

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-435

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

MAMIE L. DAVIS,
Plaintiff

v.

Columbus County
No. 97 CVS 1134

GENERAL MOTORS,
Defendant

Appeal by plaintiff from order entered 5 October 2000 by Judge Wiley F. Bowen in Robeson County Superior Court. Heard in the Court of Appeals 18 March 2002.

William L. Davis, III, for plaintiff appellant.

Young Moore and Henderson P.A., by Reed N. Fountain, for defendant appellee.

McCULLOUGH, Judge.

On 14 July 1999, the trial court entered an order of dismissal in this case. Plaintiff Mamie L. Davis attempted to give notice of appeal *pro se* on 26 July 1999. Plaintiff sought an extension of time from this Court on 9 December 1999 which was "dismissed without prejudice to file an amended notice of appeal with the clerk of superior court . . . provided the time for giving notice of appeal has not elapsed. See N.C.R. App. P. 3." She subsequently filed an amended notice of appeal with the trial court

on 7 January 2000.

Defendant General Motors filed a motion to dismiss plaintiff's amended notice of appeal and appeal, which the trial court allowed by its order entered 5 October 2000. Plaintiff gave notice of appeal on 30 October 2000 from the "Order entered in this action on October 2, 2000 in the Superior Court of Columbus County dismissing the Plaintiff's appeal to the North Carolina Court of Appeals by the Honorable Wiley Bower [sic], Superior Court Judge presiding." By order entered 19 March 2001, the trial court settled the record on appeal. Plaintiff appealed.

Although plaintiff attempts to argue three assignments of error in this purported appeal, those issues are not properly before this Court. Plaintiff gave notice of appeal on 30 October 2000 from Judge Wiley F. Bowen's "Order entered in this action on October 2, 2000 . . . dismissing the Plaintiff's appeal to the North Carolina Court of Appeals" However, "[n]o appeal lies from an order of the trial court dismissing an appeal for failure to perfect it within apt time, the proper remedy to obtain review in such case being by petition for writ of certiorari." *State v. Evans*, 46 N.C. App. 327, 327, 264 S.E.2d 766, 767 (1980); see also *Lightner v. Boone*, 221 N.C. 78, 84, 19 S.E.2d 144, 148 (1942). We therefore dismiss plaintiff's purported appeal.

After examining plaintiff's arguments, we decline to exercise our discretion to treat this purported appeal as a petition for writ of certiorari. This Court's 9 December 1999 order did not extend the time for plaintiff to file an amended notice of appeal.

See N.C.R. App. P. 27(c) (2001) ("Courts may not extend the time for taking an appeal"). Plaintiff's amended notice of appeal on 7 January 2000 was entered more than thirty days after entry of the trial court's order of dismissal on 14 July 1999 and was therefore untimely. See N.C.R. App. P. 3(c) (2001) ("Appeal from a judgment or order in a civil action . . . must be taken within 30 days after its entry.").

Thus, only the trial court's order of 5 October 2000 was subject to this Court's review pursuant to plaintiff's notice of appeal filed on 30 October 2000. While there are two means by which a party's notice of appeal may be liberally construed to determine whether this Court has jurisdiction over an unspecified portion of the judgment, see *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156-57, 392 S.E.2d 422, 424 (1990), neither is applicable here to extend the scope of review to the trial court's order of 14 July 1999.

A trial court's settlement of the record on appeal is not reviewable on appeal except by petition for writ of certiorari. *State v. Johnson*, 298 N.C. 355, 372, 259 S.E.2d 752, 763 (1979). Furthermore, because the materials excluded by the trial court were unnecessary to an understanding of errors assigned in the 5 October 2000 order, plaintiff would have been unable to show a manifest abuse of discretion even if she had properly sought review of the judicial settlement by a petition for writ of certiorari. See *State v. Little*, 27 N.C. App. 467, 478, 219 S.E.2d 494, 501, *disc. review denied*, 288 N.C. 732, 220 S.E.2d 621 (1975). Accordingly,

plaintiff's appeal is dismissed.

Dismissed.

Chief Judge EAGLES and Judge TIMMONS-GOODSON concur.

Report per Rule 30(e).