

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-454

NORTH CAROLINA COURT OF APPEALS

Filed: 20 November 2007

ALFRED ABDO, JR. and
ABDO DEMOLITION & PROPERTY
RESTORATION,

Plaintiffs-Appellants,

v.

Buncombe County
No. 06 CVS 685

M.B. KAHN CONSTRUCTION CO.,
ST. PAUL SURETY and
ST. PAUL FIRE & MARINE
INSURANCE CO.,

Defendants-Appellees.

Appeal by plaintiffs from order entered 29 January 2007 by
Judge Dennis J. Winner in Buncombe County Superior Court. Heard in
the Court of Appeals 8 October 2007.

Alfred Abdo, Jr., plaintiff-appellant, pro se.

*G. Gray Wilson and J. Chad Bomar, attorneys for the
defendants-appellees.*

ELMORE, Judge.

This matter arises out of a contract for a construction project on the campus of the University of North Carolina – Asheville. On 9 February 2006, Alfred Abdo, Jr., and Abdo Demolition and Property Restoration (plaintiffs) filed a complaint against the general contractor for the project, M.B. Kahn Construction Co., as well as St. Paul Surety, and St. Paul Fire &

Marine Insurance Co. (collectively, defendants), alleging that plaintiffs had paid for the labor and materials for a demolition subcontractor when the subcontractor was unable to do so. Plaintiffs sought to be reimbursed by defendants for these expenses.

On 2 June 2006, the trial court entered an order, which was amended on 8 June 2006, dismissing all but one of plaintiffs' claims. On 16 October 2006, the trial court awarded defendants summary judgment on plaintiffs' remaining claim. On 13 November 2006, plaintiffs filed an amended notice of appeal from these orders as well as an affidavit of indigency (the First Appeal). On 16 January 2007, plaintiffs filed the record on appeal. On 22 January 2007, plaintiffs filed a petition to sue/appeal as an indigent which was denied by the trial court on 29 January 2007.

On 28 February 2007, this Court dismissed the First Appeal due to plaintiffs' failure to post an appeal bond and to pay the docketing fee and the printing deposit as required by the North Carolina Rules of Appellate Procedure. On 2 March 2007, plaintiffs purportedly filed a notice of appeal from the trial court's order denying the petition to proceed as an indigent (the Second Appeal). However, the record on appeal filed on 17 April 2007 for the Second Appeal does not contain a copy of this notice of appeal. It is the Second Appeal that is now before this Court.

In conjunction with their appellees' brief, defendants filed a motion to dismiss the Second Appeal on the grounds that plaintiffs failed to include the notice of appeal and that

plaintiffs have violated numerous provisions of the Appellate Rules. As we conclude that we have no jurisdiction over this appeal, we allow defendants' motion to dismiss.

Pursuant to Rule 3(a) of the North Carolina Rules of Appellate Procedure:

Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subdivision (c) of this rule.

N.C.R. App. P. 3(a) (2007).

Here, plaintiffs have included the amended notice of appeal from the First Appeal but have failed to include a copy of the notice of appeal from the trial court's order denying their indigency petition. "'Without proper notice of appeal, this Court acquires no jurisdiction.'" *Blevins v. Town of West Jefferson*, __ N.C. App. __, __, 643 S.E.2d 465, 467 (2007) (citation omitted). Unless this jurisdictional requirement is met, the appeal must be dismissed. See *Smith v. Smith*, 43 N.C. App. 338, 339, 258 S.E.2d 833, 835 (1979). Accordingly, we dismiss plaintiffs' appeal.

Dismissed.

Judges WYNN and BRYANT concur.

Report per Rule 30(e).