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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-658

Filed: 18 December 2018

N.C. Industrial Commission, I.C. No. TA25775

JONATHAN E. BRUNSON, Plaintiff,

v.

OFFICE OF THE DISTRICT ATTORNEY FOR THE 12TH PROSECUTORIAL DISTRICT, THE NORTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, and THE STATE OF NORTH CAROLINA, Defendants.

Appeal by Plaintiff from decision and order filed 6 September 2017 and order filed 29 March 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 26 November 2018.

Jonathan E. Brunson, Plaintiff-Appellant, pro se.

Attorney General Joshua H. Stein, by Assistant Attorney General Barry H. Bloch, for Defendants-Appellees.

McGEE, Chief Judge.

Jonathan E. Brunson (“Plaintiff”) appeals from two orders of the North Carolina Industrial Commission (“Industrial Commission”) dismissing his claims against the above-named Defendants pursuant to the North Carolina Tort Claims

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Act (“Tort Claims Act”), N.C. Gen. Stat. § 143-291, *et seq.*, and denying his motion for default judgment.

I. Factual and Procedural History

Plaintiff filed a claim with the Industrial Commission on 19 July 2016 pursuant to the Tort Claims Act. Plaintiff alleged: (1) that between 25 March 2009 and 17 July 2011 the above-named Defendants (hereinafter “Defendants”) negligently withheld potentially exculpatory evidence during pre-trial discovery; (2) that the State negligently hired, supervised, and retained employees of the Office of the District Attorney for the Twelfth Prosecutorial District (“District Attorney’s Office”) and the North Carolina Department of Social Services (“DSS”); and (3) that Defendants negligently administered criminal discovery laws in a racially discriminatory manner.

The North Carolina Department of Justice (“DOJ”) filed three motions to dismiss and a motion to stay discovery on 24 August 2016 on behalf of “Defendant, North Carolina Department of Correction.” Defendants’ first motion to dismiss was made pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) for failure to state a claim based on the fact that Defendants’ alleged conduct occurred outside the Tort Claims Act’s statute of limitations. Defendants further moved to dismiss Plaintiff’s claims pursuant N.C. Gen. Stat. § 1A-1, Rule 12(b)(1) based on a lack of subject matter jurisdiction. Defendants alleged Plaintiff’s claim was a collateral attack on Plaintiff’s

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criminal conviction, rather than a claim of negligence. Finally, Defendants moved to dismiss Plaintiff's claim pursuant to Rule 12(b)(6) for failure to state a claim based on prosecutorial immunity.

Plaintiff filed a motion to strike Defendants' motions to dismiss and stay discovery on 20 September 2016. Plaintiff filed a declaration for entry of default on 26 September 2016. Plaintiff filed a motion for default judgment on 3 October 2016. Plaintiff filed a motion for leave to file an amended tort claim on 12 October 2016 and an addendum to his 12 October 2016 motion on 21 October 2016. Plaintiff filed an addendum to his 3 October 2016 motion for default judgment on 2 March 2017. Defendants responded to Plaintiff's motions; however, neither Plaintiff's motions nor Defendants' responses are included in the record on appeal. Defendants filed a motion for leave to amend, along with an amended answer on 23 June 2017. The amended answer sought to add a new motion to dismiss and alter the introductory paragraph to include the correct Defendants. The additional motions to dismiss were made under Rule 12(b)(6) based on public official immunity and N.C. Gen. Stat. § 1A-1, Rule 12(b)(1), (2), (4), and (5) based on Plaintiff's failure to name a state agency.

Special Deputy Commissioner Brian Liebman entered a decision and order on 6 September 2017 ("6 September 2017 order"), which dismissed Plaintiff's claims with prejudice, pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction. The Tort Claims Act gives the Industrial Commission jurisdiction to hear negligence claims

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regarding state agencies, institutions, and departments; however, both the District Attorney's Office and the Cumberland County Department of Social Services ("Cumberland DSS") are county agencies. Similarly, the 6 September 2017 order held that none of the alleged negligent acts occurred while the negligent individuals were employees of a state department, institution, or agency; therefore, the Industrial Commission did not have subject matter jurisdiction over Plaintiff's claim against the State. Alternatively, the 6 September 2017 order held that, to the extent Plaintiff's claim asserted constitutional violations on behalf of the State, the Industrial Commission did not have subject matter jurisdiction. Finally, the 6 September 2017 order held that, even assuming *arguendo* that the Industrial Commission had jurisdiction to hear Plaintiff's claim, dismissal would be proper pursuant to Rule 12(b)(6) because the alleged negligent acts occurred outside the Tort Claims Act's statute of limitations.

