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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-733

Filed 7 May 2025

N.C. Industrial Commission, Nos. TA029615, TA029616, TA029617

SUSAN W. VAUGHAN, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES;  
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS; OFFICE OF  
INDIGENT DEFENSE SERVICES, Defendants.

Appeal by plaintiff from order entered 11 March 2024 by the North Carolina  
Industrial Commission. Heard in the Court of Appeals 9 April 2025.

*Sarah W. Vaughan, pro se plaintiff-appellant.*

*Attorney General Jeff Jackson, by Special Deputy Attorney General Carl  
Newman & Assistant Attorney General Hailey M. Cleek, for defendants-  
appellees.*

ARROWOOD, Judge.

Susan Vaughan (“plaintiff”) appeals from the North Carolina Industrial  
Commission’s (“the Commission”) order dismissing plaintiff’s claims made under the  
Tort Claims Act with prejudice. On appeal, plaintiff argues the Commission: (1)  
erred in finding that her claims were barred by the statute of limitations under the

Tort Claims Act and (2) erred in not applying other legal theories to set aside the applicable statute of limitations. For the following reasons, we affirm the North Carolina Industrial Commission's dismissal of plaintiff's claims.

I. Background

Plaintiff brought three tort claims against the North Carolina Department of Health and Human Services ("NCDHHS"), the North Carolina Administrative Office of the Courts ("NCAOC") and the Office of Indigent Defense Services ("IDS") from actions beginning in September 2013. Plaintiff alleged that in September 2013, Kathlyn Romm, the Director of the Currituck County Department of Social Services ("DSS"), and Courtney Hull, the attorney for DSS, colluded to defame plaintiff by bringing criminal charges against her for serious child neglect committed against her grandson. Plaintiff alleged that DSS failed to inform her of the grounds for which she was accused of serious child neglect and failed to notify her of her right to file a petition for judicial review.

Plaintiff filed a petition for judicial review of DSS's determination of serious child neglect in October 2013. In November 2013, Ms. Romm and Ms. Hull offered plaintiff a plea deal in which DSS would drop the serious child neglect charge if plaintiff would plead to the lesser charge of simple neglect. Plaintiff agreed to the plea deal, however, she asserted later during a custody hearing for her grandson that Ms. Romm and Ms. Hull used evidence of plaintiff's conviction of neglect as proof she was unfit to adopt her grandson. Plaintiff was denied custody and her grandson was

eventually adopted by a third-party in 2016.

On 29 September 2018, in a separate federal lawsuit that plaintiff filed surrounding the same events, plaintiff discovered that her petition for judicial review in October 2013 was never calendared because the Currituck County Clerk of Court was told that the serious child neglect charges had been dropped. Plaintiff then alleged that at the time she pleaded guilty for simple child neglect, Ms. Romm and Ms. Hull negligently failed to inform her that the serious child neglect charge had already been dropped and led plaintiff to believe she was still under threat of prosecution.

On 28 September 2021, pursuant to N.C.G.S. § 143-291, plaintiff filed three separate complaints with the North Carolina Industrial Commission. Along with her complaints, plaintiff filed three separate petitions to appeal as an indigent person.<sup>1</sup> On 8 October 2021, plaintiff filed an amended complaint against NCDHHS, and specifically DSS, alleging Ms. Romm and Ms. Hull colluded to defame plaintiff by promoting false allegations of child neglect, causing plaintiff to lose custody of her grandchild. Additionally, plaintiff claimed DSS failed to inform her of the grounds for the neglect accusation and failed to inform her of her right to petition for review. Finally, plaintiff alleged that DSS negligently allowed her grandson to be adopted by someone who, plaintiff discovered in June 2020, had several driving while impaired

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<sup>1</sup> These complaints were rejected on 28 September 2021 because plaintiff submitted petitions to appeal as an indigent person rather than petitions to sue as an indigent person.

incidents. For this allegation, plaintiff claimed that NCDHHS negligently failed to perform a criminal background check on the adopter and to train and supervise its agents and employees in the adoption process.

On 8 October 2021, plaintiff also filed an amended complaint against the NCAOC alleging the county clerk refused to calendar a hearing date for her timely and properly filed petition for judicial review. Plaintiff alleged that this error caused her financial loss and loss of any contact with her grandson.

Finally, on 8 October 2021, plaintiff filed an amended complaint against IDS alleging her assigned counsel, Meader Harriss, was colluding with Ms. Romm and Ms. Hull at DSS and he fraudulently induced her to sign the plea agreement for simple neglect.

