

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-77

Filed 20 June 2023

North Carolina Industrial Commission, I.C. No. TA-28162

COLELL STEELE, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by Plaintiff from decision and order entered 10 August 2022 by the North Carolina Industrial Commission. Heard in the Court of Appeals 7 June 2023.

Colell B. Steele, pro se, Plaintiff-Appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General Gregory L. Rouse, II, for Defendant-Appellee.

COLLINS, Judge.

Plaintiff Colell Steele appeals from a decision and order entered by the North Carolina Industrial Commission denying Plaintiff's negligence claim against the North Carolina Department of Public Safety under the Tort Claims Act for failing to meet his burden to establish a prima facie case of negligence. Because the

Commission's findings of fact are supported by competent evidence, and the findings in turn support its conclusions of law, the decision and order is affirmed.

I. Factual Background and Procedural History

In July 2017, Plaintiff was an inmate in the Blue Unit at Maury Correctional Institution. The Blue Unit is comprised of two tiers of cells, with each cell housing one inmate; the unit does not have bunk beds. Plaintiff was assigned to a cell on the upper tier of the unit.

On 6 July 2017, Plaintiff underwent surgery to repair a hernia. Plaintiff was prescribed hydrocodone following his surgery and discharged with instructions to “[t]ake pain medicine as prescribed, [and] report any new, increasing, or unrelieved pain to medical/custody[.]” Plaintiff’s discharge instructions also indicated that Plaintiff could participate in activities as tolerated, and that Plaintiff should be assigned a “Bottom/lower Bunk for 1 month[.]” Additionally, Plaintiff had a Medical Duty Status sheet indicating a housing restriction of “Bottom Bunk” and physical restrictions of “No Climbing,” and “Lifting limited to 10 pounds[.]”

Plaintiff experienced dizziness and disorientation due to the hydrocodone and stopped taking the medication on 7 July 2017 but did not inform Defendant’s staff or medical personnel of his side effects. On 9 July 2017, Plaintiff fell down the stairs while walking from his cell to breakfast. Plaintiff claimed that, at the time of the fall, he was still dizzy and disoriented from the medication he had taken on 6 July 2017. As a result of the fall, Plaintiff injured his back and right knee, resulting in several

months of physical therapy and his need to use a cane to walk.

On 22 November 2019, Plaintiff filed a claim, pro se, with the Commission pursuant to the Tort Claims Act alleging negligence against the officials on duty at the time of his fall. Defendant responded on 2 January 2020, and the matter came on for an evidentiary hearing before a Deputy Commissioner on 29 July 2021. At the hearing, Plaintiff argued that Defendant was negligent in not assigning him to a cell on the lower tier of his unit. Plaintiff argued that since there were no bunk beds on his unit, the discharge instructions specifying “Bottom/lower Bunk for 1 month” should have been interpreted to mean that Plaintiff was to be assigned to a cell on the lower tier of the unit.

On 19 November 2021, the Deputy Commissioner issued a Decision and Order denying Plaintiff’s claim. On 9 December 2021, Plaintiff gave notice of appeal to the Full Commission. The Commission issued a decision and order on 10 August 2022, denying Plaintiff’s claim. Plaintiff appealed to this Court.

II. Discussion

Plaintiff argues that the Commission erroneously denied his negligence claim because (1) Defendant owed Plaintiff a duty to place Plaintiff in a bunk on the lower tier of his unit, (2) Defendant breached that duty by not placing Plaintiff on the lower tier of his unit, and (3) Plaintiff’s fall was a reasonably foreseeable consequence of Defendant’s failure to place Plaintiff on the lower tier of his unit.

A. Standard of Review

This Court reviews the Commission's decisions pursuant to the Tort Claims Act to determine whether there was any competent evidence before the Commission to support its findings of fact and whether the Commission's findings of fact support its conclusions of law and decision. *Taylor v. N.C. Dep't of Corr.*, 88 N.C. App. 446, 448, 363 S.E.2d 868, 869 (1988) (citation omitted). The Commission's findings of fact are conclusive if there is any competent evidence to support them. N.C. Gen. Stat. § 143-293 (2022).

B. Findings of Fact

The Commission made the following findings of fact resolving issues in dispute:

8. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that there is no evidence that Defendant was on notice that Plaintiff was experiencing dizziness or disorientation as a result of taking hydrocodone on 6 July 2017.

9. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that Plaintiff has failed to establish that he was restricted from navigating stairs or needed to be housed on the lower tier of his unit as a result of his 6 July 2022 surgery. The Full Commission notes that Plaintiff's discharge instructions do not specifically restrict Plaintiff from climbing or descending stairs. Additionally, the Full Commission finds that there is insufficient evidence to support that the discharge instruction's notation that Plaintiff was restricted to a "Bottom/lower Bunk for 1 month" was intended to restrict Plaintiff to assignment to a cell on the lower tier.

At the hearing, Plaintiff testified that he did not inform Defendant's staff or

medical personnel that he experienced any side effects from the hydrocodone. Additionally, Plaintiff produced no evidence that his discharge instructions or climbing restriction were intended to proscribe the use of stairs. Accordingly, the Commission's findings are supported by competent evidence in the record and are conclusive on appeal. *Id.*

C. Conclusions of Law

"Actions to recover for the negligence of a State employee under the Tort Claims Act are guided by the same principles that are applicable to other civil causes of action." *Simmons v. N.C. Dep't of Transp.*, 128 N.C. App. 402, 406, 496 S.E.2d 790, 793 (1998) (citation omitted). To establish a prima facie negligence claim, a plaintiff must allege facts showing:

(1) that [defendant] owed plaintiff a duty of care under the circumstances; (2) that actions or omissions by at least one of the named employees of [defendant] constituted a breach of that duty; (3) that the breach was the actual and proximate cause of plaintiff's injury; and (4) that plaintiff suffered damages.

Simmons v. Columbus Cnty. Bd. of Educ., 171 N.C. App. 725, 730, 615 S.E.2d 69, 74 (2005) (citation omitted). A State official has a duty of reasonable care to protect the plaintiff from reasonably foreseeable harm. *Taylor*, 88 N.C. App. at 451, 363 S.E.2d at 871. Thus, "a prison official is liable when he knows of, or in the exercise of reasonable care should anticipate, danger to the prisoner, and with such knowledge or anticipation fails to take the proper precautions to safeguard his prisoners." *Id.*

(citations omitted).

Here, the Commission concluded that Plaintiff had “failed to meet his burden to establish a *prima facie* case of negligence[,]” reasoning that:

Plaintiff failed to establish that his fall on 9 July 2017 was reasonably foreseeable to Defendant. Plaintiff failed to inform Defendant that he experienced side effects of dizziness and disorientation from the hydrocodone he took on 6 July 2017 at any point prior to his fall. Additionally, Plaintiff has failed to establish that Defendant was on notice that he was unable to navigate stairs, or was medically restricted from doing so, as a result of his 6 July 2017 surgery.

This conclusion is supported by the Commission’s findings of fact.

III. Conclusion

Because the Commission’s findings of fact are supported by competent evidence, and the findings support its conclusions of law, the decision and order is affirmed.

AFFIRMED.

Judges DILLON and HAMPSON concur.

Report per Rule 30(e).