

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA04-309

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2004

PIEDMONT INDUSTRIAL EQUIPMENT,
INC.,

Plaintiff,

v.

Gaston County
No. 02 CVS 3429

GASTON COUNTY,

Defendant.

Appeal by defendant from judgment entered 17 October 2003 by Judge Jesse B. Caldwell, III, in Gaston County Superior Court. Heard in the Court of Appeals 4 November 2004.

Arthurs & Foltz, by Douglas P. Arthurs and Tara R. Sain, for plaintiff-appellee.

Stott, Hollowell, Palmer & Windham, L.L.P., by Grady B. Stott, and Assistant Gaston County Attorney Kathleen M. Gadd, for defendant-appellant.

TYSON, Judge.

Gaston County ("defendant") appeals the trial court's judgment entered in favor of Piedmont Industrial Equipment, Inc., ("plaintiff") finding plaintiff's use of its real property ("the Property") did not violate the Gaston County Zoning Ordinance ("the Ordinance"). We dismiss the appeal.

I. Background

Plaintiff is a North Carolina corporation doing business in Gaston County, North Carolina. Its principal business is the

purchase and sale of power plant machinery, such as electric, heating, air conditioning, ventilating, and plumbing supplies. It owns the Property, which consists of 4.0365 acres and is situated within an Industrial General ("I-G") zoning district as designated by the Gaston County Board of Commissioners ("the Board"). Plaintiff uses the Property in connection with its business of buying and selling commercial air conditioners.

On 13 September 2002, plaintiff filed a declaratory judgment asking the court to find that plaintiff's use of the Property complied with I-G zoning. Defendant responded by arguing plaintiff's use of the Property for storage of salvaged units violates the Ordinance.

The case was tried without a jury on 25 August 2003. The trial court found plaintiff's use of the Property was "a use as a matter of right in the Industrial General District" and did not violate the Ordinance and ruled against defendant. Defendant appeals.

II. Issue

The dispositive issue before this Court is whether defendant has complied with the North Carolina Rules of Appellate Procedure.

III. North Carolina Rules of Appellate Procedure

Defendant argues the trial court erred in finding as fact plaintiff was in the business of buying and selling commercial air conditioning equipment and that plaintiff's use of the Property complied with the Ordinance. We decline to reach the merits of defendant's claims.

The North Carolina Rules of Appellate Procedure outline the formatting and content requirements for briefs submitted for appellate review. Our appellate courts have consistently held that these rules are “‘mandatory and that failure to follow [them] will subject an appeal to dismissal.’” *Holland v. Heavner*, ___ N.C. App. ___, ___, 595 S.E.2d 224, 226 (2004) (quoting *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999) (citations omitted)).

A. Rule Violations

Rule 28(b) of the North Carolina Rules of Appellate Procedure states in part:

An appellant’s brief in any appeal shall contain . . .

. . . .

(4) A statement of the grounds for appellate review. Such statement shall include citation of the statute or statutes permitting appellate review.

. . . .

(6) An argument, to contain the contentions of the appellant with respect to each question presented The body of the argument shall contain citations of the authorities upon which the appellant relies.

N.C.R. App. P. 28(b)(4) and (6) (2004) (emphasis supplied).

Rule 26(g)(1) requires a brief’s text to “be presented with double spacing between each line of text.” N.C.R. App. P. 26(g)(1) (2004).

Defendant’s brief fails to comply with the above three Rules of Appellate Procedure. First, the brief does not include a

statement of the grounds for appellate review under a separate heading as required by Rule 28(b)(4). We also find no such statement or citation to statutory authority warranting appellate review included within defendant's argument. N.C.R. App. P. 28(b)(4).

