An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-88

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

TANISHA MONTRICE SPENCE
a/k/a TANISHA M. SPENCE,

Plaintiff,

v.

Mecklenburg County
No. 05 CVD 4457

HUNTER AUTO AND WRECKER
SERVICE, INC., a/k/a
HUNTER AUTO AND WRECKER
SERVICE,

Defendants.

Appeal by defendant from an order entered 9 September 2005 by Judge Hugh B. Campbell, Jr. in Mecklenburg County District Court. Heard in the Court of Appeals 9 April 2007.

Miller & Miller, by J. Jerome Miller, for defendant-appellants Hunter Auto and Wrecker Service, Inc., a/k/a Hunter Auto and Wrecker Service.

No brief for plaintiff-appellee.

ELMORE, Judge.

On 4 February 2005, plaintiff filed a complaint in district court seeking $3,500.00 from defendant. Plaintiff alleged that her car had been stolen and recovered by police, and defendant had towed it. Plaintiff claimed that "[i]nstead of them leaving my car at the Wrecker Service Company the[y] took my car to salvage and sold everything off my car and further more they didn't have a

mechanic's lean on my car." On 11 March 2005, the complaint was dismissed when plaintiff failed to appear at trial. Plaintiff gave notice of appeal. On 5 April 2005, the case was assigned to arbitration. An arbitration hearing was scheduled on 13 May 2005. However, the arbitrator entered an award in favor of the plaintiff when a supervisor from defendant's company appeared at the hearing without an attorney.

On 26 May 2005, defendant, through counsel, filed a request for a trial *de novo*. According to defendant, the trial court administrator mailed to defendant a notice of hearing, but did not serve notice on defendant's counsel. Therefore, defendant's counsel did not appear at the hearing. Accordingly, defendant's appeal was dismissed and that arbitrator's award reinstated.

On 1 August 2005, defendant moved to set aside the arbitration award and judgment. Defendant argued that the trial court should set aside the judgment for good cause pursuant to Rule 55(d) and for mistake, inadvertence, surprise or excusable neglect pursuant to Rule 60(b)(1). On 9 September 2005, the trial court denied defendant's motion. The trial court found that although counsel had alleged that it did not receive notice of the trial date, defendant did "not allege that it did not itself receive such notice." Furthermore, the trial court noted that although defendant stated that it had a meritorious defense, defendant had shown nothing in support of its assertion. Accordingly, the trial court concluded that defendant had made an insufficient showing in support of its motion to justify relieving it from the judgment.

Defendant appeals.

Defendant argues that the trial court erred in denying the motion to set aside the arbitration award and judgment pursuant to Rule 60(b)(1) (2005). Rule 60(b)(1) provides that a party may be granted relief from a judgment or order for "mistake, inadvertence, surprise, or excusable neglect." N.C. Gen. Stat. § 1A-1 (2005), Rule 60(b)(1). This Court has stated:

> To set aside a judgment under Rule 60(b)(1), the moving party must show excusable neglect and a meritorious defense. "A Rule 60(b) motion is addressed to the sound discretion of the trial court and its ruling will not be disturbed absent an abuse of that discretion." However, "what constitutes 'excusable neglect' is a question of law which is fully reviewable on appeal."

Creasman v. Creasman, 152 N.C. App. 119, 124, 566 S.E.2d 725, 728-29 (2002)(citations omitted). "[I]n the absence of sufficient showing of excusable neglect, the question of meritorious defense becomes immaterial." *Scoggins v. Jacobs*, 169 N.C. App. 411, 413, 610 S.E.2d 428, 431 (2005)(citations omitted).

In the case *sub judice*, defendant claims excusable neglect in failing to appear for trial because counsel did not receive notice of the hearing. However, defendant stated in a motion that the trial court administrator had in fact mailed defendant itself a notice of the hearing, and the trial court found in denying the Rule 60(b) motion that defendant had not alleged that it did not receive such notice. Litigants are expected to pay "that attention which a man of ordinary prudence usually gives his important business, and failure to do so is not excusable." *Jones v. Fuel*

Co., 259 N.C. 206, 209, 130 S.E.2d 324, 326 (1963). A party generally cannot demonstrate excusable neglect by merely establishing ignorance of the judicial process. *In re Hall*, 89 N.C. App. 685, 688, 366 S.E.2d 882, 885, *disc. review denied*, 322 N.C. 835, 371 S.E.2d 277 (1988). Here, it appears defendant received notice of the hearing, but did not communicate such with his attorney. Thus, defendant has "failed to demonstrate that it exercised the proper care necessary to establish excusable neglect and to justify setting aside the judgment entered against it." *City Finance Co. v. Boykin*, 86 N.C. App. 446, 448, 358 S.E.2d 83, 84 (1987). Accordingly, we hold that the trial court did not abuse its discretion by denying the motion to set aside the judgment.

Affirmed.

Judges WYNN and GEER concur.

Report per Rule 30(e).