

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-371

NORTH CAROLINA COURT OF APPEALS

Filed: 19 February 2002

MICHAEL COVINGTON and
LESLIE DIEMER,

Plaintiffs,

v.

Wake County
No. 99 CVD 02155

RICHARD McCREERY,

Defendant.

Appeal by defendant from order entered 22 December 2000 by Judge Alice C. Stubbs in District Court, Wake County. Heard in the Court of Appeals 23 January 2002.

No brief for plaintiffs-appellee.

Richard McCreery, defendant-appellant, pro se.

PER CURIAM

The matter before us shows conclusively that defendant failed to timely settle the record of appeal prior to filing it with this Court. For the reasons set forth in our decision of *Higgins v. Town of China Grove*, 102 N.C. App. 570, 402 S.E.2d 885 (1991), we affirm the trial court's dismissal of defendant's appeal.¹

¹N.C.R. App. P. 25 (a) (2002) provides in pertinent part:

In this case, defendant failed to timely serve a properly constituted proposed record on appeal and he filed a record on appeal in this Court that was not settled. On 26 June 2000, defendant filed notice of appeal from the 12 June 2000 order and judgment. Defendant's deadline to arrange for preparation of the transcript was 10 July 2000. Plaintiffs filed a motion to dismiss the appeal, before defendant filed his notice of appeal with this Court, concerning plaintiffs' failure to follow the time allowed by the Rules of Appellate Procedure to serve the proposed appeal. The trial court properly dismissed the appeal, and in its order pointed out that defendant was three months late in contracting with the court reporter for the transcript of the trial appeared, which is beyond the 14 days required by Rule 7(a)(1).

As stated in *Higgins*, "the Rules of Appellate Procedure are mandatory"; accordingly, we affirm the trial court's dismissal of the appeal. 102 N.C. App. at 572, 402 S.E.2d at 886; see also *Lowder v. All Star Mills, Inc.*, 91 N.C. App. 621, 372 S.E.2d 739 (1988) (appeal dismissed when the plaintiff failed to file record in the appellate court within 150 days).

Affirmed.

Panel consisting of: WYNN, HUDSON and THOMAS

Report per Rule 30(e).

Prior to the filing of an appeal in an appellate court motions to dismiss are made to the court. . . from which appeal has been taken; after an appeal has been filed in an appellate court motions to dismiss are made to that court.