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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-707

Filed 07 March 2023

Wake County, No. 22-CVS-5578

CLOREY E. FRANCE, Plaintiff,

v.

N.C. DEPARTMENT OF PUBLIC SAFETY, Defendants.

Appeal by plaintiff from order entered 6 June 2022 by Judge Paul Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 8 February 2023.

Clorey E. France, pro se for plaintiff-appellant.

No brief filed by defendant-appellee.

FLOOD, Judge.

Clorey E. France (“Appellant”) appeals from the 6 June 2022 Order dismissing Appellant’s Petition to Assert Claims. We hold Appellant’s claims should have been filed under the Tort Claims Act (the “Act”) and heard by the Industrial Commission.

I. Factual and Procedural Background

Appellant has been an inmate in the North Carolina Department of Corrections since 1 April 2011. On 15 August 2011, Appellant injured his knee while

playing basketball at the Alexander Correctional Facility. Appellant informed North Carolina Department of Public Safety (“NCDPS”) medical providers of his injury. Appellant claims the knee injury caused the following symptoms: “locking up of the knee, giving out while walking, fluid on the knee, [and] swelling from simple standing for ten minutes or more.” Appellant further alleges these symptoms are common to a torn meniscus. Appellant requested magnetic resonance imaging (“MRI”) be conducted on several occasions but, instead, medical providers took radiographs (“x-rays”) of his injured knee and treated it with Tylenol and a knee brace. In May 2017, Appellant was allowed physical therapy for the first time since injuring his knee. The physical therapists recommended an MRI. NCDPS, however, did not schedule an MRI for Appellant, and only offered more pain medications and physical therapy. On 15 January 2022, an x-ray of Appellant’s knee revealed extensive damage to the knee due to the injured meniscus. Following this x-ray, an MRI and more physical therapy were ordered. An MRI on 4 August 2020 showed severe, long-term damage to the lateral meniscus.

In May of 2017, Appellant informed medical providers of an elbow injury he suffered while doing one-armed pull-ups. Appellant claims to have suffered “excruciating pain and disability” as a result of the injured elbow. The pain made it difficult for Appellant to write, brush his teeth, and sleep. Appellant was not provided with any treatment or medical attention but was advised to “rest the elbow.” In May 2019, Appellant was given an MRI of the elbow, which showed extensive damage and

swelling to the ligaments and tendons. Following the MRI, Appellant was referred to Emerge Ortho of Catawba where he was diagnosed with carpal tunnel syndrome and elbow pain. Appellant was prescribed braces for his wrists to combat the carpal tunnel syndrome, a brace for his elbow, and rest. Appellant wore the braces and rested his elbow for six months, but the pain and numbness only worsened. Appellant was scheduled for a nerve-test appointment with Emerge Ortho but was taken to the appointment on the wrong date, and a new appointment was never scheduled.

Over the last three years, Appellant has filed “sick call requests” with every NCDPS facility in which he has been housed. Following these requests, he was examined by various medical providers who all concluded his symptoms were associated with his already diagnosed elbow injury. On 23 February 2021, Appellant filed four separate grievances under the NCDPS Prisons Administrative Remedy Procedure. The grievances claim NCDPS failed to “properly treat and diagnose his injuries”; showed “deliberate indifference” to Appellant’s medical needs; and therefore, inflicted “cruel and unusual punishment” on Appellant.

On 10 May 2022, Appellant filed a civil action in Wake County Superior Court against NCDPS, Dr. Surbi Jain, and “unknown medical providers.” On 6 June 2022, Judge Ridgeway dismissed Appellant’s complaint on the grounds the superior court did not have jurisdiction over this type of action, and the claim should have been filed under the Act pursuant to N.C. Gen. Stat. § 143-291 (2021). On 17 June 2022, Appellant filed timely notice of appeal to this Court.

II. Jurisdiction

An appeal of right lies in this Court from a final judgment issued by a superior court under N.C. Gen. Stat. § 7A-27 (2021).

III. Analysis

The sole issue on appeal is whether the trial court erred by dismissing Appellant's claims on the grounds the superior court lacked subject matter jurisdiction because Appellant's claims should have been filed under the Act and, therefore, heard by the Industrial Commission. Appellant argues the trial court erred by dismissing his complaint because Appellant's claims involve intentional acts and violations to Appellant's constitutional rights, which are not actionable under the Act, and should have been permitted to proceed in the superior court. We disagree.

"Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2020). "Subject-matter jurisdiction 'involves the authority of a court to adjudicate the type of controversy presented by the action before it.'" *Id.* at 511, 689 S.E.2d at 592 (citation omitted). Subject matter jurisdiction is conveyed upon the courts by our Constitution or statute and "cannot be conferred on a court by action of the parties." *Id.* at 511, 689 S.E.2d at 592.

The purpose of the Act is "to enlarge the rights and remedies of a person who is injured by the negligence of a State employee who was acting within the course of his employment." *Russell v. N.C. Dept. of Env't and Nat. Res.*, 227 N.C. App. 306,

309, 742 S.E.2d 329, 332 (2013). The Industrial Commission, not a superior court, has sole jurisdiction over ordinary negligence claims filed under the Act. See *Gonzales v. N.C. State Univ.*, 189 N.C. App. 740, 746, 231 S.E.2d 9, 13 (2008) (“[T]he Tort Claims Act allows a suit against the State only for ordinary negligence in the forum of the Industrial Commission.”).

In this case, Appellant is correct in asserting only ordinary negligence claims can be filed under the Act, whereas intentional acts of officers or employees of the State are not compensable pursuant to the Act. *White v. Trew*, 366 N.C. 360, 363, 736 S.E.2d 166, 168 (2013). Appellant’s allegations of wrongdoing by the NCDPS, however, if true, would constitute ordinary negligence.

Under long-established principles of North Carolina law, the State has an unquestionable duty to provide medical care to prisoners, and breach of that duty is ordinary negligence. *Medley v. N.C. Dept. of Corr.*, 330 N.C. 837, 842, 412 S.E.2d 654, 657 (1992). “Our legislature has codified this duty in a statute requiring [NCDPS] to ‘prescribe standards for health services to prisoners, which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and hospital basis, for all types of patients.’” *Id.* at 842, 412 S.E.2d at 658 (quoting N.C. Gen. Stat. § 148-19 (1991)). The State further has responsibility to provide medical care to prisoners under our Constitution as well as the federal Constitution. *Id.* at 842, 412 S.E.2d at 658.

The Cruel and Unusual Punishment Clause of the Eighth Amendment imposes a duty on prisons to provide medical care for inmates. *West v. Atkins*, 487 U.S. 42, 56, 102 S. Ct. 2250, 2259, 101 L. E. 2d 40, 54 (1988). Actions that fall under the Eighth Amendment incorporate those which “involve the unnecessary and wanton infliction of pain,” including “deliberate indifference to serious medical needs of prisoners.” *Estelle v. Gamble*, 429 U.S. 97, 103, 97 S. Ct. 285, 290, 50 L. E. 2d. 251, 261 (1976). A less serious breach, however, such as negligence, is not a violation of the Eighth Amendment but is only actionable under the Act. *Medley*, 330 N.C. at 844, 412 S.E.2d at 659; *see also Estelle*, 429 U.S. at 106, 97, S. Ct. at 292, 50 L. E. 2d. at 261.

There is nothing in the Record that shows any intentional act by NCDPS caused harm to Appellant. To the contrary, NCDPS provided Appellant with medical care for his knee and elbow injuries for nine years. Appellant was given x-rays, pain medication, braces, physical therapy, and MRIs. Appellant was provided with medical care, however unsatisfactory Appellant found the medical care to be. Our discussion is not to say NCDPS was negligent in providing care to Appellant; rather, it is to say any claim Appellant may assert against NCDPS would lie in negligence—not intentional acts or violations of Appellant’s constitutional rights. Appellant has not presented a forecast of evidence showing a “deliberate indifference to serious medical needs” in violation of his constitutional rights. *See Estelle*, 429 U.S. at 106, 97 S. Ct. at 292, 50 L. E. 2d. at 261.

We therefore find the superior court did not have subject matter jurisdiction over Appellant's claims because the Act intentionally conveyed jurisdiction of negligent acts by state employees or agents upon the Industrial Commission. *See McKoy*, 202 N.C. App. at 511, 689 S.E.2d at 592; *see also* N.C. Gen. Stat. § 143-291.

IV. Conclusion

We hold the trial court did not err in dismissing Appellant's claim for lack of subject matter jurisdiction because Appellant should have filed his claim pursuant to the Tort Claims Act. *See* N.C. Gen. Stat. § 143-291 (2021).

AFFIRMED.

Judges WOOD and GRIFFIN concur.

Report per Rule 30(e).