Second, defendant's analysis under its assignments of errors does not satisfy the requirements of Rule 28(b)(6). Defendant cites two cases of authority addressing generally this Court's standard of review on appeal. However, the discussion following each assignment of error is purely argumentative without citations of any authority upon which defendant relies. Failure to include citation to authority *in support of* an argument results in abandonment of the party's assignment of error. *State v. Walters*, 357 N.C. 68, 85-86, 588 S.E.2d 344, 355, *cert. denied*, ___ U.S. ___, 157 L. Ed. 2d 320 (2003); *Byrne v. Bordeaux*, 85 N.C. App. 262, 265, 354 S.E.2d 277, 279 (1987) (citing *Groves & Sons v. State*, 50 N.C. App. 1, 273 S.E.2d 465 (1980), *cert. denied*, 302 N.C. 396, 279 S.E.2d 353 (1981)).

Finally, the body of defendant's brief is typed in single space. This technical defect compounds the basis for dismissal. *Steingress*, 350 N.C. at 65, 511 S.E.2d at 299 (appeal dismissed for failing to double space text and reference assignments of error in the argument).

B. Rule 2

Rule 2 of the North Carolina Rules of Appellate Procedure states:

To prevent manifest injustice to a party, or to expedite decision in the public interest, either court of the appellate division may, except as otherwise expressly provided by these rules, suspend or vary the requirements or provisions of any of these rules in a case pending before it upon the application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

N.C.R. App. P. 2 (2004).

Our Supreme Court noted in *Steingress* that "Rule 2 relates to the residual power of our appellate courts to consider, in exceptional circumstances, significant issues of importance in the public interest, or to prevent injustice which appears manifest to the Court and only in such instances." 350 N.C. at 66, 511 S.E.2d at 299-300 (citing *Blumenthal v. Lynch*, 315 N.C. 571, 578, 340 S.E.2d 358, 362 (1986)). This Court has held that "'there is no basis under Appellate Rule 2 upon which we should waive plaintiff's violations of Appellate Rules'" *Holland*, ___ N.C. App. at ___, 595 S.E.2d at 227 (quoting *Sessoms v. Sessoms*, 76 N.C. App. 338, 340, 332 S.E.2d 511, 513 (1985)).

Our review of the entire record fails to disclose any exceptional circumstances, significant issues, or manifest injustices that warrant suspension of the Appellate Rules. We decline to reach the merits of the case under Rule 2.

IV. Conclusion

This Court has the authority to dismiss an appeal for failing to satisfy the timing, formatting, and content requirements mandated by the appellate rules. See N.C.R. App. P. 13(c) (2004) ("If an appellant fails to file and serve his brief within the time

allowed, the appeal may be dismissed"); N.C.R. App. P. 14(d) (2) (2004) ("If an appellant fails to file and serve his brief within the time allowed, the appeal . . . may be dismissed on motion of any appellee"); N.C.R. App. P. 25(a) (2004) ("If after giving notice of appeal . . . the appellant shall fail within the times allowed by these rules or by order of court to take any action . . . the appeal may on motion of any other party be dismissed."); N.C.R. App. P. 28(a) (2004); N.C.R. App. P. 34 (2004) (dismissal permitted as a sanction for frivolous appeals).

Our Supreme Court has recognized this power and has affirmed this Court's decisions to dismiss appeals for appellate rules violations. See *Steingress*, 350 N.C. at 64, 511 S.E.2d at 298; see also *Craver v. Craver*, 298 N.C. 231, 236, 258 S.E.2d 357, 361 (1979); *Walter Corporation v. Gilliam*, 260 N.C. 211, 213, 132 S.E.2d 313, 315 (1963); *Woodburn v. N.C. State Univ.*, 156 N.C. App. 549, 551, 577 S.E.2d 154, 156 (granting motion to strike documents that were included in the record in violation of the appellate rules), *disc. rev. denied*, 357 N.C. 470, 584 S.E.2d 296 (2003).

Defendant's three assignments of error are deemed abandoned for failure to comply with Rules 26 and 28 of the North Carolina Rules of Appellate Procedure. This appeal is dismissed.

Dismissed.

Judges TIMMONS-GOODSON and GEER concur.

Report per Rule 30(e).