NO. COA01-646

NORTH CAROLINA COURT OF APPEALS

Filed: 16 April 2002

JEANETTE TEAGUE,
Plaintiff,

v.

Burke County
No. 91 CVS 1611

PAUL TEAGUE, SR. and
ROBIN BERRY DANNER,
Defendants.

Appeal by defendants from judgment entered 2 September 1994 by Judge Jerry Cash Martin in Burke County Superior Court. Heard in the Court of Appeals 25 March 2002.

C. Gary Triggs for plaintiff-appellee.

Sherwood Carter for defendant-appellants.

EAGLES, Chief Judge.

On 14 October 1991, plaintiff Jeanette Teague filed suit against Paul Teague, Sr. (Mr. Teague) for intentional infliction of emotional and mental distress and against Robin Berry Danner Teague (Mrs. Danner Teague) for criminal conversation. On 2 September 1994, a jury found in favor of plaintiff on both claims. As to plaintiff's claim against Mr. Teague, the jury awarded plaintiff $500,000 in compensatory damages and $100,000 in punitive damages. As to the claim against Mrs. Danner Teague, the jury awarded plaintiff $1.00 in compensatory damages and $10,500 in punitive

damages. Judge Jerry Cash Martin entered judgment 30 October 1994, *nunc pro tunc* 2 September 1994.

On 9 September 1994, pursuant to Rules 50(b) and 59, defendants filed motions for judgment notwithstanding the verdict and for new trial. From 3 November 1994 to 24 March 2000, defendants did not calendar their motions or attempt to have their motions heard. On 24 March 2000, Judge Martin entered a consent order allowing the motions to be heard. Judge Martin signed an order denying defendants' motions on 31 July 2000. The order was filed on 11 August 2000. Defendants filed notice of appeal on 13 September 2000.

By order entered 27 September 2000, the Honorable Claude Sitton extended the time to serve the proposed record on appeal up to and including 15 November 2000. The record and trial transcripts were timely filed. Because of defendants' failure to file and serve appellants' brief within 30 days after mailing the printed record on appeal, this Court, on 9 April 2001, dismissed the appeal.

On 30 April 2001, defendants filed a petition for writ of certiorari. This Court granted defendants' petition on 15 May 2001 and ordered that defendants refile the settled record on appeal within 15 days of the order. The record on appeal was filed on 21 May 2001. On 14 June 2001, defendants filed a motion to extend time for defendants to file their brief. The motion was allowed, ordering defendants to file their brief by 6 August 2001. Defendants filed their brief on 30 July 2001. Plaintiff's motion

to extend time was granted and plaintiff timely filed her brief on 1 October 2001.

Plaintiff suffered from schizophrenia for more than 30 years. At the time of trial, plaintiff was institutionalized and too severely mentally ill to pursue her claims. Her claims were prosecuted by her adult children, Paul Teague, Jr. (Paul Jr.) and Pam Elliott (Mrs. Elliott). Plaintiff's evidence demonstrated that Mr. Teague abused plaintiff from 1960 to 1991. Paul Jr. testified that he witnessed many assaults over the years. He stated that Mr. Teague's assaults on plaintiff "would happen two or three times a week; and if we got through a whole week without one, we were doing good . . . ." In describing the abuse, Paul Jr. stated that Mr. Teague would hit, punch, jerk plaintiff's hair, and swing her up against the wall. Among other things, Mrs. Elliott testified about one episode during which Mr. Teague beat plaintiff so severely that plaintiff stayed in the hospital for approximately one week. Plaintiff's expert, psychiatrist Dr. Tong Su Kim, testified that though plaintiff's condition was likely genetic, plaintiff was rendered incapable of living any normal life because of the abusive actions of Mr. Teague. Trial testimony also established that from 1988 to 1991, Mr. Teague had several sexual affairs, the last of which occurred with co-defendant Mrs. Danner Teague.

Defendants (appellants) raise five arguments on appeal: (1) the judgment against Robin Berry Danner Teague is void for lack of jurisdiction; (2) the trial court erred by allowing evidence of misconduct occurring between 1960 and 1985; (3) the trial judge

erred by allowing an improper closing argument and by expressing an opinion that defendant Paul Teague may have abused his wife, co-defendant Robin Berry Danner Teague; (4) the verdict was given under the influence of passion and prejudice; and (5) the verdict against defendant Paul Teague, Sr. is not warranted by the evidence because plaintiff failed to present any evidence that any misconduct by Mr. Teague caused any severe disabling or emotional condition from which plaintiff suffered. We do not reach the merits of appellants' arguments. Because of appellants' flagrant disregard for the North Carolina Rules of Appellate Procedure, we dismiss this appeal.

