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NO. COA05-235

NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2005

SANDRA DALE HELTON,  
Administratrix of the Estate  
of Garland Ray Sawyer,  
Plaintiff,

v.

North Carolina Industrial Commission  
I.C. File No. TA-16952

N.C. DEPARTMENT OF CORRECTION,  
Defendant.

Appeal by plaintiff from a Decision and Order entered 16 November 2004 by the North Carolina Industrial Commission. Heard in the Court of Appeals 13 October 2005.

*The Moore Law Firm, by George W. Moore, for plaintiff-appellant.*

*Attorney General Roy Cooper, by Assistant Attorney General Donna B. Wojcik, for defendant-appellee.*

LEVINSON, Judge.

Plaintiff Sandra Dale Helton appeals from a Decision and Order of the North Carolina Industrial Commission dismissing her claim for damages under the N.C. Tort Claims Act. We affirm.

The relevant facts are summarized as follows: In 1999 Garland Sawyer (Sawyer) pled guilty to involuntary manslaughter and was sentenced to 13 to 16 months imprisonment in the North Carolina Department of Correction (DOC). In July 1999 Sawyer was housed at Buncombe Correction Center (BCC). At around 9:00 p.m. on 3 July 1999, he complained to BCC

correctional officers that he was experiencing chest pain, chest pressure, and pain radiating down his left arm. The BCC officer in charge, Sergeant Richard Terry, called 911, and Sawyer was taken by ambulance to Mission-St. Joseph's Hospital in Asheville. At the hospital, he was treated by Dr. Gail Pignatiello, M.D., who performed several tests, including an EKG, chest x-ray, and other cardiac tests. Dr. Pignatiello diagnosed Sawyer with "acute chest pain, resolved" and noted that acid reflux was likely involved. Discharge instructions advised Sawyer to avoid fried or fatty foods, prescribed the medication Prilosec, and referred him to the BCC physician for follow-up. Sawyer was returned to BCC at around 1:30 a.m. on 4 July 1999; about an hour and a half later, he complained of pain in his chest and left wrist. The officer in charge reviewed the hospital instructions indicating that Sawyer had acid reflux, then gave him an extra pillow and a non-prescription antacid. For the balance of the night Sawyer appeared to rest comfortably, and made no other complaints to correctional officers on duty. When the BCC work shifts changed, the incoming correctional officers were told that Sawyer had gone to the hospital with chest pain and had been diagnosed with acid reflux.

On 4 July 1999 Sawyer was visited by plaintiff and two other family members. Plaintiff approached Sergeant Terry during the visit and expressed her opinion that Sawyer was sick and needed medical attention. Sergeant Terry told plaintiff that if Sawyer felt ill, he need only alert any staff member and he would be brought to Terry's office. However, Sawyer did not bring any health complaints to Sergeant Terry that day. Other correctional officers who either spoke with or observed Sawyer during the day of 4 July testified uniformly that Sawyer appeared normal and expressed no health complaints. Around 7:30 p.m. a correctional officer found Sawyer unconscious in the dorm area and alerted Sergeant Terry, who called 911. The correctional officers administered CPR, and emergency and hospital medical personnel attempted to

resuscitate Sawyer; however, Sawyer never regained consciousness and was pronounced dead at around 8:30 p.m. on 4 July 1999.

In April 2001 plaintiff filed a claim for damages with the North Carolina Industrial Commission, pursuant to N.C. Gen. Stat. §143-291 *et seq.*, the N.C. Tort Claims Act. Her claim was accompanied by an affidavit alleging that Sawyer's death was caused by the negligence of certain BCC correctional officers, DOC administrators, and DOC medical personnel. The case was heard before Industrial Commission Deputy Commissioner George Hall in January 2003. On 21 May 2003 Hall issued a Decision and Order finding that, although the named DOC employees had not been negligent in their care of Sawyer, Dr. Pignatiello was negligent by releasing Sawyer without further observation and testing. The Commissioner also found that Dr. Pignatiello's negligence "was the proximate cause of [Sawyer's] death" and that Dr. Pignatiello was "as a matter of law an agent of the [DOC]." On this basis, Commissioner Hall concluded that defendants were negligent, and awarded plaintiff damages of \$500,000.

Defendants appealed to the Full Commission, which issued its Decision and Order on 16 November 2004. The Commission found that Dr. Pignatiello was not an agent or employee of the DOC. However, the Commission agreed with the deputy commissioner that the named defendants had not been negligent, and therefore dismissed plaintiff's claim. From this Decision and Order plaintiff appeals.

