

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-104

Filed 3 October 2023

Gaston County, No. 19CVS2966

CITY OF GASTONIA, Plaintiff,

v.

NANCY F. MCDANIEL, SAMUEL JAMES MCDANIEL, JAMES WILSON FOY, SR., PATTI TAYLOR FOY, MARY ALICE FOY AUTEN, FRANKLIN DEAN AUTEN, and DUKE ENERGY CAROLINAS, LLC, Defendants.

Appeal by defendants from order signed on 22 July 2022 by Judge Jesse B. Caldwell, IV in Gaston County Superior Court. Heard in the Court of Appeals 6 September 2023.

Hamilton Stephens Steele & Martin, PLLC, by Rebecca K. Cheney and Kenneth B. Dantine for plaintiff-appellee.

Sigmon, Clark, Mackie, Hanvey, & Ferrell, P.A., by Andrew J. Howell, for defendants-appellants.

GORE, Judge.

Defendants appeal the trial court's interlocutory order granting plaintiff's Motion for Determination of All Issues Other Than Damages. This case involves an eminent domain action and a prior injunctive relief action opposing plaintiff's condemnation notice. Because we lack jurisdiction pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure, we dismiss the appeal.

CITY OF GASTONIA V. MCDANIEL

Opinion of the Court

Defendants filed a notice of appeal to this Court on 8 August 2022. The notice of appeal must comply with Rule 3 to confer jurisdiction upon this Court. *Bailey v. State*, 353 N.C. 142, 156, 540 S.E.2d 313, 322 (2000). “The provisions of Rule 3 are jurisdictional, and failure to follow the rule’s prerequisites mandates dismissal of appeal. . . . The rule may not be disregarded by the legislature, by the judge of a superior court, or by litigants or counsel.” *Id.*

In the record before us, the order upon which defendants noticed appeal lacks a file stamp demonstrating the date and entry of the order. We have stated many times that an order is “entered when it is reduced to writing, signed by the judge, and filed with the clerk of court.” *In re Thompson*, 232 N.C. App. 224, 227, 754 S.E.2d 168, 171 (2014) (quoting N.C. R. Civ. P. 58 (2013)). Moreover, until entry of the order, “a party cannot appeal an order.” *Id.* Because the order from which appeal is sought does not have a visible file stamp demonstrating both entry and its date to confirm timeliness of appeal, we lack jurisdiction to consider this appeal. Accordingly, we dismiss the appeal for lack of jurisdiction.

DISMISSED.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).