

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1649

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
Nos. 03 CR 244454 - 244457

RAMON EDUA RAMIREZ-MARCIANO a/k/a  
RAMON RAMIREZ-MARCIANO a/k/a  
RAMON EDUARD RAMIREZ-MARLIO

Appeal by Harco National Insurance Company, Surety from orders entered 14 September 2005 by Judge Phillip F. Howerton, Jr., in Mecklenburg County District Court. Heard in the Court of Appeals 29 September 2006.

*James, McElroy & Diehl, P.A., by Adam L. Horner and Sarah M. Brady, for appellee Mecklenburg County Board of Education.*

*Andresen & Associates, by Kenneth P. Andresen, for surety-appellant.*

TYSON, Judge.

Harco National Insurance Company ("Harco") appeals from orders rendered in open court. We dismiss the appeal.

#### I. Background

On 15 September 2003, Ramon Edua Ramirez-Marciano a/k/a Ramon Ramirez-Marciano a/k/a Ramon Eduard Ramirez-Marlio ("defendant") was charged with two counts of hit and run causing property damage, assault with a deadly weapon, and reckless driving. Defendant's total bond for these four citations was set at \$13,500.00. On 20

September 2003, Harco, through its bondsman, posted four appearance bonds as surety for defendant in the total amount of \$13,500.00 and defendant was released.

Defendant did not appear at his scheduled court date on 16 October 2003 and the trial court issued bond forfeiture notices on 20 October 2003 in each of the cases. Each of the bond forfeiture notices stated the forfeitures would become final judgments on 18 March 2004.

On 28 December 2004, an agent of Harco surrendered defendant to the Mecklenburg County Jail. On 17 February 2005, the State voluntarily dismissed the charges against defendant.

On 3 August 2005, Harco filed motions for relief from the final judgments pursuant to N.C. Gen. Stat. § 15A-544.8. It appears the trial court conducted a hearing on Harco's motions on 14 September 2005. At the conclusion of the hearing, the trial court rendered an oral judgment granting Harco's motions for relief in part and awarding Harco a total of \$3,000.00 plus interest in relief from the forfeited bonds. Written orders reflecting the trial court's rendered judgments were not entered at that time. Harco filed notices of appeal on 11 October 2005 from the trial court's oral rulings.

On 9 June 2006, Mecklenburg County Board of Education (the "Board") filed with this Court a motion to dismiss the appeal on the ground the appeal is frivolous. Because we dismiss the appeal for lack of jurisdiction, we deny both of the Board's motions to dismiss and for reasonable expenses as moot.

II. Issue

The dispositive issue is whether this Court has jurisdiction to hear the appeal. We conclude that it does not.

III. Entry of Judgment

We first note the record on appeal does not include any judgments of the trial court, and failure to include them in the record on appeal subjects the appeal to dismissal. N.C.R. App. P. 9(a)(1) (2005); see *Wiseman v. Wiseman*, 68 N.C. App. 252, 255, 314 S.E.2d 566, 567-68 (1984).

The announcement of judgment in open court is the mere rendering of the judgment, not the entry of the judgment. *Kirby Bldg. Sys. v. McNeil*, 327 N.C. 234, 393 S.E.2d 827 (1990). Although appeal of a rendered order or judgment may be timely filed, jurisdiction will not vest with this Court if judgment in substantial compliance with the judgment rendered is not subsequently entered. *Abels v. Renfro Corp.*, 126 N.C. App. 800, 804, 486 S.E.2d 735, 738, *disc. rev. denied*, 347 N.C. 263, 493 S.E.2d 450 (1997); see *Worsham v. Richbourg's Sales & Rentals*, 124 N.C. App. 782, 784, 478 S.E.2d 649, 650 (1996).

Entry of an order occurs when an order is reduced to writing, signed by the judge, and filed with the clerk. *Abels*, 126 N.C. App. at 803, 486 S.E.2d at 738. The absence of such written order giving this Court jurisdiction mandates that an appeal be dismissed. *Searles v. Searles*, 100 N.C. App. 723, 725-27, 398 S.E.2d 55, 56-57 (1990).

Although the trial court in this case announced its decision

in open court, no written orders that are signed by the judge and filed with the clerk appear in the record on appeal. Harco refers to the trial court's orders as orders made in open court, both in its notices of appeal and in its brief.

IV. Conclusion

No evidence shows the orders from which Harco purports to appeal from have been entered. This appeal must be dismissed. *Id.* Because we dismiss the appeal for lack of jurisdiction, we deny both of the Board's motions to dismiss and for reasonable expenses as moot.

Dismissed.

Judges BRYANT and LEVINSON concur.

Report per Rule 30(e).