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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-299

Filed 16 January 2024

North Carolina Industrial Commission, No. TA-28363

CRAIG MUNN, Plaintiff,

v.

NORTH CAROLINA

DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by Plaintiff from Decision and Order entered 18 January 2023 by the full North Carolina Industrial Commission. Heard in the Court of Appeals 22 August 2023.

Craig Munn, pro se Plaintiff-Appellant.

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

CARPENTER, Judge.

Craig Munn (“Plaintiff”) appeals from a Decision and Order entered by the full North Carolina Industrial Commission, which affirmed the denial of Plaintiff’s negligence claim against the North Carolina Department of Public Safety (“Defendant”) under the Tort Claims Act. After careful review, we affirm the Decision

and Order.

I. Factual & Procedural Background

On 6 September 2017, Plaintiff, an inmate at Columbus Correctional Institution, was stabbed with a handmade “shank” by his bunkmate, Dwight Sharp, leaving Plaintiff with permanent scarring. Plaintiff maintains he wrote a letter to the Assistant Superintendent of the prison, Jennifer Walsh, notifying her three hours before the attack that Sharp possessed a “homemade shank.”

On 13 February 2020, Plaintiff initiated an action before the North Carolina Industrial Commission (the “Commission”) alleging Defendant was negligent and liable under N.C. Gen. Stat. § 143-291, the Tort Claims Act (“TCA”), in failing to protect him from reasonably foreseeable harm. In short, Plaintiff named Defendant’s Assistant Superintendent, Jennifer Walsh, Correctional Officer James Spillman, and Correctional Officer Kevin Oxendine as the employees who failed to take sufficient measures to protect him from the assault by Sharp.

On 25 March 2020, Defendant filed motions to dismiss and an answer. On 7 October 2020, after a pretrial conference and motions hearing on 15 September 2020, Special Deputy Commissioner Jessica Price filed an order denying Defendant’s motions to dismiss. On 21 October 2021, Deputy Commissioner Larry Hall held a full evidentiary hearing. At the hearing, Plaintiff testified he was not afraid of Sharp prior to the assault, and the bunkmates had no prior issues. Aside from his testimony, Plaintiff presented no evidence tending to support his position.

On 18 February 2022, Deputy Commissioner Hall entered a Decision and Order denying Plaintiff's negligence claim. On 25 February 2022, Plaintiff filed a Form T-44 Application for Review, seeking to appeal the 18 February 2022 Decision and Order to the full Commission. On 18 January 2023, after reviewing the record of the prior proceedings and Decision and Order by Deputy Commissioner Hall, Plaintiff's T-44 Application for Review and Memorandum of Law, Defendant's brief, and contents of the Commission's file, the full Commission filed a Decision and Order, affirming the denial of Plaintiff's claim. On 24 February 2023, Plaintiff filed Notice of Appeal. On 13 March 2023, the Commission acknowledged Plaintiff's Notice of Appeal by letter.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 143-293 (2021).

III. Issue

The issue on appeal is whether the Commission erred in concluding Plaintiff failed to establish a prima facie case of negligence against Defendant.

IV. Analysis

Plaintiff appeals the Commission's 18 January 2023 Decision and Order denying his negligence claim under the TCA. After careful review, we conclude the Commission did not err in denying Plaintiff's negligence claim because competent evidence exists to support the Commission's findings of fact and those findings justify its conclusions of law.

A. Standard of Review

The standard of review for an appeal from a Commission's decision and order under the TCA, as stated in *Simmons v. Columbus County Board of Education*, is “when considering an appeal from the Commission, our Court is limited to two questions: (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.” 171 N.C. App. 725, 728, 615 S.E.2d 69, 72 (2005) (quoting *Simmons v. N.C. Dep't of Transp.*, 128 N.C. App. 402, 405–06, 496 S.E.2d 790, 793 (1998)); N.C. Gen. Stat. § 143-293.

1. Findings of Fact

First, we consider whether the Commission's findings of fact are supported by competent evidence.

