

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-362

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2002

BUCKEYE FIRE EQUIPMENT CO., INC.,
Plaintiff,

v.

Gaston County
No. 00 CVS 3356

RICK GIBBY and C.L. RABB,
Defendants.

Appeal by plaintiff from judgment entered 29 August 2001 and order entered 7 January 2002 by Judge Robert P. Johnston in Gaston County Superior Court. Heard in the Court of Appeals 7 October 2002.

Schusterman Law Firm, P.A., by Stephen D. Schusterman, for plaintiff-appellant.

Reid C. James for defendant-appellee Rick Gibby.

Carpenter & Carpenter, P.L.L.C., by James R. Carpenter, for defendant-appellee C.L. Rabb.

EAGLES, Chief Judge.

Plaintiff Buckeye Fire Equipment, Co., Inc. filed a civil complaint against, *inter alia*, its former employee Rick Gibby ("Gibby") and C.L. Rabb ("Rabb), the owner of one of its suppliers. In its complaint, plaintiff alleged that Gibby had fraudulently issued company checks totaling more than \$10,000 to Rabb and his company, C.L. Rabb, Inc., as payment for cardboard boxes that were

never delivered. Gibby filed a counterclaim against plaintiff for breach of his employment contract. A jury ruled in favor of defendants on plaintiff's claims and in favor of Gibby on his counterclaim. After plaintiff and Gibby agreed to a damages amount of \$3000, the trial court entered judgment reflecting the jury's verdict on 29 August 2001. Plaintiff filed a motion for judgment notwithstanding the verdict or for a new trial, which was denied by the court by order entered 7 January 2002. Plaintiff filed notice of appeal from the judgment and order on 8 February 2002.

Under Rule 3 of our Rules of Appellate Procedure, notice of appeal must be filed within thirty days of the entry of a civil judgment by the trial court. N.C.R. App. P. 3(a), (c). "Failure to give timely notice of appeal in compliance with . . . Rule 3 of the North Carolina Rules of Appellate Procedure is jurisdictional, and an untimely attempt to appeal must be dismissed." *Booth v. Utica Mutual Ins. Co.*, 308 N.C. 187, 189, 301 S.E.2d 98, 99-100 (1983). As noted above, the trial court entered its order denying plaintiff's motion for judgment notwithstanding the verdict on 7 January 2002; plaintiff filed notice of appeal thirty-two days later on 8 February 2002. The record on appeal submitted by plaintiff contains no allegation or showing of any period of noncompliance with the service requirement of N.C.R. Civ. P. 58 that would extend the thirty-day deadline for appealing the order. See N.C.R. Civ. P. 3(c)(1), (2). Because notice of appeal is untimely under Rule 3(c), we dismiss the appeal.

Our dismissal of the appeal on jurisdictional grounds moots defendant Rabb's motion to dismiss the appeal.

Appeal dismissed.

Judges McCULLOUGH and HUDSON concur.

Report per Rule 30(e).