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NO. COA09-1376

NORTH CAROLINA COURT OF APPEALS

Filed: 20 July 2010

ERNEST THAMES,  
Plaintiff-Appellant,

v.

Industrial Commission  
No. TA-19451

NORTH CAROLINA DEPARTMENT  
OF CORRECTION,  
Defendant-Appellee.

Appeal by Plaintiff from an Opinion and Award filed 30 July 2009 by the North Carolina Industrial Commission. Heard in the Court of Appeals 23 March 2010.

*North Carolina Prisoner Legal Services, Inc., by Jason Miller,  
for Plaintiff-Appellant.*

*Attorney General Roy Cooper, by Assistant Attorney General  
William P. Hart, Jr., for Defendant-Appellee.*

McGEE, Judge.

Ernest Thames (Plaintiff) was a prisoner in the custody of the North Carolina Department of Correction (Defendant) on 2 September 2005. On that date, Plaintiff was being transported by Defendant. Plaintiff was wearing full restraints, and while exiting Defendant's transport van, Plaintiff fell. Plaintiff filed a claim for damages with the North Carolina Industrial Commission under the State Tort Claims Act alleging negligence on the part of correctional officers Honeycutt and Davis (the Officers).

Plaintiff asserted in an affidavit of claim that Defendant, through the Officers, had allowed Plaintiff to suffer injuries while he was wearing full restraints. In a Decision and Order filed 8 January 2009, Deputy Commissioner J. Brad Donovan awarded Plaintiff damages in the amount of \$10,000.00 for injuries Plaintiff sustained as a result of the 2 September 2005 fall. Defendant appealed to the Industrial Commission. In an Opinion and Award entered 30 July 2009, the Industrial Commission ordered that Plaintiff recover nothing from Defendant and dismissed Plaintiff's claim. Plaintiff appeals.

The evidence before the Industrial Commission tended to show that Plaintiff was an inmate in the custody of Defendant on 2 September 2005. The Officers were transporting Plaintiff by van from the Marion Correctional Institution to Catawba Valley Medical Center for treatment of a medical condition. Plaintiff was wearing full restraints, including handcuffs and ankle irons connected to a chain around Plaintiff's waist. The chain connecting the ankle irons to Plaintiff's waist dragged on the ground. Twice before, Plaintiff had exited a van while wearing full restraints. While exiting the van on 2 September 2005, Plaintiff "stepped off the van onto the steps . . . to get [his] bearings." Officer Honeycutt told Plaintiff to "watch [his] step," but neither Officer mentioned the chain dragging behind Plaintiff.

As Plaintiff was climbing down the steps, the chain on his ankle irons became snagged on the steps behind Plaintiff, causing him to fall. Because Plaintiff was fully restrained, he was unable

to support himself, and he fell to the ground. Officers Honeycutt and Davis were standing on either side of the steps and did not assist Plaintiff. Neither Officer asked Plaintiff if he needed assistance in exiting the van, nor did they catch Plaintiff as he fell.

Plaintiff struck his shoulder against the pavement, breaking his glasses in the process. Plaintiff was diagnosed with an acromioclavicular joint strain in his right shoulder, as well as a closed head wound, from the fall. Plaintiff contends he is still suffering from "intermittent pain in his shoulder."

*Standard of Review*

We review Industrial Commission decisions under the State Tort Claims Act to determine: "(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. N.C. Dept. Of Transportation*, 128 N.C. App. 402, 405-06, 496 S.E.2d 790, 793 (1998) (citation omitted).

Our Court has held that "[a]ctions to recover for the negligence of a State employee under the Tort Claims Act are guided by the same principles that are applicable to other civil causes of action." *Id.* at 406, 496 S.E.2d at 793 (citation omitted).

