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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-769

Filed 16 April 2025

N.C. Industrial Commission, No. TA-30717

LYNETTE MELVIN, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE, Defendant.

Appeal by Plaintiff from order entered 23 May 2024 by the North Carolina Industrial Commission. Heard in the Court of Appeals 12 February 2025.

Lynette Melvin, pro se, Plaintiff-Appellant.

Attorney General Jeff Jackson, by Special Deputy Attorney General Christopher J. Stipes, for Defendant-Appellee.

COLLINS, Judge.

Plaintiff Lynette Melvin appeals an order dismissing her negligence claim against Defendant North Carolina Department of the Secretary of State brought under the State Tort Claims Act. Plaintiff argues that the North Carolina Industrial Commission erred by dismissing her claim pursuant to Rule 12(b)(6), failing to consider her supplemental pleadings to her affidavit, and dismissing her claim despite the transcript being incomplete. We find no merit to Plaintiff's arguments

and affirm the order.

I. Background

Plaintiff filed a tort claims affidavit with the Industrial Commission alleging that Defendant acted negligently by failing to conduct a criminal investigation into an allegedly fraudulent notarial act. Defendant moved to dismiss the claim under Rule 12(b)(6), arguing that negligent investigation is not a valid claim under the State Torts Claims Act and that Plaintiff's allegations failed to sufficiently plead negligence. Plaintiff opposed Defendant's motion to dismiss and included a document wherein Plaintiff attempted to supplement and clarify her allegations. A deputy commissioner dismissed Plaintiff's affidavit with prejudice pursuant to Rule 12(b)(6).

Plaintiff appealed to the Full Commission. Plaintiff also filed a motion to amend the transcript because the transcript was missing forty-five seconds of transcribed audio. The Commission determined Plaintiff's motion to amend the transcript was moot after an amended transcript had been provided.

The Commission granted Defendant's motion to dismiss pursuant to Rule 12(b)(6) because negligent investigation is not a recognized tort under the State Tort Claims Act. The Commission also determined that Plaintiff's allegations, even if taken as true, were insufficient to establish negligence. Plaintiff appealed to this Court.

II. Discussion

Plaintiff first contends that the Commission erred by granting Defendant's

motion to dismiss pursuant to Rule 12(b)(6). We disagree.

A. Motion to Dismiss

Dismissal under Rule 12(b)(6) is proper when the complaint on its face (1) reveals that no law supports the claim, (2) reveals the absence of facts sufficient to make a valid claim, or (3) discloses some fact that necessarily defeats the claim. *Asheville Lakeview Props., LLC v. Lake View Park Comm'n, Inc.*, 254 N.C. App. 348, 352 (2017) (citation omitted). “This Court must conduct a de novo review of the pleadings to determine their legal sufficiency and to determine whether the trial court’s ruling on the motion to dismiss was correct.” *Williams v. N.C. Dep’t of Justice, Crim. Standards Div.*, 273 N.C. App. 209, 213 (2024) (citation omitted); N.C. Gen. Stat. § 143-291 (2024) (the North Carolina Industrial Commission is considered a court for the purpose of hearing tort claims against agencies of the state).

1. Rule 12(b)(6) Dismissal

Under the State Torts Claims Act, the Commission may hear claims arising from the negligent act of any officer, employee, involuntary servant or agent of the State acting within the scope of his employment. *Guthrie v. N.C. State Ports Auth.*, 307 N.C. 522, 536 (1983) (citation omitted). However, the claims must arise from “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.” *Id.*

[T]o establish negligence for purposes of the State Tort Claims Act, [a] plaintiff must show that: (1) [the] defendant failed to exercise due care in the performance of some legal

duty owed to [the] plaintiff under the circumstances; and
(2) the negligent breach of such duty was the proximate
cause of the injury.

Cedarbrook Residential Ctr., Inc. v. N.C. Dep't of Health and Hum. Servs., 383 N.C.
31, 49 (2022) (quotation marks and citation omitted).

Here, Plaintiff's affidavit alleges that the Secretary of State was negligent by conducting only a non-criminal investigation into a certain notarial act and by failing to commission a criminal fraud investigator to investigate the act. "Private persons do not, of course, exercise regulatory power and, therefore, cannot be held liable for engaging in regulatory activities in a negligent manner." *Id.* at 50. Therefore, the State Tort Claims Act precludes a finding that Defendant is liable to Plaintiff for what amounts to negligent regulation. *Id.* at 51. Accordingly, Plaintiff has failed to sufficiently allege facts that support a valid claim under the State Tort Claims Act and the Commission did not err by dismissing Plaintiff's claim pursuant to Rule 12(b)(6).

B. Supplemental Pleadings

Plaintiff next contends that the Commission erred by not considering her supplemental pleadings to her affidavit. We disagree.

A party may amend his pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 30 days after it was served. Otherwise[,] a party may amend his pleading only by leave of court or by written consent of the

adverse party.

N.C. Gen. Stat. § 1A-1, Rule 15(a) (2024).

Here, Defendant filed a motion to dismiss before Plaintiff moved to supplement her pleadings. Therefore, Plaintiff lost her right to amend her pleadings as a matter of course. Moreover, Plaintiff's pleading was not a pleading to which a responsive pleading was not permitted. Thus, Plaintiff was required to request and obtain leave of court or written consent from Defendant to supplement her pleadings. Plaintiff did neither. As a result, the Commission did not err by not considering Plaintiff's supplemental pleading.

C. Transcript

Plaintiff also contends that the Commission erred by dismissing her claim because approximately forty-five seconds of the audio recording of the pre-trial hearing, and the corresponding transcribed audio, were missing. Even if proceeding without this information was somehow erroneous, Plaintiff makes no argument that she was prejudiced. *See* N.C. Gen. Stat. § 1A-1, Rule 61 (2024) (an error by itself does not require reversal; appellant must demonstrate that the error was prejudicial). Plaintiff has failed to carry her burden to show prejudice and her argument lacks merit.

III. Conclusion

The Commission did not err by dismissing Plaintiff's claim pursuant to Rule 12(b)(6), failing to consider her supplemental pleadings to her affidavit, or dismissing

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her claim despite the transcript being incomplete. The Commission's order is affirmed.

AFFIRMED.

Chief Judge DILLON and Judge FLOOD concur.

Report per Rule 30(e).