

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-738

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

ISTIVAN DOUGLAS,
Plaintiff,

v.

N.C. DEPARTMENT
OF CORRECTION,
Defendant.

North Carolina
Industrial Commission
No. TA-15479

Appeal by plaintiff from decision and order entered 23 April 2001 by the North Carolina Industrial Commission. Heard in the Court of Appeals 11 March 2002.

Attorney General Roy Cooper, by Assistant Attorney General Richard L. Harrison, for the N.C. Department of Correction.

Istivan Douglas, plaintiff-appellant, pro se.

BRYANT, Judge.

On 25 July 1996, plaintiff commenced this action by filing an affidavit with the North Carolina Industrial Commission pursuant to the North Carolina Tort Claims Act. In the affidavit, plaintiff alleged that defendant was negligent in its care of plaintiff while he was under the supervision of Central Prison Hospital recovering from spinal cord surgery. Plaintiff claimed that his bed was placed in such a way that his elbow was allowed to rest on a hot heating duct, resulting in burns to his elbow while sleeping. On

29 June 2000, Deputy Commissioner Richard Ford dismissed plaintiff's claim for failure to present any evidence proving negligence. Plaintiff appealed to the Full Commission. On 23 April 2001, the Full Commission denied plaintiff's requests to receive further evidence and to rehear the case, and affirmed the Deputy Commissioner's decision. Plaintiff appeals.

Plaintiff raises six "assignments of error" in his brief. However, plaintiff does not bring these assignments of error forth as arguments in his brief. Additionally, to the extent that these "assignments of error" are in fact arguments, plaintiff cites no authority to support his contentions. Thus, the assignments of error are deemed abandoned. N.C.R. App. P. 28(b)(5).

Liberally construing plaintiff's remaining argument, plaintiff essentially argues that defendant was negligent in its care of him after his surgery, resulting in his arm being burned, and that he should be compensated for his injury. This Court has stated:

Under the Tort Claims Act, "when 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." In a proceeding under the Tort Claims Act, "[f]indings of fact by the Commission, if supported by competent evidence, are conclusive on appeal even though there is evidence which would support a contrary finding." "On appeal, this 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.'"

Fennell v. N.C. Dep't of Crime Control and Public Safety, ___ N.C.

App. ___, ___, 551 S.E.2d 486, 490 (2001) (citations omitted). Upon review of the record, we find the evidence supports the Commission's findings of fact and conclusions of law that defendant failed to prove any negligence on the part of defendant. First, Dr. Barbara Pohlman testified that plaintiff's bed would not be pushed up against a wall or heating unit. Dr. Pohlman explained that "nurses staff has to be able to get around - all the way around the bed in order to care for patients. The beds are not pushed up against walls." Second, Dr. Pohlman testified that plaintiff was on "mild to moderate sedation" and that his "sensory function was exquisitely intact, was absolutely normal on his sensory side." Dr. Pohlman notes that if plaintiff had not been an inmate, he would have been sent home to recover. Thus, Dr. Pohlman, who was testifying as an expert, opined that plaintiff would wake up if he were being burned. Accordingly, we affirm the Commission's decision denying plaintiff's claim.

Affirmed.

Judges WYNN and THOMAS concurs.

Report per Rule 30(e).