#### Standard of Review

"The standard of review for an appeal from the Full 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 (2003). As long as

there is competent evidence in support of the Commission's decision, it does not matter that there is evidence supporting a contrary finding. "The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding." Thus, "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." *Simmons v. Columbus County Bd. of Educ.*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 615 S.E.2d 69, 72 (2005) (quoting *Simmons v. N.C. Dept. of Transportation*, 128 N.C. App. 402, 405-06, 496 S.E.2d 790, 793 (1998), and *Anderson v. Construction Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965)).

Plaintiff herein sought damages for negligence. "Actionable negligence is the failure to exercise that degree of care which a reasonable and prudent person would exercise under similar conditions." " *Tise v. Yates Construction Co.*, 345 N.C. 456, 459-60, 480 S.E.2d 677, 680 (1997) (quoting *Hart v. Ivey*, 332 N.C. 299, 305, 420 S.E.2d 174, 177-78 (1992)). " "To recover damages for actionable negligence, a plaintiff must establish (1) a legal duty, (2) a breach thereof, and (3) injury proximately caused by such breach." *Id.* at 460, 480 S.E.2d at 680 (quoting *Mozingo v. Pitt County Memorial Hosp.*, 331 N.C. 182, 415 S.E.2d 341, 344 (1992)). Under the Tort Claims Act, the State is liable for:

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. Gen. Stat. §143-291 (2003). "Additionally, under the Tort Claims Act: "The burden of proof as to [negligence is] on the plaintiff. Evidence is usually not required in order to establish and justify a finding that a party has failed to prove that which he affirmatively asserts. It usually

occurs and is based on the absence or lack of evidence.’’ *Drewry v. N.C. Dept. of Transp.*, 168 N.C. App. 332, 337, 607 S.E.2d 342, 346 (quoting *Bailey v. N.C. Dept. of Mental Health*, 2 N.C. App. 645, 651, 163 S.E.2d 652, 656 (1968)), *disc. review denied*, 359 N.C. 410, 612 S.E.2d 318 (2005).

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Plaintiff argues in her appeal that the Industrial Commission committed reversible error by (1) failing to conclude as a matter of law that defendants “had a nondelegable duty to provide adequate medical services” to Sawyer; (2) failing to make certain findings of fact in addition to those set out in the record; and (3) failing to conclude that Sawyer’s death was proximately caused by defendants’ negligence. At the outset, we note the necessity of distinguishing between legal issues presented by the instant appeal and issues not properly before us.

In her appellate brief, plaintiff correctly states the general rule that the DOC has a “nondelegable duty to provide medical care for inmates[.]” *Medley v. N.C. Department of Correction*, 330 N.C. 837, 845, 412 S.E.2d 654, 659 (1992). We conclude, however, that the instant appeal does not require our interpretation of DOC’s duty to provide its inmates with medical care. The parties essentially agree both that the DOC is generally responsible for an inmate’s medical care, and that on 4 July 1999 Sawyer needed medical care. The *issue* is whether or not the failure to provide timely medical care to Sawyer was due to DOC’s negligence, or was simply the result of an unfortunate set of circumstances. Thus, the question is not whether the DOC is responsible for providing medical care to prisoners, but whether the evidence established that defendants negligently breached this duty.

Plaintiff also argues that, because the State had a nondelegable duty to provide medical care, Dr. Pignatiello “was, as a matter of law, an agent of the Defendant-Appellee[.]” We

conclude that, for the following reasons, the instant appeal does not raise the question of Dr. Pignatiello's status with respect to the DOC.

Pursuant to N.C. Gen. Stat. §143-297 (2003), a claim under the Tort Claims Act must include, *inter alia*, “(2) [t]he name of the department, institution or agency of the State against which the claim is asserted, and the name of the State employee upon whose alleged negligence the claim is based.” G.S. §143-297(2). “The purpose of G.S. 143-297(2), requiring a claimant under the Tort Claims Act to name in the affidavit the negligent employee of the State agency, is to enable the agency to investigate the employee actually involved rather than all employees.” *Smith v. N.C. Dept. of Transp.*, 156 N.C. App. 92, 99, 576 S.E.2d 345, 351 (2003) (quoting *Northwestern Distributors, Inc. v. North Carolina Dept. Of Transp.*, 41 N.C. App. 548, 551-52, 255 S.E.2d 203, 206 (1979)).

