Franklin v. Wiggins

634 S.E.2d 273 (2006) | Cited 0 times | Court of Appeals of North Carolina | September 5, 2006

Unpublished opinion

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

Plaintiff William Carter Franklin appeals from the dismissal of two lawsuits he filed in New Hanover County against defendants June Marie Wiggins and Wiggins LLC, d/b/a Kohl's Frozen Custard, one asserting a claim for wrongful termination of employment and the other arising out of a workplace injury. We agree with thedistrict court that (1) plaintiff failed to include sufficient factual allegations in his wrongful termination complaint, and (2) plaintiff's workplace injury claim falls within the exclusive jurisdiction of the North Carolina Industrial Commission. Further, the trial court's award to defendants of attorneys' fees under N.C. Gen. Stat. § 6-21.5 (2005) is fully supported by the record. Accordingly, we affirm.

Facts and Procedural History

Defendants operate a family restaurant specializing in frozen custard. Plaintiff was briefly employed by defendants in the summer of 2004. During his brief tenure, an accident took place in which plaintiff severely cut his finger on the sharp blade of a frozen custard machine. Shortly after the accident took place, plaintiff's employment with defendants was terminated for reasons that are in dispute. Plaintiff ultimately filed a workers' compensation claim in the Industrial Commission with respect to his finger injury and entered into a clincher agreement resolving that claim.

Plaintiff also filed a complaint with the North Carolina Department of Labor ("DOL") alleging a violation of REDA. Following an investigation, DOL issued a right-to-sue letter dated 9 September 2004, concluding that "there was insufficient evidence to determine that there was a violation of REDA." The letter notified plaintiff that he had "the right to file a private lawsuit in superior court." Plaintiff, representing himself, filed two actions in New Hanover County Small Claims Court based on these events. The first complaint, 04 CVM 5426 (later 04 CVD 4607), was dated 8 November 2004 and sought $5,000.00 for "wrongful termination [and] slander." The magistrate dismissed the action, and plaintiff appealed to district court. His case went to arbitration, and the arbitrator also dismissed the action, awarding plaintiff nothing. Plaintiff then sought a trial de novo in the district court. Defendants filed a motion to dismiss, for summary judgment, and for sanctions. Plaintiff did not present any evidence or file any further pleadings.

The district court ruled that "[p]laintiff has asserted no facts to support his claims and there is no law upon which his claims could be based." It therefore granted defendants' motion to dismiss because "[p]laintiff has failed to state a claim upon which relief may be granted." The district court also ordered plaintiff to pay defendants' attorneys' fees. Finally, after noting that plaintiff had "filed approximately 20 small claims actions in New Hanover County . . . in forma pauperis, most of which have been resolved against him," the district court provided that "[p]laintiff shall not file any further civil actions or appeals in New Hanover County without first obtaining approval from the Chief District Court Judge or Senior Resident Superior Court Judge for the Fifth District." [1] The other complaint, 05 CVM 2128 (later 05 CVD 2064), filed by plaintiff in small claims court on 11 May 2005, also sought $5,000.00 in damages and purported to be based on "wreckless [sic] endangerment, negligence: 7/10/04 amputation of mid distal phalanx." The magistrate dismissed the action, and plaintiff appealed to the district court, again presenting no additional pleadings or evidence beyond his initial filing in small claims court. The district court dismissed the case, stating that (1) reckless endangerment was not a cognizable claim in North Carolina, (2) plaintiff's claims were barred by the Workers' Compensation Act, (3) "[p]laintiff has asserted no facts to support his claims and there is no law upon which his claims could be based," and (4) plaintiff was obligated to pay defendants' costs and attorneys' fees.

The district court's orders in both of plaintiff's lawsuits were filed on 30 June 2005. Plaintiff gave timely notice of appeal from both orders on 5 July 2005. The appeals are before us on a consolidated record. [2]

Discussion

We first address plaintiff's wrongful termination/slander lawsuit. The district court dismissed plaintiff's complaint on the grounds that plaintiff failed to state a claim upon which relief may be granted. We hold that his small claims court complaint was inadequate to state a claim for relief.

We acknowledge that N.C. Gen. Stat. § 7A-216 (2005) provides that "[t]he complaint in a small claim action . . . need be in no particular form, but is sufficient if in a form which enables a person of common understanding to know what is meant." The statute further specifies that "the forms prescribed in this Article are sufficient under this requirement, and are intended to indicate the simplicity and brevity of statement contemplated." Id. Those forms appear in N.C. Gen. Stat. § 7A-232 (2005).

