

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-684

NORTH CAROLINA COURT OF APPEALS

Filed: 16 April 2002

JETTIE RUTH STEVENS,

Plaintiff,

v.

Wake County

No. 97 CVS 8076

JACINTO HERRERA GUZMAN,

Defendant.

Appeal by plaintiff from order entered 15 February 2001 by Judge James F. Ammons, Jr. in Wake County Superior Court. Heard in the Court of Appeals 13 March 2002.

E. Gregory Stott, for plaintiff-appellant.

Baker, Jenkins & Jones, P.A., by Kevin N. Lewis, for defendant-appellee.

TYSON, Judge.

Jettie Ruth Stevens ("plaintiff") appeals from a written order denying plaintiff's oral and written motions for judgment notwithstanding the verdict and a new trial. We affirm the trial court's order.

I. Facts

The evidence at trial tended to show that on 2 March 1997 at approximately 4:24 p.m. plaintiff was a passenger in a car driven by Regina Marie Randolph ("Regina"). Jacinto Herrera Guzman's ("defendant") car and Regina's car collided. Regina, plaintiff,

and defendant disagreed about who was at fault. The jury returned a verdict denying that defendant was negligent. —

This case is before us for the second time. Following the jury verdict, plaintiff's attorney made an oral motion in open court for (1) judgment notwithstanding the verdict and/or (2) a new trial. The trial court denied plaintiff's oral motions. Plaintiff then filed a written Rule 59 motion for new trial on 26 February 1999. On 1 March 1999, the trial court signed the judgment pursuant to the jury's verdict, and it was filed 5 March 1999. On 29 March 1999, the trial court heard plaintiff's written Rule 59 motion for new trial and orally denied it.

_____ Defendant filed a Rule 68 motion for costs on 12 March 1999. The trial court granted the motion and awarded defendant \$1,086.28 in costs in a written order filed 29 April 1999.

On 19 May 1999, plaintiff filed a motion to compel the trial court to reduce to writing its denial of plaintiff's motions for a new trial. The trial court denied plaintiff's motion by order dated 3 June 1999. In notices of appeal dated 28 May 1999 and 11 June 1999, plaintiff appealed the trial court's (1) 5 March 1999 judgment for defendant, (2) 29 April 1999 order granting defendant costs, (3) oral orders denying plaintiff's motions for judgment notwithstanding the verdict and new trial, and (4) 3 June 1999 order refusing to reduce its oral orders to writing.

We previously held that plaintiff's 11 June 1999 notice of appeal from judgment was untimely, and we dismissed her appeal. We also concluded that plaintiff was entitled to have the trial

court's oral orders denying plaintiff's motions for a new trial and judgment notwithstanding the verdict reduced to writing. Plaintiff's appeal, at that time, was not the proper mode for getting the trial court to enter its orders: "[t]he failure of the trial court to enter an order, however, is not a matter to be addressed on an appeal from that inaction, but instead is to be addressed through a writ of mandamus filed with this Court." *Stevens v. Guzman*, 140 N.C. App. 780, 783, 538 S.E.2d 590, 593 (2000).

Plaintiff filed a petition for discretionary review with our Supreme Court. The Supreme Court granted the petition and oral arguments were heard on 12 September 2001. The Supreme Court filed its *per curiam* opinion on 5 October 2001 stating that "discretionary review improvidently allowed." *State v. Guzman*, 354 N.C. 214, 552 S.E.2d 140 (2001).

_____ Following this Court's earlier opinion, plaintiff petitioned our Court for a writ of mandamus on 22 December 2000 to compel the trial court to reduce its oral orders to writing. By order dated 16 January 2001, we ordered the trial court to reduce its rulings to writing on plaintiff's oral and written motions for judgment notwithstanding the verdict and/or a new trial. On 15 February 2001, the trial court reduced its previous oral orders to writing *nunc pro tunc* 24 February 1999 and 29 March 1999. On 14 March 2001, plaintiff appealed from that written order denying her motion for judgment notwithstanding the verdict and/or a new trial pursuant to Rules 59 and 60 of the North Carolina Rules of Civil

Procedure.

II. Issues

____Plaintiff assigns as error the trial court's (1) granting of defendant's motion *in limine* and its refusal to allow plaintiff to impeach defendant on issues regarding defendant's current immigration status, (2) entry of judgment filed 5 March 1999 as erroneous as a matter of law, and (3) denial of plaintiff's motions for judgment notwithstanding the verdict and a new trial.

III. Conclusion

____Plaintiff argues that the "refusal of the trial court to allow plaintiff's attorney to impeach the defendant on cross-examination was highly prejudicial to the plaintiff, was improper and therefore reversible error." Whether or not this is true is irrelevant. The only issue on appeal is whether the trial court abused its discretion in refusing to grant plaintiff's motions for judgments notwithstanding the verdict and/or a new trial.

____"It has long been the rule in this State that a motion to set aside the verdict and for a new trial is 'addressed to the sound discretion of the trial judge, whose ruling, in the absence of abuse of discretion, is not reviewable on appeal.'" *Glen Forest Corp. v. Bensch*, 9 N.C. App. 587, 589, 176 S.E.2d 851, 853 (1970) (quoting *Pruitt v. Ray*, 230 N.C. 322, 52 S.E.2d 876 (1949)). Plaintiff failed to argue or offer any showing that the trial court abused its discretion, nor is any abuse of discretion shown by the record. We affirm the order of the trial court.

____Affirmed.____

Judges WYNN and TIMMONS-GOODSON concur.

Report per Rule 30(e).