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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-842

Filed 15 August 2023

Orange County, No. 22CVS19

IN THE MATTER OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING
SOUGHT BY:

PATRICK CAMPBELL, Petitioner.

Appeal by Petitioner from Orders entered 3 March 2022 and 31 May 2022 by Judge Alyson A. Grine in Orange County Superior Court. Heard in the Court of Appeals 21 March 2023.

Patrick J. Campbell, Petitioner-Appellant, Pro se.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F. E. Smith and William O. Walker, IV, for Respondent-Appellee.

HAMPSON, Judge.

Factual and Procedural Background

Patrick Campbell (Petitioner) appeals from Orders entered 3 March 2022 and 31 May 2022. In addition, Petitioner also seeks to challenge the trial court's summary denial of his Motion pursuant to Rule 52 of the North Carolina Rules of Civil Procedure

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requesting specific findings of fact and conclusions of law. The Record before us tends to reflect the following:

On 10 January 2022, Petitioner filed a Petition for Release of Custodial Law Enforcement Agency Recording (Petition) in the trial court pursuant to N.C. Gen. Stat. § 132-1.4A(f). Petitioner sought recordings in connection with a juvenile complaint involving one of his children as well as another civil matter. The Petition was addressed to Tracy Holloway (Holloway), Director of Student Safety for Chapel Hill Carrboro City Schools (CHCCS), and requested footage recorded by CHCCS security cameras. Specifically, the Petition sought:

[A]ll video and audio recordings made at Carrboro High School during which I or my minor children were present, visible or audible between the hours of 3pm to 5:30pm on the following dates and times: Fri Oct. 8th 2021, Fri Oct 22nd 2021, Fri Nov 5th 2021, Fri Nov 19th 2021, Fri Dec 3rd 2021. Persons appearing including myself [and Petitioner's minor children].

On 3 February 2022, the trial court entered an Order (February Order) directing CHCCS to provide the trial court “a copy of the custodial law enforcement agency recording identified in the . . . Petition.” The February Order required production of the recording by 10 February 2022 and set a hearing for 14 February 2022. On 10 February 2022, Holloway and the CHCCS Board of Education (collectively, Respondents) filed a written Response in Opposition to the Petition, contending the CHCCS is not a “custodial law enforcement agency” such that N.C. Gen. Stat. § 132-1.4A would apply to it and CHCCS does not maintain “recordings”

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as that term is defined in N.C. Gen. Stat. § 132-1.4A(a)(6). As such, Respondents requested the trial court dismiss the Petition.

On 14 February 2022, the trial court held a hearing on the Petition. Following the hearing, on 2 March 2022, the trial court entered an Order (March Order) denying the Petition. The trial court concluded “CHCCS is not a ‘custodial law enforcement agency’ as defined by N.C. Gen. Stat. § 132-1.4A(a)(2)” and the “recordings the Petition seeks are not ‘recordings’ for purposes of N.C. Gen. Stat. § 132-1.4A(a)(6).” As such, the trial court ultimately concluded “N.C. Gen. Stat. [§] 132-1.4(A) does not apply to CHCCS and the statute is not an appropriate vehicle by which Petitioner may seek the contemplated CHCCS records” and dismissed the matter.

Following the dismissal of the Petition, on 21 March 2022, Petitioner filed a Motion requesting the trial court amend the March Order to include new findings of fact and conclusions of law pursuant to Rules 59 and 52(b) of the North Carolina Rules of Civil Procedure.

Pursuant to Rule 59, Petitioner moved the trial court to amend the March Order for the following reasons: “New evidence shows that recordings captured by the surveillance systems of similarly situated North Carolina educational institutions are interpreted as law enforcement records and are routinely released in response to comparable petitions under NCGS 132-1.4A(f)”; Respondents “engaged in misconduct by . . . unilaterally emailing the trial court without contemporaneously emailing [P]etitioner”; “Respondents then failed on February 10th to provide the requested

recordings . . . as ordered by the [trial] court”; and Respondents “engaged in further misconduct on February 21, 2022 by emailing a draft order directly to the [trial] court at 11:14am, without having previously provided [P]etitioner any opportunity to review or comment.” Petitioner’s Motion also sought the inclusion of numerous, additional findings of fact and conclusions of law pursuant to Rule 52(b).

