

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1578

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

ALEX H. THOMPSON, and wife,  
SHEILA THOMPSON,  
Plaintiffs

v.

Lee County  
No. 98 CVS 371

LEE COUNTY,  
Defendant and  
Third-Party Plaintiff

v.

MICHAEL S. WATERS, d/b/a  
WATERHOUSE REALTY &  
CONSTRUCTION,  
Third-Party Defendant

Appeal by plaintiffs from order entered 1 September 2005 by Judge Jack A. Thompson in Lee County Superior Court. Heard in the Court of Appeals 11 September 2006.

*Bruce T. Cunningham, Jr., for plaintiffs-appellants.*

*No brief for defendant-appellee.*

*Staton, Doster, Post & Silverman, by Norman C. Post, Jr., for third-party defendant-appellee.*

CALABRIA, Judge.

Alex H. Thompson and Sheila Thompson ("plaintiffs") appeal the trial court's denial of their motion to set aside a notice of

dismissal. We dismiss the appeal for violations of the North Carolina Rules of Appellate Procedure.

On 16 April 1998, plaintiffs filed a complaint ("the first complaint") against Michael S. Waters ("Waters") and Lee County alleging negligence in the construction and inspection of their home. On 28 April 1998, Lee County moved to dismiss which the trial court granted on 6 August 1998.<sup>1</sup> Following mediation on 5 March 1999, plaintiffs and Waters entered into a settlement agreement whereby Waters agreed to purchase plaintiffs' residence for \$103,500.00 by 30 June 1999 if plaintiffs filed a voluntary dismissal with prejudice for the negligence action instituted against Waters. On 6 July 1999, plaintiffs filed a second complaint ("the second complaint") alleging Waters failed to comply with the mediated settlement agreement. The summons accompanying the second complaint was never served upon Waters. On 27 July 1999, plaintiffs filed a document captioned "Notice of Voluntary Dismissal Without Prejudice." However, plaintiffs stated in the text of the document they were giving notice of voluntary dismissal *with prejudice* pursuant to North Carolina Rule of Civil Procedure 41(a)(1) regarding the first complaint.

On 27 September 2004, plaintiffs filed a request for a jury trial with the trial court administrator regarding the first complaint for 29 November 2004. On 27 October 2004, the trial

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<sup>1</sup>This Court affirmed the trial court, but the Supreme Court reversed. See *Thompson v. Waters*, 351 N.C. 462, 526 S.E.2d 650 (2000). Nevertheless, the trial court subsequently granted Lee County's motion for summary judgment on 13 February 2002.

court administrator informed plaintiffs the first complaint would not be calendared because plaintiffs filed a voluntary dismissal with prejudice on 27 July 1999 with respect to Waters and Lee County was previously granted summary judgment on 13 February 2002. On 24 May 2005, plaintiffs filed a motion to set aside their "Notice of Voluntary Dismissal Without Prejudice." On 31 August 2005, the trial court denied plaintiff's motion. Plaintiffs appeal.

Plaintiffs argue the trial court erred in denying their motion to set aside a notice of voluntary dismissal. However, plaintiffs failed to cite any authority in their brief to this Court to support their argument. Consequently, this assignment of error is abandoned. See N.C. R. App. P. 28(b)(6) (2005) (stating "[a]ssignments of error ... in support of which no ... authority [is] cited, will be taken as abandoned). Further, Rule 28(b)(6) requires that "[i]mmediately following each question shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal." Plaintiffs' brief fails to identify either the numbered assignment of error or corresponding page numbers where the assigned error appears in the record. "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 Transp.*, 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)). Consequently, plaintiffs'

failure to comply with Rule 28(b)(6) subjects this appeal to dismissal. This assignment of error is dismissed.

Dismissed.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).