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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-471

No. COA21-805

Filed 5 July 2022

North Carolina Industrial Commission, I.C. No. TA-27576

STEVEN PRENTICE, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by plaintiff from order entered 22 January 2021 by the North Carolina Industrial Commission. Heard in the Court of Appeals 7 June 2022.

Steven Prentice, pro se plaintiff-appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General Benjamin Gurlitz, for defendant-appellee.

ARROWOOD, Judge.

¶ 1

Steven Prentice (“plaintiff”) appeals from the North Carolina Industrial Commission’s (the “Commission”) order denying his claims for negligence. Plaintiff contends the Commission erred in finding that he did not provide credible evidence to support his claims and in failing to conclude that the Department of Public Safety (“defendant”) was required to provide plaintiff with proper equipment for his prison job. For the following reasons, we affirm the Commission’s order.

I. Background

¶ 2 On 5 March 2019, plaintiff filed a Tort Claim Affidavit with the Commission pursuant to the Tort Claims Act. Plaintiff alleged that, while incarcerated at Lanesboro Correctional Institution, he was assigned to work “as a janitor in [s]egregation” housing. Plaintiff further alleged that he was not provided with adequate footwear for the job, in which he was required to “clean messes, regurgitation, body fluids, sewage and other spills[.]” Plaintiff alleged he was required to use New Balance sneakers he had purchased at the canteen, which were ruined by the janitorial work; plaintiff also alleged that he contracted a variety of foot ailments.

¶ 3 On 30 January 2020, this matter came before a deputy commissioner for a full evidentiary hearing. Plaintiff, appearing *pro se*, was the only witness to testify at the hearing. Plaintiff testified that he was forced to accept his janitorial job and would have been sent to “the hole” if he declined. Plaintiff further testified that he was provided with work boots, but that they were “way too big” and caused plaintiff to develop blisters. Plaintiff stated that he went to a doctor to obtain a hepatitis vaccination and for consultation regarding his blisters; the doctor took the boots and stated that he would order orthopedic boots for plaintiff. Plaintiff alleged that he was never provided with orthopedic boots and accordingly was forced to use his New Balance sneakers. To support his assertion that work boots were proper equipment

for his janitorial job, plaintiff testified that he was given latex gloves as safety equipment for his hands.

¶ 4

Additionally, plaintiff alleged that, when he was transferred from Warren Correctional Institution to Tabor Correctional Institution on 5 February 2019, defendant's employees did not abide by its policies and procedures in processing plaintiff's personal property. Plaintiff testified that when he arrived at Tabor Correctional Institution, he had five bags of personal property and five legal books. Plaintiff stated that the general policy permitted "three bags of personal property" and did not limit the number of additional bags for "legal materials and legal property," but that Tabor Correctional Institution was "medium custody" and permitted "five personal books and five legal books even though there's no limit on legal books."

¶ 5

Plaintiff testified that staff informed him that he could only keep five books in total, and in response plaintiff took out a copy of his policy manual and asked to review it with the staff. Plaintiff stated that a sergeant was called, and plaintiff was sent to medical for evaluation; during the evaluation, staff took an inventory of his property. Plaintiff stated that when he returned, his property was placed in three piles: one that plaintiff was permitted to keep, one that needed to be sent home, and one that needed to be discarded. Plaintiff alleged that the "home" pile included his prescription glasses and that he had to wait ten months to get new glasses. Plaintiff

further testified that he later saw some of his books in the library on the donated book cart; his request for their return was denied.

¶ 6 Plaintiff entered eleven DC-160 forms into evidence titled “Prisons Personal Property Inventory.” The forms describe the disposition of plaintiff’s property on certain dates; two of the forms, dated “2-5-19” in the top right corner, appear to list property with a disposition of “stored.” Plaintiff signed both forms in two locations, once to indicate that he “acknowledge[d] the accuracy and completeness of [the] inventory[,]” and again to “certify that [he] received the above listed articles of personal property in the condition specified.” Plaintiff dated both signatures 4 February 2019.

¶ 7 On 6 February 2020, the deputy commissioner issued a Decision and Order denying plaintiff’s claim. The commissioner found that “in view of the entire record, Plaintiff has failed to prove all of the essential elements of a negligence action. Further, Plaintiff has failed to prove that an employee/agent of Defendant was negligent and that if negligent that he is entitled to any relief.” Accordingly, the commissioner concluded that plaintiff’s claim should be denied.

