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NO. COA11-317
NORTH CAROLINA COURT OF APPEALS

Filed: 1 November 2011

IN RE: APPEAL OF ACTION OF Macon County
THE ZONING ADMINISTRATOR OF THE No. 10 CVS 487
TOWN OF HIGHLANDS (#0110)
CONCERNING WILLIAM J. PEACOCK

Appeal by petitioner from judgment entered 26 October 2010 by Judge Mark E. Powell in Macon County Superior Court. Heard in the Court of Appeals 14 September 2011.

Jones, Key, Melvin & Patton, P.A., by Fred H. Jones and Karen L. Kenney, for petitioner William J. Peacock.

Coward, Hicks & Siler, P.A., by William H. Coward, for respondent Town of Highlands.

STEELMAN, Judge.

Where petitioner failed to file a petition for *certiorari* seeking review of the Board of Adjustment's ruling regarding an ordinance violation within the 30-day time period set forth in N.C. Gen. Stat. § 160A-388(e2), the trial court properly granted respondent's motion to dismiss the petition as untimely filed.

I. Factual and Procedural Background

On 7 January 2010, the zoning administrator from the Town of Highlands (respondent) inspected William Peacock's (petitioner) property and issued a citation for a violation of the ordinance prohibiting manufactured homes within the R-1 ETJ zoning district. Petitioner was ordered to remove the manufactured home from the property within 60 days of the issuance of the citation. Petitioner timely appealed the zoning administrator's decision to the Zoning Board of Adjustment (Board) asserting that the structure was a recreational vehicle, not a manufactured home.

On 12 May 2010, the Board held a public hearing to consider petitioner's appeal. The Board ruled that the structure on the property met the definition of a "manufactured home/mobile home" under section 1002 of the Zoning Ordinance and affirmed the decision of the zoning administrator. The written ruling was filed on 18 May 2010 in the office of the Planning and Development Department in a book identified as "Zoning Board Rulings: 1/1/07 through Current" as required by the ordinance.

On 28 July 2010, petitioner filed a petition for *certiorari* in the Superior Court of Macon County seeking review of the Board's decision. Respondent filed a motion to dismiss the petition as untimely filed. On 26 October 2010, the trial court

found that the petition was not filed within the time period provided in N.C. Gen. Stat. § 160A-388(e2) and granted respondent's motion to dismiss. The trial court also held that respondent was entitled to an order of abatement pursuant to N.C. Gen. Stat. § 160A-175(e) and ordered petitioner to remove the structure from his property within 60 days.

Petitioner appeals.

II. "Final Decision"

In his first argument, petitioner contends that the trial court erred in dismissing his petition for *certiorari*. We disagree.

The applicable statutory provision is N.C. Gen. Stat. § 160A-388(e2), which provides:

Every decision of the board shall be subject to review by the superior court by proceedings in the nature of *certiorari*. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

N.C. Gen. Stat. § 160A-388(e2) (2009) (emphasis added); *see also* *McCCrann v. Vill. of Pinehurst*, ___ N.C. App. ___, ___ S.E.2d ___ (October 4, 2011) (No. COA11-291).

Petitioner concedes in his brief that the Board's written ruling was "issued and signed by the Zoning Administrator and Board Chairman on 17 May 2010 and then filed with the Town's records on 18 May 2010[.]" Petitioner argues, however, that the Board's decision did not become "final" until the ruling was entered into the minutes of the Board and signed by the Secretary and Chairman on 14 July 2010. Thus, petitioner contends the 30-day time period to appeal the Board's ruling did not begin to run until 14 July 2010, and that his petition for *certiorari* was timely filed on 28 July 2010.

Petitioner points to a provision in Appendix B of the Rules of Procedure for the Zoning Board of Adjustment, titled "VIII. Decisions," which states, in part:

B. Form. Notice of the decision in a case, in the form of a written ruling, shall be given to the applicant by the secretary or the Zoning Administrator as soon as practicable after the case is decided. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Secretary and the Chairman upon approval of the minutes by the Board. . . .

However, the provision in the ordinance that requires a ruling to be entered into the minutes of the Board does not affect or extend the statutory time requirement as to when a petition must be filed in order for the superior court to hear the appeal. See *Sanford v. Oil Co.*, 244 N.C. 388, 390, 93 S.E.2d 560, 562 (1956) ("When the applicable statute provides an appeal from an administrative agency or an inferior court to the Superior Court, the procedure provided in the Act must be followed.").

In the instant case, the Board issued and signed its written ruling on 17 May 2010, and filed it on 18 May 2010 in the office of the Planning and Development Department in a book identified as "Zoning Board Rulings: 1/1/07 through Current." This book is kept as a public record by the Town and is available for inspection at all reasonable times.¹ There is a conspicuous note directed to petitioner included in the Board's written decision, which states: "NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the

¹ Appendix B, Section VIII(E) of the Rules of Procedure provides: "E. Public Record of Decisions. The decisions of the Board, as filed in its minutes and written ruling, shall be a public record, available for inspection at all reasonable times."

Superior Court of Macon County within thirty (30) days after the date of this order.”

Petitioner failed to file his petition for *certiorari* until 28 July 2010, more than 30 days after the decision of the Board was filed. This argument is without merit.

III. Notice

In his second argument, petitioner contends that the trial court erred in dismissing petitioner’s petition for *certiorari* as untimely when he filed it within 30 days of receiving notice of the Board’s ruling. We disagree.

Petitioner alternatively argues that the earliest possible date triggering the 30-day appeal deadline was 1 July 2010, the date petitioner picked up a copy of the written ruling from the Town Hall. However, petitioner was present at the 12 May 2010 hearing. The written ruling was timely mailed to petitioner at the address shown in his appeal to the Board, 70 Holt Road, Highlands, North Carolina. It was returned as “unclaimed” after four attempts to deliver the ruling were made by the post office on 19 May, 26 May, 3 June, and 9 June 2010. The address where the ruling was sent was the address of the “owner” as shown on the Macon County tax records for the property in question; the same address the Notice of Violation was sent to and received on

4 March 2010; and the same address shown on the appeal form submitted to the Board by petitioner on 12 March 2010. Petitioner cannot now claim that the Board failed to provide him notice of its written ruling.

Petitioner failed to comply with the statutory time limitations of N.C. Gen. Stat. § 160A-388(e2). The trial court properly granted respondent's motion to dismiss the petition for *certiorari* as untimely filed.

AFFIRMED.

Judges HUNTER, Robert C. and MCCULLOUGH concur.

Report per Rule 30(e).