On 20 May 2022, the trial court held a hearing on Petitioner’s Motion. The trial court denied the Motion under Rules 52 and 59 as both untimely and because it lacked merit. As to the merits of the Motion, the trial court concluded: “the Petitioner seeks to reargue matters already decided by the [trial] [c]ourt or put forth arguments which were not made at the 14 February 2022 hearing but could have been made.” Further, the trial court concluded “Petitioner has failed to demonstrate that any subpart of Rule 59 upon which the Motion for Relief relies is an appropriate basis for relief.” The trial court entered a written Order denying Petitioner’s Motion on 31 May 2022 (May Order). That same day, Petitioner filed a Motion under Rule 52 of the North Carolina Rules of Civil Procedure, proposing 103 findings of fact and nine conclusions of law. On 3 June 2022, the trial court summarily denied this Motion via email, stating the trial court “will not be issuing an order because the [M]otion is summarily denied.” Petitioner filed written Notice of Appeal on 28 June 2022.

Analysis

Although Petitioner raises numerous issues on appeal, Petitioner’s substantial and gross violations of the North Carolina Rules of Appellate Procedure impede this

Court's ability to conduct a meaningful review.

“[R]ules of procedure are necessary . . . in order to enable the courts properly to discharge their dut[y] of resolving disputes.” *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 193, 657 S.E.2d 361, 362 (2008) (citation and quotation marks omitted). “It necessarily follows that failure of the parties to comply with the rules, and failure of the appellate courts to demand compliance therewith, may impede the administration of justice.” *Id.* Rule 25 allows this Court, on its own initiative, to sanction a party for noncompliance. N.C.R. App. P. 25(b) (2023). Rule 34(b) provides a list of appropriate sanctions for appellate rule violations including dismissal of the appeal, monetary sanctions, and “any other sanction deemed just and proper.” N.C.R. App. P. 34(b)(1)-(3).

When a party's noncompliance with the appellate rules rises to the level of a substantial failure or gross violation such that the noncompliance impairs the [C]ourt's task of review and review on the merits would frustrate the adversarial process, dismissal of the appeal may be appropriate. *Dogwood*, 362 N.C. at 200-01, 657 S.E.2d at 366-67. Moreover, although we are mindful of Plaintiff's *pro se* status in this case, the Rules of Appellate Procedure “apply to everyone—whether acting *pro se* or being represented by all of the five largest law firms in the state.” *Bledsoe v. Cnty. of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999).

I. Petitioner's Various Nonjurisdictional Violations

Rule 28 of the North Carolina Rules of Appellate Procedure governs the content

and function of a party's brief. The function of Rule 28 is to ensure that the parties' briefs "define clearly the issues presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon." N.C.R. App. P. 28(a). Rule 28(b) contains a list of ten rules designed to promote that function. For example, before setting forth his substantive argument, the appellant's brief must first contain a statement of the grounds for appellate review, including citation to the statute permitting appellate review; and a section containing "[a] full and complete statement of the facts"—that is, "a non-argumentative summary of all material facts . . . supported by references to pages in the record on appeal." N.C.R. App. P. 28(b)(4)-(5).

Here, Petitioner fails to set forth a statement of the grounds for appellate review or a citation to any statute permitting such review, as required by Rule 28(b)(4). Instead, Petitioner states the standard of review for a dismissal pursuant to Rule 12(b)(6), without citation, under the heading "Statement of the Grounds for Appellate Review." Moreover, Petitioner has failed to provide a full and complete Statement of the Facts, failing to provide any citations to the Record, exhibits, or supporting documents. Petitioner's brief provides this Court with very little context from which to understand the various errors alleged in the ten issues Petitioner presents on appeal. Further, Petitioner also failed to: include page numbering in his brief as required by N.C.R. App. P. 26(g)(1) and Appendix B; include page references in the subject index and table of authorities as required by N.C.R. App. P. 26(g)(2);

and use a proportionally spaced font with serifs as required by N.C.R. App. P. 26(g)(1).

