

NO. COA02-7

NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2002

DEAN DANIELS,
Plaintiff,
v.

WAL-MART STORES, INC.,
Defendant.

Appeal by defendant from order filed 23 August 2001 by Judge W. Allen Cobb, Jr. in New Hanover County Superior Court. Heard in the Court of Appeals 12 November 2002.

Narron & Holdford, P.A., by B. Perry Morrison, Jr., for plaintiff appellee.

Brown, Crump, Vanore & Tierney, L.L.P., by Michael W. Washburn, for defendant appellant.

GREENE, Judge.

Wal-Mart Stores, Inc. (Defendant) appeals from an order filed 23 August 2001 granting Dean Daniels (Plaintiff) a new trial. Defendant filed notice of appeal on 12 September 2001 and filed a brief in this Court on 15 April 2002.

On 23 July 2002, this Court entered an order striking Defendant's brief for failure to comply with Rule 26(g) of the Rules of Appellate Procedure and *Lewis v. Craven Regional Medical Center*, 122 N.C. App. 143, 468 S.E.2d 269 (1996) (briefs must contain no more than 65 characters and spaces per line, or 10 characters per inch, to comply with appellate rules); N.C.R. App.

P. 26(g).¹ This Court further ordered Defendant to file a substitute brief complying with the appellate rules within ten days of the order. Defendant has not filed a substitute brief.

This Court may impose sanctions under Appellate Rules 25 and 34 for failure to comply with an order requiring a substitute brief. *Hilliard v. Hilliard*, 146 N.C. App. 709, 714, 554 S.E.2d 374, 378 (2001); N.C.R. App. P. 25, 34. Thus, Defendant is subject to sanctions, including dismissal of this appeal, for failure to comply with an order of this Court requiring a substitute brief. N.C.R. App. P. 34(b)(1). Accordingly, in our discretion we elect to dismiss Defendant's appeal.

Dismissed.

Chief Judge EAGLES and Judge MARTIN concur.

¹Appellate Rule 26(g) was amended effective 7 October 2002 to require compliance with a new provision in Appellate Rule 28 that mandates briefs submitted in non-proportionally spaced type may not contain more than 10 characters per inch and briefs submitted in proportional type must be in at least 14 point type. N.C.R. App. P. 26(g); N.C.R. App. P. 28(j)(1)(B).