

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA12-1371
NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2013

WILLIAM WALKER,
Plaintiff-Appellant,

v.

North Carolina
Industrial Commission
I.C. No. TA-21806

NORTH CAROLINA DEPARTMENT
OF CORRECTION,
Defendant-Appellee.

Appeal by Plaintiff from decision and order filed 6 June 2012 by the North Carolina Industrial Commission. Heard in the Court of Appeals 14 May 2013.

Attorney General Roy Cooper, by Associate Attorney General Adrian W. Dellinger, for Defendant-Appellee.

William Lee Walker, pro se, Plaintiff-Appellant.

McGEE, Judge.

Plaintiff, an inmate at Warren Correctional Institution, initiated this claim under the Tort Claims Act by filing an affidavit on 24 May 2010 in which he alleged he received money orders by mail on 4 and 5 May 2009, but that Defendant's named employee (Ms. Shearin) deposited only one of the money orders

into Plaintiff's account. A deputy commissioner conducted a hearing on Plaintiff's claim on 5 August 2011 and filed a decision and order on 21 September 2011, denying Plaintiff's claim. Plaintiff appealed to the Industrial Commission, which also denied the claim, based upon the following pertinent findings of fact:

2. On May 4, 2009, Plaintiff was a prison inmate incarcerated in the custody and control of Defendant at the Warren Correctional Institution.

3. On May 4, 2009, Plaintiff received a money order in the amount of \$160.00 from his girlfriend. Plaintiff received a credit on his account in the amount of \$160.00.

4. Plaintiff also alleges that he received another money order on May 5, 2009 in the amount of \$160.00, but the second money order was not credited to his account.

5. Plaintiff believes that he received money orders in the amount of \$160.00 on both May 4 and 5, 2009 because he received two different envelopes, one with the date of May 4, 2009 and another dated May 5, 2009. Stamped onto both envelopes was "Funds received/Receipt to follow."

6. When Plaintiff questioned as to why his account was not credited \$160.00 based on the May 5, 2009 envelope, Mary Shearin, account technician for Defendant, advised Plaintiff that she had only received one money order and credited his account accordingly. She advised Plaintiff that the money order she received had the reference number of 16313865614. The money order

which Plaintiff received on May 4, 2009 was money order #16313865614.

7. Ms. Shearin instructed Plaintiff to provide a reference number for the second money order.

8. Ms. Shearin did not receive the envelope until after it had been processed by the mail room and the mail room had stamped each envelope with received and credited.

9. Plaintiff never provided Ms. Shearin with a reference number for a second money order.

10. Plaintiff has failed to prove that Defendant was negligent resulting in loss of a second money order in the amount of \$160.00. Plaintiff did not provide any evidence that he indeed received a second money order in the amount of \$160.00 and a named employee of Defendant negligently handled his personal mail resulting in the loss of his money order.

The Commission concluded that Plaintiff failed to carry his burden of showing that any employee of Defendant committed any acts of negligence or breached any duty owed to Plaintiff that resulted in a loss or harm to Plaintiff or his personal property.

We note that a copy of the notice of appeal, without which we lack jurisdiction, is absent from the record on appeal. See *Crowell Constructors, Inc. v. State ex rel. Cobey*, 328 N.C. 563, 563-64, 402 S.E.2d 407, 408 (1991). We further note, however,

that the record on appeal does contain correspondence from Plaintiff to the Commission requesting, among other things, a copy of the notice of appeal to this Court, which was filed with the Commission. The record on appeal does not contain any correspondence from the Commission in response to Plaintiff's requests. Defendant has not moved to dismiss Plaintiff's appeal and, indeed, has admitted in its appellee's brief that Plaintiff filed a notice of appeal to this Court on 21 June 2012. In view of these circumstances, we exercise our discretion to treat the record on appeal and Plaintiff's brief as a petition for writ of *certiorari* and allow the petition. See *Anderson v. Hollifield*, 345 N.C. 480, 482, 480 S.E.2d 661, 663 (1997); *In re Brownlee*, 301 N.C. 532, 547-48, 272 S.E.2d 861, 870 (1981).

An appeal from the Industrial Commission to this Court "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 (2011). Accordingly, our review of a decision and order rendered under the Tort Claims Act is limited to two questions: (1) whether the Commission's findings of fact are supported by competent evidence, and (2) whether the Commission's conclusions

of law are supported by the findings of fact. *Simmons v. N.C. Dept. of Transportation*, 128 N.C. App. 402, 405-06, 496 S.E.2d 790, 793 (1998).

Plaintiff argues the Commission failed to consider certain evidence, namely a remitter report, a trust fund account statement, and two stamped envelopes, which he contends shows the existence of a second money order that was not deposited into his prison account on or about 5 May 2009. Plaintiff submits that Ms. Shearin mistakenly placed the same number on each receipt.

The evidence, however, does not support Plaintiff's supposition but, rather, supports the Commission's determination that only one money order was received on or about 4 May 2009. While the record before us contains two envelopes from "Teresa P. Walker" addressed to Plaintiff at Warren Correctional Institution, each date-stamped "RECEIVED" by "MAIL ROOM" on 4 May 2009 and 5 May 2009, only one envelope is stamped "FUNDS RECEIVED/RECEIPT TO FOLLOW." The remitter deposit report shows only one deposit made on 4 May 2009 in the amount of \$160.00 with a reference number of 16313865614, representing the serial number of one money order. The trust fund account statement does not help Plaintiff because, although it references a

deposit of a money order in the amount of \$160.00 on 5 May 2009, it also references the same money order number as the remitter deposit form entry of 4 May 2009. Finally, Ms. Shearin testified that, in response to her request to Plaintiff to produce a receipt for the missing money order, Plaintiff provided two receipts, one of which matched the number of the money order deposited into the trust account on 5 May 2009 and the other that matched the serial number of a money order deposited a year later, on 4 May 2010. Ms. Shearin also testified that a money order could be deposited one day but not appear on the trust fund account statement until the next day. Ms. Shearin speculated that the envelopes could have been mistakenly stamped in the mail room.

"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 Cty. Bd. of Educ.*, 171 N.C. App. 725, 728, 615 S.E.2d 69, 72 (2005). We find evidence in the record to support the Commission's decision. We accordingly affirm the Commission's decision and order.

Affirmed.

Judges ELMORE and STEPHENS concur.

Report per Rule 30(e).