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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-870

No. COA21-740

Filed 20 December 2022

Mecklenburg County, No. 19 CVS 16728

SCGVIII-LAKEPOINTE, LLC, Plaintiff,

v.

VIBHA MEN'S CLOTHING, LLC; KALISHWAR DAS, Defendants.

Appeal by defendant from orders entered 25 September 2020 and 25 March 2021 by Judge Donnie Hoover in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 August 2022.

*No appellee brief filed.*

*Kalishwar Das, pro se, for defendant-appellant.*

DIETZ, Judge.

¶ 1 Kalishwar Das appeals from several orders of the trial court following entry of final judgment against him. As explained below, Das has not shown that we possess appellate jurisdiction over his appeal and we must therefore dismiss it for lack of jurisdiction.

**Facts and Procedural History**

¶ 2 Kalishwar Das is the guarantor on a commercial lease agreement between

tenant Vibha Men's Clothing and landlord SCGVIII-Lakepointe, LLC (Lakepointe).

¶ 3 Lakepointe commenced eviction proceedings after Vibha defaulted on the lease. Lakepointe later sued Vibha for breach of the lease agreement and Das for breach of the guaranty agreement.

¶ 4 At a bench trial on the lease and guaranty claims, Vibha and Das did not have counsel. The trial court refused Das's request to represent Vibha (a business in which Das was the sole stakeholder) but offered to continue the proceeding so that Vibha could retain counsel. Das declined to continue the proceeding and represented himself at the trial. Vibha, unrepresented by counsel, put on no defense. The trial court entered judgment in favor of Lakepointe and against Vibha and Das on 25 September 2020.

¶ 5 Following the entry of the judgment, Das hired an attorney to represent him. On 5 October 2020, Das's counsel moved for a new trial under Rule 59. The trial court signed an order denying the motion on 23 March 2021 and the trial court entered the order on 25 March 2021.

¶ 6 On 5 May 2021, Das emailed the trial court administrator stating that his attorney had provided him a copy of the order and instructions about how to file an appeal; that Das had attempted to obtain the order from the court at some earlier point without success; and that Das had ended his attorney-client relationship with his counsel:

*Opinion of the Court*

My Attorney Mr. Eric Levine in his conversation this morning confirmed me that there was no order signed as of yet this is why I did not get its copy (even while I went to court myself 10 days ago to get case copies) but he forwarded me the email of opponent attorney with the order copy of this case today at 4:22pm which was signed by Hon. Judge Hoover on March 25<sup>th</sup>, 2021. My question is: 'why was it not available in the case copy record even 10 days ago from now so that I would have retrieved the copy of this judgment by myself?'

Mr. Levine told me that within 30 days from the day the copy of this judgment is served to me I should Appeal. Considering this, how sooner I should expect from you a signed copy of this judgment at my home address?

Mr. Eric Levine is no longer my Attorney from now so please address all correspondence to me only. I am going to ask for the return of my all case files.

¶ 7           The record does not indicate when Das's counsel received a copy of the trial court's 25 March 2021 order or how it was served upon him. Das filed a notice of appeal from the trial court's judgment on 12 May 2021.

¶ 8           Das then ordered a transcript of the trial proceeding to prepare his appeal. After receiving the transcript from the court reporter, Das filed a motion to "correct" the transcript, asserting that there were various omissions that distorted the trial proceedings and exposed "courthouse corruption." The trial court denied Das's motion.

¶ 9           On 15 September 2021, Das filed a notice of appeal from the trial court's order regarding the transcript. Lakepointe appeared and filed a brief in that separate

appeal (Lakepointe did not appear or file a brief in this appeal). We rejected Das's arguments and affirmed the trial court's order. *SCGVIII-Lakepointe, LLC v. Vibha Men's Clothing, LLC*, No. COA21-690 (Dec. 20, 2022).

### **Analysis**

¶ 10 Before addressing the merits of Das's appeal, we must determine if we possess appellate jurisdiction. Under Rule 3 of the North Carolina Rules of Appellate Procedure, a party seeking to appeal a judgment must file and serve notice of appeal "within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three-day period" or "within thirty days after service upon the party of a copy of the judgment if service was not made within that three-day period." N.C. R. App. P. 3(c)(1)–(2). "The provisions of Rule 3 are jurisdictional, and failure to follow the requirements thereof requires dismissal of an appeal." *Wallis v. Cambron*, 194 N.C. App. 190, 193, 670 S.E.2d 239, 241 (2008).

¶ 11 Here, the trial court entered its order on 25 March 2021. Das did not appeal within thirty days of entry of this order. The record contains no indication of when Das (through his counsel at the time) was served with a copy of the order denying his Rule 59 motion, which triggered the 30-day time to appeal. N.C. R. App. P. 3(c)(3). Likewise, Das's statement of the grounds for appellate review does not identify when he received notice of the entry of that order.

¶ 12 In the record on appeal, there is an email that Das sent to the trial court

administrator on 5 May 2021 requesting a copy of the challenged order. In that email, Das acknowledges that his counsel previously obtained a copy of the order, but the email does not indicate how or when Das's counsel did so. Simply put, the record in this case does not show that Das's appeal is timely. The burden of providing a record to support this Court's exercise of appellate jurisdiction falls on the appellant. *Denney v. Wardson Constr., Inc.*, 264 N.C. App. 15, 17, 824 S.E.2d 436, 438 (2019). Because the notice of appeal in this case was filed more than thirty days after entry of the order, and because neither the record nor the statement of grounds for appellate review justify the otherwise untimely filing of that notice, we must dismiss this appeal for lack of jurisdiction.<sup>1</sup>

### **Conclusion**

¶ 13

We dismiss this appeal for lack of jurisdiction.

DISMISSED.

Chief Judge STROUD and Judge ZACHARY concur.

Report per Rule 30(e).

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<sup>1</sup> We recognize that, when the record on appeal does not contain a certificate of service for the challenged order, the burden of showing when the appellant received actual notice shifts to the appellee. *Brown v. Swarn*, 257 N.C. App. 417, 422, 810 S.E.2d 237, 240 (2018). But this principle applies when the appellant asserts that the appeal is timely. Das did not do so here and thus *Brown* is distinguishable.