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NO. COA10-1168

NORTH CAROLINA COURT OF APPEALS

Filed: 7 June 2011

ROGER STEVENSON,
Plaintiff,

v.

N.C. Industrial Commission
I.C. Nos. TA-20589-91

N.C. DEPARTMENT OF
CORRECTION,
Defendant.

Appeal by Plaintiff from Decision and Order entered 8 April 2010 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 8 February 2011.

Roger Stevenson, pro se.

Attorney General Roy Cooper, by Associate Attorney General Christina S. Hayes, for Defendant-Appellee.

BEASLEY, Judge.

Roger Stevenson (Plaintiff) appeals from the Full Commission's Decision and Order dismissing Plaintiff's claims against the North Carolina Department of Correction (NCDOC or Defendant) with prejudice. For the following reasons, we affirm.

At the time of the filing of this action, Plaintiff was an inmate

at the Lanesboro Correctional Institution in Anson County.¹ On 1 April 2008, Plaintiff filed an affidavit for a claim of damages under the Tort Claims Act, N.C. Gen. Stat. § 143-291, *et seq.*, with the North Carolina Industrial Commission.² Plaintiff alleged in his affidavit that on 17 March 2008, the NCDOC, through certain named employees, mistakenly accused him of being in illegal possession of a food tray during a search of inmates' cells and that, as a direct result, Plaintiff was negligently and wrongfully placed on "Nutra-loaf" as punishment. For three days, beginning 22 March 2008, Plaintiff was served Nutraloaf as a substitute for regular meals but refused to eat it because he claimed that "[h]e cannot eat NutraLoaf." Plaintiff alleged that by 25 March 2008, he had developed "head and stomach pains from having gone without food and nourishment for three days," when the correctional unit manager apologized to Plaintiff because the prison officials "had got [ten] the wrong cell" and that it was a different prisoner who "should have been screened and placed on NutraLoaf." Plaintiff claimed that such

¹ The record indicates that Plaintiff has since been moved to the Pasquotank Correctional Institution in Elizabeth City. However, this case concerns events which allegedly occurred at the Lanesboro Correctional Institution.

² Although the Industrial Commission's order indicates that Plaintiff filed three separate tort claim affidavits "involving a number of different employees" and that the Commission exercised its discretion in consolidating claims TA-20589, TA-20590, and TA-20591 because "all allegations arise out of a common transaction of events," only the affidavit identified as I.C. File No. TA-20589 appears in the record.

negligent conduct resulted in his "deprivation of food and nourishment, loss of weight, and debilitation to [his] physical, mental, and emotional health," and he sought damages therefor.

In its answer, the NCDOC denied Plaintiff's negligence-related allegations and made several motions to dismiss, including two 12(b)(6) motions, one for lack of proximate cause and one for failure to properly allege damages, and individual motions to dismiss based on allegations of intentional acts, contributory negligence, and failure to exhaust administrative remedies. A preliminary hearing on the NCDOC's motions to dismiss was held before the presiding deputy commissioner on 3 June 2009 by video conference. The deputy commissioner filed an interlocutory decision and order on 30 June 2009, consolidating Plaintiff's claims and dismissing them with prejudice. On Plaintiff's appeal, the Full Commission affirmed the deputy commissioner's order with minor modifications and likewise dismissed Plaintiff's three tort claims with prejudice. In support of its decision, the Commission made the following findings of fact:

2. Plaintiff alleged in his Affidavits that various employees of Defendant at Lanesboro Correctional Institution breached their respective duties of care on or between the dates of March 17 and March 25, 2008, proximately causing personal injury to him.

3. Although Plaintiff has detailed several incidents involving a number of different employees during this time period, all allegations arise out of a common transaction

of events. Plaintiff alleges he was improperly accused and found guilty of a disciplinary infraction involving the return of his food tray subsequent to a scheduled meal. Plaintiff further alleges that the medical staff who screened him for placement on a restricted diet of "Nutra-loaf" as punishment for the infraction did not notify him that he was being screened for this purpose. Finally, Plaintiff alleges that he suffered pain due to hunger and other complications resulting from the issuance of "Nutra-loaf."

