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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1047

Filed: 3 September 2019

North Carolina Industrial Commission, I.C. No. TA-24884

STANLEY S. SMITH, Plaintiff

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by plaintiff from order entered 7 August 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 24 April 2019.

S. Shane Smith, pro se, plaintiff-appellant.

Attorney General Joshua H. Stein, by Assistant Attorney General Barry H. Bloch, for defendant-appellee.

STROUD, Judge.

Stanley Shane Smith (“Plaintiff”) appeals from an opinion and award of the Industrial Commission which awarded him general damages of \$50.00 for the negligence of the North Carolina Department of Public Safety (“Defendant”) in mishandling his mail. Because the Industrial Commission’s findings of fact are supported by competent evidence and the findings support the conclusions of law, we affirm.

I. Background

Plaintiff was incarcerated at Piedmont Correctional Institution in the custody of Defendant. While incarcerated, Plaintiff had a civil suit pending with the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit Court of Appeals entered judgment on this case on 1 July 2014. On 29 August 2014, Defendant delivered mail addressed to Plaintiff to another inmate. Plaintiff maintains that because of Defendant's error, he lost his right to petition the United States Supreme Court for review of his case.

Plaintiff initiated the present action under the State Tort Claims Act on 13 April 2015. Plaintiff alleged that as a result of Defendant's negligent actions he had suffered damages in excess of \$10,000.00. This matter was heard by Deputy Commissioner Theodore Danchi on 19 October 2017. Deputy Commissioner Danchi concluded that Plaintiff had proven the elements of negligence in delivery of the mail but failed to show any damages as result of Defendant's negligence. Defendant was required to pay \$200.00 in nominal damages. Plaintiff appealed to the Full Industrial Commission, which found that Defendant breached its duty to "safekeep and properly deliver mail addressed to Plaintiff." The Full Commission's Order and Decision found "\$50.00 in general damages is a fair and reasonable award for the careless conduct of Defendant's employees/agents." Defendant was taxed \$220.00 in costs. Plaintiff timely appealed to this Court.

II. Damages

Plaintiff, proceeding pro se, challenges the Industrial Commission's calculation of Plaintiff's damages and the amount of damages related to Defendant's negligent act.

The standard of review for an appeal from the Full Commission's decision under the Tort Claims Act "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."

Becker v. N.C. Dep't of Motor Vehicles, 177 N.C. App. 436, 438, 628 S.E.2d 446, 448-49 (2006) (citation omitted) (quoting *Simmons v. Columbus Cty. Bd. of Educ.*, 171 N.C. App. 725, 727-28, 615 S.E.2d 69, 72 (2005)).

Here, the Industrial Commission found,

8. Although Plaintiff claims damages in excess of \$29,090.00, Plaintiff has offered no evidence that he sustained damages in that amount and/or but for the negligence of Defendant's employees/ agents Plaintiff would have been allowed to proceed with his action in the U.S. Supreme Court or would have been successful with his appeal.

9. In the absence of any other evidence regarding damages proximately caused by Defendant's admitted negligence, the Full Commission finds that \$50.00 in general damages is a fair and reasonable award for the careless conduct of Defendant's employees/agents.

The Industrial Commission concluded,

4. In the present case, Plaintiff has proven that

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the named employees of Defendant in this matter were negligent as they had a duty to exercise reasonable care to Plaintiff to properly handle and deliver mail addressed to him as an inmate under the custody and control of Defendant at PCI and they admittedly breached that duty on August 29, 2014 when they improperly handled Plaintiff's mail and delivered it to the wrong inmate resulting in some damages associated with Plaintiff's failed attempts to revive his federal action for purposes of seeking certiorari with the United States Supreme Court. *Pulley*, 326 N.C. at 701,392 S.E.2d at 380.

5. The burden of proving damages is on the party seeking those damages. *Olivetti Corp. v. Ames Business Systems, Inc.*, 319 N.C. 534, 547, 356 S.E.2d. 578, 586 (1987). Plaintiff has proven that he suffered some general damages which proximately resulted from Defendant's admitted negligence on August 29, 2014, but Plaintiff has failed to show that he suffered damages in the amount of \$29,090.00 and/or that Plaintiff would have been allowed to proceed with his action in the U.S. Supreme Court or would have been successful with his appeal. *Id.*; N.C. Gen. Stat. § 143-291. In the discretion of the Full Commission, Plaintiff is entitled to an award of general damages in the amount of \$50.00. *Iadanza v. Harper*, 169 N.C. App. 776, 779, 611 S.E.2d 217, 221 (2005).

There is competent evidence in the record to support the Industrial Commission's finding that Plaintiff failed to present evidence that any alleged damages are the result of Defendant's negligence and of his actual damages. Defendant did not present any evidence to show a likelihood that the United States Supreme Court would have granted review by certiorari of his case if he had received the mail from the Fourth Circuit in a timely manner or that he would have likely prevailed if the Supreme Court had accepted his case for review. Accordingly, the

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Industrial Commission's award of general damages is suitable for the negligent act committed by Defendant. The findings of the Industrial Commission are supported by competent evidence which in turn support the conclusions of law.

III. Conclusion

For the reasons stated above, we affirm the Industrial Commission's 7 August 2018 order.

AFFIRMED.

Judges BRYANT and COLLINS concur.

Report per Rule 30(e).