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NO. COA05-1151

NORTH CAROLINA COURT OF APPEALS

Filed: 4 April 2006

DAVID ROTHMAN as Administrator
For the Estate of Jeffrey
Rothman,

Plaintiff,

v.

Alamance County
No. 05 CVS 122

TOWN OF ELON (ELON POLICE
DEPARTMENT),

Defendant

Appeal by plaintiff from an order entered 25 April 2005 by Judge A. Leon Stanback, Jr., in Alamance County Superior Court. Heard in the Court of Appeals 22 February 2006.

David Rothman, Pro Se, plaintiff-appellant.

Wishart, Norris, Henninger & Pittman, P.A., by Pamela S. Duffy and Robert J. Wishart, for defendant-appellee.

PER CURIAM.

On 18 January 2005, David Rothman ("plaintiff"), acting as a *pro se* plaintiff, filed a complaint in Alamance County Superior Court seeking the release of records held by the Town of Elon ("defendant"), specifically the town's police department. Plaintiff sought the release of records concerning a police investigation done in the spring of 2001 surrounding a possible drug sale at Elon University, and involving an Elon University

student. In the spring of 2001, plaintiff's son, Jeffrey Rothman, went to Myrtle Beach, South Carolina with some friends for spring break. On their way to Myrtle Beach, plaintiff's son and his friends allegedly stopped at Elon University and purchased drugs. Plaintiff's son later drowned in Myrtle Beach, and plaintiff subsequently brought a civil action in South Carolina against the alleged drug dealer pursuant to South Carolina law. Plaintiff sought release of the town's criminal investigation records into the alleged drug sale so that he could determine if information contained in the records would assist him with his pending South Carolina civil action.

Plaintiff's complaint - filed 18 January 2005 - represents his second attempt to obtain the requested criminal investigation records. Defendant and Elon University previously denied plaintiff's requests for the investigation records, opining that these documents did not constitute public records and they were not required to release them. On 7 April 2005, defendant filed its answer to plaintiff's complaint, which included a motion for protective order or in the alternative an *in camera* review of the documents, and a motion to dismiss plaintiff's complaint. Following a hearing on 11 April 2005, the trial court entered an order on 27 April 2005. The order denied plaintiff's request for the release of defendant's criminal investigation records concerning any investigation done about an alleged drug sale at Elon University in the spring of 2001, and granted defendant's

motion to dismiss. Plaintiff appeals from the trial court's order dismissing his complaint.

Defendant has filed a motion for sanctions against plaintiff pursuant to Rule 34 of our rules of appellate procedure. Rule 34(a) provides that

A court of the appellate division may, on its own initiative or motion of a party, impose a sanction against a party or attorney or both when the court determines that an appeal or any proceeding in an appeal was frivolous because of one or more of the following:

- (1) the appeal was not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
- (2) the appeal was taken or continued for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (3) a petition, motion, brief, record, or other paper filed in the appeal was so grossly lacking in the requirements of propriety, grossly violated appellate court rules, or grossly disregarded the requirements of a fair presentation of the issues to the appellate court.

N.C. R. App. P. 34(a) (2005). In its motion, defendant seeks not only a dismissal of plaintiff's appeal, but also monetary damages and any other sanctions this Court deems just and proper, as allowed by Rule 34(b).

In the instant case, plaintiff has failed to comply with the North Carolina Rules of Appellate Procedure, therefore, we decline to reach the merits of his appeal. In order for a party to obtain our review of the decision of a lower court, an appellant "must

adhere to certain mandatory procedural requirements." *Duke University v. Bishop*, 131 N.C. App. 545, 546, 507 S.E.2d 904, 905 (1998). Our Rules of Appellate Procedure are "mandatory and 'failure to follow these rules will subject an appeal to dismissal.'" *Viar v. N.C. DOT*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (quoting *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999)), *reh'g denied*, 359 N.C. 643, 617 S.E.2d 662 (2005). "[E]ven *pro se* appellants must adhere strictly to the Rules of Appellate Procedure . . . or risk sanctions." *Strauss v. Hunt*, 140 N.C. App 345, 348-49, 536 S.E.2d 636, 639 (2000) (citing N.C. R. App. P. 25(b)). Due to the gross violations of our rules of appellate procedure, we hereby grant defendant's motion for rule 34 sanctions against plaintiff, and dismiss plaintiff's appeal.

