

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-977

Filed: 21 March 2017

Mecklenburg County, No. 15-CVS-4987

GEORGE HENDERSON, Plaintiff,

v.

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, VINCENT JACOBS (CAROLINA BASKETBALL CLUB-CBC (INDIVIDUALLY); DENNIS COVINGTON CAROLINA BASKETBALL CLUB-CBS (INDIVIDUALLY); and CAROLINA BASKETBALL CLUB, LLC., Defendants.

Appeal by plaintiff from order entered 24 March 2016 by Judge Robert C. Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 21 February 2017.

The Law Office of Java O. Warren, by Java O. Warren, for plaintiff-appellant.

Campbell Shatley, PLLC, by Christopher Z. Campbell and Chad Ray Donnahoo, for defendant-appellees.

BRYANT, Judge.

Where plaintiff's notice of appeal was not timely filed and plaintiff failed to petition this Court for writ of certiorari to address the merits of his appeal, we dismiss.

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On 12 March 2015, plaintiff George Henderson commenced this action by filing a complaint against defendant Carolina Basketball Club, LLC (“defendant CBC”), and the filing of an amended complaint on 22 September 2015, which added defendants Vince Jacobs, Dennis Covington, and Charlotte-Mecklenburg Board of Education (“defendant Board”). On 7 December 2016, defendants Jacobs and CBC filed their answer to plaintiff’s amended complaint. On 14 December 2016, defendant Board timely filed its answer denying plaintiff’s allegations, asserting a defense for failure to state a claim, and asserting cross-claims against the remaining defendants. Defendant Covington never answered plaintiff’s amended complaint. On 3 February 2016, defendant Board filed a motion to dismiss pursuant to North Carolina Rules of Civil Procedure 12(b)(1), (2), and (6).

On 15 March 2016, a hearing was held on defendant Board’s motion in Mecklenburg County Superior Court, the Honorable Robert C. Ervin, Judge presiding. By order filed 24 March 2016, Judge Ervin granted defendant Board’s motion to dismiss plaintiff’s claims against defendant Board with prejudice.

Almost two months later, on 11 May 2016, plaintiff and defendants Jacobs and CBC filed a joint motion for entry of judgment to revise the 24 March 2016 order *nunc pro tunc*, pursuant to Rules 54(b), 60(b)(2), and 60(b)(6) of the North Carolina Rules

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of Civil Procedure, to certify the matter for immediate appeal.¹ The next day, on 12 May 2016, plaintiff filed notice of appeal from the 24 March 2016 order.

Under our North Carolina Rules of Appellate Procedure, Rule 3(c), “Time for Taking Appeal,” states, in pertinent part, the following:

In civil actions and special proceedings, a party must file and serve a notice of appeal:

(1) within 30 days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure; or

(2) within 30 days after service upon the party of a copy of the judgment if service was not made within that three-day period

Wallis v. Cambron, 194 N.C. App. 190, 192–93, 670 S.E.2d 239, 241 (2008) (quoting N.C. R. App. P. 3(c) (2007)).

“The provisions of Rule 3 are jurisdictional, and failure to follow the requirements thereof requires dismissal of an appeal.” *Id.* at 193, 670 S.E.2d at 241 (quoting *Abels v. Renfro Corp.*, 126 N.C. App. 800, 802, 486 S.E.2d 735, 737 (1997)).

“A jurisdictional default, therefore, precludes the appellate court from acting in any manner other than to dismiss the appeal.” *Dogwood Dev. & Mgmt. Co., LLC v. White*

¹ There is no indication in the record that a ruling was obtained on this motion.

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Oak Transp. Co., Inc., 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008) (citations omitted).

In the instant case, plaintiff filed notice of appeal forty-nine days after the entry of the order from which the appeal is taken—well beyond the thirty-day deadline prescribed in Rule 3. *See* N.C. R. App. P. 3(c) (2017). The order was issued on 24 March 2016 and plaintiff filed notice of appeal on 12 May 2016—nineteen days after 23 April 2016—the last day on which plaintiff’s notice of appeal could have been considered timely. Plaintiff also failed to petition this Court to issue a writ of certiorari as a result of his untimely notice of appeal in order to address the merits of plaintiff’s appeal. As a result, the untimely nature of plaintiff’s notice of appeal and failure to petition for writ of certiorari deprives this Court of jurisdiction over the appeal. *See E. Brooks Wilkins Family Med., P.A., v. WakeMed*, ___ N.C. App. ___, ___, 784 S.E.2d 178, 184 (2016); *see also Dogwood*, 362 N.C. at 197–98, 657 S.E.2d at 365. Therefore, we dismiss plaintiff’s appeal.

DISMISSED.

Judges INMAN and ZACHARY concur.

Report per Rule 30(e).