

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-195

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

JOHNNY BENTON FLETCHER

v.

Surry County  
No. 03 CVS 293

LOIS NISTON VERNON

Appeal by plaintiff from order entered 1 July 2005 by Judge William Z. Wood, Jr., in Surry County Superior Court. Heard in the Court of Appeals 25 September 2006.

*Johnny Benton Fletcher, pro se plaintiff-appellant*

*Bowden & Laws, P.C., by Robert B. Laws, for defendant-appellee.*

JACKSON, Judge.

Johnny Benton Fletcher ("plaintiff") filed a negligence action against Lois Niston Vernon ("defendant") in Surry County Superior Court on 6 March 2003, seeking damages for personal injuries allegedly sustained in an automobile collision. A jury awarded plaintiff \$2,000.00, and judgment was entered upon the verdict on 1 April 2005. On 8 April 2005, plaintiff filed a motion for a new trial, which was denied by an order entered on 1 July 2005. Plaintiff dated and served his notice of appeal on 8 August 2005, thirty-eight days after entry of the order.

Pursuant to North Carolina Rule of Appellate Procedure 3(c), notice of appeal must be filed within 30 days of entry of the order from which the appeal is taken. This requirement is mandatory and jurisdictional. See *Booth v. Utica Mutual Ins. Co.*, 308 N.C. 187, 189, 301 S.E.2d 98, 99-100 (1983) ("Failure to give timely notice of appeal in compliance with . . . Rule 3 of the North Carolina Rules of Appellate Procedure is jurisdictional, and an untimely attempt to appeal must be dismissed."). Here, plaintiff's notice of appeal was filed more than thirty days after entry of the order. In addition, the record on appeal fails to disclose any delay in service of the order upon plaintiff which might extend the thirty day filing deadline pursuant to Rule 3(c)(2). Because the record before this Court does not demonstrate plaintiff's timely filing of notice of appeal, we dismiss the appeal for lack of jurisdiction. *Id.*

We note defendant has filed a motion to dismiss plaintiff's appeal based upon plaintiff's additional violations of the Rules of Appellate Procedure. However, having dismissed plaintiff's appeal *ex mero motu* on jurisdictional grounds, we dismiss defendant's motion as moot.

Appeal dismissed; motion dismissed.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).