II. Rule 28(b)(6) Violations

Moreover, presuming arguendo, that the above violations do not give rise to a substantial failure or gross violation warranting dismissal, Petitioner's brief violates Rule 28(b)(6) to such an extent that we deem each argument presented to be abandoned.

Rule 28(b)(6) requires the appellant's brief to include "[a]n argument, to contain the contentions of the appellant with respect to each issue presented. . . . [and] a concise statement of the applicable standard(s) of review for each issue" N.C.R. App. P. 28(b)(6). The Rule expressly warns appellants that "[i]ssues . . . in support of which no reason or argument is stated, will be taken as abandoned." *Id.* An appellant avoids abandonment when he complies with the Rule's mandate that "[t]he body of the argument . . . shall contain citations of the authorities upon which appellant relies." *Id.* This Court has routinely held an argument to be abandoned where an appellant presents argument without such authority and in contravention of the rule. *See, e.g., Fairfield v. WakeMed*, 261 N.C. App. 569, 575, 821 S.E.2d 277, 281 (2018) ("Plaintiffs do not cite any legal authority in support of this argument as required by the North Carolina Rules of Appellate Procedure. Therefore, we deem this issue to be abandoned." (citation omitted)); *GRE Props. Thomasville LLC v. Libertywood Nursing Ctr., Inc.*, 235 N.C. App. 266, 276, 761 S.E.2d 676, 682 (2014) ("Yet, defendant cites only *State v. Kirby*, 206 N.C. App. 446, 456, 697 S.E.2d 496, 503

(2010), for the proposition that issues of relevance are reviewed *de novo* and fails to cite any further legal authority in support of its argument. As a result, we find defendant has abandoned this argument.” (citation omitted)).

Here, Petitioner violated Rule 28(b)(6) by failing to include a standard of review for any issue or cite to any legal authority in support of his numerous arguments. Indeed, Petitioner states, without citation, the standard of review for a Rule 12(b)(6) motion to dismiss; however, none of the ten issues identified in Petitioner’s brief concern North Carolina Rule of Civil Procedure 12(b)(6). Further, although Petitioner sporadically drops a cursory, incomplete citation, Petitioner fails to otherwise cite, analogize, or distinguish relevant authority to support his numerous claims. As such, Petitioner’s briefing to this Court is merely an amalgamation of conclusory statements that fail to apply any legal authority. *See Lopp v. Anderson*, 251 N.C. App. 161, 167, 795 S.E.2d 770, 775 (2016) (concluding Plaintiff abandoned the issues raised in his appeal where his argument consisted of declaratory statements unsupported by any citation to authority and made only a passing reference to a statute). *See also State v. Summers*, 177 N.C. App. 691, 699, 629 S.E.2d 902, 908 (2006) (declining to address one of the appellant’s arguments when he failed to include a statement of the applicable standard of review). Consequently, we deem Plaintiff’s arguments abandoned as “it is not the role of this Court to create an appeal for an appellant or to supplement an appellant’s brief with legal authority or arguments not contained therein.” *Thompson v. Bass*, 261 N.C.

App. 285, 292, 819 S.E.2d 621, 627 (2018) (citations omitted).

Conclusion

Petitioner has failed to substantially comply with several of the nonjurisdictional rules governing the form and content of appellate briefs. Presuming, arguendo, that these violations do not, standing alone, warrant dismissal, Petitioner's failure to present appropriate argument supported with citations to authority and the Record consistent with Rule 28(b)(6) "constitute[s] a default precluding substantial review." *Dogwood*, 362 N.C. at 200, 657 S.E.2d at 367. "That failure both impairs the court's task of review and . . . frustrate[s] the adversarial process[,] as any review on the merits would require this Court to construct and decide arguments that [Petitioner] has not adequately presented and to which Defendants have not had any opportunity to respond." *K2HN Constr. NC, LLC v. Five D Contractors, Inc.*, 267 N.C. App. 207, 215, 832 S.E.2d 559, 565 (2019) (citation and quotation marks omitted). As a result, we dismiss Petitioner's appeal for the violations identified by this Court.

DISMISSED.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).