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NO. COA01-926

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

DAVID S. COUSINS,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. TA-15361

NORTH CAROLINA DEPARTMENT
OF CORRECTION,
Defendant.

Appeal by plaintiff from opinion and award of the North Carolina Industrial Commission filed 23 April 2001. Heard in the Court of Appeals 26 March 2002.

David S. Cousins pro se plaintiff-appellant.

Attorney General Roy Cooper, by Assistant Attorney General Amar Majmundar, for defendant-appellee.

GREENE, Judge.

David S. Cousins (Plaintiff) appeals an opinion and award of the Full Commission of the North Carolina Industrial Commission (the Full Commission) filed 23 April 2001 in favor of the North Carolina Department of Correction (Defendant).

Plaintiff, an inmate at an institution of Defendant, filed a claim for damages under the North Carolina Tort Claims Act alleging that certain named employees of Defendant had negligently destroyed various items of his personal property confiscated upon his arrival at

Caledonia Correctional Institution (Caledonia). This matter was heard by Deputy Commissioner Douglas Berger on 13 July 2000.

During Plaintiff's case-in-chief, he testified that when he arrived at Caledonia, prison officials confiscated certain items of personal property, including a Master lock, a key, and a silver necklace. Plaintiff noted the items were listed on a Department of Correction Personal Property Inventory Form (DC-160) and remained with Defendant's officials. Plaintiff stated that Defendant's officials told him he "had 30 days to send home [his] property, give it to charity[,] or destroy it." Approximately eight months later when Defendant was transferred to Lumberton Correctional Institution, he discovered his property had been destroyed. Plaintiff admitted he had failed to give prison officials his home address at the time the subject personal property was confiscated "because [he] didn't want to submit [his] house address for prison official[s] to retain it 30 days." He testified, however, that he was under the impression he would be contacted by prison officials before the expiration of the thirty-day period concerning what he wanted to do with his confiscated property.

Defendant presented the testimony of Harold Pearson (Pearson), who was a Unit Manager in the Close Custody Unit at Caledonia when Plaintiff was an inmate at that facility. Pearson testified that standard operating procedure required inventory of an inmate's property upon entry into the prison; the property is then listed on a DC-160; and "[a]t that moment, the inmate is given an opportunity to send it home, or donate it[,] or have it destroyed." Pearson stated that items such as locks, keys, and chains would be considered contraband at Caledonia and would be subject to seizure. If an inmate fails to give an address or provide information for disposal of the confiscated property, the property is destroyed. Pearson testified there is no specific time the property would be held before it is destroyed. He did note, however, that before

destroying confiscated property, prison officials “try to give the inmate a reasonable amount of time” to make a decision. According to Pearson, a “reasonable time” may be anywhere from ten to fourteen days or as long as thirty days at the discretion of the individual officer. Pearson testified that if an inmate initially fails to provide prison officials with a home address or the name of a charity to which his property might be donated, there is no policy or procedure requiring an inmate to be notified before his property is destroyed.

By decision and order entered 4 August 2000, Deputy Commissioner Berger dismissed Plaintiff’s action with prejudice. The deputy commissioner specifically concluded that “Plaintiff failed to meet his burden of proof that the named employees of Defendant were negligent.” Plaintiff appealed to the Full Commission, and the Full Commission found as fact that:

3. Pursuant to [D]efendant’s policy, [P]laintiff was provided the choice of having the contraband items sent home, given to charity[,] or destroyed.

4. At that time, [P]laintiff refused to provide an address for shipment of the property. Although not required by [D]efendant’s policy, [P]laintiff was informed he would be allowed thirty (30) days to provide a shipping address.

5. Plaintiff failed to provide [D]efendant with a shipping address within thirty (30) days, thus his property was destroyed.

Based on the findings of fact, the Full Commission concluded that Plaintiff had failed to meet his burden of proof that the named employees of Defendant were negligent. The Full Commission dismissed with prejudice Plaintiff’s claims.

The dispositive issue is whether the Full Commission erred in dismissing with prejudice Plaintiff’s tort claims action.

This Court's review of an Industrial Commission's decision is limited to a determination of whether the Full Commission's findings are supported by competent evidence and whether those findings justify its legal conclusions and decision. *Simmons v. N.C. Dep't of Transp.*, 128 N.C. App. 402, 405-06, 496 S.E.2d 790, 793 (1998). The findings of the Full Commission are conclusive on appeal if supported by any competent evidence, although the evidence may support a contrary finding. *Id.* at 405, 496 S.E.2d at 793.

The Industrial Commission is given the authority to determine whether an individual's claim against a department of the State of North Carolina

arose 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, 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.

N.C.G.S. §143-291(a) (1999) (amended 2000). To establish negligence, 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." *Bolkhir v. N.C. State Univ.*, 321 N.C. 706, 709, 365 S.E.2d 898, 900 (1988). The burden is on the plaintiff to prove that an employee of the State was negligent. *Bailey v. N.C. Dept. of Mental Health*, 2 N.C. App. 645, 651, 163 S.E.2d 652, 656 (1968).

In this case, Plaintiff has failed to establish that Defendant's employees did not exercise due care. Plaintiff was made fully aware that if he did not provide for the disposition of his property within thirty days, the property would be destroyed. Although Plaintiff opted to have the items sent to his home address, he never provided an address to the employees. As Plaintiff had failed to provide an address to Defendant's employees, pursuant to department policy, they were not required to inform Plaintiff prior to destroying his property. There is no indication

Defendant's employees failed to comply with Defendant's policy or that Plaintiff was unaware of the possibility his property could be destroyed. Accordingly, Plaintiff did not meet his burden of proving the negligence of Defendant's employees.

Affirmed.

Judges HUDSON and TYSON concur.

Report per Rule 30(e).