¶ 8 On 24 February 2020, plaintiff appealed the deputy commissioner’s Decision and Award to the Full Industrial Commission. On 22 January 2021, the Commission issued a Decision and Order denying plaintiff’s claim. The Commission found that plaintiff “presented no evidence to corroborate his allegations that work boots were

required equipment for his segregation janitorial position, or that defendant failed to provide him work boots for said position.” The Commission further found that plaintiff “failed to present credible evidence that defendant confiscated and discarded any of the alleged items listed in plaintiff’s Affidavit[.]” Accordingly, the Commission concluded that plaintiff failed to prove the essential elements of a negligence action.

¶ 9 On 9 February 2021, plaintiff entered notice of appeal. On 20 January 2022, plaintiff submitted his brief *pro se*.

II. Discussion

¶ 10 Plaintiff contends the Commission erred in denying his claims for negligence related to inadequate footwear and allegedly lost property. We disagree.

¶ 11 This Court reviews a decision and order from the Commission “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. § 143-293 (2021). On appeal, this Court must determine “(1) whether competent evidence exists to support the Commission’s findings of fact, and (2) whether the Commission’s findings of fact justify its conclusions of law and decision.” *Simmons v. N.C. Dep’t of Transp.*, 128 N.C. App. 402, 405-406, 496 S.E.2d 790, 793 (1998) (citation omitted).

¶ 12 Pursuant to the Tort Claims Act, the Commission
shall determine whether or not each individual claim arose

as a result of the negligence of any officer, employee, involuntary servant or agent 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. If the Commission finds 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 and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages that the claimant is entitled to be paid[.]

N.C. Gen. Stat. § 143-291(a) (2021). In order to establish an actionable claim for negligence under the Tort Claims Act, a plaintiff is required to “show that (1) [defendant] owed plaintiff a duty of care; (2) the actions, or failure to act, by [defendant]’s named employee breached that duty; (3) this breach was the actual and proximate cause of plaintiff’s injury; and (4) plaintiff suffered damages as a result of such breach.” *Simmons*, 128 N.C. App. at 406, 496 S.E.2d at 793 (citation omitted). Additionally, this Court has held that the Department of Correction has a duty to exercise reasonable care in the storage, handling, and return of an inmate’s property. *Price v. N.C. Dep’t of Correction*, 103 N.C. App. 609, 613, 406 S.E.2d 906, 908 (1991) (awarding damages for lost property where issue of negligence was not contested).

¶ 13 Plaintiff contends the Commission incorrectly determined that he failed to show defendant owed him a duty to provide work boots for his janitorial job. Plaintiff

provided testimony regarding the conditions of his janitorial job and his attempts to obtain orthopedic boots, but plaintiff did not present any other documentary or objective evidence to establish that defendant owed him a duty to provide specific footwear. Although plaintiff cites portions of defendant's Policy and Procedures Manual in his brief, plaintiff failed to enter any portion of the Manual into evidence before the Commission. Accordingly, we affirm the Commission's findings and conclusion that plaintiff failed to establish a negligence claim with respect to footwear for his janitorial job.

¶ 14 Plaintiff further contends the Commission failed to properly consider the DC-160 forms in finding that plaintiff had failed to present evidence to support his claim for lost property. Plaintiff specifically notes the Commission's finding that "[p]laintiff did not provide any DC-160 Forms from the date of incident, February 5, 2019, to corroborate his allegations." The DC-160 forms included in the record dated 5 February 2019, however, also include plaintiff's signatures with the date 4 February 2019. Accordingly, it appears that these forms concern property stored on 4 February 2019. Plaintiff did not present any other DC-160 forms or documentary evidence to support his allegations of lost property. In order to establish a negligence claim with respect to his property, plaintiff was required to show that defendant's actions, or failure to act, breached the duty to exercise reasonable care. *Simmons*, 128 N.C. App. at 406, 496 S.E.2d at 793 (citation omitted). Plaintiff's

testimony alone is insufficient to establish his claim, and the DC-160 forms do not conclusively establish that defendant breached its duty. We affirm the Commission's findings and conclusion that plaintiff failed to show that defendant breached a duty of care.

III. Conclusion

¶ 15

For the foregoing reasons, we affirm the Commission's order.

AFFIRMED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).