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NO. COA12-672
NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2013

ROGER BARTLETT, MICHAEL
BARTLETT, and ANTHONY JONES,
Plaintiffs,

v.

WAYNE COUNTY BOARD OF
EDUCATION,
Defendant.

North Carolina
Industrial Commission
I.C. Nos. TA-21085
TA-21086
TA-21087

Appeal by plaintiffs from decision and order entered 22
December 2011 by the North Carolina Industrial Commission.
Heard in the Court of Appeals 15 November 2012.

*Riddle & Brantley, LLP, by Kurt L. Dixon, for plaintiffs-
appellants.*

*Attorney General Roy Cooper, by Special Deputy Attorney
General Amar Majmundar and Assistant Attorney General
Christina S. Hayes, for defendant-appellee.*

GEER, Judge.

Plaintiffs Roger Bartlett, Michael Bartlett, and Anthony
Jones appeal from a decision and order of the North Carolina
Industrial Commission entered in favor of defendant Wayne County
Board of Education. On appeal, plaintiffs primarily argue that

the Commission should have found more credible and given greater weight to the evidence supporting plaintiffs' negligence claims. Under the applicable standard of review, however, we may not revisit the Commission's decisions on weight and credibility. Because the Commission's findings are supported by competent evidence and because those findings support the Commission's conclusions of law, we affirm.

Facts

On 13 February 2006, at approximately 7:30 a.m., Michael Bartlett was operating a van in a southerly direction on N.C. Highway 111 ("NC 111") in Goldsboro, North Carolina, near its intersection with Slick Rock Road. Roger Bartlett and Anthony Jones were passengers in the van. NC 111 and Slick Rock Road are flat and straight where they intersect. The roads were dry, the weather was clear, and it was already daylight.

Plaintiffs had stopped at a store located on the right side of NC 111 just north of the intersection with Slick Rock Road. The store was adjacent to a restaurant and shared a gravel parking lot that could be accessed from either NC 111 or Slick Rock Road. Plaintiffs testified that when they left the store, Michael Bartlett backed the van straight out from the store onto NC 111 approximately 148 feet from the intersection of Slick

Rock Road and proceeded south on NC 111 at an estimated speed of 30 to 35 miles per hour.

Also at approximately 7:30 a.m., Ezetta Bentham was operating a Wayne County school bus in an easterly direction on Slick Rock Road approaching the intersection with NC 111. Twenty-six middle and high-school students were on board the bus. The parties stipulated that Ms. Bentham was, at the time, acting as an employee of defendant within the course and scope of her employment.

Ms. Bentham stopped at the stop sign at the intersection of Slick Rock Road and NC 111. A large white sign in the parking lot to her left initially obstructed Ms. Bentham's northerly view of NC 111, so she inched the bus forward to obtain an unobstructed view. Ms. Bentham testified that, after looking twice in both directions and confirming that there were no vehicles on NC 111 approaching from either direction for at least half a mile, she began a right-hand turn onto NC 111. She further testified that she heard a horn, applied her brakes, and jerked her head to see the van "maybe a split second before" colliding with it. Ms. Bentham had "no idea where [the van] came from" and was sure "the road was completely clear" when she initiated her turn.

Timothy Hobson, a student on the bus, was sitting in a window seat on the left side of the bus and looking north along NC 111. He saw the van come out from behind the white sign and heard its engine roar. According to Timothy, the van pulled onto NC 111 at a 45-degree angle and accelerated as if the driver wanted to quickly pass the bus so as not to be behind it when travelling down NC 111. Amber Norris, another student sitting on the left side of the bus, also saw the van pull onto NC 111 from the parking lot at an angle and try to pull up around the bus. Bria Wills, a third student on the bus, testified that the van travelled towards the intersection, partly on the road and partly in the parking lot, until the van swerved completely onto the road near the intersection and sped up in an apparent attempt to pass the bus.

The front left corner of the bus hit the right side of the van in the area of the middle passenger door and the right rear panel/bumper. Trooper James Davis of the North Carolina Highway Patrol arrived at the scene of the accident shortly after it occurred. Although he cited Ms. Bentham for failure to yield, that charge was later dismissed. As a result of the collision, Michael and Roger Bartlett sustained physical injuries requiring surgery. Also as a result of the collision, Anthony Jones was

diagnosed with connective tissue injuries that have since substantially resolved but still occasionally cause discomfort.

