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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-87

Filed 05 September 2023

N.C. Industrial Commission, No. TA-29116

COBEY W. LAKEMPER, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by Plaintiff from order entered 24 August 2022 by the Full Commission in North Carolina Industrial Commission. Heard in the Court of Appeals 6 June 2023.

Cobey Lakemper, pro se.

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

GRIFFIN, Judge.

Plaintiff appeals from an order by the Full Commission of the North Carolina Industrial Commission dismissing his tort claim without prejudice. Plaintiff argues the Full Commission erred in dismissing his claim for lack of jurisdiction as it was a claim of active negligence, over which the Full Commission had jurisdiction, rather than a challenge to the policy and procedure of the North Carolina Department of

Public Safety. We hold the Full Commission did not err in dismissing Plaintiff's claim.

I. Factual and Procedural Background

On 13 November 2020, while incarcerated at Tabor Correctional Institute ("TCI"), Plaintiff asked an officer to call a medical emergency so he could obtain immediate treatment for an infection in his left ear. Plaintiff was informed that, due to the COVID-19 pandemic, all medical visits had been suspended. Plaintiff continued to submit requests and was eventually evaluated by a nurse in December 2020. A week later, Plaintiff was evaluated by a physician's assistant who provided Plaintiff with medication. Nonetheless, Plaintiff's eardrum eventually ruptured.

On 14 January 2021, Plaintiff, *pro se*, filed a tort claim with the North Carolina Industrial Commission alleging Defendant's employees at TCI were negligent in suspending sick-call operations for a thirty-day period, and, as a result of that negligence, Plaintiff suffered damages totaling over \$25,000. On 12 March 2021, Defendant filed a motion to dismiss Plaintiff's claim. On 19 March 2021, Plaintiff filed a response. On 22 March 2021, Plaintiff filed a motion for default judgment.

On 22 June 2021, Defendant's motion to dismiss and Plaintiff's motion for default judgment came on for hearing before a Special Deputy Commissioner. On 4 November 2021, the Special Deputy Commissioner entered an order dismissing Plaintiff's claim without prejudice pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure, concluding Plaintiff's claim amounted to "a challenge to an

internal correctional policy, which [was] not a subject appropriate for judicial scrutiny.” Plaintiff appealed to the Full Commission on 6 January 2022. On 24 August 2022, the Full Commission entered an order dismissing Plaintiff’s claim without prejudice for lack of jurisdiction, again pursuant to Rule 12(b)(1).

Plaintiff filed a notice of appeal to this Court on 12 September 2022. Plaintiff also filed a motion for sanctions on 6 March 2023 and a request for waiver of printing costs on 18 May 2023.¹

II. Standard of Review

In reviewing an appeal from the decision of the North Carolina Industrial Commission, this Court is limited in its inquiry to only two questions of law: “[1] whether the Commission’s findings of fact are supported by competent evidence, and [2] whether its conclusions of law are supported by its findings of fact.” *Tanner v. State Dep’t of Correction*, 19 N.C. App. 689, 691, 200 S.E.2d 350, 351 (1973) (citations omitted).

III. Analysis

¹ Plaintiff filed a motion for sanctions in response to Defendant’s motion for extension of time to file Defendant’s brief contending Defendant’s motion was “knowingly fabricated in a deliberate effort to mislead this Court, and is thereby fraudulent and submitted in bad faith.” Upon review, we hold Plaintiff’s motion to be without merit. Plaintiff’s motion for sanctions is therefore denied.

In addition to his motion for sanctions, Plaintiff filed a request for waiver of printing costs noting his incarceration status had not changed and he was unable to pay the \$217 requested of him. We recognize appellate filing requirements must be observed, even in pauper appeals, except those requirements as to printing. *See Sigman v. Southern Ry. Co.*, 135 N.C. 181, 182, 47 S.E. 420, 420 (1904); *Brinkley v. Smith*, 130 N.C. 224, 226, 41 S.E. 106, 107 (1902). Thus, upon review, we grant Plaintiff’s request and waive printing costs.

Plaintiff argues the Full Commission erred in dismissing his tort claim, pursuant to Rule 12(b)(1) of the North Carolina Rules of Civil Procedure, for lack of jurisdiction as it was a claim of active negligence properly before the Full Commission rather than a challenge to the policy and procedure of the North Carolina Department of Public Safety. We disagree.

Under Rule 12(b)(1), a claim for relief, in any pleading, may be dismissed for lack of jurisdiction over the subject matter. N.C. R. Civ. P. 12(b)(1). In proceedings before the North Carolian Industrial Commission, “determination of jurisdiction is the first order of business.” *Crawford v. Wayne Cnty. Bd. of Educ.*, 3 N.C. App. 343, 346, 164 S.E.2d 748, 750 (1968).

Our North Carolina Tort Claims Act confers upon the Industrial Commission limited jurisdiction to hear tort claims against State departments, institutions, and agencies, noting in pertinent part:

The Industrial 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.

N.C. Gen. Stat. § 143-291(a) (2021). Our Industrial Commission, however, despite having limited jurisdiction to review tort claims, is without jurisdiction to consider policy and procedural decisions made by the Department of Public Safety (“DPS”)

and/or the Department of Corrections as such decisions are “strictly administrative and not judicial.” *State v. Garris*, 265 N.C. 711, 712, 144 S.E.2d 901, 902 (1965) (citation omitted); *see also Goble v. Bounds*, 281 N.C. 307, 312, 188 S.E.2d 347, 350 (1972). Further, “circumstances [which] turn on [the] analysis of internal correctional policy, [] rightfully lie within the sole administrative jurisdiction of our State governmental departments, and are not, barring a clear instance of constitutional infirmity, subjects appropriate for judicial scrutiny.” *In re Imprisonment of Stevens*, 28 N.C. App. 471, 474, 221 S.E.2d 839, 841 (1976) (citations omitted). As such, we must recognize that where a plaintiff’s claim, despite being filed under the Tort Claims Act, concerns matters not within the Industrial Commission’s jurisdiction per N.C. Gen. Stat. § 143-291(a), the claim must be dismissed for lack of subject matter jurisdiction. *See* N.C. R. Civ. P. 12(b)(1).

Here, Plaintiff filed a claim for damages under the Tort Claims Act alleging Defendant’s employees were negligent in “disallowing much-needed medical attention” as TCI had suspended all sick call operations, except matters involving life-or-death, due to the COVID-19 pandemic. Moreover, on appeal, Plaintiff argues his challenge is “not to policy but rather [Defendant] not acting in accordance with established NC DPS Policy[.]” Despite Plaintiff’s contention here, he is effectively challenging circumstances which turn on the analysis of the policies and procedures decided by TCI in the midst of the COVID-19 pandemic. Such a challenge is not appropriate for judicial scrutiny. *See In re Stevens*, 28 N.C. App. at 474, 221 S.E.2d

at 841.

Because Plaintiff filed a claim with the Industrial Commission which was not appropriate for judicial scrutiny, the Industrial Commission was without jurisdiction and therefore did not err in dismissing Plaintiff's claim pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

IV. CONCLUSION

For the aforementioned reasons, we affirm the order of the Full Commission dismissing Plaintiff's claim without prejudice.

AFFIRMED.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).