

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-798

NORTH CAROLINA COURT OF APPEALS

Filed: 2 May 2006

ROBERT P. WEEKS and
SHIRLEY A. WEEKS,
Petitioners,

v.

Dare County
No. 04 CVS 492

THE TOWN OF NAGS HEAD
and THE TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS,
Respondents.

Appeal by petitioners from order entered 23 March 2005 by Judge J. Richard Parker in the Superior Court in Dare County. Heard in the Court of Appeals 12 January 2006.

The Brough Law Firm, by Robert E. Hornick, Jr., for Petitioner-Appellants.

Hornthal, Riley, Ellis & Maland, L.L.P., by Donald I. McRee, Jr., for Respondent-Appellees.

HUDSON, Judge.

Petitioners, who own a 45,000 square foot parcel of property in the Town of Nags Head, sought preliminary subdivision plat approval from the Town of Nags Head in 2004. Petitioners wished to create four single-family residential lots on their property. They sought a variance from the local ordinance which required that all lots have a minimum of 50 feet of frontage on a public street, as two of the lots in petitioner's proposed plan would only have 20 feet of frontage. On 7 July 2004, the Nags Head Board of

Commissioners ("the Board") denied petitioners' variance and subdivision applications. Petitioners appealed to the Superior Court, which affirmed the Board on 7 February 2005. Petitioners appeal. As discussed below, we dismiss.

It is well-established that the Rules of Appellate Procedure are mandatory and that failure to comply with the rules subjects an appeal to dismissal. *Viar v. N.C. DOT*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (2005); *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999). Furthermore, "[i]t is not the role of the appellate courts [] to create an appeal for an appellant." *Viar*, 359 N.C. at 402, 610 S.E.2d at 361. We thus conclude that petitioners' numerous rules violations require us to dismiss their appeal. Rule 10(c)(1) requires that each assignment of error make "clear and specific record or transcript references." N.C. R. App. P. 10(c)(1)(2004). Petitioners failed to make such references in their assignments of error. Additionally, Rule 28(b)(4) requires that appellant's brief contain a "statement of the grounds for appellate review," which "shall include citation of the statute or statutes permitting appellate review." N.C. R. App. P. 28(b)(4) (2004). Petitioners failed to include this required statement.

Petitioners also failed to comply with Rule 28(b)(6), which requires that the party's brief contain:

An argument, to contain the contentions of the appellant with respect to each question presented. Each question shall be separately stated. *Immediately 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.*

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.

N.C. R. App. P. 28(b)(6)(2004) (emphasis added). Petitioners' brief does not refer to the pertinent assignments of error or record page numbers. Petitioners made four assignments of error, but they only present two arguments in the brief, and we cannot readily discern which assignments of error correspond to these arguments. Further, some of the contentions asserted within petitioners' arguments do not correlate with any assignment of error. "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." *Id.* Accordingly, we dismiss petitioners' appeal.

Dismissed.

Judges TYSON and GEER concur.

Report per Rule 30(e).