

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-689

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

ESTATE OF CHARLES MICHAEL  
EPLEY, BY JOSHUA G. EPLEY,  
ADMINISTRATOR,  
Petitioner,

v.

Ashe County  
No. 05 CVS 226

BOARD OF TRUSTEES OF THE  
TEACHERS' AND STATE EMPLOYEES'  
RETIREMENT SYSTEM DIVISION,  
Respondent.

Appeal by petitioner from order entered 3 February 2006 by Judge Michael E. Helms in Ashe County Superior Court. Heard in the Court of Appeals 14 December 2006.

*Todd, Vanderbloeman & Brady, PA, by Charles A. Brady, III, for petitioner-appellant.*

*Attorney General Roy Cooper, by Assistant Attorney General Robert M. Curran, for respondent-appellee.*

GEER, Judge.

Petitioner Joshua G. Epley, administrator of the Estate of Charles Michael Epley, purports to appeal an order of the superior court affirming a final decision of respondent Board of Trustees of the Teachers' and State Employees' Retirement System. The Board has filed a motion to dismiss petitioner's appeal, arguing in part that petitioner failed to include the notice of appeal in the record on appeal.

Under the North Carolina Rules of Appellate Procedure, an appellant must "fil[e] notice of appeal with the clerk of superior court . . . ." N.C.R. App. P. 3(a). In order to establish this Court's jurisdiction, a copy of that notice of appeal must be included in the record on appeal. N.C.R. App. P. 9(a)(2)(g). "It is the duty of the appellant to ensure that the record is complete." *Hicks v. Alford*, 156 N.C. App. 384, 389, 576 S.E.2d 410, 414 (2003).

It is well established that "[w]hen the record does not include a notice of appeal, the appellate courts are without jurisdiction." *In re Hudson*, 165 N.C. App. 894, 898, 600 S.E.2d 25, 28, *appeal dismissed and disc. review denied and cert. denied*, 359 N.C. 189, 607 S.E.2d 271 (2004). See also *Crowell Constructors, Inc. v. State ex rel. Cobey*, 328 N.C. 563, 563-64, 402 S.E.2d 407, 408 (1991) ("The notice of appeal must be contained in the record. Since the record does not contain a notice of appeal in compliance with Rule 3, the Court of Appeals had no jurisdiction of the appeal. The appeal should have been dismissed." (internal citations omitted)). As respondent points out and petitioner concedes, the record on appeal in this case does not include the notice of appeal.

Further, petitioner has not moved to amend the record, and nothing in his response to the motion to dismiss can be construed to be a request that we amend the record on appeal. See *In re Baker*, 158 N.C. App. 491, 492, 581 S.E.2d 144, 145 (2003) (granting motion to amend record on appeal to include notice of appeal so

that this Court had jurisdiction). Petitioner simply argues that the cases cited by respondent are distinguishable. Because petitioner neither included the notice of appeal in the record on appeal nor moved to amend the record to achieve compliance, we are compelled to dismiss his appeal.

Dismissed.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).