

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-131

NORTH CAROLINA COURT OF APPEALS

Filed: 5 December 2006

HERBERT HAYES,
Plaintiff,

v.

Cumberland County
No. 04 CVD 8081

JOEL MACIAS,
Defendant.

Appeal by plaintiff from judgment entered 19 September 2005 by Judge Kimbrell Kelly Tucker in the District Court in Cumberland County. Heard in the Court of Appeals 11 October 2006.

Herbert Hayes, pro se plaintiff-appellant.

Burton & Sue, L.L.P., by C. Michael Day, for defendant-appellee.

Hudson, Judge.

On 18 October 2004, plaintiff filed a complaint alleging negligence and for damages from defendant resulting from a car collision between the parties. On 13 December 2004, plaintiff moved for judgment by default, and on 17 December 2004, defendant answered and admitted negligence. Following a hearing on plaintiff's motion for default judgment, the district court found that no entry of default had been filed and denied the motion and the case moved forward to a jury trial. In August 2005, at the close of plaintiff's evidence, defendant moved for a directed

verdict pursuant to Rule 50, which motion the court granted. Plaintiff appeals. As discussed below, we dismiss.

Defendant stipulated that he negligently failed to reduce his speed to avoid colliding with the rear of plaintiff's car, but denied that his actions proximately caused plaintiff's injuries. Plaintiff testified, and called defendant and another witness, but did not present any evidence as to medical causation or medical bills.

First, we note that plaintiff's brief contains numerous violations of the North Carolina Rules of Appellate Procedure. "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. DOT*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (2004) (quoting *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999)). Although plaintiff appeals *pro se*, *Viar* dictates that "the Rules of Appellate Procedure must be consistently applied; otherwise, the Rules become meaningless[.]" *Viar*, 359 N.C. at 402, 610 S.E.2d at 361; see also *Consol. Elec. Distribs., Inc. v. Dorsey*, 170 N.C. App. 684, 613 S.E.2d 518 (2005). In *Viar*, the plaintiff had failed to comply with Rule 10 and Rule 28(b) and our Supreme Court dismissed the appeal for those violations. *Viar*, 359 N.C. at 402, 610 S.E.2d at 361. Here, plaintiff fails to comply with the same rules and we likewise dismiss.

Plaintiff appeals only from the 19 September 2005 judgment granting defendant's motion for directed verdict. However, several

of his assignments of error and a number of paragraphs in his brief concern the court's denials of his motion for entry of default judgment and motion to compel discovery. Plaintiff having failed to timely appeal from these orders, we lack jurisdiction to review such arguments. See N.C. R. App. P. 3(d) & 10(a) (2004).

Rule 28(b) requires the following:

(6) 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 appellants 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). Plaintiff lists a series of questions presented at the beginning of his brief, but fails to follow each question with 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."

In addition, Rule 10 requires that:

Each assignment of error shall, so far as practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned.

N.C.R. App. P. 10(c)(1). Rule 10 ensures that an appellee has notice of the issues that will be raised on appeal and allows him to determine the sufficiency of the proposed record on appeal. *State v. Baggett & Penuel*, 133 N.C. App. 47, 48, 514 S.E.2d 536, 537 (1999). See *Broderick v. Broderick*, __ N.C. App. __, __, 623

S.E.2d 806, 807 (2006) (dismissing an appeal where the appellant's assignment of error only cited the order appealed from without providing record references or setting forth a legal issue). Plaintiff's assignments of error fail to state the legal basis for each argument, and several assignments of error lack the clarity required.

Because of these rules violations, we dismiss plaintiff's appeal.

Dismissed.

Judges HUNTER and CALABRIA concur.

Report per Rule 30(e).