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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-241

Filed: 4 October 2016

North Carolina Industrial Commission, I.C. No. TA-23292

TERRY LYTLE, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by plaintiff from Opinion and Award entered 6 January 2016 by the Full Commission of the North Carolina Industrial Commission. Heard in the Court of Appeals 7 September 2016.

*Terry Lytle, pro se, for plaintiff.*

*Attorney General Roy Cooper, by Assistant Attorney General Barry H. Bloch, for defendant.*

ELMORE, Judge.

Terry Lytle (plaintiff) appeals from the Opinion and Award entered by the Full Commission of the North Carolina Industrial Commission. We affirm.

**I. Background**

While plaintiff was incarcerated at Lanesboro Correctional Institution, he filed an affidavit and claim for damages against the North Carolina Department of Public

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Safety (defendant) under the North Carolina Tort Claims Act, N.C. Gen. Stat. § 143-291. Plaintiff alleged that on 16 March 2012, correctional staff negligently withdrew ten dollars from his trust account for a disciplinary hearing that did not take place. Plaintiff alleged “over \$10,000” in damages, including the ten dollar fee, “stamps, papers, pens, and unlimited stress and mental anguish of why staff are so negligent and the grievance procedure is a farce.”

On 16 June 2015, the North Carolina Industrial Commission held an evidentiary hearing on the matter, in which plaintiff appeared, testified, and called witnesses. Deputy Commissioner Sumit Gupta filed a Decision and Order on 7 July 2015, concluding that defendant was negligent in withdrawing ten dollars from plaintiff’s account. Deputy Commissioner Gupta awarded plaintiff ten dollars. Plaintiff appealed to the Full Commission of the Industrial Commission, arguing that he was entitled to the \$10,000 in damages that he had claimed and that defendant should pay the costs of the action.

On 17 December 2015, the Full Commission reviewed the matter without oral argument. In an Opinion and Award filed 6 January 2016, the Full Commission awarded plaintiff ten dollars and ordered defendant, as the non-prevailing party, to pay the costs of the action. Plaintiff appeals.

### **II. Analysis**

Plaintiff initially presented six issues in his brief on appeal; however, plaintiff

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failed to present any argument as to four of those issues and they are, thus, deemed abandoned. *See* N.C. R. App. P. 28(b)(6) (2016) (“Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.”).

Plaintiff first argues that the Industrial Commission erred by not holding pretrial hearings on his declaration for entry of default and on his objection to defendant’s motion for extension of time to file an answer. Next, plaintiff argues that the Industrial Commission erred in disregarding plaintiff’s 12 June 2014 request for judicial notice.

The North Carolina Industrial Commission hears and passes upon tort claims against all departments, institutions, and agencies of the State. N.C. Gen. Stat. § 143-291 (2015). Upon determination of the claim, either party may file notice of appeal to the Full Commission of the Industrial Commission. N.C. Gen. Stat. § 143-292 (2015). “Either the claimant or the State may, within 30 days after receipt of the decision and order of the full Commission, . . . appeal from the decision of the Commission to the Court of Appeals.” N.C. Gen. Stat. § 143-293 (2015). “Such appeal 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.” *Id.*; *see also Simmons v. Columbus Cnty. Bd. of Educ.*, 171 N.C. App. 725, 727–28, 615 S.E.2d 69, 72 (2005).

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“Parties have a right to appeal any final judgment of a superior court. Thus, an appeal of right arises only from a final order or decision of the Industrial Commission.” *Berardi v. Craven Cnty. Sch.*, 202 N.C. App. 364, 365, 688 S.E.2d 115, 116 (2010) (quoting *Cash v. Lincare Holdings*, 181 N.C. App. 259, 263, 639 S.E.2d 9, 13 (2007)); *see also Coulter v. Catawba Cnty. Bd. of Educ.*, 189 N.C. App. 183, 188, 657 S.E.2d 428, 432 (2008) (“Appellate review is limited to the decision and order of the Industrial Commission.”).

Here, plaintiff does not contest any of the Full Commission’s findings of fact or conclusions of law. Plaintiff’s arguments primarily pertain to the Deputy Commissioner’s failure to hold pretrial hearings and failure to take judicial notice. However,

[I]n order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party’s request, objection, or motion.

N.C. R. App. P. 10(a)(1) (2016); *see also Coulter*, 189 N.C. App. at 188, 657 S.E.2d at 432 (noting that alleged errors by the Deputy Commissioner were not properly before this Court). To the extent we can construe plaintiff’s argument on appeal to mean that the Full Commission erred in not awarding plaintiff \$10,000 in damages as claimed, plaintiff’s argument does not have merit.

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The Full Commission's 6 January 2016 Opinion and Award contains sufficient findings of fact, which were supported by competent evidence. Based on the unchallenged findings of fact, which are binding on appeal, *Dawson v. N.C. Dep't of Env't & Nat. Res.*, 204 N.C. App. 524, 525, 694 S.E.2d 427, 428 (2010), the Full Commission concluded as a matter of law the following:

As trustee of plaintiff's inmate trust account, defendant had a duty to secure and manage plaintiff's trust account funds and maintain a proper accounting for the benefit of plaintiff. Defendant breached that duty by the transfer of a \$10.00 administrative fee out of plaintiff's inmate trust account on March 16, 2012, for its own benefit. Defendant has not shown any basis for the deduction of that administrative fee from plaintiff's account. Defendant's breach of its fiduciary duty as trustee of plaintiff's inmate trust account proximately resulted in damages to plaintiff in the amount of \$10.00. Accordingly, the Commission concludes that defendant was negligent in the management of plaintiff's inmate trust account.

The Full Commission concluded that defendant shall pay plaintiff ten dollars in damages and ordered defendant to pay the costs of the action. Plaintiff has failed to show error.

**III. Conclusion**

The Full Commission did not err in its Opinion and Award.

AFFIRMED.

Judges ZACHARY and ENOCHS concur.

Report per Rule 30(e).

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