Specifically, we note that plaintiff's brief begins by failing to provide a statement of the procedural history of plaintiff's case, as required by Rule 28(b)(3) of our Rules of Appellate Procedure. N.C. R. App. P. 28(b)(3) (2005). Although plaintiff's statement of the facts tends to provide a procedural history of the case, this alone is insufficient to comply with Rule 28(b)(3). Plaintiff's statement of facts also fails to present a full and complete, and nonargumentative, summary of the facts of the case, as required by Rule 28(b)(4). N.C. R. App. P. 28(b)(4) (2005). Plaintiff's facts are argumentative in nature, and fail to provide references to the pages in the record or transcript. *Id.* In addition, plaintiff's statement of facts refers to orders and documents which were not made part of the record, thus they are not

before us for our review or to aid in our understanding of the case. See N.C. R. App. P. 9(a)(1) (2005).

With respect to the questions presented by plaintiff, he has failed to properly include "a concise statement of the applicable standard(s) of review for each question presented." N.C. R. App. P. 28(b)(6) (2005). Moreover, plaintiff's second assignment of error, and subsequently the second question presented in his brief, is not limited to a single issue, and in fact presents two different issues in the same question, in violation of Rule 10(c)(1). N.C. R. App. P. 10(c)(1) (2005). In plaintiff's second assignment of error and question presented, he contends the trial court erred in failing to examine defendant's investigation file *in camera*, and also that the court erred in failing to provide him with information regarding the "time, date, location, and nature of violations reported." These are separate and distinct issues which should be presented in separate assignments of error and arguments. Plaintiff's second question presented in his brief also fails to cite to caselaw accurately, and his argument contains inaccurate quotations of the cases he does attempt to cite.

We also note that the first question presented in plaintiff's brief contends the trial court violated his right to due process by requiring that plaintiff give up all rights to an appeal if the trial court were to do an *in camera* review of the information plaintiff sought from defendant. Plaintiff fails to cite any supporting caselaw or authority in support of his argument. Rule 28(b)(6) of our rules of appellate procedure require that "[t]he

body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies." N.C. R. App. P. 28(b)(6) (2005). As this Court has held previously, where no authority is cited in support of an appellant's argument, the assignment of error will be deemed abandoned. *State v. Sinnott*, 163 N.C. App. 268, 273, 593 S.E.2d 439, 442-43 (2004). Although plaintiff does reference Article I, Sections 18 and 19 of the North Carolina Constitution, and the Fifth Amendment of the United States Constitution, these references are not sufficient to constitute supporting authority as plaintiff fails to provide any argument as to how his due process rights were violated. Merely stating that one's due process rights were violated pursuant to the North Carolina and United States Constitutions is not sufficient to meet the requirements of Rule 28(b)(6). *See id.*; *see also Consolidated Elec. Distribs., Inc. v. Dorsey*, 170 N.C. App. 684, 686, 613 S.E.2d 518, 520 (2005) ("While we recognize defendant made one reference to a statute and quoted once a statute pertaining to bonds, we do not find this sufficient citation to authority."). Thus, plaintiff's first assignment of error must be dismissed.

While we acknowledge the tragedy which inspired this case and the perseverance of plaintiff in pursuing this case *pro se*, nonetheless we are bound by the precedent of our state's caselaw. "Our rules are mandatory, and in fairness to all who come before this Court, they must be enforced uniformly." *Shook v. County of Buncombe*, 125 N.C. App. 284, 287, 480 S.E.2d 706, 708 (1997).

Therefore we grant defendant's motion for sanctions, and hereby dismiss plaintiff's appeal. We decline to impose additional sanctions beyond the dismissal of plaintiff's appeal.

Appeal dismissed.

Panel Consisting of:

Judges ELMORE, STEELMAN, and JACKSON.

Report per Rule 30 (e).