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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-659

Filed: 18 December 2018

N.C. Industrial Commission, I.C. No. TA-25828

JONATHAN E. BRUNSON, Plaintiff,

v.

NORTH CAROLINA INNOCENCE INQUIRY COMMISSION and THE STATE OF NORTH CAROLINA, Defendants.

Appeal by Plaintiff from decision and order filed 13 September 2017 and order filed 23 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 from the North Carolina Industrial Commission (“Industrial Commission”) dismissing his claims against the above-named Defendants under the North Carolina Tort Claims Act

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

I. Factual and Procedural History

Plaintiff filed a claim on 24 August 2016 with the Industrial Commission pursuant to the Tort Claims Act. Plaintiff alleged that employees or agents of the North Carolina Innocence Inquiry Commission (“IIC”) negligently failed to investigate and pursue his claim of innocence. Plaintiff alleged that IIC had a statutory duty to investigate his claim of innocence under N.C. Gen. Stat. § 15A-1466 and IIC’s failure to investigate was a result of racial discrimination. Plaintiff also alleged that the State negligently allowed IIC to violate its statutory duties and to act in a racially discriminatory manner. The record on appeal does not contain the portions of Plaintiff’s claim describing the substance of his claims.

The North Carolina Department of Justice (“DOJ”) filed two motions to dismiss and a motion to stay discovery on 8 September 2016 on behalf of “Defendant, State of North Carolina[.]” DOJ first moved to dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(1), (2), and (6) for failure to state a claim. DOJ’s motion argued that N.C. Gen. Stat. § 15A-1470 states that “unless otherwise authorized . . . the decisions of the [IIC] and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion, or otherwise.” DOJ next argued that, to the

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extent Plaintiff argued Defendants violated his constitutional rights, the Industrial Commission did not have subject matter jurisdiction under the Tort Claims Act.

Plaintiff filed a motion on 3 October 2016 for default judgment and declaration for entry of default. Plaintiff filed a motion for leave to file an amended tort claim on 10 October 2016. At a pretrial hearing held 23 August 2017, Plaintiff contended that he was not appealing IIC's decision not to pursue his claim of innocence, but was alleging negligence *per se* on the basis of IIC's statutory violation. Plaintiff further stated that he was not making a constitutional claim explicitly, but that constitutional rights were "baked into" the statute Defendants violated.

Special Deputy Commissioner Brian Liebman entered a decision and order on 13 September 2017 ("13 September 2017 order") that dismissed Plaintiff's negligence claims with prejudice, pursuant to Rule 12(b)(6) for failure to state a claim. The 13 September 2017 order held that N.C. Gen. Stat. § 15A-1466 does not, as Plaintiff alleged, require IIC to investigate every claim of innocence presented to it.

Plaintiff appealed the 13 September 2017 order to the full Industrial Commission. In an order entered 23 March 2018, the Industrial Commission affirmed the 13 September 2017 order. Plaintiff appeals the 13 September 2017 order and the 23 March 2018 order.

II. Analysis

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Plaintiff's sole argument on appeal is that the Industrial Commission erred by denying Plaintiff's declaration for entry of default and motion for default judgment against IIC because the IIC failed to file and serve an answer within thirty days of service.

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).

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 dismissed Plaintiff's claims against Defendants pursuant to Rule 12(b)(6) for failure to state a claim. "A complaint which fails to state a cause of action is not sufficient to support a default judgment for plaintiff." *Lowe's v. Worlds*, 4 N.C. App. 293, 295, 166 S.E.2d 517, 518 (1969). The Industrial Commission correctly determined in both the 13 September 2017 order and the 23 March 2018 order that N.C.G.S. § 15A-1466 does not require

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IIC to investigate every claim of innocence presented to it; therefore, IIC was not negligent in refusing to investigate Plaintiff's claim of innocence. Because the Industrial Commission correctly determined that Plaintiff failed to state a claim upon which relief could be granted, it did not abuse its discretion in denying his declaration for entry of default and motion for default judgment. The Industrial Commission's 13 September 2017 order and 23 March 2018 order are affirmed.

AFFIRMED.

Judges HUNTER, JR. and INMAN concur.

Report per Rule 30(e).