Therefore, to establish an actionable claim for negligence, [P]laintiff must show that (1) [DOC] owed [P]laintiff a duty of care; (2) the actions, or failure to act, by [DOC's] named employee breached that duty; (3) this breach was the actual and proximate cause of [P]laintiff's injury; and (4) [P]laintiff suffered damages as a result of such breach.

*Id.* (citation omitted). In general, "'a prison official is liable

when he knows of, or in the exercise of reasonable care should anticipate, danger to the prisoner, and with such knowledge or anticipation fails to take the proper precautions to safeguard his prisoners.'" *Taylor v. N.C. Dept. of Correction*, 88 N.C. App. 446, 451, 363 S.E.2d 868, 871 (1988) (citations omitted).

Plaintiff first argues that the Industrial Commission erred by "fail[ing] to recognize that the duty of reasonable care required [the Officers] to physically support Plaintiff as he exited the van . . . or, at the latest, when he began to fall[.]" Plaintiff also asserts that the Officers' warning to Plaintiff to "watch [his] step" was insufficient to satisfy the duty of reasonable care because the chain that was dragging behind Plaintiff would not have been visible to Plaintiff as a cause of danger had Plaintiff been "watch[ing] [his] step" and looking forward.

Plaintiff's argument centers on the Industrial Commission's conclusion of law number two, in which the Industrial Commission stated:

The named employees of [D]efendant in this matter could reasonably have foreseen that [P]laintiff was in danger because he was in full restraints. . . . Officers Honeycutt and Davis therefore had a duty to protect [P]laintiff from foreseeable falls when he was climbing out of the . . . van while in full restraints and unable to catch himself. In the present case, the [O]fficers warned [P]laintiff about the danger of exiting the van while in full restraints, and stood close to the exit of the van so as to be available to [P]laintiff should [P]laintiff have requested assistance in climbing out of the van. The Full Commission concludes, based on the action of Defendant's agents as demonstrated in the evidence of record, that Plaintiff has failed to show that Defendant's

agents breached their duty to protect  
[P]laintiff from foreseeable falls.

Specifically, Plaintiff's argument focuses on whether the Officers' actions were reasonable under the circumstances. Plaintiff argues that, because the Industrial Commission labeled the above as a "conclusion of law," we must review it *de novo*. However, our Supreme Court has held that "[t]he application of particular facts to the reasonableness standard is almost always a question of fact, not of law." *Bolkhir v. N.C. State Univ.*, 321 N.C. 706, 712, 365 S.E.2d 898, 902 (1988) (citation omitted). "'Only when the facts are such that reasonable minds can reach but one conclusion does the question become one of law.'" *Id.* (citations omitted). "A finding of fact by the Industrial Commission in a proceeding under the Tort Claims Act is binding if there is any competent evidence to support it." *Id.* at 708, 365 S.E.2d at 900 (citation omitted).

Reviewing the evidence before the Industrial Commission, we find that the determination of whether the Officers' conduct comported with the reasonableness standard was a determination about which reasonable minds can differ; we cannot say, as a matter of law, that a reasonable person under the circumstances would have behaved any differently than did the Officers. *See Id.* at 711-12, 365 S.E.2d at 901-02. Therefore, that portion of conclusion of law number two that concerns the application of the reasonableness standard is more properly labeled a finding of fact, and we review it as such. Thus, we look to whether competent evidence exists to support the Industrial Commission's determination.

The record before the Industrial Commission contained the following evidence. The Officers were transporting Plaintiff in full restraint by van, and Plaintiff had been transported in full restraint by van on at least two prior occasions. The Officers verbally cautioned Plaintiff to "watch [his] step" as he exited the van. Plaintiff stood atop the steps and "[got his] bearings," while the Officers positioned themselves on either side of the steps to assist Plaintiff if he requested assistance. Based on this evidence, we find that the Industrial Commission's application of the reasonableness standard, and its finding of fact that the Officers did not breach their duty, was supported by competent evidence, even though the evidence was conflicting.