Plaintiff appealed the 6 September 2017 order to the full Industrial Commission. The Industrial Commission affirmed the 6 September 2017 order in an order filed 29 March 2018. Plaintiff appeals both the 6 September 2017 order and the 29 March 2018 order.

II. Analysis

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Plaintiff argues on appeal that the Industrial Commission erred: (1) by dismissing Plaintiff's claim against the District Attorney's Office and (2) by denying Plaintiff's declaration for entry of default and motion for default judgment.

Under the Tort Claims Act, either party may

appeal from the decision of the [Industrial] Commission to the Court of Appeals. 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 [Industrial] Commission shall be conclusive if there is any competent evidence to support them.

N.C. Gen. Stat. § 143-293 (2017). The Tort Claims Act gives the Industrial Commission limited jurisdiction to hear "tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State," N.C. Gen. Stat. § 143-291(a) (2017), and to determine

whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina.

Id.

In the case before us, the Industrial Commission properly determined that it did not have jurisdiction to hear Plaintiff's claim against the District Attorney's Office or the Cumberland DSS. *See Meyer v. Walls*, 347 N.C. 97, 489 S.E.2d 880 (1997). In *Meyer*, our Supreme Court held that the Industrial Commission does not have

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jurisdiction to hear negligence claims against county agencies, even where the agency is “an alleged involuntary servant or agent of the State[.]” *Id.* at 105, 489 S.E.2d at 884. Plaintiff’s argument that the Industrial Commission has jurisdiction to hear claims because they were created by statute is without merit.

Similarly, the Industrial Commission did not err in dismissing Plaintiff’s claim against the State. The Tort Claims Act confers limited jurisdiction to the Industrial Commission to hear negligence claims against “any officer, employee, involuntary servant or agent of the State.” N.C.G.S. § 14-291(a). In the present case, the Industrial Commission found that none of the individuals named in Plaintiff’s allegations were “employees of a state department, institution, or agency.” **R13.** Therefore, the Industrial Commission properly determined it did not have subject matter jurisdiction to hear Plaintiff’s claim that the State negligently hired, supervised, and retained employees of the District Attorney’s Office and Cumberland County DSS.

Even assuming, *arguendo*, that Plaintiff had properly alleged that the individuals were employees of the State, the Tort Claims Act’s statute of limitations requires dismissal of Plaintiff’s claim. N.C. Gen. Stat. § 143-299 (2017) (“All claims against any and all State departments, institutions, and agencies shall henceforth be forever barred unless a claim be filed with the Industrial Commission within three years after the accrual of such claim[.]”). Plaintiff was convicted on approximately 17

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June 2011 and his appeal was heard by this Court on 24 May 2012. *State v. Brunson*, 221 N.C. App. 614, 727 S.E.2d 916 (2012). Any employees involved with any alleged withholding of exculpatory evidence would have been hired prior to those dates; however, Plaintiff did not file his claim until 19 June 2016.

In regard to Plaintiff's second argument, the Industrial Commission did not err in denying Plaintiff's declaration for entry of default and motion for default judgment. Entry of default judgment and default judgment are reviewed for abuse of discretion. *N.C.N.B. v. McKee*, 63 N.C. App. 58, 61, 303 S.E.2d 842, 844 (1983). "Abuse of discretion exists when the challenged actions are manifestly unsupported by reason." *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004) (citation and internal quotation marks omitted).

In the case before us, the Industrial Commission properly determined it did not have subject matter jurisdiction to hear Plaintiff's claim against Defendants. "Where there is no jurisdiction of the subject matter the whole proceeding is void *ab initio* and may be treated as a nullity anywhere, at any time, and for any purpose." *State v. Daniels*, 224 N.C. App. 608, 613, 741 S.E.2d 354, 359 (2012) (citing *High v. Pearce*, 220 N.C. 266, 271, 17 S.E.2d 108, 112 (1941)). Therefore, the Industrial Commission did not abuse its discretion by denying Plaintiff's declaration for entry of default and motion for default judgment where it found that it did not have

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jurisdiction to hear Plaintiff's claim. The Industrial Commission's 6 September 2017 order and 29 March 2018 order are affirmed.

AFFIRMED.

Judges HUNTER, JR. and INMAN concur.

Report per Rule 30(e).