

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-621
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

DINAH BORYLA-LETT, individually
and as Adm. of the estate of
AMANDA BORYLA a/k/a AMANDA HRASAR
and JEFFREY LETT,
Plaintiffs,

v.

Wake County
No. 07 CVS 11882

PSYCHIATRIC SOLUTIONS OF NORTH
CAROLINA, INC., d/b/a HOLLY HILL
HOSPITAL, GEORGE P. CORVIN, MD,
JOHN T. CLAPACS, MD and NORTH
RALEIGH PSYCHIATRY, PA, and JOHN
DOE,
Defendants.

Appeal by Plaintiff from order entered 11 December 2010 by
Judge W. Osmond Smith, III in Wake County Superior Court. Heard
in the Court of Appeals 9 November 2011.

Martin A. Rosenberg, for Plaintiffs-Appellants.

*Teague Campbell Dennis & Gorham, L.L.P., by J. Matthew
Little and Megan B. Baldwin, for Defendants-Appellees.*

BEASLEY, Judge.

Dinah Boryla-Lett, individually and as the administrator of
the estate of Amanda Boryla and Jeffrey Lett (Plaintiffs) appeal

an order for sanctions entered 11 December 2010 granting the disbursement and payment of sanctions by Plaintiffs. For the following reasons, we dismiss.

Pursuant to N.C.R. App. P. 3(d) notice of appeal "shall designate the judgment or order from which appeal is taken[.]" Additionally, "[p]roper notice of appeal is a jurisdictional requirement that may not be waived." *Chee v. Estes*, 117 N.C. App. 450, 452, 451 S.E.2d 349, 350 (1994). "As such, the appellate court obtains jurisdiction only over the rulings specifically designated in the notice of appeal as the ones from which the appeal is being taken." *Sellers v. Ochs*, 180 N.C. App. 332, 334, 638 S.E.2d 1, 2-3 (2006) (internal quotation marks omitted). A narrow exception to this rule exists where "a mistake in designating the judgment, or in designating the part appealed from if only a part is designated, should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be *fairly inferred* from the notice and the appellee is not misled by the mistake." *Evans v. Evans*, 169 N.C. App. 358, 363, 610 S.E.2d 264, 269 (2005).

In the case *sub judice*, Plaintiffs gave notice of appeal "from the order entered by Judge W. Osmond Smith III in Wake County Superior Court on or about December 10, 2010 ordering sanctions against said counsel." No reference was made to the 1 September order granting Defendants' Rule 11 motion for

sanctions. Moreover, the notice of appeal does not fall into the exception to the general rule where no intent to appeal the 1 September 2010 can be inferred. See *Fenz v. Davis*, 128 N.C. App. 621, 623, 495 S.E.2d 748, 750 (1998) (“A notice of appeal from an order denying a motion for a new trial which does not also specifically appeal the underlying judgment does not present the underlying judgment for review.”) For the aforementioned reasons, our review is limited to arguments concerning the 10 December 2010 order imposing the disbursement and payment of sanctions. Because all of Plaintiffs’ arguments challenge the 1 September 2010 order, we dismiss.

Dismissed.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).