

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-350

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

JOANNE BEKSHA-BROWN,
ADMINISTRATRIX OF THE ESTATE
OF MARK BROWN AND INDIVIDUALLY

v.

Randolph County
No. 05 CVS 1836

RODNEY MASON,
PUBLIC ADMINISTRATOR OF
THE ESTATE OF CLARENCE DICKS

Appeal by plaintiff from judgment entered 20 January 2006 by Judge John W. Smith in Randolph County Superior Court. Heard in the Court of Appeals 21 September 2006.

Clifton & Singer, L.L.P., by Lance R. Fife for plaintiff-appellant.

Morris, York, Williams, Surlis & Barringer, L.L.P., by Thomas E. Williams and Dean P. Loven, for unnamed defendant-appellee.

Teague, Rotenstreich & Stanaland, LLP, by Kenneth B. Rotenstreich and Katherine C. Hall, for defendant-appellee.

STEELMAN, Judge.

Plaintiff Joanne Beksha-Brown, administratrix of the estate of Mark Brown (plaintiff), appeals from an order granting defendants' motions to dismiss. An unnamed defendant, Government Employees Insurance Company (GEICO), and Rodney Mason, administrator of the estate of Clarence Dicks (defendant), each moved to dismiss the action pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6).

Plaintiff dismissed her appeal as to the unnamed defendant, GEICO. We dismiss plaintiff's appeal as to defendant, the administrator of the estate of Clarence Dicks.

On 26 October 2000, Mark Brown operated a motor vehicle proceeding south on U.S. Hwy. 220 in Randolph County, North Carolina, and Clarence Dicks operated a motor vehicle proceeding north. The two vehicles collided, resulting in the deaths of both drivers. Plaintiff filed this action seeking damages for the wrongful death of her intestate.

On 24 October 2003, an order was entered appointing defendant as public administrator of the estate of Clarence Dicks. On the same day, plaintiff, a citizen and resident of the Commonwealth of Massachusetts, filed a wrongful death action in the courts of Massachusetts against defendant. On 11 November 2004, plaintiff's complaint was dismissed for lack of personal jurisdiction over defendant.

On 8 September 2005, plaintiff filed this action seeking damages for wrongful death in Randolph County, North Carolina. GEICO was joined as an unnamed defendant. Both the named and unnamed defendant filed motions to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

On 20 January 2006, the trial court entered an order granting defendants' motions to dismiss with prejudice. Plaintiff appeals.

On 28 August 2006, plaintiff and GEICO filed a motion requesting that plaintiff's appeal as to GEICO be dismissed. This motion was granted on 30 August 2006.

In her sole assignment of error, plaintiff asserts that the trial court erred in dismissing her complaint against defendants. We disagree.

We first note that plaintiff's entire argument in her brief is directed to an issue concerning the statute of limitations under N.C. Gen. Stat. § 28A-19-3, as it pertains to the unnamed defendant, GEICO. This argument is based on the provisions of N.C. Gen. Stat. § 28A-19-3(i), which deals with claims against an estate for which there is insurance coverage. The record and plaintiff's brief are devoid of any indication of applicable insurance coverage other than that provided by GEICO. Moreover, appellant in her brief, expressly acknowledges that:

[I]t appears that the Plaintiff's claim against the deceased defendant's *personal assets* based on *Lassitor [v. Faison, 111 N.C. App. 206, 432 S.E.2d 373 (1993),]* was barred one year after Mr. Mason was appointed as Administrator of the Estate of Clarence Dicks[,] which was October 24, 2004.

"Rule 28 of the Rules of Appellate Procedure provides that questions not presented and discussed in a party's brief are deemed abandoned." *Gentile v. Town of Kure Beach, 91 N.C. App. 236, 237, 371 S.E.2d 302, 303 (1988).*

Appellant abandoned her arguments against the remaining defendant. We are compelled to dismiss her appeal.

Dismissed.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).