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NO. COA11-606
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

STANLEY S. SMITH,
Plaintiff,

v.

N.C. DEPARTMENT OF CORRECTION,
Defendant.

North Carolina
Industrial Commission
I.C. No. TA-20179

Appeal by plaintiff from Decision and Order entered 15 March 2011 by the North Carolina Industrial Commission. Heard in the Court of Appeals 7 November 2011.

S. Shane Smith, pro se.

Attorney General Roy A. Cooper, III, by Associate Attorney General Adrian Dellinger, for the State.

STROUD, Judge.

Plaintiff appeals a Decision and Order of the Industrial Commission arguing that the monetary damages he recovered were not adequate. For the following reasons, we affirm.

I. Background

On 6 July 2007, plaintiff, an inmate, filed a claim under the Tort Claims Act "in the amount of \$14,798.80 by reason of

the negligent conduct of the employee/agent named here Steve Bailey, Roger Moon, Doug Mitchell, [and] Eddie Ross[.]”

Plaintiff claimed,

On Wednesday, May 25, 2005, I was placed in segregation of Craggy Corr. Center. My personal property was confiscated. Doug Mitchell was the facility superintendent.

6-B: On Thursday, May 26, 2005, I was transported from Craggy. My confiscated property did not transfer with me.

6-C: On Thursday, May 26, 2005, I arrived at Cleveland Corr. Center. Additional items of my personal property were confiscated. Eddie Ross was the facility superintendent.

. . . .

6-E: On Wednesday, July 13, 2005, I transferred from Cleveland Corr. Center. My property confiscated by Cleveland did not transfer with me.

. . . .

6-H: As of this date, I am still without my confiscated property.

Plaintiff’s “confiscated property” included legal research and/or work product from the North Carolina Supreme Court library, retained counsel for post-conviction relief in superior court, and retained counsel for administrative relief for clemency motions; two pairs of New Balance athletic shoes;

approximately 200 personal photographs; a watch; computer disks; a USB computer disk; approximately 50 audio CDs; ten personal day planners; numerous books; computer software; personal correspondence; and project notebooks.

On or about 11 September 2007, defendant filed an answer. On 27 July 2010, the North Carolina Industrial Commission ("Commission") by Deputy Commissioner, J. Brad Donovan, ordered that plaintiff recover \$643.80 from defendant "due to the negligence of defendant's agents or employees." On or about 9 August 2010, both plaintiff and defendant appealed. On 15 March 2011, the Full Commission ordered plaintiff recover \$643.80 from defendant "due to the negligence of Defendant's agents or employees." Plaintiff appeals.

II. Oral Argument

On or about 30 September 2010, plaintiff requested oral argument with the Commission which was subsequently denied. Plaintiff first contends that "the Full Commission erred by not allowing plai[n]tiff oral argument." (Original in all caps.) Plaintiff notes that he "was born without fingers and toes" and thus he "experiences extreme difficulty and pain when he must hold a pen or pencil[;]" plaintiff concludes that he "could have better articulated his claim if oral argument had been allowed."

Whether to allow oral argument is within the discretion of the Commission. See *Adams v. M.A. Hanna Co.*, 166 N.C. App. 619, 623, 603 S.E.2d 402, 405 (2004) ("The Full Commission, in its discretion, may waive the use of Form 44 and oral argument, and reach its decision based on the record, assignments of error and briefs.") As plaintiff has not shown or even argued that the Commission abused its discretion, we overrule this argument. See *D'Aquisto v. Mission St. Joseph's Health Sys.*, 198 N.C. App. 674, 677, 680 S.E.2d 249, 252 (2009) ("An abuse of discretion results only where a decision is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision." (citation, quotation marks, and ellipses omitted)).

III. Decision and Order

Plaintiff's remaining four arguments challenge specific findings of fact and a conclusion of law made by the Commission.

When considering an appeal from the Industrial Commission under the Tort Claims Act, this 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. Pursuant to N.C. Gen. Stat. § 143-293, a claimant may appeal the decision of the Full Commission, but such appeal shall be for errors of law only and findings of fact of the Commission shall be

conclusive if there is any competent evidence to support them. However, when the Full Commission's findings of fact are insufficient to determine the rights of the parties, the Court may remand to the Industrial Commission for additional findings. This Court's review of the Industrial Commission's conclusions of law is *de novo*.

Phillips v. North Carolina State University, ___ N.C. App. ___, ___, 697 S.E.2d 433, 435 (2010) (citations, quotation marks, and brackets omitted).

A. Confiscated Property Returned

Plaintiff argues that "the Full Commission erred when they ruled tha[t] defendant had returned to plaintiff some of his confiscated property." (Original in all caps.) Plaintiff contends that "[t]he Record is clear: None of plaintiff's confiscated property was ever returned to him." However, plaintiff admitted he had signed a document which stated, "I certify that I have received the above listed articles of personal property in the condition specified." The document included "New Balance[,]" obviously a reference to a pair of plaintiff's New Balance athletic shoes which he had noted were confiscated. Accordingly, there was competent evidence before the Commission that some of plaintiff's confiscated property was returned to him.

B. Value of Property

Plaintiff next argues that "the Full Commission erred in their calculation[n] of the value of plaintiff's confiscated property." (Original in all caps.) As to the Commission's calculation of damages our Court has stated

the general rule [is] . . . *Olivetti Corp. v. Ames Business Systems, Inc.*, 319 N.C. 534, 547-48, 356 S.E.2d 578, 586 (1987) ("As part of its burden, the party seeking damages must show that the amount of damages is based upon a standard that will allow the finder of fact to calculate the amount of damages with reasonable certainty.").

Phillips, ___ N.C. App. at ___, 697 S.E.2d at 437 (2010).

Plaintiff admitted that he "arrive[d] at these values" based upon "what they cost at the canteen[,]" the "price at what it cost [him] to hire the representation that helped [him] get those [legal] documents[,]" and the value things "were to [him]." Beyond his own testimony, plaintiff failed to provide any evidence of the value of any of his property. Accordingly, plaintiff failed to meet his burden of "show[ing] that the amount of damages is based upon a standard that will allow the finder of fact to calculate the amount of damages with reasonable certainty." *Id.* This argument is thus overruled.

As to the value of his property, plaintiff also argues that "the Full Commission erred when they ruled th[at] certain items

of plaintiff's confiscated proper[ty] had no assignable value and that plaintiff shoul[d] not recover for the value of certain items of his confiscated property." (Original in all caps.) But plaintiff himself admits that some of his property had an "undeterminable value[;]" thus, again plaintiff failed to meet his burden of providing "a standard that will allow the finder of fact to calculate the amount of damages with reasonable certainty." *Id.* This argument is overruled.

C. Damage Award

Lastly, plaintiff argues that "the Full Commission erred in calculating the total damage award that was due to the plaintiff." (Original in all caps.) As plaintiff failed to show that the Commission had erred in the value it assigned to plaintiff's property, we conclude that the Commission's award of damages based upon these findings was proper. This argument is overruled.

IV. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

Chief Judge MARTIN and Judge ERVIN concur.

Report per Rule 30(e).