The parties agreed to consolidate all three complaints for the purposes of addressing any motions on the complaints. On 19 January 2022, the State<sup>2</sup> filed a motion to dismiss all three of plaintiff's complaints under Rules 12(b)(1), (2), and (6) of the North Carolina Rules of Civil Procedure, specifically arguing that plaintiff's claims were barred by the statute of limitations. Furthermore, the State argued plaintiff's claims lack subject matter and personal jurisdiction because her claims were intentional torts and the Commission does not have jurisdiction over claims based on intentional torts. Rather, the State argued the Commission can only hear

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<sup>2</sup> "The State" refers to defendants collectively.

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negligence claims. Additionally, the State argued plaintiff failed to state a claim upon which relief can be granted because public official immunity precludes suits against public officials acting within the scope of their office. Finally, the State argued the plaintiff's claims, taken as true, were insufficient to establish a cause of action for negligence and should be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

A hearing on the State's motion to dismiss took place on 15 June 2022 before Deputy Commissioner Layla T. Santa Rosa. During the hearing, the State primarily argued that all three of plaintiff's claims are barred by the statute of limitations and further argued that several of the actors plaintiff brought a complaint against were protected by public official immunity. On 27 April 2023, Deputy Commissioner Santa Rosa issued an order dismissing plaintiff's claims. Although Deputy Commissioner Santa Rosa acknowledged that plaintiff alleged sufficient facts to establish jurisdiction, the State's motions to dismiss were ultimately granted because plaintiff's claims were barred by the three-year statute of limitations.

In addressing the State's motion to dismiss under Rule 12(b)(6) on the grounds that plaintiff failed to file her claim within three years of the date of accrual for the cause of action, Deputy Commissioner Santa Rosa made several findings of fact. First, Deputy Commissioner Santa Rosa found that because plaintiff's affidavits submitted on 28 September 2021 were not accepted for filing because they were not accompanied by the filing fees or a petition to sue as an indigent, they were considered

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properly filed when plaintiff re-filed the claims on 8 October 2021 with a petition to sue as an indigent. Thus, plaintiff's claims must have accrued no earlier than 8 October 2018. Because plaintiff's tort claim did not accrue until 29 September 2018, Deputy Commissioner Santa Rosa dismissed her claims with prejudice pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. Plaintiff filed an appeal on the Commission's dismissal on 28 June 2023 for a full Commission review.

A full panel from the Commission entered an order on 11 March 2024 affirming the Commission's previous dismissal of all three of plaintiff's claims. The full panel determined that Rule 103 of the Tort Claims Act provided that plaintiff's claim was not officially filed until the claim was accompanied by payment for the filing fee or a Petition to Sue as an Indigent. The Panel found that plaintiff had not submitted the appropriate documentation until 8 October 2021. Accordingly, the Panel stated that because plaintiff did not properly file her claims on 28 September 2021, they affirmed the dismissal. On 3 April 2024, plaintiff filed written notice of appeal.

II. Discussion

On appeal, plaintiff argues the Commission: (1) erred in finding that her claims were barred by the statute of limitations under the Tort Claims Act and (2) erred in not applying other legal theories to set aside the applicable statute of limitations. We address each argument in turn.

A. Statute of Limitations

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Plaintiff argues on appeal that the trial court erred in determining when plaintiff's claims accrued for the purposes of determining if plaintiff's claims were barred by the statute of limitations. We disagree.

This Court reviews a decision made by the Commission under the Tort Claims Act “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.G.S. § 143-293 (2024). When considering a motion to dismiss under Rule 12(b)(6) of the Rules of Civil Procedure, “[t]he question for the court is whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory[.]” *Grant Const. Co. v. McRae*, 146 N.C. App. 370, 373 (2001) (internal quotations and citations omitted). We review an order allowing a motion to dismiss for failure to state a claim de novo. *See Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400 (2003).

“The statute of limitations may be raised as a defense by a Rule 12(b)(6) motion to dismiss if it appears on the face of the complaint that such a statute bars the plaintiff's action.” *Laster v. Francis*, 199 N.C. App. 572, 576 (2009) (citation omitted). “After a defendant has raised this affirmative defense, the burden shifts to the plaintiff to prove that he commenced the action within the statutory period.” *Nanny's Korner Day Care Ctr., Inc. v. N.C. Dep't of Health and Human Servs.*, 269 N.C. App. 269, 271 (2020) (“*Nanny's Korner I*”).