The sole factual allegations contained in plaintiff's small claims complaint were: "The defendant owes me the amount listed for the following reason: wrongful termination [and] slander." When we compare this complaint with the forms in N.C. Gen. Stat. § 7A-232, it is readily apparent that plaintiff's complaint was inadequate. The most analogous form complaint is a complaint for injury to person or property, which the statute sets out as follows:

(Caption as in form 4)

1. (Allegation of residence of parties)

2. On or about June 1, 1965, at the intersection of Main and Church Streets in the Town of Ashley, N.C., defendant (intentionally struck plaintiff a blow in the face) (negligently drove a bicycle into plaintiff) (intentionally tore plaintiff's clothing) (negligently drove a motorcycle into the side of plaintiff's automobile).

3. As a result (plaintiff suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one hundred and fifty dollars ($150.00)[)] (plaintiff suffered damage to his property above described in the sum of two hundred and fifty dollars ($250.00)[)].

Wherefore (etc., as in form 4).

Id. Thus, the form complaint includes the date that the incident at issue took place, basic facts about what occurred, and the basis for the damages sought. Other form complaints in § 7A-232 contain the same general information.

Here, plaintiff's bare bones assertion that he is suing for wrongful termination and slander contains no factual allegations at all _ no indication of the date of the termination or slander, why the termination was wrongful, or what the alleged slanderous statements were. In short, plaintiff has identified his cause of action, but not the factual basis for his claims. We do not believe that this complaint is sufficient to "enable[] a person of common understanding to know" the basis for plaintiff's lawsuit. N.C. Gen. Stat. § 7A-216.

In small claims court, "[d]emurrers and motions to challenge the legal and formal sufficiency of a complaint . . . shall not be used." Id. Nevertheless, once a plaintiff has appealed to district court, the North Carolina Rules of Civil Procedure apply. Jones v. Ratley, 168 N.C. App. 126, 130, 607 S.E.2d 38, 41 (Tyson, J., dissenting), adopted per curiam, 360 N.C. 50, 619 S.E.2d 503 (2005). See also id. at 134, 607 S.E.2d at 43 ("The abbreviated procedures that are permissible in small claims court allow prompt resolution of disputes that do not exceed $4,000.00, while allowing for a full de novo review upon appeal by the party against whom judgment was entered by the magistrate."). While the trial court could have required additional pleadings, it was entitled to dismiss plaintiff's complaint on the grounds that it failed to include any factual allegations at all. We, therefore, uphold the trial court's dismissal of case 04 CVD 4607.

We next turn to plaintiff's workplace injury action, 05 CVM 2128 (later 05 CVD 2064). The record indicates that plaintiff filed the same claims in the Industrial Commission and that he entered into a clincher agreement resolving those claims. Plaintiff has stated on appeal, moreover, that he "clearly was simply trying to resolve his Industrial Commission matters in the local courts. Ten months had

passed since the plaintiff's injury and the Commission had accomplished no settlement." Contrary to plaintiff's assertions that he was entitled to proceed on his claims both in the Industrial Commission and in the courts, the Workers' Compensation Act provides the exclusive remedy for claims arising out of workplace injuries. See N.C. Gen. Stat. § 97-10.1 (2005) ("If the employee and the employer are subject to and have complied with the provisions of this Article, then the rights and remedies herein granted to the employee . . . shall exclude allother rights and remedies of the employee . . . as against the employer at common law or otherwise on account of such injury or death."); McAllister v. Cone Mills Corp., 88 N.C. App. 577, 580, 364 S.E.2d 186, 188 (1988) (holding that, with respect to compensable injuries, an employee cannot elect to pursue an alternate avenue of recovery, but is required to proceed under the Workers' Compensation Act). Therefore, the district court correctly concluded that plaintiff's workplace injury claims were barred by § 97-10.1.[3]

Finally, plaintiff also challenges on appeal the district court's grant of defendants' motions for attorneys' fees in both lawsuits, in the amount of $1,049.40 for the wrongful termination lawsuit and $1,584.10 for the workplace injury lawsuit. In both cases, the district court cited N.C. Gen. Stat. § 6_21.5 and N.C.R. Civ. P. 11 as the bases for its award of fees and included a single finding of fact simply incorporating by reference defendants' affidavits for attorneys' fees. We affirm the award under N.C. Gen. Stat. § 6_21.5 only.

