

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-1467

NORTH CAROLINA COURT OF APPEALS

Filed: 15 July 2008

HOUSEHOLD REALTY CORPORATION,
Plaintiff,

v.

Guilford County
No. 04 CVD 48014

THOMAS J. CROWDER,
ALSIE J. CROWDER,
Defendants.

Court of Appeals

~~Appeal by Defendants from order entered 16 October 2007 by~~
Judge Susan E. Bray in Guilford County District Court. Heard in
the Court of Appeals 14 May 2008.

~~James F. Vaughan for Plaintiff-Appellee~~
Slip Opinion

Thomas J. Crowder, Pro se, for Defendants-Appellants.

STEPHENS, Judge.

Plaintiff Household Realty Corporation filed a Complaint against Defendants Thomas J. Crowder and Alsie J. Crowder on 28 June 2004, alleging Defendants had failed to pay Plaintiff \$9,175.93 on a line of credit. Civil summons was served upon Defendants on 1 July 2004. Defendants filed a response admitting a balance was owed, but contesting the amount. Defendants requested certain documents from Plaintiff on 14 September and 12 October 2004, but Plaintiff did not produce the requested documents. Plaintiff filed a motion for summary judgment on 21

April 2005. Defendants did not respond to this motion. On 12 May 2005, Defendants filed a Motion to Compel with Sanctions in order to obtain the documents requested from Plaintiff. Defendants never obtained a ruling from the trial court on the motion.

At calendar call on 27 June 2005, Judge H. Thomas Jarrell set the case for trial on 22 July 2005. Defendants requested a delay based on their "concerns over not having enough time to fashion an effective defense without the documents requested of . . . Plaintiff." Judge Jarrell denied the request. The case was heard on 22 July 2005, and the trial court entered summary judgment in favor of Plaintiff on that date. Defendants did not appeal the judgment.

On 22 October 2005, Defendants filed for Chapter 13 bankruptcy. As a result, a stay was placed on litigation involving Defendants, and all parties having claims against Defendants in Bankruptcy Court were required to file a claim with the Trustee within a certain period of time. Although Plaintiff did not file a claim, eCast Settlement Corporation ("eCast") filed a claim as Plaintiff had sold Defendants' debt to eCast on 25 June 2004.

On 7 February 2007, Defendants submitted a Motion to Modify Plan to the Bankruptcy Court to lift the stay on litigation to allow Defendants to seek a new trial in district court. Defendants alleged new evidence revealed that Plaintiff was not the owner of the debt owed by Defendants prior to the 1 July 2004 service of the civil summons.

On 29 March 2007, Judge Thomas W. Waldrep, Jr. of the United States Bankruptcy Court issued an order lifting the stay. On 26 April 2007, Defendants moved for a new trial. A hearing on the motion was held on 8 October 2007 and, by order entered 16 October 2007, the motion was denied. On 14 November 2007, Defendants filed a notice of appeal from this order.

By Defendants' first assignment of error, they contend the trial court erred in "remaining silent" on Defendants' Motion to Compel Discovery and for Sanctions. In order to preserve a question for appellate review, "[i]t is . . . necessary for the complaining party to obtain a ruling upon the party's . . . motion." N.C. R. App. P. 10(b)(1). Furthermore, appeal from a judgment or order in a civil action must be taken within 30 days after its entry. N.C. R. App. P. 3(c).

On 12 May 2005, Defendants filed the Motion to Compel Discovery and for Sanctions regarding their discovery requests. Although the underlying action was heard on 22 July 2005, Defendants failed to obtain a ruling on their motion. Instead, on Plaintiff's motion, an order granting Plaintiff summary judgment was entered on that date. Defendants filed notice of appeal on 14 November 2007, more than two years after the 30-day window for filing an appeal of the summary judgment had elapsed. Rule 10(b)(1) makes it clear that it was Defendants' burden to obtain a ruling from the trial court on their motion. By failing to do so, Defendants did not properly preserve the issue for appellate review. N.C. R. App. P. 10(b)(1). Furthermore, Defendants'

failure to give timely notice of appeal in compliance with Rule 3 deprives this Court of jurisdiction to address the issue. See *Bailey v. State*, 353 N.C. 142, 156, 540 S.E.2d 313, 322 (2000) ("In order to confer jurisdiction on the state's appellate courts, appellants of lower court orders must comply with the requirements of Rule 3[.]"). Accordingly, Defendant's failure to follow these Rules of Appellate Procedure mandates dismissal of this issue.¹ See *Booth v. Utica Mut. Ins. Co.*, 308 N.C. 187, 189, 301 S.E.2d 98, 99-100 (1983) (per curiam) ("Failure to give timely notice of appeal in compliance with . . . Rule 3 . . . is jurisdictional, and an untimely attempt to appeal must be dismissed.").

Defendants next contend that the trial court erred in denying their request for a continuance of their case at the 27 June 2005 calendar call and in not allowing Defendants to complete their testimony at the 22 July 2005 hearing. As stated above, appeal from a judgment or order in a civil action must be taken within 30 days after its entry. N.C. R. App. P. 3(c). As these two arguments pertain to the proceedings and summary judgment order entered 22 July 2005, Defendants have failed to file timely notice of appeal and these issues must be dismissed.² See *Booth, supra*.

¹ We further note that Defendants' brief contains no statement of the applicable standard of review for this question presented and no reasoning or citation to authority, as required by N.C. R. App. P. 28(b)(6), and no statement of the grounds for appellate review, as required by N.C. R. App. P. 28(b)(4).

² We note again that Defendants' brief contains no statements of the applicable standards of review for the questions presented and no reasoning or citation to authority, as required by N.C. R. App. P. 28(b)(6).

Finally, Defendants allege that the trial court erred in disregarding Plaintiff's stipulations concerning the relationship between Household Realty Corporation and Household Finance Corporation. Pursuant to Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure, "[a]ssignments of error . . . in appellant's brief . . . in support of which no reason or argument is stated or authority cited, will be taken as abandoned." N.C. R. App. P. 28(b)(6). Defendants' entire argument based on assignment of error number four is as follows:

THE COURT AT THE OCTOBER 8TH, 2007 SESSION
COMMITTED REVERSABLE (sic) ERROR IN
DISREGARDING PLAINTIFF COUNSEL'S STIPULATIONS
CONCERNING THE RELATIONSHIP BETWEEN HOUSEHOLD
REALTY CORPORATION AND HOUSEHOLD FINANCE
CORPORATION COMPARED WITH PLAINTIFF'S AND
COURTS POSITION ON THESE SAME CORPORATIONS AT
THE JULY 22ND, 2005 HEARING.
ASSIGNMENT OF ERROR NO. 4
(R. T.VOL 2, PAGE 18 LINE 17 THRU 25 AND PAGE
19, LINE 1 THRU 12) COMPARE THESE TO (R. T.
VOL. 1, PAGE 8, LINE 17 THRU 25 AND PAGE 9,
LINE 1)

Defendants' argument contains no reasoning or citation to authority, precluding this Court from conducting any meaningful appellate review. *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 657 S.E.2d 361 (2008). Accordingly, Defendants' failure to comply with Rule 28 is fatal in this instance, and their argument is deemed abandoned and is dismissed.³ *Id.*

For the foregoing reasons, Defendants' appeal is
DISMISSED.

³ We additionally note that Defendants' brief contains no statement of the applicable standard of review for this question presented, as required by N.C. R. App. P. 28(b)(6).

Judges HUNTER and STEELMAN concur.

Report per Rule 30(e).