

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

Nos. COA19-292

Nos. COA19-293

Filed: 1 October 2019

Wake County, No. 13 CVD 31

SUNAINA S. GLAIZE, Plaintiff,

v.

SAMUEL G. GLAIZE, Defendant.

Appeal by plaintiff from orders entered 25 August 2016 and 11 October 2017 by Judge Michael J. Denning in Wake County District Court. Heard in the Court of Appeals 3 September 2019.

Sunaina S. Glaize, pro se, plaintiff-appellant.

No appellee brief filed.

PER CURIAM.

In this consolidated appeal,¹ COA19-292 and COA19-293, plaintiff Sunaina S. Glaize appeals from the trial court's 25 August 2016 order granting temporary custody to defendant Samuel G. Glaize and the 11 October 2017 order awarding attorney's fees to defendant in the parties' child custody and support action. Because

¹ Although plaintiff pursued two separate appeals, COA19-292 and COA19-293, given the similarity in factual circumstances and for purposes of judicial economy, we consolidate the appeals.

plaintiff failed to file timely written notices of appeal, we must dismiss for lack of jurisdiction.

Procedural Background

The record on appeal submitted in these two cases set forth a complex procedural history. The parties were married on 14 March 2004 and separated on or about 17 November 2012. During the marriage, one minor child was born. On 3 January 2013, plaintiff filed a complaint seeking child custody, child support, and attorney’s fees.² Plaintiff alleged that “[d]efendant has created a physically and emotionally injurious environment for the minor child and [d]efendant is currently unfit to exercise the care, custody, and control of the minor child[.]” Defendant answered, contesting plaintiff’s allegations as made in “bad faith,” and counterclaimed for child custody and child support.

On 5 March 2013, the trial court entered two consent orders: 1) a temporary child custody order awarding joint legal custody to the parties, physical custody to plaintiff, and appointing a therapist to supervise visitation between defendant and the minor child; and 2) a temporary child support order directing defendant to pay monthly child support arrears. Thereafter, in September 2014, defendant was granted “physical custody of [the minor child for] approximately 50% of the time.”

² Prior to filing the complaint in January 2013, plaintiff filed a complaint and motion for domestic violence protective order in 2012 alleging that defendant sexually abused the minor child. An investigation by Child Protective Services (“CPS”) determined there were no findings suggestive of child sexual abuse, and CPS officially closed the investigation in 31 January 2013.

Defendant's motion to modify child support was also granted based on a substantial change in circumstances.

On 25 August 2016, the trial court entered a temporary custody order granting the parties joint legal and physical custody. On 15 December 2016, the trial court entered an order for plaintiff to pay defendant's attorney's fees on a payment schedule until the balance was paid.

On 19 April 2017, the trial court entered a gatekeeper order, specifically finding that "plaintiff has initiated civil actions not well[-]grounded in law or in fact, for the improper purposes of harassing [d]efendant, undermining the [trial c]ourt's orders in this action, misleading other [d]istrict [c]ourt judges, intimidating [d]efendant, and causing [d]efendant to expend unnecessary legal fees in his defense. Plaintiff's filings and conduct in this action and the domestic violence actions that she has initiated against [d]efendant constitutes [sic] litigation abuse. But for [p]laintiff's improper filing of the [domestic violence] case, [p]laintiff would not have been able to withhold custody of [the minor child] from [d]efendant . . . [and] [d]efendant has had no contact with [the minor child] . . . because [p]laintiff has concealed [the minor child's] whereabouts[.]"

On 28 September 2017, the trial court entered an order granting defendant sole permanent custody of the minor child and ordering that plaintiff have no contact with the minor child pending further court order. Plaintiff did not appeal this order.

On 11 October 2017, the trial court entered judgment on its prior award of attorney's fees to defendant to allow for accrual of interest.

On 21 December 2018, plaintiff entered notices of appeal from the 25 August 2016 order as well as the 11 October 2017 order.

Analysis

Rule 3 of the North Carolina Rules of Appellate Procedure governs appeals in civil cases and states that a notice of appeal must be filed within thirty days after the entry of a final judgment. N.C.R. App. P. 3(c)(1), (2) (2019). "The provisions of Rule 3 are jurisdictional, and failure to follow the rule's prerequisites mandates dismissal of an appeal." *Bailey v. State*, 353 N.C. 142, 156, 540 S.E.2d 313, 322 (2000).

Here, plaintiff did not properly preserve her right to appeal from the 25 August 2016 order and the 11 October 2017 order. Plaintiff's notices of appeal were filed well after the applicable deadline and failed to comply with Rule 3.

Plaintiff argues that she was not properly served with either trial court order, and therefore, her appeals should be deemed timely filed. We reject plaintiff's argument. The record shows that plaintiff had actual notice of the 11 October 2017 order, which was entered as a result of plaintiff's noncompliance with a prior court-ordered payment schedule. The record also shows plaintiff had actual notice of the 25 August 2016 order, communicated to her by her former attorney within days of

entry of the order. Plaintiff's notices of appeal, filed over two years and one year, respectively, from entry of judgment, are untimely. *See Huebner v. Triangle Research Collaborative*, 193 N.C. App. 420, 425, 667 S.E.2d 309, 312 (2008) ("We do not believe the purposes of Rule 58 ['Entry of judgment'] are served by allowing a party with actual notice to file a notice of appeal and allege timeliness based on lack of proper service[.]").

Conclusion

As noted herein, to comply with Rule 3 of the North Carolina Rules of Appellate Procedure, notice of appeal in civil cases must be filed within thirty days of entry of final judgment. Rule 3 is jurisdictional. Thus, by failing to comply with Rule 3, we dismiss plaintiff's appeals³ as this Court is without jurisdiction.

DISMISSED.

Panel consisting of: Judges MCGEE, BRYANT, and BROOK.

Report per Rule 30(e).

³ Although dicta, for the sake of this pro se litigant, we note that had this Court had jurisdiction to review the merits of appellant's relevant contentions raised in her briefs, we would, nevertheless, be constrained to affirm the judgment of the trial court in each of these appeals.