

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-274

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

CLARENCE KEITH WILLIAMSON,  
Plaintiff,

v.

Vance County  
No. 96 CVD 324

JUANITA HUNT WILLIAMSON,  
Defendant.

Appeal by defendant from order entered 11 September 2001 by Judge J. Henry Banks in Vance County District Court. Heard in the Court of Appeals 21 October 2002.

*Melissa C. Lemmond, for defendant-appellant.*

*No brief filed for plaintiff-appellee.*

HUDSON, Judge.

In April 1996, plaintiff brought an action for divorce against defendant seeking an equitable distribution of their marital property. The trial court entered a judgment of distribution on 23 April 2001, awarding defendant \$106,361.99 of the marital property, awarding plaintiff \$46,237.22 of the marital property, and ordering plaintiff to pay defendant an additional net distributive amount of \$5,718.17 plus a setoff reimbursement of \$1,920.66.

Plaintiff filed a motion for relief pursuant to North Carolina Rules of Civil Procedure 59(a)(9) and 60(a) and (b), alleging

"clerical errors," "arithmetic errors." and an "oversight or omission" in the trial court's judgment. The trial court denied the motion by order entered 11 September 2002. On 11 October 2002, defendant filed notice of appeal "from the Order rendered on September 11, 2002, . . . which denied Defendant's Motion for Relief Pursuant to Rules 60 and 59 of the Rules of Civil Procedure filed on May 7, 2001."

In her brief to this Court, defendant avers that the district court's judgment of distribution contains "[a]t least three" errors that are "so obvious and substantial" as to entitle her to an amendment or correction thereof. However, defendant gave notice of appeal only from the order denying her motion for relief under Rules 59 and 60, not from the judgment of distribution. See N.C. R. App. P. 3(d) (requiring notice of appeal to "designate the judgment or order from which appeal is taken"). Her notice of appeal "does not also specifically appeal the underlying judgment, [and, therefore,] does not properly present the underlying judgment for our review." *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990).

The scope of defendant's appeal is further "confined to a consideration of those assignments of error set out in the record on appeal." N.C. R. App. P. 10(a). Defendant assigns error as follows:

1. To the Court's Order Denying Defendant's Motion to Set Aside the Previous Judgment.
2. Court's Order Denying Defendant's Motion for Relief to Correct the Judgment.

Such broadside, conclusory language "raises no issue of law for our determination, . . . since 'the basis upon which error is assigned' is not stated in the assignment, as Rule 10(c) of our Rules of Appellate Procedure requires." *McManus v. McManus*, 76 N.C. App. 588, 590, 334 S.E.2d 270, 272 (1985) (citing *Town of Burnsville v. Boone*, 231 N.C. 577, 58 S.E.2d 351 (1950)). Therefore, the arguments found in defendant's appellate brief are not properly before this Court, and we decline to address them. *Nadeau v. Employment Sec. Comm'n of North Carolina*, 97 N.C. App. 272, 277, 388 S.E.2d 145, 148 (1990); *Mayhew Elec. Co. v. Carras*, 29 N.C. App. 105, 107-08, 223 S.E.2d 536, 538 (1976). "However, the appeal itself constitutes an exception to the [order] and brings forward any error of law apparent on its face." *Wade v. Wade*, 72 N.C. App. 372, 376, 325 S.E.2d 260, 266 (1985), *disc. review denied*, 313 N.C. 612, 330 S.E.2d 616 (1985).

A trial court's denial of a motion for relief under Rules 59 and 60 is reviewed only for manifest abuse of discretion. *Ollo v. Mills*, 136 N.C. App. 618, 624, 525 S.E.2d 213, 217 (2000). The court's ruling should not be disturbed on appeal unless it "amounted to a substantial miscarriage of justice." *Worthington v. Bynum*, 305 N.C. 478, 487, 290 S.E.2d 599, 605 (1982).

Nothing on the face of the district court's order, which simply denied defendant's motion, reflects an abuse of the court's discretion or a substantial miscarriage of justice. We note that the court was not required to enter findings of fact in support of its ruling. *Nations v. Nations*, 111 N.C. App. 211, 214, 431 S.E.2d

852, 855 (1993) (Rule 60); *Strickland v. Jacobs*, 88 N.C. App. 397, 399-400, 363 S.E.2d 229, 230 (1988) (Rule 59). Accordingly, we affirm the order.

Affirmed.

Chief Judge EAGLES and Judge MCCULLOUGH concur.

Report per Rule 30(e).