

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-23

NORTH CAROLINA COURT OF APPEALS

Filed: 16 January 2007

REGINALD LEE JENKINS,  
Plaintiff,

v.

Onslow County  
No. 05-CVD-001227

JONES ONSLOW, EMC,  
Defendant.

Appeal by Plaintiff from judgment entered 1 September 2006 by Judge Sarah C. Seaton in District Court, Onslow County. Heard in the Court of Appeals 10 October 2006.

*Reginald Lee Jenkins, plaintiff-appellant.*

*Law Offices of John Drew Warlick, P.A., by Robert A. Warlick for defendant-appellee.*

WYNN, Judge.

We must dismiss this appeal by Plaintiff because he failed to comply with our "mandatory" Rules of North Carolina Appellate Procedure.<sup>1</sup> Notwithstanding, we determined that even if Plaintiff's appeal was procedurally proper, we would uphold the trial court's dismissal of his claim under Rule 12(b)(6).

Plaintiff Reginald Jenkins contracted with Defendant Jones Onslow, EMC for electrical service to his apartment. In May 2004,

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<sup>1</sup> *N.C. Dep't of Transp. v. Viar*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (2005).

Mr. Jenkins purchased a new home. Mr. Jenkins' wife contacted Jones Onslow, EMC and requested that the electricity to the apartment be turned off on 7 June 2004. During this phone call, Mr. Jenkins' wife informed Jones Onslow, EMC of Reginald Jenkins' new address. A representative for Jones Onslow, EMC informed Mr. Jenkins' wife that any bill or surplus owed Mr. Jenkins would be forwarded to that address.

On final accounting, Jones Onslow, EMC determined Mr. Jenkins owed \$298.51, but mailed the final bill to an incorrect street namely, County Club Dr., rather than Country Club Dr. Mr. Jenkins contends that as a result, he did not receive the final bill.

On 20 October 2004, Reginald Jenkins learned that his credit report reflected an arrearage on behalf of Jones Onslow, EMC. Mr. Jenkins contacted Jones Onslow, EMC regarding the final bill, and the fact that his credit report was negatively impacted by the delinquent charge. A Jones Onslow, EMC representative informed Mr. Jenkins that once he paid the full amount of the debt his credit report would reflect the payment.

Shortly thereafter, Mr. Jenkins received a call from the Jones Onslow, EMC, Chief of Operations Officer (COO). The COO informed Mr. Jenkins that because he had been late on more than one occasion, he would not be given the benefit of the doubt. Mr. Jenkins refused to pay the final balance, until such time as the delinquent payment was expunged from his credit report.

Thereafter, Mr. Jenkins filed a pro se action alleging factual information and contended "Plaintiff has suffered financially as a

result of Defendant's actions or inactions. Plaintiff has been denied credit and has had credit privileges reduced as a result of Defendant's actions or inactions."

On 1 September 2005, after reviewing the pleadings and hearing arguments, the trial court dismissed Mr. Jenkins' action under Rule 12(b)(6) of the 2005 North Carolina Rules of Civil Procedure, for "[f]ailure to state a claim upon which relief can be granted." N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2005). From this order Mr. Jenkins appeals.

Preliminarily, we must note that Mr. Jenkins's brief violates the the North Carolina Rules of Appellate Procedure which require that the appellant's brief contain "[a] statement of the grounds of appellate review" and for each argument a "a concise statement of the applicable standard(s) of review . . . ." N.C. R. App. P. 28(b)(4), (6) (2005). The rules of appellate procedure "are mandatory and failure to follow these [rules] will subject an appeal to dismissal." *N.C. Dep't of Transp. v. Viar*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (2005) (citation omitted).

Here, Mr. Jenkins failed to state grounds for appellate review and an applicable standard of review in violation of the 2005 North Carolina Rules of Appellate Procedure 28(b)(4) and (6). Accordingly, we dismiss this appeal.

However, assuming arguendo that Mr. Jenkins' brief complied with the Rules of Appellate Procedure, we would affirm the trial court's dismissal of his complaint.

"A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff could prove no set of facts in support of his claim which would entitle him to relief." *Dixon v. Stuart*, 85 N.C. App. 338, 340, 354 S.E.2d 757, 758 (1987).

Mr. Jenkins set forth in his complaint factual statements regarding his interactions with Jones Onslow, EMC. Thereafter, he asked for damages in the amount of \$3000 arising from his lowered credit score which he contends was caused by Jones Onslow, EMC. Thus, it appears that Mr. Jenkins attempted to assert a cause of action for negligence against Jones Onslow, EMC.

To plead a prima facie tort claim for negligence under common law, a plaintiff must provide allegations illustrating a defendant's duty of care, a breach of that duty by the defendant, and damages that were both directly and proximately caused by the defendant's breach of duty.

Here, the complaint fails to set forth any duty owed by Jones Onslow, EMC to Mr. Jenkins. Moreover, the complaint fails to allege that Jones Onslow, EMC breached a duty owed to Mr. Jenkins. Finally, even if we liberally inferred that there was a duty owed to Mr. Jenkins and that it had been breached by the failure to send his final bill to the correct address, the complaint fails to alleged that such breach directly or proximately caused the damage to his credit report.

Accordingly, even if this appeal was properly before us, we would affirm the trial court's dismissal of this appeal.

Dismissed

Judges MCGEE and MCCULLOUGH concur.

Report per rule 30(e).