

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1104

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

CHARLES A. SNOW AND WIFE
ALICE D. SNOW,
Plaintiffs-Appellees,

v.

Dare County
No. 03 CVS 591

COUNTY OF DARE,
Defendant-Appellant.

Appeal by defendant from summary judgment entered 28 June 2005 by Judge John B. Lewis in Dare County Superior Court. Heard in the Court of Appeals 22 March 2006.

The Brough Law Firm, by Robert E. Hornik, Jr. and T. C. Morphis, Jr., for plaintiff-appellees.

Sharp Michael Outten and Graham, LLP, by Robert L. Outten, for defendant-appellant.

STEELMAN, Judge.

Plaintiffs filed a complaint on 5 December 2003 seeking a judgment declaring their property exempt from Dare County Subdivision Ordinances, and determining the validity of the purported subdivision of their property. Plaintiffs filed a motion for summary judgment on 5 November 2004, and this motion was granted in favor of plaintiffs on 28 June 2005. From this order granting summary judgment, defendant appeals.

The dispositive issue is whether defendant has properly preserved its arguments for appeal. In light of prior holdings of the appellate courts of this state, we hold it has not.

Defendant has included two assignments of error in the record, which read in total as follows:

1. The trial court erred in granting summary judgment in favor of Plaintiff.
2. The trial court erred in failing to grant summary judgment in favor of Defendant.

These assignments of error violate Rule 10(c)(1) of the North Carolina Rules of Appellate Procedure in that they fail to state any legal basis upon which error is assigned. They do "no more than duplicate the notice of appeal and, thus, also [do] not serve [their] function of limiting our scope of review." *Broderick v. Broderick*, __ N.C. App. __, __, 623 S.E.2d 806, 807 (2006). In light of our Supreme Court's decision in *Viar v. N.C. DOT*, 359 N.C. 400, 610 S.E.2d 360 (2005), this Court has held that it must dismiss an appeal based on assignments of error that fail to state the legal basis upon which error is assigned. *Broderick*, __ N.C. App. __, 623 S.E.2d 806; see also *May v. Down E. Homes of Beulaville, Inc.*, __ N.C. App. __, 623 S.E.2d 345 (2006). In light of this precedent, we are compelled to dismiss this appeal. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989).

DISMISSED.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).