4. On April 30, 2008, Defendant moved to dismiss each of these actions on several grounds. Chiefly, Defendant has asserted that Plaintiff failed to state a claim upon which relief may be granted, insofar as none of the allegations give rise to a cause of action for negligence.

Although the Commission thus noted that the NCDOC's chief basis for its dismissal of motions was Plaintiff's failure to state a claim for relief pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, the dismissal of Plaintiff's claims seems to be couched more in terms of subject matter jurisdiction than failure to state a claim. While the Commission's order sets forth the elements of negligence under the Tort Claims Act-which are the same as those applicable to private parties, *see Bolkhir v. N.C. State Univ.*, 321 N.C. 706, 709, 365 S.E.2d 898, 900 (1988)- it does not conclude that Plaintiff failed to make the necessary allegations to support a negligence cause of action. Rather, the Commission's dismissal of the action is predicated on its conclusion of law citing

Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972) for the general proposition that our Courts, including the Commission, are not “vested with jurisdiction to interfere with the broad discretion afforded to Department of Correction officials to govern the post-conviction supervision of prison inmates.”

Despite that the fact that the NCDOC did not include a 12(b)(1) motion, the Commission was entitled to address the jurisdictional issue on its own accord. *See State v. Webber*, 190 N.C. App. 649, 650, 660 S.E.2d 621, 622 (2008) (“It is well-established that the issue of a court's jurisdiction over a matter may be raised at any time, even for the first time on appeal or by a court *sua sponte*.”). Thus, we construe the decision and order as a dismissal for lack of subject matter jurisdiction and review it as such.

Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal. Subject-matter jurisdiction “involves the authority of a court to adjudicate the type of controversy presented by the action before it.” Subject-matter jurisdiction derives from the law that organizes a court and cannot be conferred on a court by action of the parties or assumed by a court except as provided by that law.

In re K.U.-S.G., ___ N.C. App. ___, ___, 702 S.E.2d 103, 105 (2010) (internal citations omitted).

This Court has held that “[i]n practical terms, the questions of grade of conduct, privileges, disciplinary action and

commendations are strictly administrative and not judicial (matters).” *In re Stevens*, 28 N.C. App. 471, 474, 221 S.E.2d 839, 841 (1976) (internal quotation marks omitted). These “difficult problems,” such as how to discipline prison inmates “and under what circumstances[,] turn on analysis of internal correctional policy, and are not, barring a clear instance of constitutional infirmity, subjects appropriate for judicial scrutiny.” *In re Stevens*, 28 N.C. App. at 474, 221 S.E.2d at 841 (citing *Goble v. Bounds*, 281 N.C. 307, 312, 188 S.E.2d 347, 350 (1972)). The NCDOC, of course, “does not have carte blanche[;] [w]hen a government action is challenged as unconstitutional, the courts have a duty to determine whether that action exceeds constitutional limits.” *Jones v. Keller*, 364 N.C. 249, 254, 698 S.E.2d 49, 54 (2010). However, while “the responsibility for determining the limits of statutory grants of authority to an administrative agency is a judicial function for the courts to perform,” *id.*, Plaintiff made no argument before the Industrial Commission that the NCDOC’s actions in this case exceeded the broad grant of legislative authority allowing the department to govern prison discipline. See N.C. Gen. Stat. § 148-11(a) (2009) (leaving the adoption of rules for the government of the State’s prison system, including the enforcement of discipline, to the Secretary of Corrections); see also N.C. Gen. Stat. § 148-4 (2009) (“The Secretary of Correction shall have control and custody of all

prisoners serving sentences in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof.”).

Because the authority to discipline inmates rests with the Department of Correction, we affirm.

Affirmed.

Judges MCGEE and BRYANT concur.

Report per Rule 30(e).