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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-757

Filed 16 April 2024

INDUSTRIAL COMMISSION, No. TA-27225

CHERRY JONES, by and through Her General Guardian JEFFREY S. JONES,
Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, Defendant.

Appeal by Plaintiff from Order entered 17 March 2023 by the North Carolina
Industrial Commission. Heard in the Court of Appeals 19 March 2024.

Richard E. Batts, PLLC, by Richard E. Batts, for Plaintiff-Appellant.

*Attorney General Joshua H. Stein, by Assistant Attorney General David D.
Larson, Jr., for Defendant-Appellee.*

HAMPSON, Judge.

Factual and Procedural Background

Cherry Jones (Plaintiff), by and through her General Guardian Jeffrey Jones, appeals from an Order entered 17 March 2023 by the Commissioner of the North Carolina Industrial Commission dismissing Plaintiff's appeal to the Full Commission with prejudice. The Record before us reflects the following:

On 8 October 2018, Plaintiff initiated this action by filing an affidavit with the North Carolina Industrial Commission (the Commission). Her claim was filed pursuant to the North Carolina State Tort Claims Act, stemming from a 6 October 2015 motor vehicle accident. Plaintiff alleged she was injured as a result of a negligently maintained and installed guardrail, which Plaintiff's vehicle struck during the accident.

On 17-18 November 2021, this matter came on for trial before Senior Deputy Commissioner Robert J. Harris. On 22 September 2022, the parties were served with a Decision and Order denying Plaintiff's claim. On 7 October 2022, Plaintiff filed a Motion to Reconsider the Decision and Order. On 17 October 2022, Plaintiff's Motion was denied. On 1 November 2022, Plaintiff filed Notice of Appeal to the Full Commission from the "Decision and Order entered on 22 September 2022 by Senior Deputy Commissioner Robert Harris[.]" On or about 9 November 2022, Defendant filed a Motion to Dismiss Plaintiff's appeal as untimely.

On 17 March 2023, Full Commission Vice-Chair Myra L. Griffin entered an Order concluding Plaintiff had failed to timely file notice of appeal to the Full Commission and dismissing Plaintiff's appeal with prejudice. On or about 14 April 2023, Plaintiff filed written Notice of Appeal to this Court.

Issue

The issue is whether the Industrial Commission properly dismissed Plaintiff's appeal as untimely.

Analysis

Our statutes provide review on appeal to this Court from decisions of the Industrial Commission “shall be 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). “As long as there is competent evidence in support of the Commission’s decision, it does not matter that there is evidence supporting a contrary finding.” *Simmons ex rel. Simmons v. Columbus Cnty. Bd. of Educ.*, 171 N.C. App. 725, 728, 615 S.E.2d 69, 72 (2005) (citing *Simmons v. N.C. Dep’t of Transp.*, 128 N.C. App. 402, 405, 496 S.E.2d 790, 793 (1998)). Thus, “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.” *Simmons*, 128 N.C. App. at 405-06, 496 S.E.2d at 793 (citation omitted).

Plaintiff brought this action pursuant to the North Carolina State Tort Claims Act (TCA). By enacting the TCA, “the General Assembly partially waived the sovereign immunity of the State to the extent that it consented that the State could be sued for injuries proximately caused by the negligence of a State employee acting within the scope of his employment.” *Zimmer v. N.C. Dep’t of Transp.*, 87 N.C. App. 132, 134, 360 S.E.2d 115, 117 (1987) (citation omitted). Consequently, our courts have consistently held the TCA “must be strictly construed and its terms must be

strictly adhered to.” *Etheridge v. Graham*, 14 N.C. App. 551, 553-54, 188 S.E.2d 551, 553 (1972); *see also Watson v. N.C. Dep’t of Corr.*, 47 N.C. App. 718, 722, 268 S.E.2d 546, 549 (1980), *disc. rev. denied*, 301 N.C. 239, 283 S.E.2d 135 (1980).

