

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-897

No. COA22-538

Filed 20 December 2022

North Carolina Industrial Commission No. TA-28347

EARL JAMES WATSON, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by Plaintiff from order entered 26 January 2022 by Special Deputy Commissioner Marshall L. Wright for the North Carolina Industrial Commission.

Heard in the Court of Appeals 1 November 2022.

Earl James Watson, Pro Se.

Attorney General Joshua H. Stein, by Assistant Attorney General Allison Newton, for the Defendant.

DILLON, Judge.

¶ 1 Plaintiff Earl James Watson is an inmate at a North Carolina prison. Plaintiff appeals from an order of the North Carolina Industrial Commission dismissing his claim brought under the North Carolina Tort Claims Act.

I. Background

¶ 2 In February 2020, Plaintiff filed a claim against the North Carolina

WATSON V. N.C. DEP'T OF PUBLIC SAFETY

2022-NCCOA-897

Opinion of the Court

Department of Public Safety (“DPS”) pursuant to the North Carolina Tort Claims Act (the “Act”), seeking compensation for alleged injuries he suffered during an incident that occurred over four years earlier, in September 2015. The Commission dismissed Plaintiff’s claim for failure to comply with the three-year statute of limitations applicable under the Act. Plaintiff timely appealed.

II. Analysis

¶ 3 Plaintiff makes several arguments on appeal. For the following reasons, we hold the Commission properly concluded that the statute of limitations for Plaintiff’s tort claim was not tolled by the pendency of Plaintiff’s § 1983 claim in federal court.

¶ 4 We review the Commission’s conclusions of law *de novo*. *Nay v. Cornerstone Staffing Sols.*, 380 N.C. 66, 77, 2022-NCSC-8, *17 (2022).

¶ 5 North Carolina law requires that any claim against a State department or agency be filed with the Commission within three years after the accrual of the claim. N.C. Gen. Stat. § 143-299 (2015). Here, Plaintiff’s claim accrued in September of 2015. He waited over four years to file his claim under the Act.

¶ 6 In the interim, in August of 2018, Plaintiff filed his federal claim. Plaintiff argues that DPS was a Defendant to both actions and that, as a result, the statute of limitations was tolled pursuant to 28 U.S.C. § 1367(d). He contends that even though DPS was not technically a named defendant in that federal action, DPS is a ‘person’ within the meaning of § 1983 because the lawsuit named DPS employees in their

WATSON V. N.C. DEP'T OF PUBLIC SAFETY

2022-NCCOA-897

Opinion of the Court

official capacities as defendants.

¶ 7

The pertinent federal code provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress. . .

42 U.S.C. § 1983. The United States Supreme Court has held that the definition of a ‘person’ under § 1983 does not “override the traditional sovereign immunity of the States”. *Quern v. Jordan*, 440 U.S. 332, 341 (1979). Under the Eleventh Amendment to the United States Constitution, States enjoy sovereign immunity from suit in federal court from both their own citizens and those from other states. *Lapides v. Bd. of Regents*, 535 U.S. 613, 616 (2002); U.S. Const. amend. XI. Generally, an entity “with Eleventh Amendment immunity is not a ‘person’ within the meaning of § 1983.” *Howlett v. Rose*, 496 U.S. 356, 365 (1990); *Thigpen v. Cooper*, 225 N.C. App. 798, 804, 739 S.E.2d 165, 169 (2013).

¶ 8

As an agency of the State of North Carolina, DPS enjoys sovereign immunity and is “not subject to suit under § 1983 in either federal court or state court.” *Howlett*, 496 U.S. at 365 (“the State and arms of the State, which have traditionally enjoyed Eleventh Amendment immunity, are not subject to suit under § 1983 in either federal

WATSON V. N.C. DEP'T OF PUBLIC SAFETY

2022-NCCOA-897

Opinion of the Court

court or state court”); *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) (holding that neither a State nor its officials acting in their official capacity are ‘persons’ under § 1983 when the remedy sought is monetary damages). Therefore, the Commission did not err when it concluded that the statute of limitations to file Plaintiff’s tort claim had expired because DPS was not a party to Plaintiff’s § 1983 claim.

¶ 9

Because the order from which Plaintiff appeals properly dismissed Plaintiff’s tort claim, we decline to address Plaintiff’s remaining arguments. Accordingly, Defendant’s motion on appeal for extension of time to file his reply brief is dismissed as moot.

III. Conclusion

¶ 10

The Commission did not err in concluding that Plaintiff’s tort claim against a State agency was barred by the applicable statute of limitations. We, therefore, affirm the Commission’s order dismissing Plaintiff’s tort claim.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).