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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1252

Filed: 21 June 2016

North Carolina Industrial Commission, I.C. No. TA-22267

MICHAEL DAMMONS, Plaintiff,

v.

N.C. DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by Plaintiff from opinion and award entered 19 June 2015 by the North Carolina Industrial Commission. Heard in the Court of Appeals 30 March 2016.

*Michael A. Dammons, Plaintiff-Appellant, pro se.*

*Attorney General Roy A. Cooper, III, by Associate Attorney General Zachary Padget, for the Defendant-Appellant.*

DILLON, Judge.

Michael Dammons (“Plaintiff”) is an inmate at a North Carolina correctional facility. Plaintiff appeals from an order of the North Carolina Industrial Commission awarding him one hundred dollars (\$100.00) in compensatory damages (far less than he sought) for the negligent acts of a correctional officer.

I. Background

In 2009, Plaintiff was incarcerated at a North Carolina correctional institution. Plaintiff wore a brace on his right leg due to injuries which existed prior to his

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incarceration. Plaintiff submitted a claim for damages under the Tort Claims Act for a wrist injury he sustained when he tripped and fell on the sidewalk while being escorted to a disciplinary hearing by a correctional officer.

At a hearing on the matter, Plaintiff testified on his own behalf and attempted to call another inmate as a witness. The inmate was not available, and the Deputy Commissioner continued the hearing to allow for the inmate's testimony. The Deputy Commissioner, though, subsequently issued a decision denying Plaintiff's claim without taking the inmate's testimony.

Plaintiff filed a motion for reconsideration, or, in the alternative, for relief pursuant to Rule 60 of the North Carolina Rules of Civil Procedure. The Full Commission vacated the Deputy Commissioner's order and remanded the matter to allow Plaintiff to present the inmate's testimony. However, the inmate refused to testify, and the Deputy Commissioner again issued a decision and order denying Plaintiff's claim. Plaintiff appealed this decision to the Full Commission, which held that Defendant was, in fact, negligent as alleged and awarded Plaintiff compensatory damages in the amount of one hundred dollars (\$100.00).

Plaintiff filed a motion to reconsider the decision of the Full Commission on 13 July 2015. On 14 July 2015, Plaintiff filed a notice of appeal with this Court. The Commission denied Plaintiff's motion to reconsider on 12 August 2015.

## II. Jurisdiction

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Because Plaintiff appealed the decision of the Full Commission to this Court before the Commission ruled on Plaintiff's pending motion to reconsider, Plaintiff's appeal was not timely. *See* N.C. Admin. Code tit. 4, r. 10A.0703(b) ("An award of the Full Commission is not final until the disposition is filed by the Commission on the pending motion to reconsider or to amend an award."). Therefore, we acknowledge that Plaintiff's appeal is subject to dismissal. However, we exercise our discretion to treat Plaintiff's appeal as a petition for certiorari and reach the merits of the appeal. N.C. R. App. P. 21(a)(1).

### III. Analysis

On appeal, Plaintiff challenges *the amount* of compensatory damages set in the Full Commission's decision and order. Plaintiff also argues that he was denied an evidentiary hearing and that the Full Commission failed to properly consider the record evidence in making its decision.

The scope of our review upon appeal from an award of the Industrial Commission is limited to the following questions of law: (1) Whether there was any competent evidence before the Commission to support its findings of fact, and (2) whether the findings of fact justify the Commission's legal conclusion and decision. *Bailey v. North Carolina Dept. of Mental Health*, 272 N.C. 680, 684, 159 S.E.2d 28, 31 (1968). "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."

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*Simmons v. Columbus County Bd. Of Educ.*, 171 N.C. App. 725, 728, 615 S.E.2d 69, 72 (2005).

After thorough review, we conclude that each of the Commission's findings of fact are fully supported by the evidence in the record. *See Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965) (holding that this Court's "duty goes no further than to determine whether the record contains any evidence tending to support the finding[s]"). The Commission's findings were based on the testimony of Plaintiff and the testimony of a correctional officer who testified solely regarding the procedure for placing an inmate in restraints during transport. Plaintiff's testimony regarding his fall and corresponding wrist injury was not contradicted by Defendant.

The Commission's findings of fact support its ultimate decision to award Plaintiff compensatory damages for his wrist injury. The Commission found that (1) the "[correctional officer] owed [P]laintiff a duty of care," (2) that the correctional officer breached this duty of care by "failing to be in a position to hold or catch [P]laintiff when he began to fall and failing to provide more care in supporting him during escort[.]" and (3) that Plaintiff sustained damages in the form of an injury to his left wrist, proximately caused by Defendant's breach of its duty of care. These findings support the Commission's award of compensatory damages to Plaintiff resulting from Defendant's negligence.

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Plaintiff's remaining arguments are without merit. Although Plaintiff was given the opportunity to have a witness testify in his case, the witness declined to do so. Furthermore, Plaintiff has not articulated the content of the witness's potential testimony, and has thus failed to establish why he was prejudiced by the witness's failure to testify.

AFFIRMED.

Judges CALABRIA and DIETZ concur.

Report per Rule 30(e).