The only authority Plaintiff cites for his argument that the Industrial Commission erred is a prior opinion of the Industrial Commission, *Dubose v. N.C. Dept. Of Correction*, I.C. No. TA-18758, 2008 NC Wrk. Comp. LEXIS 347, (2008). However, we find the cases are distinguishable. In *Dubose*, the Industrial Commission determined that the Department of Correction was liable for the negligence of two correctional officers on the following facts: (1) an inmate was injured by falling when exiting a transport van while in full restraints; (2) the correctional officer transporting the inmate ordered the inmate to exit the van, and then went to the other side of the van without ensuring that there was an officer available to assist the inmate; (3) the officer in charge of the receiving area to which the inmate was being transported failed to assign any officer to assist in the inmate's exit from the van; (4)

there were no officers present at the exit to the van, nor were any in a position close enough to render assistance should the inmate need it; and (5) the officer transporting the inmate returned from the opposite side of the van to find the inmate lying on the ground after falling face first when his leg irons were caught on a step. *Dubose*, I.C. No. TA-18758, 2008 NC Wrk. Comp. LEXIS 347 at \*4-5. The Industrial Commission concluded that "[t]he officers breached [the] duty by failing to assist [the inmate] out of the van, failing to hold onto [the inmate] or to be in a position to catch him, and/or more closely assist [the inmate] when he began to fall." *Id.* at \*10-11.

While *Dubose* is similar to the case before us, we find, as did the Industrial Commission, that *Dubose* differs in important areas. *Dubose* turned on the complete failure of the officers present to assist, or even place themselves in a position to assist, the inmate in exiting the van. In the case before us, the Industrial Commission found that the Officers were positioned nearby and were in a position to assist Plaintiff. The Officers also warned Plaintiff to watch his step. The Industrial Commission found that this conduct satisfied the reasonableness standard and, therefore, held that the Officers were not negligent with respect to Plaintiff's claim.

Plaintiff next argues that the Industrial Commission "placed undue importance on the fact that Plaintiff did not request assistance." Plaintiff contends this "impl[ied] that Plaintiff had a duty to ask for assistance and that the absence of such a request

contributed to his injuries [and] is tantamount to finding Plaintiff contributorily negligent." Plaintiff asserts that finding him contributorily negligent is contrary to the well-settled law of this State.

We first address Plaintiff's argument about the implications of the Industrial Commission's finding. The Industrial Commission, as quoted above, noted that "the [O]fficers warned [P]laintiff about the danger of exiting the van while in full restraints, and stood close to the exit of the van so as to be available to [P]laintiff should [P]laintiff have requested assistance in climbing out of the van." After reciting this finding of fact, the Industrial Commission applied the reasonableness standard to the Officers' conduct, and determined that their actions were reasonable. The Industrial Commission did not, in conclusion of law number two, make any conclusion about negligence on the part of Plaintiff, nor did it determine that Plaintiff in any way contributed to his injuries. Rather, the Industrial Commission determined that the Officers' conduct was reasonable and, therefore, was not a breach of the duty to protect Plaintiff from foreseeable falls. The Industrial Commission then concluded that Plaintiff failed to show that Defendant's actions amounted to negligence. Careful review of the Opinion and Award shows that Plaintiff's argument is based on a misinterpretation of the facts and law as applied by the Industrial Commission and, therefore, is without merit.

*Conclusion*



We have stated above that the Industrial Commission's determination that the Officers' conduct was reasonable under the circumstances was a finding of fact, and that such finding was supported by competent evidence. The Industrial Commission's findings of fact were supported by competent evidence; therefore, its conclusion that the Officers did not breach the duty owed to Plaintiff is binding on appeal. Plaintiff has failed to show that the conduct of the Officers breached a duty owed him, and the Industrial Commission's conclusion of law finding no negligence is proper. We therefore affirm the Industrial Commission.

Affirmed.

Judges GEER and ERVIN concur.

Report per Rule 30(e).