

22-7170

IN THE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED

FEB 08 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 21-7222

5:20-cv-03376-BD

REGINALD L. WILSON

Plaintiff

-against-

BRAD PERRITT; KENNETH E. LASSITER;

GEORGE W. BAYSDEN, JR.; AMANDA EDWARDS;

ROSEMARY E. BIANCARDI; JOHN DOE, #1; JOHN DOE #2

Defendants

REGINALD L. WILSON

#0639675

Pamlico Correctional Institution

601 North 3rd Street

Wayboro, N.C. 28515-0000

QUESTIONS PRESENTED

Whether the plaintiff's case manager, the defendant, Amanda Edwards's recommendation was based on a non-existent disciplinary infraction?

Whether each defendant neglected to check the record, to see if the plaintiff did not have an additional disciplinary infraction, when the plaintiff expressed that he had not committed an additional disciplinary infraction while on Restrictive Housing for Control Purpose (RHCP)?

Whether the plaintiff would have served an additional 180 days on RHCP, if each of the defendants would have checked the records to see that the plaintiff had not committed an additional disciplinary infraction?

TABLE OF AUTHORITIES

Negligence, Black's Law Dictionary (11th ed. 2019)

DECISIONS BELOW

The North Carolina Industrial Commission Motion to Dismiss Complaint. A copy is attached as Appendix 1a.

The decision of the United States District Court for the Eastern District of North Carolina Western Division, Order Denying Motion to amend complaint, No. 5:20-CT-3376-BO. A copy is attached as Appendix 2a.

The decision of the United States Courts of Appeals for the Fourth Circuit Denying the petition for rehearing and rehearing en banc. A copy is attached as Appendix 3a.

JURDICTION

The judgment of the United State District Court for the Eastern District of North Carolina Western Division was entered on October 22, 2019. An order denying the Petitioner's/ Plaintiffs' Claim for Damages Under Tort Claims Act Affidavit ("Affidavit") with the North Carolina Industrial Commission, was entered on December 9, 2019, and a copy is attached as Appendix 1a to this petition.

The judgment of the United States District Court for the Eastern District of North Carolina Western District was entered on August 9, 2021. An order denying as futile the plaintiff's motion for leave to amend the complaint (D.E. 12), was entered on February 23, 2022, and a copy is attached as Appendix 2a to this petition.

The judgment of Appeal from the United States Courts of Appeals for the Fourth Circuit, was submitted November 22, 2022, and Decided November 28, 2022, Affirmed by unpublished per curiam opinion. A copy is attached as Appendix 4a.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

N.C. Gen. Stat. § 143-291 (a) (2018) confers upon the North Carolina Industrial Commission jurisdiction to hear negligence against the Board of Education, the Board of Transportation, and all other departments, Institutions and agencies of the State.

Under the Tort Claims Act, "negligence is determined by the same rules as those applicable to private parties." *Bulphur v. N.C. State Univ.*, 321 N.C. 706, 709, 365 S.E.2d 898, 900 (1988). In order to prevail in a claim filed pursuant to this Act, a plaintiff must allege and prove "that there was negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his/her office, employment, service, agency or authority that was the proximate cause of the injury and that there was no contributory negligence" on the part of the plaintiff. N.C. Gen. Stat. § 143-291 (a).

The defendant's motion to dismiss tests the legal sufficiency of the plaintiff's complaint by presenting the question whether as a matter of law the allegations of the complaint, treated as true, are sufficient to state a claim upon which

relief can be granted under the Tort Claims Act. See *Isenhour v. Hutto*, 350 N.C. 601, 604, 517 S.E. 2d 121, 124 (1999).

"A complaint should not be dismissed for insufficiency unless it appears to a certainty that the plaintiff is entitled to no relief under any state of fact which would be proved in support of the claim." *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 111, 229 S.E. 2d 297, 300 (1976) (citations and internal quotation marks omitted).

STATEMENT OF THE CASE

The plaintiff's complaint alleged that he never was charged with and additional disciplinary infraction. It further alleged that the plaintiff did not commit an additional disciplinary infraction after 5-22-2017 and that the defendant, Amanda Edwards's recommendation was baseless, and each of the defendants relied on the defendant Amanda Edwards's recommendation, even after the plaintiff expressed to each defendant that he had not committed an additional disciplinary infraction while on RHCP.

The defendant, Amanda Edwards's Supervisor, the defendant George W. Baysden Jr. was made aware, when the plaintiff filed a grievance addressing that he had not committed an additional disciplinary infraction while on RHCP, no relief was granted. Also, the defendant, Rosemary E. Biancordi was again made aware of the plaintiff's issue addressing that he had no committed an additional disciplinary infraction while on RHCP, when the plaintiff filed a grievance, no relief was granted. Each defendant failed to check the

telling the truth and inmates are lying.

In this case, the only issue is the relative credibility of the plaintiff, who claimed he didn't commit an additional disciplinary infraction while on RHC/P and the defendant, Amanda Edwards who made a report stating that the plaintiff committed an additional disciplinary infraction and based her recommendation off of her report.

The Facility Classification Committee and the Director of Classification Committee/Authority merely referred to the defendant, Amanda Edwards's report and agreed with her recommendation, without taking into consideration, when the plaintiff expressed that he had not committed an additional disciplinary infraction while on RHC/P, nor did they check the record.

In this case the credibility judgments are between the plaintiff and the committee's co-worker and that "thus are under obvious pressure to resolve a disciplinary dispute in favor of the institution and the fellow employees... in retaliation to prolong the plaintiff's stay on RHC/P."

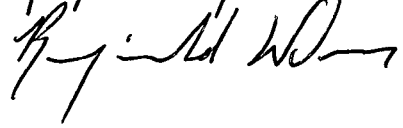
Each defendant had time to review the records and negligent to do so, and their action subjected the plaintiff to an additional 180 days on RHC/P, for a non-existent disciplinary infraction that he did not commit.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

March , 2023

Respectfully Submitted,



REGINALD L. WILSON

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