On 5 February 2009, plaintiffs filed individual affidavits with the Industrial Commission alleging negligence by Ms. Bentham, an employee of defendant. The three cases were consolidated for trial on 6 January 2010. On 3 May 2011, the deputy commissioner entered a decision and order in favor of plaintiffs, concluding that Ms. Bentham's negligent operation of the school bus on 13 February 2006 was a proximate cause of the collision and plaintiffs' injuries and damages. The deputy commissioner, accordingly, awarded each plaintiff a monetary judgment. Defendant appealed to the Full Commission.

On 22 December 2011, the Full Commission entered a decision and order reversing the decision by the deputy commissioner and dismissing plaintiffs' claims. The Commission concluded that Ms. Bentham "at all times exercised due care in her operation of the school bus on February 13, 2006, in that she kept a proper lookout when she came to the intersection of NC 111 and Slick Rock Road, exercised due caution and circumspection so as not to endanger others, and did not fail to yield the right-of-way when she began to turn onto NC 111." The Commission further concluded that plaintiffs' injuries sustained in the 13 February 2006 collision "were not proximately caused by negligence on the

part of Bentham" and that "[p]laintiffs have failed to prove by the greater weight of the evidence that [Ms. Bentham] breached a duty of care owed to them, and therefore they are not entitled to recover damages under the Tort Claims Act." Plaintiffs timely appealed to this Court.

Discussion

"[W]hen 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. N.C. Dep't of Transp.*, 128 N.C. App. 402, 405-06, 496 S.E.2d 790, 793 (1998). "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." *Simmons v. Columbus Cnty. Bd. of Educ.*, 171 N.C. App. 725, 728, 615 S.E.2d 69, 72 (2005). However, we review the Commission's conclusions of law de novo. *Holloway v. N.C. Dep't of Crime Control & Pub. Safety*, 197 N.C. App. 165, 169, 676 S.E.2d 573, 576 (2009).

We first address the Commission's conclusion that Ms. Bentham was not negligent. To establish negligence, plaintiffs must prove that (1) defendant owed plaintiffs a duty of care; (2) the actions or failure to act by defendant's named employee

breached that duty; (3) this breach was the actual and proximate cause of plaintiffs' injury; and (4) plaintiffs suffered damages as a result of the breach. *N.C. Dep't of Transp.*, 128 N.C. App. at 406, 496 S.E.2d at 793.

With respect to whether Ms. Bentham breached her duty of care, N.C. Gen. Stat. § 20-158(b)(1) (2011) provides in part: "When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway." This statute "not only requires the driver on a servient highway to stop, but such driver is further required to exercise due care to see that he may enter or cross the dominant highway or street in safety before entering thereon." *Kanoy v. Hinshaw*, 273 N.C. 418, 428-29, 160 S.E.2d 296, 304 (1968).

Plaintiffs do not dispute that the Commission's findings of fact supported its conclusion that Ms. Bentham did not breach a duty of care. Supporting its conclusion that Ms. Bentham was not negligent, the Commission found that plaintiffs stopped at a store located on the right side of NC 111 just north of the intersection with Slick Rock Road and that a large white sign, located in the store's shared parking lot, was located in such a way that it would be difficult for someone on Slick Rock Road to

see a car driving in the parking lot. The Commission also found that Ms. Bentham stopped at the stop sign facing her on Slick Rock Road, that two signs obstructed Ms. Bentham's view down NC 111 to her left, and that Ms. Bentham accordingly twice "inched the bus forward slightly to try to obtain an unobstructed view of NC 111." The Commission further found that, when inching the bus forward, Ms. Bentham "us[ed] her side mirrors to make sure she did not cross the dashed white lines onto the travel portion of NC 111."

In addition, the Commission made the following finding:

8. Once she had a clear view down NC 111 and confirmed by looking twice both ways that there was no vehicle approaching from either direction for at least one-half mile, Bentham took her foot off the bus's brakes and began to initiate a right-hand turn onto NC 111. As she put her foot on the accelerator, she heard a horn and saw the Chevrolet van being driven by Michael Bartlett come out of nowhere. She immediately braked but was unable to avoid colliding with the van. The left front corner of the bus hit the right side of the van in the area of the middle passenger door and the right rear quarter panel/bumper.

The Commission found credible Ms. Bentham's testimony that "she had a clear view of NC 111 when she began making her turn and Plaintiffs' vehicle was not traveling south on NC 111." Further, the Commission found that Ms. Bentham "kept a proper lookout when she came to the intersection of NC 111 and Slick

Rock Road" and "did not fail to yield the right-of-way when she began to turn onto NC 111."

These findings support the conclusion that Ms. Bentham did not breach a duty of care owed to plaintiffs. See *Smith v. Stocks*, 54 N.C. App. 393, 397, 283 S.E.2d 819, 821 (1981) (holding defendant's evidence sufficient to support finding that she was not negligent when evidence showed defendant came to full stop at intersection, she looked to her left and right, she determined it was safe to proceed across intersection, plaintiff's truck was not in sight or not close enough to be a hazard, and plaintiff collided with defendant after defendant had already crossed median of road on which plaintiff was travelling). Indeed, plaintiffs do not contend otherwise.

