. *Id.* (citation omitted).

B. Analysis

¶ 12 The Tort Claims Act is an expressly limited statutory waiver of the State's sovereign immunity by the General Assembly. N.C. Gen. Stat. § 143-291(a) (2021). The Tort Claims Act permits claims arising "as a result of the negligence of any . . . employee . . . of the State while acting within the scope of his office, employment, service, agency, or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina." *Id.*

¶ 13 "Under the Tort Claims Act, jurisdiction is vested in the Industrial Commission to hear claims against state departments, institutions, and agencies for personal injuries or damages sustained by any *person as a result of the negligence* of a state officer, agent, or employee acting within the scope of his employment." *Frazier v. Murray*, 135 N.C. App. 43, 47, 519 S.E.2d 525, 528 (1999) (emphasis supplied) (citation omitted).

¶ 14 "The Tort Claims Act does not give the Industrial Commission jurisdiction to award damages based on intentional acts." *Id.* at 48, 519 S.E.2d at 528 (citation omitted). "Injuries intentionally inflicted by employees of a state agency are not compensable under the Tort Claims Act. Intentional acts are legally distinguishable from negligent acts." *Id.* (citation omitted).

¶ 15 Our Court has consistently held false arrest is an intentional tort. *See Stanback v. Westchester Fire Ins. Co.*, 68 N.C. App. 107, 114-15, 314 S.E.2d 775, 779 (1984). All of Plaintiff's claims assert either intentional torts or constitutional violations. The Full Commission correctly concluded no subject matter jurisdiction existed over Plaintiff's claims. In light of our decision, we need not reach Plaintiff's remaining arguments.

V. Conclusion

¶ 16 The Full Commission did not err by concluding the Commission did not acquire subject matter jurisdiction over Plaintiff's claims. The Full Commission's order is affirmed. *It is so ordered.*

AFFIRMED.

Judges DIETZ and COLLINS concur.

Report per Rule 30(e).