

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-173

NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2002

IN RE: ZONING OF RICHARD D.
BATCHELOR and DEBORAH J.
BATCHELOR PROPERTY ON SKYUKA ROAD, POLK COUNTY, NORTH CAROLINA

Polk County
No. 01 CVS 70

Appeal by respondents from judgment entered 19 October 2001 by Judge James U. Downs in Superior Court, Polk County. Heard in the Court of Appeals 26 August 2002.

Adams Hendon Carson Crow & Saenger, P.A., by George Ward Hendon and Cynthia Marie Roelle, for petitioner-appellees.

Powell & Deutsch, by Robert J. Deutsch for respondent-appellants.

WYNN, Judge.

On 6 October 2000, the Polk County zoning administrator approved the issuance of a building permit to Richard D. and Deborah J. Batchelor (petitioners) for an accessory building on their property in the Skyuka Hills Subdivision. Residents of Skyuka Hills Subdivision and the Skyuka Hills homeowners association (respondents) filed a letter of appeal on 17 October 2000 with the Polk County Zoning Board of Adjustment (Board). In a decision issued on 1 February 2001, the Board reversed the zoning administrator's determination that the proposed building was in

compliance with the requirements of the Polk County Zoning Ordinance.

On 23 February 2001, petitioners filed a petition for writ of certiorari with the Polk County Superior Court seeking review of the Board's decision. In a judgment entered on 19 October 2001, Judge James U. Downs reversed the Board's decision and reinstated the zoning administrator's determination. On 5 November 2001, respondents filed a motion for relief from the judgment pursuant to N.C.R. Civ. P. 60(b)(6) and a motion for a stay of proceedings to enforce the judgment. Respondents filed a notice of appeal on 30 November 2001 which stated they gave "notice of appeal from the Judgment entered on October 19, 2001 . . . , oral notice of appeal having been given in open court on October 19, 2001." In an order entered 18 December 2001, the trial court denied the motion for relief from the judgment and allowed the motion for a stay contingent upon the posting of a \$10,000.00 supersedeas bond. From the trial court's judgment, respondents appeal.

Notice of appeal for all judgments entered in civil actions on or after 1 July 1989 must be given "by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subdivision (c) of this rule." N.C.R. App. P. 3(a) (2002). Respondents initially attempted to enter oral notice of appeal in open court on 19 October 2001. Oral notice of appeal is no longer effective under Rule 3. See *Darcy v. Osborne*, 101 N.C. App. 546, 400 S.E.2d 95 (1991). Respondents then filed a written notice of appeal forty-

two days later on 30 November 2001. The written notice of appeal is untimely, however, for "[a]ppeal from a judgment . . . must be taken within 30 days after its entry." N.C.R. App. P. 3(c).

"Appellate Rule 3 is jurisdictional and if the requirements of this rule are not complied with, the appeal must be dismissed." *Currin-Dillehay Bldg. Supply, Inc. v. Frazier*, 100 N.C. App. 188, 189, 394 S.E.2d 683, *disc. review denied*, 327 N.C. 633, 399 S.E.2d 326 (1990). Due to respondents' failure to give timely written notice of appeal, this appeal is dismissed.

Dismissed.

Judges McGEE and CAMPBELL concur.

Report per Rule 30(e).