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NO. COA00-1199

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

SARAH R. PAGE,  
Plaintiff,

v.

New Hanover County  
No. 99 CVS 2157

A.A. CANOUTAS and  
BILLY H. MASON,  
Defendants.

Appeal by plaintiff from order entered 12 June 2000 by Judge W. Allen Cobb, Jr., in New Hanover County Superior Court. Heard in the Court of Appeals 6 November 2001.

*Alvin G. Matthews; and Lester G. Carter, Jr., for plaintiff appellant.*

*Clark, Newton & Evans, L.L.P., by John Richard Newton, for defendant appellee.*

McCULLOUGH, Judge.

The undisputed facts in this appeal are straightforward. Defendant A.A. Canoutas was granted summary judgment on 10 February 2000 in the underlying action in this case. Plaintiff Sarah Page properly filed her notice of appeal on 8 March 2000. On 10 May 2000, plaintiff filed notice of designation of transcript on attorneys for both defendants. Defendant Canoutas filed a motion to dismiss on 22 May 2000, which was granted after a hearing on 12 June 2000 on the grounds that plaintiff had failed to comply with

N.C.R. App. P. 7 and 25 by failing to timely file the notice of designation of transcript. It is from this order of dismissal that plaintiff appeals.

Plaintiff contends that on 29 February 2000 her attorney called one Carol Washington, whom her attorney believed at the time was the court reporter during the summary judgment hearing, to order a transcript of the proceeding in preparation for appeal. The substance of the contact between Ms. Washington and plaintiff's attorney was that her attorney left messages on Ms. Washington's answering machine. According to telephone records, plaintiff's attorney attempted a couple of other times to call Ms. Washington. On 13 April 2000, plaintiff's attorney was contacted and informed that it was one Tina Stancil, and not Carol Washington, who was the court reporter on duty on 8 February 2000. Plaintiff's attorney wrote a letter to Tina Stancil on 13 April 2000 to inform her that he was ordering the transcript. Ms. Stancil mailed the transcript to plaintiff on or about 10 May 2000.

Plaintiff makes the following assignments of error: That the trial court committed reversible error (I) in dismissing plaintiff's appeal to this Court for an alleged failure to comply with N.C.R. App. P. 7 when the transcript was ordered by plaintiff as shown in the record on appeal and was duly served on counsel for defendant within the time requirements of N.C.R. App. P. 11; (II) in failing to apply "excusable neglect" or substantial compliance as to N.C.R. App. P. 7 and 11; (III) in failing to allow plaintiff's countermotion for good cause shown under N.C.R. App. P.

25; (IV) by arbitrarily and prejudicially failing to consider the good cause shown by plaintiff in compliance with N.C.R. App. P. 7 and 11.

N.C.R. App. P. 7(a) (1) reads as follows:

(a) *Ordering the transcript.*

*(1) Civil cases. Within 14 days after filing the notice of appeal the appellant shall arrange for the transcription of the proceedings or of such parts of the proceedings not already on file, as the appellant deems necessary, in accordance with these rules, and shall provide the following information in writing: a designation of the parts of the proceedings to be transcribed; the name and address of the court reporter or other neutral person designated to prepare the transcript; and, where portions of the proceedings have been designated to be transcribed, a statement of the issues the appellant intends to raise on appeal. The appellant shall file the written documentation of this transcript arrangement with the clerk of the trial tribunal, and serve a copy of it upon all other parties of record, and upon the person designated to prepare the transcript.*

N.C.R. App. P. 7 (2001) (emphasis added). Plaintiff has not complied with the facial requirements of Rule 7 as it appears from the record. While plaintiff's attorney may have called and left a message on Carol Washington's home phone prior to filing notice of appeal, that is the extent of plaintiff's action. The attorney did not follow up that call until mid-April, long after the 14-day period had passed. Thus, this case turns on whether plaintiff substantially complied with the requirements of Rule 7.

Plaintiff's attorney called Carol Washington on 29 February 2000 and ordered a transcript of the motion for summary judgment

proceeding. He did not speak to Ms. Washington, but only left a message for her. It is apparent from the record that it was weeks before either side contacted the other. Rule 7 puts the burden of making arrangements for the transcription of the court proceedings on the appealing attorney. *Id.* It is also true that the court reporter has an affirmative obligation to prepare the transcript upon a proper request. See *Anuforo v. Dennie*, 119 N.C. App. 359, 364, 458 S.E.2d 523, 527 (1995) (Greene, J., dissenting). The 14-day period set forth in Rule 7(a) had passed on 13 April 2000, when the court reporter informed plaintiff's attorney that they could not locate the records. Plaintiff's attorney did nothing as time passed, and failed to file "written documentation of this transcript arrangement with the clerk" or "serve a copy of it upon all other parties of record" as required by Rule 7(a)(1).

This Court cannot say that a message left on an answering machine is substantial compliance with the requirements of Rule 7(a)(1). In other cases in which this Court has determined that substantial compliance with Rule 7 did occur, much more was done. For instance, in the case of *Pollock v. Parnell*, 126 N.C. App. 358, 484 S.E.2d 864 (1997), this Court concluded that "the defendant's actions in conferring with both the Clerk of Superior Court and the Administrative Office of the Courts, purchasing copies of the audio tapes, employing a transcriptionist, and obtaining a transcript of the proceeding within sixty days of the defendant's notice of appeal" constituted substantial compliance. *Pollock*, 126 N.C. App. at 362, 484 S.E.2d at 866. The *Pollock* case involved a district

court proceeding which did not have a court reporter. Thus, the case is different factually, but the principle remains the same. The attorney must do more than make a phone call and hope that it gets done. At the very least, this Court has determined that sending a letter to the court reporter constituted substantial compliance with Rule 7. See *Anuforo*, 119 N.C. App. at 362, 458 S.E.2d at 526. We will not extend substantial compliance to making a telephone call and leaving a message for the court reporter. This assignment of error is overruled.

This Court has carefully reviewed the remaining assignments of error and finds them to be without merit. The ruling of the trial court is

Affirmed.

Judges GREENE and CAMPBELL concur.

Report per Rule 30(e).