

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-1352

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

ALFATIR CRAWFORD,  
JUDGMENT RECOVERY, LLC,  
ASSIGNEE OF THE JUDGMENT,  
Plaintiff

v.

Wake County  
No. 96 CVS 1992

DANIEL WATTLINGTON,  
AKA: DANIEL WATTLINGTON,  
DBA: B&W ENTERPRISES,  
Defendant

# Court of Appeals

Appeal by defendant from an order entered 29 May 2007 by Judge Jasper B. Allen, Jr. in Wake County Superior Court. Heard in the Court of Appeals 21 April 2008.

## Slip Opinion

*No brief for plaintiff-appellee.*

*Daniel Watlington, defendant-appellant, pro se.*

HUNTER, Judge.

Defendant appeals from an order directing the sheriff of Cumberland County to sell a parcel of real estate and apply the proceeds of the sale to the payment of a judgment held against defendant. For the reasons discussed below, we dismiss the appeal.

The record indicates that the underlying action involved a breach of contract claim brought by the original plaintiff Alfatir Crawford against defendant. On 24 September 1997 judgment was

entered against defendant in the principal amount of \$200,000.00 with interest accruing at eight percent (8%) per annum dating back to 8 October 1993. Execution entered directing the sheriff to collect judgment was returned unexecuted due to the sheriff's inability to locate any assets owned by defendant.

On 22 July 1998 defendant became the owner of a piece of real property located in Cumberland County. On 24 September 1998, defendant purported to convey the property to The Pallie Trust, which was created on 22 September 1998. Plaintiff moved for an order directing the sheriff to sell the real estate and apply the proceeds of the sale to the payment of the judgment owed by defendant. After a hearing at which defendant did not appear, the trial court determined that the conveyance to the trust was not valid in that it failed to convey the property to a trustee. The trial court also concluded that even if the conveyance was valid, it would constitute a fraudulent transfer and could be avoided by the judgment creditor in executing the judgment. The court granted plaintiff's motion and directed the sheriff of Cumberland County to take all steps necessary to sell the property and apply the proceeds to the judgment.

Defendant challenges the trial court's jurisdiction over the matter. He contends that since the property at issue in this case does not belong to him personally but to an irrevocable trust, the trial court erred in ordering the sale of the property to satisfy judgment entered solely against defendant.

We find that defendant has failed to comply with the Rules of Appellate Procedure. We, therefore, dismiss defendant's appeal.

In the present case, defendant failed to list assignments of error in the record on appeal as required by Rules 9(a)(1)(k) and 10(a) and (c)(1). N.C.R. App. P. 9(a)(1)(k), 10(a), 10(c)(1). Further, defendant's brief fails to refer to any assignments of error as required by Rule 28(b)(6). N.C.R. App. P. 28(b)(6). The record filed by defendant does not comport with the Rules of Appellate Procedure in that: (1) it does not contain an index as required by Rule 9(a)(1)(a); (2) it does not contain a statement identifying the judge from whose order appeal is taken or the session at which the order was rendered pursuant to Rule 9(a)(1)(b); (3) it does not contain a copy of the order from which appeal is taken pursuant to Rule 9(a)(1)(h), although such order is included in the appendix in defendant's brief; and (4) the record is not paginated as required by Rule 9(b)(4). N.C.R. App. P. 9(a)(1)(a), (b), (h), 9(b)(4). The brief filed by defendant also fails to comply with our appellate rules by: (1) failing to state the grounds for appellate review; (2) failing to argue separately each question presented after defendant listed eight issues; and (3) failing to state the applicable standard of review. See N.C.R. App. P. 28(b)(4), (6).

This Court has stated, "[t]he Rules of Appellate Procedure are mandatory; failure to comply with these rules subjects an appeal to dismissal. Furthermore, these rules apply to everyone -- whether acting *pro se* or being represented by all of the five largest law

firms in the state." *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999) (citation omitted). More recently, our Supreme Court noted that "when a party fails to comply with one or more nonjurisdictional appellate rules, the court should first determine whether the noncompliance is substantial or gross under Rules 25 and 34. If it so concludes, it should then determine which, if any, sanction under Rule 34(b) should be imposed." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (No. 303A07 filed 7 March 2008) (slip op. 15). Defendant's violations of the appellate rules are so numerous and so egregious that they interfere with this Court's ability to understand and judge the merits of his appeal: His brief lacks assignments of error, grounds for appellate review, and standard of review, and the record lacks an index, page numbers, and even the order being appealed, though he has included it in the appendix of his brief. We have considered lesser sanctions under Rule 34(b), but believe the sanction of dismissal is appropriate in this case, as defendant has not provided us with the materials to review his case.

Additionally, we have reviewed this case on its merits and conclude that defendant's arguments are without merit.

Dismissed.

Judges McCULLOUGH and STEELMAN concur.

Report per Rule 30(e).