Under the Tort Claims Act, “[a]ll claims against any and all State departments, institutions, and agencies shall henceforth be forever barred unless a claim be *filed* with the Industrial Commission within three years after the accrual of such claim[.]” N.C.G.S. § 143-299 (2024) (emphasis added). “The accrual of the statute of limitations period typically begins when the plaintiff is injured or discovers he or she has been injured.” *Nanny’s Korner I*, 269 N.C. App. at 271 (internal citation omitted). Furthermore, “discovery statutes” allow a statute of limitations to “not begin to run until plaintiff discovers, *or in the exercise of reasonable care, should have discovered*, that he was injured as a result of defendant’s wrongdoing.” *Black v. Littlejohn*, 312 N.C. 626, 642 (1985). Under Rule 103 of the North Carolina Administrative Code,

(a) No tort claim shall be accepted for filing with the Commission unless the claim is accompanied by an attorney's check, certified check, money order, or electronic transfer of funds in payment of a filing fee in an amount equal to the filing fee required for the filing of a civil action in the Superior Court division of the General Court of Justice.

(b) The provisions of Paragraph (a) of this Rule notwithstanding, a tort claim that is accompanied by a Petition to Sue as an Indigent shall be accepted for filing upon the date of its receipt.

11 NCAC 23B.0103. Furthermore, N.C.G.S. § 143-291.2(b) requires the Commission to reject a proposed Tort Claims Act affidavit by “indigent persons” unless “each claim . . . complies with all statutory and administrative requirements applicable to the filing of civil actions[.]” N.C.G.S. § 143-291.2(b) (2024).



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Here, plaintiff argues the Commission erred in rejecting plaintiff's affidavits that were filed on 28 September 2021. We disagree. Plaintiff originally filed three affidavits on 28 September 2021, asserting claims for her injuries against NCDHHS, NCAOC, and IDS. These affidavits were properly rejected by the Commission because the affidavits were not submitted with the appropriate filing fee or a Petition to Sue as an Indigent. Rather, plaintiff submitted her affidavits with a Petition to Appeal as an Indigent Person. Plaintiff then resubmitted her affidavits with the appropriate Petition to Sue as an Indigent, however, she did not file these affidavits until 8 October 2021. Because Rule 103 of the North Carolina Administrative Code dictates that claims cannot be accepted unless filed with the filing fee or the appropriate Petition to Sue as an Indigent form, the Commission properly deemed plaintiff's complaint as filed on 8 October 2021. Accordingly, the Commission also properly held that plaintiff's claims must have accrued no earlier than 8 October 2018.

The basis of plaintiff's complaint is that she discovered, on 28 September 2018, that when she originally filed a petition for judicial review of DSS's determination of serious child neglect that her hearing was not calendared because the charges for serious child neglect were dropped. Plaintiff argued that because she did not discover the hearing was not calendared until 28 September 2018, and the lack of a hearing on her request for judicial review caused her to lose custody of her grandson, she had until 28 September 2021 to file her complaints. However, even if plaintiff's claims

accrued on 28 September 2018, she still did not properly file the claims until 8 October 2021 pursuant to N.C.G.S. § 143-291.2(b).

Even assuming arguendo plaintiff's claim was properly filed on 28 September 2021, plaintiff's claims actually accrued much earlier than 28 September 2018. First, plaintiff's claims against NCDHHS and DSS stem from the handling of the serious child neglect charges brought against plaintiff. Plaintiff alleged that DSS failed to inform plaintiff of the grounds for the serious child neglect charges against her. In exercising reasonable care, plaintiff should have discovered, when the charges were initially brought against her, that she was never informed of the basis for this charge.

Furthermore, plaintiff contends that NCDHHS and DSS were negligent in allowing her grandson's adoptive father to adopt him given the father had a "20-year history of reckless driving, driving while impaired and driving without a license." Plaintiff did not make this discovery until June 2020. However, plaintiff was aware of the adoption of her grandson when it occurred in 2016, which is the injury she seeks to correct. Her discovery of the adoptive father's previous problems is not a further injury that tolls the statute of limitations, but rather is an additional damage arising out of the injury of the adoption. Accordingly, for plaintiff's claim against NCDHHS, her cause of action accrued in 2013, when she should have discovered that she was never informed of the basis for the charges.

Second, for plaintiff's claim against NCAOC, plaintiff alleged that NCAOC failed to calendar her petition for judicial review, which should have happened before

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November 2013. Plaintiff should have known that her petition for judicial review was not calendared for a hearing within a reasonable timeframe after plaintiff filed her request for judicial review in October 2013, and not knowing the reason for why the hearing was not calendared does not extend the time allowed for her to file her complaint with the Commission. Plaintiff should have filed her complaint within three years after November 2013 in order to safely file within the three-year statute of limitations. Accordingly, the Commission properly dismissed plaintiff's claim against NCAOC.

