

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1685

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

MICHAEL S. PERKINSON,  
Plaintiff,

v.

Vance County  
No. 05 CVS 550

CHARLES HAWLEY, individually  
and in his official capacity  
as Jail Administrator; R. T.  
BREEDLOVE, Sheriff of Vance  
County, individually and in his  
official capacity; WESTERN SURETY  
COMPANY; and CNA SURETY COMPANY,  
Defendants.

Appeal by plaintiff from an order entered 6 September 2005 by  
Judge Kenneth C. Titus in Vance County Superior Court. Heard in  
the Court of Appeals 24 July 2006.

*Michael Scott Perkinson, pro se, plaintiff-appellant.*

*Womble Carlyle Sandridge & Rice, PLLC, by Mark A. Davis, for  
defendants-appellees.*

MARTIN, Chief Judge.

Plaintiff is an inmate currently incarcerated at Harnett  
Correctional Institution. Prior to 5 December 2000, plaintiff was  
incarcerated in the Vance County Jail. Plaintiff brought this  
negligence action against Defendants Charles Hawley, individually  
and in his official capacity as jail administrator; Vance County  
Sheriff R.T. Breedlove, individually and in his official capacity;

Western Surety Company; and CNA Surety Company (collectively, "Defendants") seeking to recover for injuries which he allegedly suffered on 5 December 2000 when he was attempting to climb down from a top bunk bed at the jail and fell to the floor. Plaintiff appeals from the trial court's 6 September 2005 order dismissing his action pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

Defendants have moved to dismiss the appeal in this Court on the ground plaintiff has failed to comply with the North Carolina Rules of Appellate Procedure. Because of multiple violations of the North Carolina Appellate Rules, we allowed defendants' motion and dismiss plaintiff's appeal.

"Appellate review is based solely upon the record on appeal, N.C.R. App. P. 9(a); it is the duty of the appellant[] to see that the record is complete." *Collins v. Talley*, 146 N.C. App. 600, 603, 553 S.E.2d 101, 102 (2001) (citations and quotations omitted). Here, plaintiff failed to settle the record on appeal as required by Appellate Rule 9(a)(1)(i). The record as filed does not contain an index of the contents of the record as required by Rule 9(a)(1)(a). Many of the documents included in the record do not contain page numbers and the documents that do have page numbers are not in sequential order in the record. See N.C.R. App. P. 9(b)(4) ("The pages of the record on appeal shall be numbered consecutively[.]"). Further, the assignments of error set out in the record do not contain specific citations to the record as required by Rule 10(c)(1).

In addition, plaintiff's brief fails to comply with the North Carolina Appellate Rules by: (1) failing to include a subject index as required by Rule 28(b)(1); (2) failing to state the grounds for appellate review as required by Rule 28(b)(4); (3) failing to set forth the standard of review as required by Rule 28(b)(6); and (4) failing to include a certification that the brief contains no more than 8,750 words as required by Rule 28(j)(2)(A)(2). Further, plaintiff has failed to reference any assignments of error in his appellate brief as a result of which his assignments of error are deemed abandoned. See N.C.R. App. P. 28(b)(6) ("Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned."). Finally, plaintiff attached a document not included in the record and not permitted under Rule 28(d) in an appendix to his brief. See N.C.R. App. P. 9(a) (stating that review is solely upon the record and transcripts) and Rule 28(b) (describing proper contents of appellant's brief).

As this Court stated in *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 519 S.E.2d 316 (1999):

The Rules of Appellate Procedure are mandatory; failure to comply with these rules subjects an appeal to dismissal. Furthermore, these rules apply to everyone - whether acting *pro se* or being represented by all of the five largest law firms in the State.

*Id.* at 125, 519 S.E.2d at 317 (citing *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999)); see also, *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 401, 610 S.E.2d 360, 360, *reh'g denied*, 359 N.C. 643, 617 S.E.2d 662 (2005). Because of

plaintiff's multiple violations of the appellate rules, his appeal must be dismissed notwithstanding his *pro se* status. *Bledsoe*, 135 N.C. App. at 125, 519 S.E.2d at 317.

Motion to dismiss allowed; Appeal dismissed.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).