

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-947

NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2002

WAYNE C. KELLY, Administrator of
The Estate of Clinton Lawton Kelly,
Plaintiff

v.

Lee County
No. 00 CVS 01030

WEYERHAEUSER COMPANY,
JOHN STEPHENSON &
LEROY SAMUEL SEEBART,
Defendants.

Appeal by plaintiff from order entered 27 January 2001 by Judge Wiley F. Bowen in Lee County Superior Court. Heard in the Court of Appeals 25 April 2002.

Wayne Clinton Kelly, pro se.

Teague, Campbell, Dennis & Gorham, L.L.P., by J. Matthew Little and Tara L. Davidson, for defendants-appellees.

PER CURIAM.

Wayne C. Kelly, Administrator of the Estate of Clinton L. Kelly ("plaintiff") appeals from an order granting Weyerhaeuser Company's, Mr. John Stephenson's & Mr. Leroy Samuel Seebart's (collectively "defendants") motion to dismiss pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure, the doctrines of collateral estoppel and res judicata, and granting defendants' motions for sanctions pursuant to N.C.G.S § 1A-1, Rule 11 and

N.C.G.S. § 1D-45. Defendants request and argue in their brief that we dismiss plaintiff's appeal.

_____We dismiss plaintiff's appeal as frivolous. Plaintiff's "appeal was taken . . . for an improper purpose . . . to cause unnecessary delay" and "needless increase in the cost of litigation." N.C.R. App. P. 34(a)(2). Plaintiff's brief also "grossly violate[s] appellate court rules" by: (1) referencing matters not contained in the record, and (2) exceeding space limitations and requirements. N.C.R. App. P 34(a)(3) and 26(g). Plaintiff's appeal is dismissed. We remand this case to the trial court for hearing to determine the reasonable expenses, including reasonable attorney fees, incurred by defendants as a result of this frivolous appeal. N.C.R. App. P. 34(c).

_____Appeal dismissed and remanded.

_____Panel consisting of:

Judges MARTIN, TYSON, and THOMAS

Report per Rule 30(e).