Finally, plaintiff brought a claim against IDS over her appointed counsel's performance during DSS's case of serious child neglect against plaintiff. Specifically, plaintiff argued Mr. Harriss improperly instructed her to accept the simple neglect charges and failed to inform her that the charges for serious child neglect had been dropped. Plaintiff's cause of action against IDS accrued when she had been damaged by the stipulation to simple neglect charges. In this case, plaintiff argues that because she stipulated to simple child neglect, she was unable to gain custody of her grandson, who was adopted in 2016. Thus, plaintiff's injury would have accrued in 2016, when her petition for custody of her grandson was denied. Accordingly, the Commission properly dismissed plaintiff's claim against IDS because plaintiff brought her claim against IDS five years after the claim accrued.

B. Plaintiff's Remaining Claims

Plaintiff further argues on appeal that the Commission failed to consider

alternate grounds, such as doctrines of equitable tolling and estoppel, continued wrong, negligence per se, and N.C.G.S. § 1-52(9) in determining when plaintiff's claims accrued. We disagree.

Plaintiff argues on appeal that equitable estoppel should toll her claim because she filed these complaints shortly after her federal lawsuit arising out of the same facts concluded. Equitable estoppel arises “when a party has been induced by another’s acts to believe that certain facts exist, and that party rightfully relies and acts on that belief to his detriment.” *Glynn v. Wilson Medical Center*, 236 N.C. App. 42, 53 (2014) (citation omitted). Furthermore, to adequately plead equitable estoppel, the plaintiff must allege: “(1) conduct on the part of the party sought to be estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct will be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts.” *Robinson v. Bridgestone/Firestone North Am. Tire, L.L.C.*, 209 N.C. App. 310, 319 (2011). Furthermore, a plaintiff must show that they lacked the means of ascertaining the real facts and relied on defendant’s conduct to their detriment. *See Johnson Neurological Clinic, Inc. v. Kirkman*, 121 N.C. App. 326, 332–33 (1996).

Here, plaintiff argues her claims should be equitably tolled because she was not aware of the *reason* for why her petition for judicial review was never calendared. However, plaintiff was on notice that her hearing was never calendared when a reasonable time had passed after her initial petition was submitted in October 2013.

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Furthermore, plaintiff knew she never had a hearing on her petition and thus could have inquired at any time as to the reason why her hearing was never calendared. Although plaintiff learned new facts on why her hearing was not calendared in September 2018, she knew, or reasonably should have known that she suffered a legal injury in 2013 when her hearing was never scheduled. Thus, because plaintiff had the means of ascertaining the real facts as to why her hearing was never calendared, the Commission properly did not consider equitable tolling and estoppel in dismissing plaintiff's claims.

Plaintiff further argues that the Commission should have considered N.C.G.S. § 1-52(9) before dismissing her claims. This statute reads: "For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake." N.C.G.S. § 1-52(9). Here, plaintiff's claim against NCDHHS and DSS is for negligence in not calendaring her hearing and for the adoption of her grandson, not for fraud on the part of DSS. Second, plaintiff did not discover the facts surrounding why her hearing was not calendared until 28 September 2018. However, as stated earlier, because her complaint before the Commission was not properly filed until 8 October 2021, her claim is still barred by the statute of limitations. Accordingly, the Commission properly did not consider N.C.G.S. § 1-52(9) in dismissing plaintiff's claims.

Finally, plaintiff contends that the continuing wrong doctrine also tolls the

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accrual date for her claims. Plaintiff makes this argument for the first time on appeal, thus it is not preserved before this Court. The continuing wrong doctrine states that the “statute of limitations does not begin to run until the violative act ceases.” *Williams v. Blue Cross Blue Shield of N.C.*, 357 N.C. 170, 179 (2003). Furthermore, “[a] continuing violation is occasioned by continual unlawful acts, not by continual ill effects from an original violation.” *Id.* (citation omitted). Here, plaintiff contends that she has continued to suffer because “agents violated a statute enacted to protect children and their family members’ rights[.]” Plaintiff’s argument fails because she has not alleged sufficient facts to show that NCDHHS and DSS agents have continued to perform violative acts that have caused her harm. Rather, the only violative act she alleges was committed against her occurred in 2016, when her grandson was adopted. Thus, the theory of continued wrong does not toll the accrual date of plaintiff’s injury past 2016, and plaintiff’s claim was still untimely and correctly barred by the statute of limitations for tort claims.

III. Conclusion

For the foregoing reasons, we affirm the North Carolina Industrial Commission’s order dismissing plaintiff’s claims.

AFFIRMED.

Judges WOOD and FREEMAN concur.

Report per Rule 30(e).