Plaintiff's claim names certain DOC correctional officers, administrators, and DOC health care providers as the negligent State employees. She alleges that the defendants were negligent in failing to return Sawyer to the hospital after his initial visit on 3 July 1999. She does not name Dr. Pignatiello. Further, she asserts on appeal that her “essential claim is that the Defendant-Appellee failed to provide any medical care for inmate Sawyer or to return him to the hospital when his condition worsened . . . not that medical care rendered was not in compliance with the standard of care[.]” And plaintiff emphasizes that she “did not allege medical malpractice by a health care provider”[;] “did not offer any evidence of medical malpractice by a health care provider”[; and] “did not allege that medical care was not in accordance with the standard of care[.]” Since plaintiff does not allege that Dr. Pignatiello was negligent, the adequacy of Pignatiello's medical treatment is irrelevant. Moreover, because Dr. Pignatiello's

medical treatment is not an issue in this case, it is irrelevant whether or not Dr. Pignatiello was an “agent” of the DOC. Therefore, we will not address plaintiff’s arguments on this point.

We conclude that the Industrial Commission was not required to make a conclusion of law pertaining either to the State’s nondelegable duty to provide medical care, or to the relationship between Dr. Pignatiello and the DOC. This assignment of error is overruled.

Plaintiff argues next that the Industrial Commission erred by failing to make certain findings of fact. We disagree.

Under N.C.R. Civ. P. 52(a)(1), “[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.” “Our Supreme Court has noted that ‘while Rule 52(a) does not require a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts, it does require specific findings of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached.’” *RPR & Assocs. v. University of N.C.-Chapel Hill*, 153 N.C. App. 342, 355-56, 570 S.E.2d 510, 519 (2002) (quoting *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 658 (1982)). Rule 52 applies to cases heard by the Industrial Commission under the Tort Claims Act. *See, e.g., Parker v. State Department of Transp.*, 122 N.C. App. 279, 468 S.E.2d 589 (1996).

“A trial court’s duty pursuant to N.C. Gen. Stat. §1A-1, Rule 52 to find facts and state its conclusions separately ‘merely [serves] to provide a basis for appellate review.’ The appellate review this Court must be able to conduct consists of a determination of whether (1) the trial court’s findings of fact are supported by competent evidence and (2) the trial court’s conclusions of law are supported by its findings of fact.” *Department of Transp. v. Byerly*, 154 N.C. App.

454, 459, 573 S.E.2d 522, 525 (2002) (quoting *Winston-Salem Wrecker Ass'n v. Barker*, 148 N.C. App. 114, 119, 557 S.E.2d 614, 618 (2001)). Thus, “in making findings of fact, the trial court is required only to make brief, pertinent and definite findings and conclusions about the matters in issue[.]” *Fortis Corp. v. Northeast Forest Products*, 68 N.C. App. 752, 753, 315 S.E.2d 537, 538 (1984) (citation omitted).

We next consider whether plaintiff’s suggested findings of fact were required in order for us to review the Commission’s Decision and Order. Plaintiff first asserts that the Commission should have found that Dr. Pignatiello advised Sawyer to return to the hospital if he felt worse or “had problems” and that the correctional officers at BCC were not told of this directive. Plaintiff relies heavily on the assertion that the absence of this instruction to correctional officers was significant. We disagree, however, and conclude that a recommendation to bring Sawyer back to the hospital if he “had problems” or “got worse” is too vague to provide any meaningful guidance as to symptoms indicating a need for medical treatment. The presence or absence of a hospital discharge sheet noting that Sawyer should come back to the hospital if he had “problems” would not have made any difference in the correctional officers’ ability to meet their duty of care towards Sawyer, and thus is not a part of the analysis of plaintiff’s negligence claim. Accordingly, the Industrial Commission was not required to make findings of fact on this issue.

Plaintiff next asserts that the Industrial Commission was required to make a finding of fact that Sawyer was very ill and did not receive necessary medical treatment. As discussed above, the issue is not whether Sawyer should have gotten medical treatment, but whether defendants were negligent in their failure to recognize how ill he was. We conclude that this finding, and numerous additional ones suggested by plaintiff, were not required. The relevant assignments of error are overruled.

We have considered plaintiff's remaining assignments of error and find them to be without merit. The order of the Industrial Commission is

Affirmed.

Judges McCULLOUGH and ELMORE concur.

Report per Rule 30(e).