

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA01-141

NORTH CAROLINA COURT OF APPEALS

Filed: 19 March 2002

WAKE COUNTY on behalf of
Wake County Human Services,
Plaintiff,

v.

Wake County
No. 00 CVD 6255

PAULA MORRILL,
Defendant.

Appeal by defendant from order entered 29 August 2000 by Judge Kristin H. Ruth in Wake County District Court. Heard in the Court of Appeals 26 November 2001.

Wake County Child Support Attorneys, by Melinda Wagoner Cope and Elizabeth P. Clary, for plaintiff-appellee.

Paula Morrill, pro se, defendant-appellant.

BIGGS, Judge.

This appeal arises out of an action by Wake County Human Services to obtain child support from Paula Morrill (defendant), mother of the minor child, Edward Morrill.

We find certain procedural issues dispositive of this appeal, and, accordingly, summarize below the procedural history of this action:

1. 21 February 2000: Defendant enters into Voluntary Placement Agreement (VPA) with Wake County DSS, in which defendant agreed to placement of the child in foster care.

2. 13 June 2000: Wake County Human Services files complaint, seeking child support from defendant.
3. 13 July 2000: Defendant signs "Response to Complaint" denying financial responsibility for child support for her son while he is in foster care. Hearing held before District Court Judge Kristin H. Ruth on 3 August 2000.
4. 29 August 2000: Trial court enters order, requiring defendant to pay \$540 a month in child support, and \$3,240 in past child support.
5. 29 September 2000: Defendant signs notice of appeal from child support order entered 29 August 2000, and serves plaintiff-appellee with copy of proposed record on appeal.
6. 17 October 2000: Plaintiff-appellee serves objections to proposed record.
7. 30 October 2000: Defendant files request for judicial settlement of record, and submits proposed record to the trial court on 9 November 2000.
8. 27 November 2000: Defendant files "Amended Request for Hearing to Settle Record on Appeal." Trial court conducts hearing 4 December 2000.
9. 5 January 2001: Transcript delivered to defendant. On 16 January 2000, defendant serves plaintiff with revised proposed record on appeal, and request that record be settled by agreement. Plaintiff has never signed stipulation settling record by agreement.

On 20 February 2001, plaintiff filed a motion to dismiss defendant's appeal in this Court, on the grounds that the record on appeal had not been settled in accord with the Rules of Appellate Procedure. Plaintiff argued that the trial court did not prepare an order settling the record on appeal, as required by N.C.R. App. P. 9(1)(i).

Both parties agree that the trial court failed to prepare an order settling the record on appeal. This was a violation of the

N.C.R. App. P. 11(c), which provides in relevant part that upon request for judicial settlement:

The judge shall send written notice to counsel for all parties setting a place and a time for a hearing to settle the record on appeal. *The hearing shall be held not later than 15 days after service of the request for hearing upon the judge. The judge shall settle the record on appeal by order entered not more than 20 days after service of the request for hearing upon the judge.* (emphasis added)

The use of the word "shall" in this Rule signifies that the action thus described is mandatory. *Thigpen v. Ngo*, 143 N.C. App. 209, 545 S.E.2d 477 (2001), *rev'd in part on other grounds*, __ N.C. __, 558 S.E.2d 162 (2002).

In the instant case, the request for judicial settlement was filed on 30 October 2000. Therefore, the trial court was required to schedule a hearing no later than 14 November, and to enter an order settling the record on appeal no later than 20 November 2000. Defendant's 27 November 2000 "Amended Request for Hearing to Settle Record on Appeal," was filed after both of these deadlines had passed. The trial court lacked authority to extend the time for settlement of the record, or to conduct the hearing on 4 December 2000. *Groves v. Community Hous. Corp.*, 144 N.C. App. 79, 83, 548 S.E.2d 535, 537 (2001) (trial court's order "purporting to extend the time for settling the record on appeal," was invalid and "exceeded the authority vested in the trial court"). Further, even if the 4 December 2000 hearing were valid, the deadline for judicial settlement of the record following the hearing would have been 18 December 2000. Finally, we note that defendant has filed

no motions for extension of time with this Court, as required by N.C.R. App. P. Rule 27(c)(2).

N.C.R. App. P. 9(1) states that the record on appeal from civil actions and special proceedings "shall contain," *inter alia*, an "order settling the record on appeal[.]" N.C.R. App. P. 9(1)(i). Defendant's failure to obtain settlement of the record, or to include an order settling it, violates N.C.R. App. P. 9, and is sufficient grounds for dismissal of her appeal. *Seigel v. Patel*, 132 N.C. App. 783, 513 S.E.2d 602 (1999).

Defendant has also violated other Rules of Appellate Procedure. Although N.C.R. App. P. 10(c)(1) requires that assignments of error cite "clear and specific record or transcript references," defendant has not included any such references. Defendant has also submitted several documents that do not show the date of filing, in violation of N.C.R. App. P. 9(b)(3), and has included others that do not show proof of service, as required by N.C.R. App. P. 26(d).

"The Rules of Appellate Procedure are mandatory, and failure to follow them will subject an appeal to dismissal." *Groves*, 144 N.C. App. at 82, 548 S.E.2d at 537. Moreover, "it is the appellant who 'bears the burden of seeing that the record on appeal is properly settled and filed with this Court.'" *Id.* at 82, 548 S.E.2d at 537 (quoting *McLeod v. Faust*, 92 N.C. App. 370, 371, 374 S.E.2d 417, 418 (1988)). We are aware that the defendant is appealing *pro se*. However, as this Court stated in *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 519 S.E.2d 316 (1999), the

Rules of Appellate Procedure apply to everyone. We also realize that this Court has the discretion to suspend the Rules of Appellate Procedure, if necessary "[t]o prevent manifest injustice to a party[.]" N.C.R. App. P. 2. Our review of the substantive merits of defendant's appeal reveals no compelling reason to exercise our discretion in this manner.

For the reasons stated above, the plaintiff's Motion to Dismiss defendant's appeal is granted.

Appeal dismissed.

Chief Judge EAGLES and Judge MARTIN concur.

Report per Rule 30(e).