N.C. Gen. Stat. § 6_21.5 provides in pertinent part: In any civil action or special proceeding the court, upon motion of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading. . . . The court shall make findings of fact and conclusions of law to support its award of attorney's fees under this section.

This Court has previously held that the fact-finding requirement in this section is satisfied when the trial court incorporates by reference the motions and affidavits of the party moving for fees. Winston-Salem Wrecker Ass'n v. Barker, 148 N.C. App. 114, 118_19, 557 S.E.2d 614, 617_18 (2001) (when the trial court's order held simply that fees "'should be granted in accordance with the provisions of G.S. § 6_21.5 upon the grounds raised in said motions and affidavit,'" this Court noted that "[c]omprehensive review of the order, the motion, and the affidavit and its attachments provides sufficient findings of fact to support the award of attorney's fees"). Barker is controlling as to N.C. Gen. Stat. § 6-21.5, and we are thus compelled to hold that the district court's incorporation of defendants' affidavits sufficed to support the court's award of fees. In re Appeal from Civil Penalty, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court."). [4] The trial court's conclusion that plaintiffs' claims in both actions were non-justiciable is fully supported by the record. In the context of an award of attorneys' fees, the test regarding whether a claim is non-justiciable is whether the "party persisted in litigating the case after a point where he should reasonably have become aware that the pleading he filed no longer contained a justiciable issue." Sunamerica Fin. Corp. v. Bonham,

328 N.C. 254, 258, 400 S.E.2d 435, 438 (1991). With respect to the wrongful termination and slander claims, plaintiff included no factual allegations in his complaint and offered no evidence in support of his claims in opposition to defendants' motion for summary judgment. See N.C.R. Civ. P. 56(e) ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."). With respect to the workplace injury action, we note that plaintiff freely admits that these causes of action arose solely out of his pending claims before the Industrial Commission. As we have stated, it is well-settled in this State that employees must pursue claims arising out of workplace-related injuries under the Workers' Compensation Act in the IndustrialCommission only and, therefore, plaintiff's claims were not justiciable in small claims court or district court. Under these circumstances, plaintiff failed to show that the district court erred in awarding fees based on non-justiciability.

Affirmed.

Judges TYSON and STEELMAN concur.

Report per Rule 30(e).

1. Although plaintiff presents arguments in his brief regarding the propriety of this gate-keeping order, he did not assign error to that portion of the trial court's order and, therefore, thoseissues are not properly preserved for appellate review. N.C.R. App. P. 10(a) ("[T]he scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10."). For that reason, we do not address them.

2. We note that plaintiff has appended to his brief a number of documents that do not appear elsewhere in the record, which he characterizes as "evidence for trial." While our Rules of Appellate Procedure permit an appendix to a brief, "it [is] improper for [a party] to attach a document not in the record and not permitted under N.C.R. App. P. 28(d) in an appendix to its brief." Horton v. New South Ins. Co., 122 N.C. App. 265, 268, 468 S.E.2d 856, 858, cert. denied, 343 N.C. 511, 472 S.E.2d 8 (1996); see also N.C.R. App. P. 28(d) (describing the permitted contents ofan appendix to a brief, including statutory authority and transcript excerpts). We, therefore, have disregarded these materials.

3. Our Supreme Court has recognized a narrow exception to the exclusivity rule for "cases in which a defendant employer engaged in conduct that, while not categorized as an intentional tort, was nonetheless substantially certain to cause serious injury or death to the employee. . . . This exception applies only in the most egregious cases of employer misconduct. Such circumstances exist where there is uncontroverted evidence of the employer's intentional misconduct and where such misconduct is substantially certain to lead to the employee's serious injury or death." Whitaker v. Town of Scotland Neck, 357 N.C. 552, 556-57, 597 S.E.2d 665, 667-68 (2003) (citing Woodson v. Rowland, 329 N.C. 330, 407 S.E.2d 222 (1991)). Plaintiff does not, however, argue that his claims fall within this exception.

4. We note that a single finding of fact incorporating an affidavit by reference is insufficient to support sanctions under

Rule 11. Davis v. Wrenn, 121 N.C. App. 156, 160, 464 S.E.2d 708, 711 (1995) (holding that a fee award under Rule 11 must besupported by findings and conclusions explaining the appropriateness of fee award and indicating how the court arrived at the particular amount), cert. denied, 343 N.C. 305, 471 S.E.2d 69 (1996). The parties do not, however, address the issue whether affirmance of an award of fees under § 6-21.5 renders moot any error in connection with an accompanying award under Rule 11, and therefore we express no opinion on that question.