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NO. COA05-1694

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

STATE OF NORTH CAROLINA

v.

Mecklenburg County  
Nos. 03 CR 217170 - 217171

CHARLES DAVID PICKERING

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 12 April 2003, Charles David Pickering ("defendant") was charged with assault inflicting serious bodily injury and assault and battery. Defendant's bond was set at \$25,000.00 for the assault inflicting serious bodily injury charge and \$1,000.00 for the simple assault charge. On 15 April 2003, Harco, through its bondsman, posted two bonds as surety for defendant in the total

amount of \$26,000.00 and defendant was released.

Defendant did not appear at his scheduled court date on 20 August 2003 and the trial court issued two bond forfeiture notices on 22 August 2003. Both bond forfeiture notices stated the forfeitures would become final judgments on 19 January 2004.

On 11 March 2005, an agent of Harco surrendered defendant to the Mecklenburg County Jail. The State voluntarily dismissed the charges against defendant on 27 April 2005.

On 3 August 2005, Harco filed motions for relief from the final judgments pursuant to N.C. Gen. Stat. § 15A-544.8. 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 motion for relief in part, awarding Harco \$5,000.00 plus interest in relief from the forfeited \$25,000.00 bond, and \$250.00 plus interest in relief from the forfeited \$1,000.00 bond. 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 a motion to dismiss the appeal with this Court on the ground Harco's appeal is frivolous and a motion for an award of reasonable expenses. Because we dismiss the appeal for lack of jurisdiction, we deny both the Board's motions to dismiss and for reasonable expenses as moot.

## II. Issue

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

### III. Entry of Judgment

The record on appeal does not include any judgments of the trial court. 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 judgment, not the entry of judgment. *Kirby Bldg. Sys. v. McNiell*, 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 invoking this Court's jurisdiction mandates dismissal of Harco's appeal. *Searles v. Searles*, 100 N.C. App. 723, 727, 398 S.E.2d 55, 57 (1990).

Although the trial court in this case announced its decision in open court, no written orders, signed by the judge and filed with the clerk, appear in the record on appeal. Harco refers to

the trial court's orders as the orders made in open court, both in its notices of appeal and in its brief.

IV. Conclusion

Nothing in the record before us 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 the Board's motions to dismiss and for reasonable expenses as moot.

Dismissed.

Judges BRYANT and LEVINSON concur.

Report per Rule 30(e).