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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-876

Filed 7 May 2024

N.C. Industrial Commission, TA-27245

JULIUS WILLIAMS, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF ADULT CORRECTION f/k/a NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by Plaintiff from decision and order entered 21 June 2023 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 21 February 2024.

Julius Williams, pro-se, Plaintiff-Appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General Gregory L. Rouse, II, for the State.

WOOD, Judge.

Julius Williams (“Plaintiff”) appeals a decision and order of the Full Commission of the North Carolina Industrial Commission (“the Commission”) concluding Plaintiff was entitled to an award of \$500.00 in damages after a finding of negligence by employees of the North Carolina Department of Public Safety (“Defendant”). We affirm the Decision and Order of the Commission.

I. Factual and Procedural History

At the time relevant to this action, Plaintiff was housed as an inmate at Orange Correctional Center and Defendant and its employees were acting within their scope of employment. On 10 August 2018, between 8:30 p.m. and 9:30 p.m., Plaintiff was escorted by Sergeant Kirkland and Corporal Warren to the shower area. That day, Plaintiff informed Corporals Kirkland and Warren of his concerns about the conditions of the shower floor, specifically, the lack of a slip-proof shower mat inside of the shower stall. He requested the slip-proof mat, located directly outside of the shower stall he was using, be moved inside the shower. His request was ignored. Plaintiff previously made this request to Corporals Kirkland and Warren on multiple occasions, but his request was denied each time.

Plaintiff was concerned about slippery hazardous conditions inside the shower. The floor of the shower was made of smooth glazed tiles and was sloped and beveled downward at approximately a twenty-five-degree angle to allow for drainage. There was not a non-slip mat on the shower floor nor any safety handrails on the shower walls. The mats located outside the shower stalls were for inmate safety because water would run onto the floor outside of the shower.

After being escorted to the shower on 10 August 2018, Plaintiff attempted to clean his left leg by standing on his right leg and lifting his left leg up. While Plaintiff was standing on his right leg, he slipped, fell backwards, and hit the back of his head against the tile wall behind him. While falling, Plaintiff's right wrist struck the back

Opinion of the Court

of the tile wall and he fell onto the floor beneath him, resulting in injuries to his lower back and right wrist. Plaintiff yelled for help until Corporals Warren and Kirkland arrived at the scene and were informed by Plaintiff that he had slipped and fallen and was unable to move. Subsequently, EMS arrived and transported him by ambulance to UNC Hospital in Chapel Hill. At the hospital, Plaintiff told the doctor he had pain in the back of his head that radiated down his neck to his lower back, as well as pain in his wrist. Over the next few weeks Plaintiff had continuous and consistent pain.

On 24 September 2018, Plaintiff was diagnosed with a ganglion cyst in his right wrist. Over the next few months, Plaintiff frequently visited Defendant's medical department due to continued pain in his back and wrist. On 1 February 2019, an MRI was conducted on Plaintiff's right wrist and on 27 February 2019, Plaintiff underwent an MRI of his lumbar spine, which revealed bulging discs and pinched nerves. On 30 May 2019 Plaintiff was seen by a specialist at UNC Neurosurgery who recommended physical therapy treatment. However, the medical advisors at the Department of Public Safety ("DPS") informed Plaintiff prior to his appointment with UNC that he would have to choose between participating in therapy or undergoing the wrist surgery first, so Plaintiff chose to delay the recommended physical therapy treatment in favor of the surgery. In June 2019, doctors successfully performed surgery on Plaintiff to remove the ganglion cyst. It

took approximately one year thereafter for Plaintiff's symptoms to resolve, but he still had right wrist soreness as of March 2022.

On 17 October 2018, Plaintiff filed this State Tort Claim action with the North Carolina Industrial Commission alleging Defendant's negligence caused him to suffer damages as the result of a slip-and-fall in the shower. On 4 December 2018, Defendant filed responsive pleadings and a motion to dismiss the action.

The trial was held on 17 March 2022, and Senior Deputy Commissioner Robert J. Harris filed an Order denying Plaintiff's claim on 21 October 2022. That same day, Plaintiff appealed the Order to the Full Commission panel. On 21 June 2023, the Full Commission filed a Decision and Order reversing the Deputy Commissioner's decision and held, pursuant to N.C. Gen. Stat. § 143-219, Plaintiff was entitled to an award of \$500.00 in damages after a finding of negligence. The Full Commission found "Defendant's negligence directly and proximately caused Plaintiff to suffer temporary low back, neck, and right wrist pain" as a result of the slip-and-fall and Defendant failed to prove Plaintiff was contributorily negligent. The Full Commission further found the award of damages was limited because Plaintiff did not present expert medical testimony "to prove that his ganglion cyst, lumbar radiculopathy, lumbar spondylosis, and chronic lumbago were the proximate result of Defendant's negligence. On 3 July 2023, Plaintiff filed a Notice of Appeal to this Court, alleging the Full Commission erred in its award of \$500.00.

