

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1321

NORTH CAROLINA COURT OF APPEALS

Filed: 01 August 2006

XAVIER MONTEZ BOONE, a
Minor by and through his
Guardian Ad Litem,
MONIQUE SKINNER and
ANGELA HARGRAVE,

Plaintiffs,

v.

Halifax County
No. 02 CVS 657

BENNIE BURTON MOORE,

Defendant.

Appeal by plaintiffs from judgment entered 20 April 2005 by Judge W. Russell Duke, Jr. in Halifax County Superior Court. Heard in the Court of Appeals 11 May 2006.

Perry, Anthony & Sosna, by Cedric R. Perry, for plaintiffs-appellants.

Baker, Jones, Daly & Carter, P.A., by W. Hugh Jones, Jr., for defendant-appellee.

ELMORE, Judge.

Plaintiffs appeal an order of the trial court granting defendant's motion for a directed verdict and dismissing plaintiffs' complaint with prejudice. The facts underlying the appeal are as follows: Xavier Montez Boone (the minor plaintiff) was attempting to cross the street at a place other than the crosswalk when a pickup truck driven by defendant hit the minor

plaintiff's left hip. Just prior to the accident, defendant was traveling at approximately ten miles per hour. Defendant saw three boys cross the street about thirty or forty yards ahead of him. Defendant testified that the minor plaintiff jumped out into the street when defendant's truck was about three feet away from him. Defendant further testified that he attempted to avoid hitting the minor plaintiff but was unable to do so.

After plaintiffs rested their case, defendant moved the trial court for a directed verdict pursuant to Rule 50 of the North Carolina Rules of Civil Procedure. The trial court denied the motion. Defendant then presented evidence, and plaintiffs presented rebuttal evidence. Defendant renewed his motion for a directed verdict at the close of all evidence. The court, after considering arguments of counsel, allowed the motion.

Plaintiffs filed a notice of appeal on 9 May 2005 from the judgment granting defendant's motion for directed verdict. For the following reasons, we dismiss plaintiffs' appeal. Plaintiffs have failed to include a list of the assignments of error in the record. This is in violation of the unequivocal language of Rule 10 of our Rules of Appellate Procedure. See N.C.R. App. P. 10(c)(1) ("A listing of the assignments of error upon which an appeal is predicated shall be stated at the conclusion of the record on appeal, in short form without argument, and shall be separately numbered."). The appellant has the burden of presenting a complete record on appeal. See N.C.R. App. P. 9(a)(1)(e) and (k); *Pharr v. Worley*, 125 N.C. App. 136, 139, 479 S.E.2d 32, 34 (1997).

"The North Carolina Rules of Appellate Procedure are mandatory and 'failure to follow these rules will subject an appeal to dismissal.'" *Viar v. N.C. Dep't of Transportation*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (2005) (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). This Court has held previously that failure to include a list of the assignments of error within the record is "fatal" to the appeal. See *Shook v. County of Buncombe*, 125 N.C. App. 284, 285, 480 S.E.2d 706, 706 (1997) ("[a] party may not present for the first time in an appellate brief a question raising issues of law not set out in the assignments of error contained in the record on appeal.") (internal quotations omitted). Because plaintiffs have committed a substantial violation of our Rules of Appellate Procedure, we dismiss the appeal.

Dismissed.

Judges McGEE and STEELMAN concur.

Report per Rule 30(e).