NO. COA01-40

NORTH CAROLINA COURT OF APPEALS

Filed: 5 March 2002

JAMES L. SWISHER,

Petitioner-Appellant,

v. Guilford County
No. 00 CVS 4496

BOARD OF ADJUSTMENT OF
CITY OF GREENSBORO,
NORTH CAROLINA,

Respondent-Appellee.

Appeal by petitioner from order entered 19 October 2000 by Judge William H. Freeman in Guilford County Superior Court. Heard in the Court of Appeals 17 October 2001.

Robert S. Cahoon, for petitioner-appellant.

Greensboro Legal Department, by A. Terry Wood and Becky Jo Peterson-Buie, for respondent-appellee.

BRYANT, Judge.

Petitioner appeals from an order upholding the Greensboro Board of Adjustment's [BOA] denial of petitioner's application for a variance requesting permission to move a proposed planting yard rather than dig up petitioner's parking lot.

James L. Swisher [petitioner] owned a rectangular tract of land that he wanted to use to expand a parking lot leased to a car rental company. In November 1998, petitioner's contractor

requested a building permit from the Greensboro City Building Inspector's Office. Personnel at that office told petitioner that a permit was not required for paving less than 40,000 square feet. The part of the lot that petitioner wanted to pave was just under 40,000 square feet. Petitioner paved the lot, leaving unpaved a small wedge of land adjacent to a lot owned by Mr. Otis Apple.

In May 1999, petitioner received a "Notice of Violation" from the City of Greensboro Zoning Enforcement Officer. The notice stated that a site plan was required for review and approval prior to the start of construction. Petitioner submitted a site plan, which was approved. The approved site plan provided for landscape buffering on all four sides of the paved lot, including the installation of a ten-foot wide buffer planting on the north side, which bordered Apple's lot. To install the planting areas, petitioner would have to dig up a portion of the paved lot at great expense. Petitioner requested a variance in lieu of installing the approved planting areas. In the variance, he requested to locate the northern planting yard partly on Apple's lot. Greensboro Development Ordinance 30-2-2.9, however, requires all planting yards to be on one or more lots in single undivided ownership. Greensboro, N.C., Code § 30-2-2.9 (1991).

On 8 December 1999, petitioner received a second Notice of Violation from the Zoning Enforcement Officer. The notice stated that the property at "719 Norwalk Street" was in violation of several sections of the Greensboro Development Ordinance. Petitioner's property, however, is *715* Norwalk Street. On 28

December, the Zoning Enforcement Officer issued a third notice of violation, also stating that the property at "719 Norwalk Street" was in violation of the Greensboro Code.

Two days later, petitioner appealed to the Greensboro BOA from the rulings of the Zoning Enforcement Officer. He also petitioned the BOA to grant the requested variance. The BOA upheld the Zoning Enforcement Officer's Notice of Violation and denied petitioner's request for a variance. The Superior Court upheld the BOA's ruling. Petitioner appeals.

We note at the outset that petitioner brought six assignments of error covering twenty-seven pages in the record on appeal. In his brief, petitioner argues only assignments of error 4, 5 and 6. Because petitioner failed to raise assignments of error 1, 2 and 3 in his brief, they are deemed abandoned and will not be considered. *See* N.C. R. App. P. 28(a).

Petitioner's remaining assignments of error are that the trial court erred in: 1) making findings of fact which were not supported by, and were contrary to, the evidence and the record; 2) making conclusions of law not supported by, and contrary to the record and the evidence, and not supported by valid findings of fact; and 3) signing and entering the judgment because it is not based on valid findings of fact or valid conclusions of law and because it denies the appellant relief to which he is entitled.

Petitioner assigns error to eight of the trial court's findings of fact, which petitioner complains were not supported by, and were contrary to, the evidence and the record. We first

address petitioner's failure to comply with the North Carolina Rules of Appellate Procedure. Petitioner's brief fails to comply with Rule 10(c)(1), which addresses the form of assignments of error:

> A listing of the assignments of error upon which an appeal is predicated shall be stated . . . in short form without argument . . . . Each assignment of error shall . . . state plainly, concisely and without argumentation the legal basis upon which error is assigned. An assignment of error is sufficient if it directs the attention of the appellate court to the particular error about which the question is made . . . . Questions made as to several issues or findings relating to one ground of recovery or defense may be combined in one assignment of error, if separate record or transcript references are made.

N.C. R. App. P. 10(c)(1). In petitioner's first assignment of error he includes eight findings of fact which cover two pages in small type. We recognize that a single assignment of error may contain questions as to several findings that relate to one ground of recovery; however, the appellant must nevertheless comply with the remainder of Rule 10. Restating eight findings of fact in their entirety in small type over two pages does not meet the requirement that assignments of error be stated *plainly and concisely*. As presented, respondent's first assignment of error forces this Court to piece together eight findings in an attempt to determine what it is exactly that petitioner argues.

Furthermore, Rule 28(b)(5) requires that assignments of error for which no authority is cited be deemed abandoned. N.C. R. App. P. 28(b)(5). Petitioner's first assignment of error cites only to the record on appeal and the Greensboro Development Ordinance in

question in support of petitioner's contention that the trial court erred. Specifically, petitioner cites to § 30-3-11.1 in support of his contention that his less-than-40,000-square-foot paved parking lot was exempt from the planting yard requirements of the ordinance. A review of this ordinance reveals no such 40,000-square-foot cut-off. Greensboro, N.C., Code § 30-3-11.1 (1991). Petitioner merely presents his argument without citing to supporting authority as to why the landscaping requirements do not apply. Respondent, on the other hand, directs our attention to § 30-5-4.1(B)(3), which states that landscaping requirements apply to "[a]ll expansions of . . . parking areas, . . . except the first three thousand (3,000) square feet of expansions to . . . parking areas . . . ." Greensboro, N.C., Code § 30-5-4.1(B)(3) (1991).

As we have often stated, the Rules of Appellate Procedure are mandatory and the failure to comply with them may result in dismissal. *See, e.g., Steingress v. Steingress*, 350 N.C. 64, 511 S.E.2d 298 (1999). We acknowledge that we could invoke Rule 2, which allows this Court to suspend the rules on its own initiative "[t]o prevent manifest injustice to a party." N.C. R. App. P. 2. However, because of petitioner's utter failure to comply with our Rules, we will not relieve petitioner of the burden of presenting a cogent argument founded in law.

DISMISSED.

Judges WYNN and McCULLOUGH concur.

Report per Rule 30(e).