"To obtain review of lower court decisions, appellants must adhere to certain mandatory procedural requirements." *Duke University v. Bishop*, 131 N.C. App. 545, 546, 507 S.E.2d 904, 905 (1998). "[O]nly those who properly appeal from the judgment of the trial divisions can get relief in the appellate divisions." *In re Lancaster*, 290 N.C. 410, 424, 226 S.E.2d 371, 380 (1976). The Rules of Appellate Procedure are mandatory and are designed to keep the process of perfecting an appeal flowing in an orderly manner. *Craver v. Craver*, 298 N.C. 231, 236, 258 S.E.2d 357, 361 (1979).

In their brief, appellants properly set forth a statement of questions presented for review, a statement of the procedural history, and a brief statement of the facts. N.C. R. App. P. 28(b)(2)-(4). However, Rule 28(b)(5) also requires an appellant's brief to contain:

> An argument, to contain the contentions of the appellant with respect to each question

> presented. Each question shall be separately stated. Immediately following each question shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal. Assignments of error not set out in the appellant's brief, *or in support of which no reason or argument is stated or authority cited*, will be taken as abandoned.
>
> *The body of the argument shall contain citations of the authorities upon which the appellant relies.* Evidence or other proceedings material to the question presented may be narrated or quoted in the body of the argument, with appropriate reference to the record on appeal or the transcript of proceedings, or the exhibits.

N.C. R. App. P. 28(b)(5) (emphasis added).

In the argument sections of appellants' brief, after each question for review, appellants included a reference to the assignments of error pertinent to the question identified by their numbers. Appellants failed, however, to include the pages at which the assignments of error appear in the printed record on appeal as required by Rule 28(b)(5). *Bishop*, 131 N.C. App. at 548, 507 S.E.2d at 906.

Additionally, the body of each of appellants' five arguments fails to "contain citations of the authorities upon which the appellant[s] rel[y]." N.C. R. App. P. 28(b)(5).

In Section I, appellants contend that the judgment against Mrs. Danner Teague is void for lack of jurisdiction. Appellants argue that the trial court never acquired personal jurisdiction over Mrs. Danner Teague because no summons was ever issued to her. Appellants fail to point this Court to any specific case or statute

supporting appellants' argument. Appellants' sole statement supporting this assignment of error is as follows:

> The cases in North Carolina providing that a person submits himself the [sic] personal jurisdiction by virtually any kind of appearance appear to involve cases in which a summons was actually issued.

In Section III, appellants contend, without citing supportive authority, that "the trial judge commited [sic] error by allowing an improper closing argument and by expressing an opinion that defendant Paul Teague may have abused his wife, co-defendant Robin Berry Danner Teague." Appellants argue that "permitting such an argument was clearly prejudicial to the defendant, especially in light of the history of the judge permitting almost any question that implied that Paul Teague, Sr. had committed any misconduct with anyone at any period of time in history."

In Section IV, appellants contend, without citing any authority, that the jury's "verdict was given under the influence of passion and prejudice." Appellants argue that "[t]he purpose of this trial was to make it appear that Paul Teague, Sr.'s abuse of his wife caused her to become mentally ill" and that "the entire transcript must be read to see the prejudicial nature of the improper evidence and the way it may have caused the jury to arrive at a verdict they deemed fair and 'compensatory,' which was actually merely punitive."

For failure to cite to any authority on which appellants rely in Sections I, III, and IV, these assignments of error are

dismissed. N.C. R. App. P. 28(b)(5); *see Atlantic Veneer Corp. v. Robbins*, 133 N.C. App. 594, 600, 516 S.E.2d 169, 173 (1999).

In Section II, appellants contend that the trial court erred by allowing evidence of alleged misconduct by Mr. Teague occurring between 1960 and 1985. During argument in support of a motion *in limine*, appellants stipulated that the relevant time period for the alleged tort of intentional infliction of emotional distress was between 8 September 1985 and 14 October 1991. Appellants argue that the trial court erred by allowing evidence of events that occurred before 1985 and after 1991 and that this evidence was "extremely prejudicial."