Plaintiffs, however, challenge the Commission's findings of fact 6, 8, and 9, all of which supported the Commission's conclusion that Ms. Bentham was not negligent. Finding of fact 6 stated that "[t]here is a large, white sign for the restaurant out by the road near the intersection, located in such a way that it would make it difficult for someone on Slick Rock Road to see a car driving in the parking lot." Plaintiffs point to other evidence, which they argue shows that from Ms. Bentham's vantage point, "fully one half or more of the parking lot . . . is clearly visible."

In finding of fact 8, the Commission found that as Ms. Bentham "put her foot on the accelerator, she heard a horn and saw the Chevrolet van being driven by Michael Bartlett come out of nowhere." Plaintiffs contend that Ms. Bentham's testimony in support of finding of fact 8 "is clearly erroneous and not credible" in light of other evidence.

Similarly, plaintiffs challenge the Commission's finding of fact 9, in which the Commission found credible Ms. Bentham's testimony that "she had a clear view of NC 111 when she began making her turn and Plaintiffs' vehicle was not travelling south on NC 111." Regarding finding of fact 9, plaintiffs contend that Ms. Bentham's testimony supporting that finding was not credible based upon other testimony by Ms. Bentham and other evidence, including testimony of student passengers on the bus and a diagram depicting the collision produced by the officer who responded to the collision.

Our review of the record reveals that findings of fact 6, 8, and 9 are supported by Ms. Bentham's testimony, the testimony of student passengers on the bus, and photographic exhibits depicting the area of the collision. Although plaintiffs argue that the evidence on which findings of fact 6, 8, and 9 are based is not credible and that other, allegedly contradictory, evidence should be given more weight, this Court will not judge

the credibility of or reweigh the evidence before the Commission. See *Sprinkle v. N.C. Wildlife Res. Comm'n*, 165 N.C. App. 721, 726, 600 S.E.2d 473, 476 (2004) ("On appeal, the 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." (internal quotation marks omitted)).

Finally, plaintiffs challenge the Commission's finding of fact 17. First, plaintiffs challenge the portion of finding of fact 17, which provides that Ms. "Bentham at all times . . . kept a proper lookout when she came to the intersection of NC 111 and Slick Rock Road, . . . and did not fail to yield the right-of-way when she began to turn onto NC 111." Finding of fact 17 further states: "A reasonable person in the exercise of due care and while looking left and right for vehicles in the lanes of travel before starting to make a right turn onto a highway, would not be expected to take note of a vehicle traveling through a parking lot, nor would she be expected to anticipate that the vehicle might suddenly turn onto the highway at an angle in front of her."

Plaintiffs contend that based on the testimony of student passengers on the bus, it was impossible for Ms. Bentham to have

carefully looked to her left and not seen the van. Therefore, plaintiffs assert, the evidence shows that Ms. Bentham did not keep a proper lookout. Plaintiffs contend that the majority of eyewitnesses in this case testified that the responding officer's diagram depicting the accident scene was accurate, that the diagram demonstrates "the van had to have been almost directly in front of the bus at the time defendant Bentham [sic] started her turn," and that this evidence conclusively established that Ms. Bentham failed to yield the right-of-way to plaintiffs' van.

However, Ms. Bentham's testimony, the testimony of Mr. Hobson, and photographic exhibits depicting the area of the collision support the Commission's finding of fact 17. The Commission's decision to give greater weight to that evidence over plaintiffs' evidence is not reviewable on appeal.

We, therefore, hold that the Commission's findings are supported by competent evidence and, accordingly, are binding on appeal. *Pigg v. N.C. Dep't of Corr.*, 198 N.C. App. 654, 660, 680 S.E.2d 235, 238 (2009) ("Because the Commission's findings of fact are supported by competent evidence, they are binding on this appeal."). We decline the invitation to reweigh the evidence or question the Commission's determinations regarding credibility.

Finally, plaintiffs contend that the Commission's conclusion of law that Ms. Bentham did not breach the standard of care was erroneous because it was contrary to the weight of the evidence -- a contention that disregards the applicable standard of review. Since the Commission's findings of fact were supported by competent evidence and those findings support the Commission's conclusion of law that Ms. Bentham did not breach the standard of care, we must affirm the decision and order of the Commission.

Affirmed.

Judges STEPHENS and McCULLOUGH concur.

Report per Rule 30(e).