

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA01-1092

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

FELICIA LIVIA SPRINCENATU,

Plaintiff,

v.

Durham County
No. 01 CVS 0021

ALLSTATE INDEMNITY COMPANY,
EDDIE SCOTT and PEARL SCOTT,

Defendants.

Appeal by plaintiff from order entered 12 April 2001 by Judge Anthony Brannon, and orders entered 5 June 2001 by Judge Orlando F. Hudson, Jr., in Superior Court, Durham County. Heard in the Court of Appeals 5 June 2002.

Felicia Livia Sprincenatu, plaintiff-appellant, pro se.

Teague, Rotenstreich & Stanaland, LLP, by Kenneth B. Rotenstreich and Paul A. Daniels, for defendants-appellees.

WYNN, Judge.

Plaintiff appeals from the trial court's 12 April 2001 order setting aside the 22 February 2001 entry of default against defendant Allstate Indemnity Company; plaintiff also appeals from the trial court's 5 June 2001 orders allowing defendant Allstate's motion to dismiss, and allowing defendants Scotts' motion to

dismiss. We affirm.

Plaintiff filed a "Proposed Record on Appeal" with this Court on 30 August 2001. We note that the record does not comply with N.C.R. App. P. 9 (2002) in that it does not contain an index pursuant to Rule 9(a)(1)(a), nor does it contain a copy "of any agreement, notice of approval, or order settling the record on appeal" as required pursuant to Rule 9(a)(1)(i). The record further fails to comply with the requirements of Rules 9(b)(1) and 9(b)(4). Furthermore, the record, even assuming *arguendo* that it was properly constituted under Rule 9 and properly settled under N.C.R. App. P. 11 (2002), was not timely filed with this Court pursuant to N.C.R. App. P. 12 (2002).

On 19 October 2001, plaintiff filed a delinquent motion for extension of time to file the record on appeal with this Court; the same day, defendants filed a motion to dismiss plaintiff's appeal as well as a motion for sanctions against plaintiff under N.C.R. App. P. 34. These motions were referred to this panel for disposition.

Plaintiff's brief was to be filed with this Court on or before 7 October 2001; on 23 October 2001, plaintiff filed a delinquent motion for extension of time until 6 November 2001 to file her brief; this Court allowed plaintiff's motion, requiring that her brief be filed with this Court on or before 3 December 2001. The order allowing plaintiff's motion for extension provided specifically that "No further extensions of time to file plaintiff-appellant's brief shall be allowed." Plaintiff filed her brief

with this Court on 5 December 2001.

On 19 December 2001, defendants-appellees filed a motion for extension of time until 4 February 2002 to file their brief, which motion was granted by this Court. Defendants filed their brief with this Court on 5 February 2002.

On 2 January 2002, defendants filed a motion to amend the record on appeal, consistent with their contention that the record on appeal was never properly settled. This motion was referred to this panel for disposition.

We hereby deny defendants 2 January 2002 motion to amend the record on appeal; deny plaintiff's 19 October 2001 motion for extension of time to file the record on appeal; and deny defendants motion to dismiss plaintiff's appeal on the basis of plaintiff's multiple violations of our Rules of Appellate Procedure. Furthermore, we deny defendants-appellees' motion for sanctions against plaintiff pursuant to Rule 34.

We have therefore reviewed the merits of plaintiff's appeal despite the record not being timely filed with this Court and numerous other rules violations. We summarily hold that plaintiff has failed to show that the trial court abused its discretion in setting aside the entry of default, see *Privette v. Privette*, 30 N.C. App. 41, 226 S.E.2d 188 (1976); additionally, plaintiff has failed to show that the trial court erred in granting defendants-appellees' motions to dismiss. Accordingly, the trial court's 12 April 2001 order setting aside the entry of default, and the 5 June 2001 orders allowing defendants-appellees' motions to dismiss are,

Affirmed.

Judges HUNTER and THOMAS concur.

Report per Rule 30(e).