The pertinent findings of fact by the Commission in this case are, in relevant part:

3. During the Deputy Commissioner hearing, Plaintiff testified that he had no known issues with his bunkmate Mr. Sharp prior to 6 September 2017, that he had been bunkmates with Mr. Sharp for approximately three to four months, and that he had not been afraid of Mr. Sharp. Plaintiff also testified that he rarely saw Mr. Sharp because they worked in different parts of [Columbus Correctional Institution]. Plaintiff explained that on 6 September 2017 he wrote a letter to [Columbus Correctional Institution's] warden communicating that his bunkmate possessed a shank and that he dispatched this letter as legal mail from [Columbus Correctional Institution's] mailroom the same day. Plaintiff testified that he believes Defendant's employees named in his

Affidavit are responsible for Mr. Sharp learning about the letter prior to the assault and are thereby responsible for his injuries. Plaintiff articulated a rationale for this theory: "Because during the attack [Mr. Sharp] mentioned about how a letter being wrote as he was stabbing me. So how . . . would he know it was a letter and not verbal?"

4. As a result of a formal grievance filed by Plaintiff on 1 October 2017, Defendant investigated Plaintiff's allegation that Officer Spillman and Officer Oxendine informed Mr. Sharp of the contents of the letter prior to the assault. Defendant's Step One response explains that Officer Spillman and Oxendine "indicated that they did not provide any information to anyone to cause your injuries." Defendant's Step Three response concluded that Plaintiff's "allegations are insufficiently supported" and dismissed the grievance for lack of evidence.

10. While Plaintiff postulated that Defendant's employee informed Plaintiff's assailant of the contents of his letter prior to the assault and are thereby responsible for his injuries, Plaintiff presented no evidence, other than his own testimony, to support this theory.

11. Based upon a preponderance of the evidence in view of the entire record, the Full Commission finds that Plaintiff has failed to prove the essential elements of a negligence claim. Specifically, Plaintiff failed to prove that the assault was anticipated by any agent or employee of Defendant, that the assault reasonably should have been anticipated by any agent or employee of Defendant, or that Defendant violated any policy in failing to prevent the assault. While Plaintiff alleges that he sent a letter to the warden reporting his bunkmate for possession of a shank three hours prior to the assault, Plaintiff presented no evidence that any employee of Defendant read the letter prior to the assault or that its contents were divulged to any inmate prior to the assault. Even if an employee of Defendant had read Plaintiff's letter and was put on notice that Plaintiff's bunkmate had a shank prior to the attack, Defendant would not have had notice that an assault on Plaintiff was imminent.

Record evidence tends to show the following. Plaintiff testified that prior to the 6 September 2017 assault, he had no prior issues with Sharp, he was not afraid or ever threatened by Sharp, and the two rarely saw each other because they worked in different locations within the Columbus Correctional Institution. Plaintiff also testified that three hours prior to the assault he wrote a letter to the warden indicating Sharp had a “homemade shank” and dispatched that letter via legal mail in the mailroom. Plaintiff, however, presented no evidence that Defendant or any employee received the letter, read it, or provided information of it to anyone prior to the assault.

Thus, there was competent evidence to support the Commission’s findings of fact and they are conclusive on appeal. *See Simmons*, 171 N.C. App. at 727, 615 S.E.2d at 72; N.C. Gen. Stat. § 143-293.

2. Conclusions of Law

Next, we review whether the Commission’s conclusions of law are supported by its findings of fact. *See Simmons*, 171 N.C. App. at 728, 615 S.E.2d at 72.

Under the TCA, the Commission possesses jurisdiction to adjudicate negligence claims asserted against the State. N.C. Gen. Stat. § 143-291(a) (2021). Claims for the negligence of State actors under the TCA are “determined by the same rules as those applicable to private parties.” *Bolkhir v. N.C. State Univ.*, 321 N.C. 706, 709, 365 S.E.2d 898, 900 (1988).

To establish a *prima facie* case of actionable negligence, a plaintiff must allege facts showing: 1) the defendant owed the plaintiff a duty of reasonable care, 2) the defendant breached that duty, 3) the defendant's breach was an actual and proximate cause of the plaintiff's injury, and 4) the plaintiff suffered damages as the result of the defendant's breach.

