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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-157

No. COA19-430

Filed 20 April 2021

Industrial Commission, No. TA-26062

ERNEST NICHOLS, Plaintiff,

v.

NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS AND THE
SUPREME COURT OF NORTH CAROLINA, Defendants.

Appeal by plaintiff from order of the Industrial Commission entered 27
November 2018. Heard in the Court of Appeals 14 April 2020.

Ernest James Nichols, pro se, plaintiff-appellant

*Attorney General Joshua H. Stein, by Assistant Attorney General Barry H.
Bloch, for defendants-appellees.*

STROUD, Chief Judge.

¶ 1 Plaintiff appeals from a dismissal of his tort claim by the Full Industrial
Commission. Plaintiff alleged Justice Cheri Beasley of the North Carolina Supreme
Court committed an act of negligence by denying his Petition for Writ of Habeas
Corpus in 2015. We affirm the order of the Industrial Commission.

I. Background

¶ 2 Plaintiff is an inmate in the custody of the Department of Public Safety. On

29 December 2016, the Industrial Commission received a tort claim alleging, “On or about August 20, 2015 Cheri Beasley, a justice on the Supreme Court of North Carolina, committed common law negligence by failing to provide proof of trial court’s jurisdiction over the subject matter for case ‘09-CRS-247949 (Meck. County).” “[Justice] Beasley breached that duty by denying the Petition for Writ of Habeas Corpus and failing to provide proof of the trial court’s jurisdiction over the subject matter.”¹

¶ 3

On 14 November 2017, a special deputy commissioner entered an order dismissing Plaintiff’s claim with prejudice for failure to state a claim for negligence upon which relief could be granted based upon the doctrine of judicial immunity. Plaintiff appealed to the Full Commission. The Full Commission affirmed the deputy commissioner’s order and dismissed Plaintiff’s claims with prejudice. Plaintiff appeals to this Court.

II. Standard of Review

Under the Tort Claims Act, “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.” In

¹ We note that the Order denying Plaintiff’s Petition for Habeas Corpus was signed by Justice Beasley, but she signed on behalf of the unanimous Supreme Court, with exception of Justice Ervin who recused.

a proceeding under the Tort Claims Act, “[f]indings of fact by the Commission, if supported by competent evidence, are conclusive on appeal even though there is evidence which would support a contrary finding.” “On appeal, this Court ‘does not have the right to weigh the evidence and decide the issue on the basis of its weight. The Court’s duty goes no further than to determine whether the record contains any evidence tending to support the finding.’”

Fennell v. N.C. Dep’t of Crime Control & Pub. Safety, 145 N.C. App. 584, 589-90, 551 S.E.2d 486, 490 (2001) (alteration in original) (citations omitted).

III. Analysis

¶ 4

Plaintiff argues Justice Beasley did not have judicial immunity “for actions taken in the ‘complete absence of all jurisdiction.’” *Bare v. Atwood*, 204 N.C. App. 310, 314, 693 S.E.2d 746, 750 (2010). He contends “[Justice] Beasley committed negligence in issuing an Order when the case law establishes a clear duty to provide proof of jurisdiction.”

Under the Tort Claims Act, jurisdiction is vested in the Industrial Commission to hear claims against state departments, institutions and agencies for personal injuries or damages sustained by any person as a result of the negligence of a state officer, agent or employee acting within the scope of his employment. The Industrial Commission must decide whether the alleged wrong:

[A]rose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service,

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agency or authority, under 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 . .

..
The Tort Claims Act embraces only claims against state agencies.

Frazier v. Murray, 135 N.C. App. 43, 47, 519 S.E.2d 525, 528 (1999) (alteration in original) (citations omitted). “It is well established that ‘[a] judge of a court of this State is not subject to civil action for errors committed in the discharge of his official duties.’” *Sharp v. Gulley*, 120 N.C. App. 878, 880, 463 S.E.2d 577, 578 (1995) (alteration in original) (quoting *Fuquay Springs v. Rowland*, 239 N.C. 299, 300, 79 S.E.2d 774, 776 (1954)). Further, “injuries intentionally inflicted by employees of agencies of the State are not compensable under the Tort Claims Act.” *Braswell v. N.C. A & T State Univ.*, 5 N.C. App. 1, 7, 168 S.E.2d 24, 27 (1969).

¶ 5

Here, the Industrial Commission found and concluded

the actions of Justice Beasley fall within her official role or duties as a judicial officer. Because plaintiff’s negligence claim against the North Carolina Administrative Office of the Courts and the North Carolina Supreme Court are based upon the actions of Justice Beasley in her role as a Justice of the Supreme Court of North Carolina and said claims are barred by the doctrine of Judicial immunity, plaintiff’s claim must be dismissed.

(Citation omitted.)

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¶ 6

Plaintiff has not cited any legal authority supporting his argument that the Supreme Court’s denial of a petition for writ of habeas corpus is not a judicial act. His citation to *Bare v. Atwood*, 204 N.C. App. 310, 314, 693 S.E.2d 746, 750 (2010), fails to support this argument. Justice Beasley’s denial of Plaintiff’s Petition for Writ of Habeas Corpus was clearly a “judicial act”:

The factors to be considered in “determining whether an act by a judge is a ‘judicial’ one relate to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.”

Bare, 204 N.C. App. at 314, 693 S.E.2d at 750 (citation omitted). We affirm the Industrial Commission’s order.

AFFIRMED.

Judges ARROWOOD and HAMPSON concur.

Report per Rule 30(e).