Unlike the body of appellants' argument in Sections I, III, and IV, in Section II, appellants do mention two relevant cases. However, appellants' identification of case law is limited to only the title of each case:

> Of course, when this happened the defendant was not prepared through pre-trial discovery or any other means to address such allegations, and of course, with the judge's ruling the trial became a free-for-all. See *Gordon vs. Gordon*.
>
> This is clearly an exception to the hearsay rule and goes to the issue of mental distress. See *Griffin vs. Griffin.*

Appellants fail to identify the issuing courts or reporter system in which the cases can be found and fail to cite to the appropriate volumes and page numbers.

Finally, in Section V, appellants contend:

> The verdict against defendant Paul Teague Sr. is not warranted by the evidence because the plaintiff failed to present any evidence that

> any misconduct of defendant Paul Teague, Sr. caused any severe disabling or emotional condition such as neurosis, psychosis, chronic depression, phobia or other severe and disabling emotional condition from which plaintiff suffered.

In support of this contention, appellants write:

> In the case of *Waddle vs. Sparks*, the Supreme Court stated "the essential elements of an action for intentional infliction of emotional distress are extreme and outrageous conduct by the defendant which is intended and does in fact cause severe emotional distress." *Waddle vs. Sparks*. In the *Stanback* case of 1979 the court stated, "in order to show severe emotional distress, the plaintiff must show she was suffering emotional distress of a very serious kind."

As in Section II, in this section, appellants identify authority only by case name or partial case name. Appellants fail to identify the issuing courts or the reporters in which the cases can be found. Similarly, appellants fail to provide appropriate volumes and page numbers for the two cases generally mentioned.

North Carolina Rules of Appellate Procedure Rule 28(b)(5) explicitly requires an appellant to include, in the body of an argument, citations of the legal authorities upon which the appellant relies. Appellants here do not present novel issues for which no authority exists. After reading appellants' brief, we conclude that each section of appellants' argument failed to comply with Rule 28(b)(5).

In addition to appellants' failure to comply with Rule 28(b)(5), appellants' brief violates N.C. R. App. P. 26(g) by filing a brief using an impermissible font and number of characters per line. *Lewis v. Craven Regional Medical Center*, 122 N.C. App.

143, 147, 468 S.E.2d 269, 273 (1996). "Each page of a *properly* formatted brief should contain no more than 27 lines of double spaced text with, at most, 65 characters per line." *Webster Enterprises, Inc. v. Selective Ins. Co. of the Southeast*, 125 N.C. App. 36, 40, 479 S.E.2d 243, 246 (1997) (citing *Lewis*, 122 N.C. App. at 147, 468 S.E.2d at 273).

> This standard is met when a brief is presented in the same type-setting as used by this Court in its slip opinions -- Courier 10cpi -- which insures no more than sixty-five (65) characters per line and twenty-seven (27) lines per page. Courier 10cpi may be achieved in computer and word processing technology by utilizing no smaller than size twelve (12) Courier or Courier New font.

Howell v. Morton, 131 N.C. App. 626, 628, 508 S.E.2d 804, 806 (1998). This Court has made clear its type-setting requirements, yet here, appellants' brief uses a font that compresses approximately 77 characters per line.

North Carolina Rules of Appellate Procedure Rule 25(b) states that "[a] court of the appellate division may, on its own initiative . . . impose a sanction against a party or attorney or both when the court determines that such party or attorney or both substantially failed to comply with these appellate rules." North Carolina Rules of Appellate Procedure Rule 34(a)(3) explicitly permits sanctions in situations where "a petition, motion, brief, record, or other paper filed in the appeal . . . grossly violated appellate court rules."

This is appellants' second attempt at perfecting their appeal before this Court. Their first appeal was dismissed for failure to

timely file appellants' brief. This Court, in its discretion, granted appellants' subsequent writ of certiorari, giving appellants a second bite at the apple. However, because of appellants' numerous flagrant violations of our rules in their second attempt, we impose the sanction of dismissal of the appeal. N.C. R. App. P. 34(b)(1).

Appeal dismissed.

Judges HUDSON and BRYANT concur.

Report per Rule 30(e).