Gibson v. Ussery, 196 N.C. App. 140, 143, 675 S.E.2d 666, 668 (2009) (citation omitted).

Plaintiff bears the burden of proof on all these elements and must prove his case by a preponderance of the evidence. *Thornton v. F.J. Cherry Hosp.*, 183 N.C. App. 177, 182, 644 S.E.2d 369, 373 (2007), *aff'd*, 362 N.C. 173, 655 S.E.2d 350 (2008).

In order to prevail in a claim against a State actor filed under the TCA, a party must prove that there was negligence on the part of an employee of the State while acting within the scope of his employment that was the proximate cause of the injury, and there was no contributory negligence attributable to the complaining party. *See* N.C. Gen. Stat. § 143-291(a). "In a complaint under the [TCA], a plaintiff must generally name the State employees he or she alleges negligently caused his or her injury, N.C. [Gen. Stat.] § 143-297, and then prove that at least one of the named employees did in fact, negligently cause his injury." *Nunn v. N.C. Dep't of Pub. Safety*, 227 N.C. App. 95, 98, 741 S.E.2d 481, 483–84 (2013) (citation omitted).

Defendant, by and through its agents or employees, owes a duty of reasonable care to prevent reasonably foreseeable harm to inmates within its custody. *See Taylor v. N.C. Dep't of Corr.*, 88 N.C. App. 446, 451, 363 S.E.2d 868, 871 (1988). "Foreseeable

injury is a requisite of proximate cause, which is, in turn, a requisite for actionable negligence.” *Thornton*, 183 N.C. App. at 182, 644 S.E.2d at 373 (quoting *Barefoot v. Joyner*, 270 N.C. 388, 393–94, 154 S.E.2d 543, 547 (1967)). “To prove foreseeability, a plaintiff must show that the ‘defendant might have foreseen that some injury would result from his act or omission, or that consequences of a generally injurious nature might have been expected.’” *Id.* (quoting *Williamson v. Liptzin*, 141 N.C. App. 1, 10, 539 S.E.2d 313, 319 (2000)). Thus, “a prison official is liable when he knows of, or in the exercise of reasonable care should anticipate danger to a prisoner, and with such knowledge or anticipation fails to take the proper precautions to safeguard his prisoners.” *Taylor*, 88 N.C. App. at 451, 363 S.E.2d at 871.

Here, Plaintiff contends he provided advance notice to Defendant that his bunkmate, Sharp, was armed and dangerous, and Defendant failed to take appropriate action. In affirming the Decision and Order of Deputy Commissioner Hall, the full Commission concluded that Plaintiff did not meet “his burden of proof on all essential elements necessary to prevail in a negligence claim.” More specifically, the full Commission concluded “Plaintiff failed to prove that any agent or employee of Defendant knew or reasonably should have known that Plaintiff was in danger, or violated any policy in failing to prevent the assault.” And, therefore, Plaintiff failed to show “Defendant breached its duty of care to protect Plaintiff from reasonably foreseeable harm.”

The full Commission’s conclusions of law are supported by the findings of fact.

Nothing in evidence indicated Defendant knew or should have known Plaintiff was in danger or that an assault on Plaintiff was anticipated. Plaintiff did not inform Defendant or its employees that he felt threatened or at risk of harm by Sharp prior to the assault. No evidence established that Defendant or its employees received the letter, read it, or provided information regarding it to anyone prior to the assault. Even assuming Plaintiff's alleged letter made it to appropriate authorities, the letter disclosed the existence of a "homemade shank" and did not disclose an attack on Plaintiff was imminent, meaning a violent altercation between Plaintiff and Sharp was not reasonably foreseeable.

Thus, the Commission's findings of fact support its conclusion that Plaintiff failed to prove Defendant breached its duty to protect Plaintiff from reasonably foreseeable harm and thereby failed to establish actionable negligence by Defendant. *See Simmons*, 171 N.C. App. at 728, 615 S.E.2d at 72.

V. Conclusion

Because the Commission's findings of fact are supported by competent evidence, and the findings in turn support its conclusions of law, we therefore affirm the full Commission's Decision and Order.

AFFIRMED.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).