II. Standard of Review

An appeal from the Full Commission of the Industrial Commission's decision under the Tort Claims Act "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 (2023). Thus, if the findings of fact are supported by competent evidence, it does not matter if there is evidence supporting a contrary finding. *Simmons v. North Carolina Dep't of. Transp.*, 128 N.C. App. 402, 405-406, 496 S.E.2d 790, 793 (1998). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding[s]." *Matter of Collins*, 251 N.C. App. 764, 766, 797 S.E.2d 28, 31 (2017) (citation and internal quotation marks omitted). The Commission's conclusions of law are reviewed *de novo*. *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004). "Under a *de novo* review, [this C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Fields v. H&E Equip. Servs., LLC*, 240 N.C. App. 483, 486, 771 S.E.2d 791, 793-94 (2015) (citation and internal quotation marks omitted). Plaintiff does not challenge the Full Commission's findings of fact, therefore "the findings are 'presumed to be correct.'" *Okwara v. Dillard Dep't Stores, Inc.*, 136 N.C. App. 587, 591, 525 S.E.2d 481, 484 (2000) (citation omitted). "Our review, therefore, is limited to the question of whether the trial court's findings of fact, which are presumed to be supported by competent evidence, support its conclusions of law and judgment." *Id.* at 591-592, 525 S.E.2d at 484 (citation omitted).

III. Analysis

Plaintiff contends: (1) the Commission erred when it awarded Plaintiff only \$500.00 in damages; and (2) given his testimony and extensive medical records, Plaintiff is entitled to an award of \$25,000.00, despite his failure to present expert medical testimony.

Under N.C. Gen. Stat. § 143-291(a), to establish a claim for negligence under the Tort Claims Act, a Plaintiff must show, “(1) [defendant] owed plaintiff a duty of care; (2) the actions, or failure to act, by [defendant]’s named employee breached that duty; (3) this breach was the actual and proximate cause of plaintiff’s injury; and (4) plaintiff suffered damages as a result of such breach.” *Simmons v. North Carolina Dep’t of Transp.*, 128 N.C. App. at 406, 496 S.E.2d at 793. Plaintiff bears the burden of proof of establishing all elements 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).

To establish damages, the burden of proof is on the party seeking them. *Olivetti Corp. v. Ames Business Systems, Inc.*, 319 N.C. 534, 547, 356 S.E.2d 578, 586 (1987) (citation omitted). The amount of damages is left to the discretion of the Commission. N.C. Gen. Stat. § 143-291(2023); *Jackson v. N.C. Dep’t of Crime Control and Pub. Safety*, 97 N.C. App. 425, 432, 388 S.E.2d 770, 774 (1990). Compensatory damages include general damages for “mental or physical pain and suffering, inconvenience, or loss of enjoyment which cannot be definitively measured in monetary terms,” and

special damages, which “are usually synonymous with pecuniary loss.” *Iadanza v. Harper*, 169 N.C. App. 776, 779, 611 S.E.2d 217, 221 (2005) (citation omitted).

“Where ‘a layman can . . . do not more than indulge in mere speculation (as to the cause of a physical condition), there is no proper foundation for a finding by the trier without expert medical testimony.” *Gillikin v. Burbage*, 263 N.C. 317, 325, 139 S.E.2d 753, 760 (1965) (citations omitted). However, “[t]here are many instances in which the facts in evidence are such that any layman of average intelligence and experience would know what caused the injuries complained of.” *Id.* (citation omitted).

The Full Commission concluded,

6. In the present matter, the Full Commission concludes that Plaintiff presented sufficient evidence, through his own testimony, that Defendant’s negligence directly and proximately caused Plaintiff to suffer temporary low back, neck, and right wrist pain as a result of the August 10, 2018, slip-and-fall. The cause of Plaintiff’s ganglion cyst, lumbar radiculopathy, lumbar spondylosis, and chronic lumbago, however, is a complicated medical question that requires expert medical testimony. As Plaintiff has not presented expert testimony regarding these conditions, Plaintiff has failed to prove that his ganglion cyst, lumbar radiculopathy, lumbar spondylosis, and chronic lumbago were the proximate result of Defendant’s negligence.

9. ... In the present matter, Plaintiff is entitled to a reasonable award of general damages in the amount of \$500.00 for his pain and suffering. Plaintiff has failed to show that Defendant’s breach was an actual and proximate cause of his back conditions or ganglion cyst, and as such, he is not entitled to damages for those alleged conditions.

Opinion of the Court

The only evidence Plaintiff brought forth to show that Defendant's negligence directly and proximately caused Plaintiff's injuries was his own testimony and medical records. Plaintiff's Exhibit 2, Plaintiff's medical bills, show his medical expenses were fully paid by the Department of Public Safety and by Contractual Write-Offs. Plaintiff failed to support his position for more specific, or greater, damages with any statutory or case law authority. Plaintiff did not put forth any evidence that the Commission's calculation of damages was in error.

We hold that the Full Commission did not err in its award to Plaintiff. The Commission found, through Plaintiff's own testimony, that sufficient evidence was presented of pain and suffering from the slip-and-fall incident. However, without expert testimony regarding his ganglion cyst, lumbar radiculopathy, lumbar spondylosis, and chronic lumbago, there was insufficient evidence as to the cause of those conditions such that the Commission could award damages for those conditions. The only evidence of damages was the Plaintiff's request for \$25,000.00, which was unsupported by the testimony and the record.

Therefore, Plaintiff failed to meet his burden of proof to establish damages, other than pain and suffering, when he did not present any evidence other than his own testimony. Further, since the amount of damages awarded rests within the discretion of the Commission, the award should not be disturbed.

IV. Conclusion

We conclude that the Full Commission's Decision and Order to award \$500.00

Opinion of the Court

in general damages to Plaintiff for pain and suffering is supported by competent evidence. Thus, we affirm the Order and award of the Full Commission.

AFFIRMED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).