The TCA provides: “Upon determination of said claim the Commission shall notify all parties concerned in writing of its decision and either party shall have 15 days after receipt of such notice within which to file notice of appeal with the Industrial Commission.” N.C. Gen. Stat. § 143-292 (2021). The Tort Claims Rules adopted by the Industrial Commission specifically provide that a party may appeal the Deputy Commissioner’s decision to the Full Commission, and “[n]otice of appeal shall be made to the Commission within 15 days from the date when notice of the Deputy Commissioner’s Order or Decision and Order has been received by the appellant.” Tort Claims Rule 11 NCAC 23B .0302(a) (2019). These provisions both unambiguously impose a mandatory fifteen-day deadline to file notice of appeal to the Full Commission.

Plaintiff contends the Full Commission erred by finding the time to appeal was not tolled by Plaintiff’s filing of a Motion for Reconsideration. In support of this argument, Plaintiff consistently cites sources and precedent related to the North Carolina Workers’ Compensation Act. In this case, however, Plaintiff’s claim is governed by the TCA. Thus, holdings, rules, or interpretations regarding the Workers’ Compensation Act are inapplicable to Plaintiff’s claim.

Plaintiff also argues her Motion to Reconsider should serve to toll the fifteen-

day notice of appeal deadline because “there is nothing mentioned [in the TCA or Tort Claims Rules] that precludes tolling in the manner exercised by Plaintiff.” We are not persuaded.

“Statutory interpretation properly begins with an examination of the plain words of the statute.” *Belmont Ass’n, Inc. v. Farwig*, 381 N.C. 306, 310, 873 S.E.2d 486, 489 (2022) (quoting *Correll v. Div. of Soc. Servs.*, 332 N.C. 141, 144, 418 S.E.2d 232, 235 (1992)). Further, “[w]hen the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give the statute its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein.” *In re Banks*, 295 N.C. 236, 239, 244 S.E.2d 386, 388-89 (1978); *see also State v. Camp*, 286 N.C. 148, 151, 209 S.E.2d 754, 756 (1974) (“It is a well-settled principle of statutory construction that where a statute is intelligible without any additional words, no additional words may be supplied.”).

In this case, neither the text of the TCA nor the Tort Claims Rules contain any language contemplating tolling the time to file notice of appeal. Accordingly, we will not read in such a provision. Further, Plaintiff points to a tolling provision in the Workers' Compensation Act and its Rules in support of her contention. This, however, counsels against Plaintiff’s argument because it demonstrates that had the General Assembly or the Commission intended for a motion for reconsideration to toll the time to file notice of appeal in TCA cases, they would have included such a

provision. Absent language providing for tolling, we do not read the TCA or Tort Claims Rules as implicitly allowing tolling.

Plaintiff also contends the Commission should have granted her relief pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure and found her notice of appeal was timely. Rule 60(b) provides: “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding” for certain enumerated reasons. N.C. Gen. Stat. § 1A-1, Rule 60(b) (2021).

In this case, Plaintiff never filed a Rule 60(b) motion. Moreover, the Commission’s decision to find Plaintiff’s notice of appeal not timely was proper. In its Order, the Full Commission considered Plaintiff’s arguments regarding tolling and determined “Plaintiff failed to cite any relevant legal authority to support this assertion.” Further, the Full Commission determined Plaintiff had relied on the Workers’ Compensation Rules rather than the TCA or Tort Claims Rules, which were “the regulative framework relevant to the case at hand,” and which do not have a tolling provision. Thus, Plaintiff has not shown the Commission’s decision was unsupported by competent evidence or reason. Therefore, the Commission did not err in dismissing Plaintiff’s appeal with prejudice.

Conclusion

Accordingly, for the foregoing reasons, we affirm the Industrial Commission’s Order dismissing Plaintiff’s appeal with prejudice.

JONES V. N. C. DEPT' OF TRANSP.

Opinion of the Court

AFFIRMED.

Judges GRIFFIN and THOMPSON concur.

Report per Rule 30(e).