

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-806

NORTH CAROLINA COURT OF APPEALS

Filed: 1 May 2007

MARTIN COUNTY,
Plaintiff,

v.

Martin County
No. 04 CVD 156

ARTHUR K. ANGE, Individually and
as Trustee, and Spouse of ARTHUR
K. ANGE, if any, R. GUY MAYO, JR.
and wife, JEANETTE B. MAYO, and
DELORESE A. KNOTT and Spouse of
DELORESE A. KNOTT, if any,
Defendants.

Appeal by defendant from judgment entered 22 July 2004 by
Judge Samuel G. Grimes in Martin County District Court. Heard in
the Court of Appeals 16 April 2007.

*Irvine Law Firm, PC, by David J. Irvine, Jr, and Amanda G.
Bramble, for plaintiff-appellee.*

Arthur K. Ange, pro se, defendant-appellant.

GEER, Judge.

On 21 April 2004, plaintiff Martin County filed a complaint in
district court seeking a tax foreclosure with respect to certain
real property owned by defendant Arthur Ange within the county.
The district court subsequently granted plaintiff's motion for
summary judgment on 22 July 2004.

On 26 July 2004, defendant filed a notice of appeal from the
order granting summary judgment to Martin County Superior Court.
Plaintiff filed a motion to dismiss that purported appeal. The
record on appeal contains no order addressing plaintiff's motion to

dismiss, but on 22 October 2004, defendant filed a "notice of appeal to the North Carolina Court of Appeals from an order entered by plaintiff and signed by District Court Judge Samuel G. Grimes, dismissing Defendant's notice of appeal to Martin County Superior Court Division."

Rule 9 of the North Carolina Rules of Appellate Procedure provides that "[t]he record on appeal in civil actions . . . shall contain: a copy of the judgment, order or other determination from which appeal is taken." N.C.R. App. P. 9(a)(1)(h). A failure to include a copy of the order or judgment being appealed precludes review by this Court. See *Beneficial Mortgage Co. of N.C. v. Peterson*, 163 N.C. App. 73, 79, 592 S.E.2d 724, 728 (2004) (holding that omission of summary judgment order from record on appeal "precludes review").

Further, none of defendant's five assignments of error relates to the order dismissing his appeal to superior court that was the subject of defendant's notice of appeal. They instead address the district court's entry of summary judgment and various motions and requests made by defendant in the district court proceeding. We do not, however, have jurisdiction to review the district court's summary judgment order and any errors related to that order because defendant did not file a notice of appeal from that order to this Court.

Under N.C.R. App. P. 3(c), defendant was required to file and serve his notice of appeal from the district court's order within 30 days of 27 July 2004, the date upon which plaintiff served that

order on defendant. His notice of appeal was required to "designate the judgment or order from which appeal is taken and the court to which appeal is taken" N.C.R. App. P. 3(d). Because defendant failed to file a notice of appeal in compliance with N.C.R. App. P. 3 from the district court's order, we lack jurisdiction over defendant's assignments of error. *Bromhal v. Stott*, 116 N.C. App. 250, 253, 447 S.E.2d 481, 483 (1994) ("Without proper notice of appeal, the appellate court acquires no jurisdiction and neither the court nor the parties may waive the jurisdictional requirements even for good cause shown under Rule 2."), *disc. review denied*, 339 N.C. 609, 454 S.E.2d 246, *aff'd*, 341 N.C. 702, 462 S.E.2d 219 (1995).

We also cannot address the arguments in defendant's brief regarding the dismissal of his appeal to superior court. Rule 10 of the Rules of Appellate Procedure provides that "the scope of review on appeal is confined to a consideration of those assignments of error set out in the record on appeal in accordance with this Rule 10." Since defendant failed to include any assignment of error relating to the dismissal of his purported appeal, that issue is not properly before us. See *Davis v. Macon Cty. Bd. of Educ.*, ___ N.C. App. ___, ___, 632 S.E.2d 590, 598 ("However, petitioner did not list this specific argument in her assignment of error and therefore we do not address this issue."), *disc. review denied*, 360 N.C. 645, 638 S.E.2d 465 (2006). Accordingly, we dismiss defendant's appeal.

Dismissed.

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Judges WYNN and ELMORE concur.

Report per Rule 30(e).