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NO. COA08-763

NORTH CAROLINA COURT OF APPEALS

Filed: 7 April 2009

EVAN SMITH and BERNADINE SMITH,  
Plaintiffs,

v.

Mecklenburg County  
No. 04 CVS 21571

KEVIN ALFRED AMAS  
And PARKS CHEVROLET, INC.,  
Defendants.

# Court of Appeals

Appeal by Plaintiffs from judgment entered 14 March 2008 *nunc pro tunc* 4 June 2007 by Judge W. Robert Bell in Superior Court, Mecklenburg County. Heard in the Court of Appeals 9 March 2009.

## Slip Opinion

*Evan Smith & Bernadine Smith, pro se.*

*No brief filed for defendants.*

WYNN, Judge.

This appeal is most difficult to evaluate because numerous violations of the Rules of Appellate Procedure and omissions from the Record on Appeal and brief make it all but unreviewable.<sup>1</sup>

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<sup>1</sup> The Record on Appeal is not consecutively paginated as mandated by Rule 9(b) (4); the assignments of error do not appear in the Record on Appeal pursuant to Rules 9(a) (1) (k) and 10(c) (1) but are instead included in a section of Plaintiffs' brief; and there is no indication that the Record on Appeal was settled in accordance with Rule 11. See *Higgins v. Town of China Grove*, 102 N.C. App. 570, 402 S.E.2d 885 (1991) (dismissing appeal, in part,

However, we dismiss appeals “only in the most egregious instances of non-jurisdictional default . . . .” *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 200, 657 S.E.2d 361, 366 (2008) (citation omitted). Although this appeal surely meets that test, we will attempt to search merits given the efforts of the *pro se* litigants to seek vindication for what they contend was a breach of a contract to perform repairs by Parks Chevrolet, Inc. on a car owned by Evan Smith, a college student. Apparently, Evan Smith’s mother, Bernadine Smith, attempted to join in the lawsuit as a plaintiff but the trial court found that she lacked standing to do so. Ultimately, the trial court directed a verdict for Parks Chevrolet, Inc. after Evan Smith finished with the presentation of his case.

At best, we can decipher two possible issues in this appeal - whether the trial court erred by (I) dismissing Bernadine Smith from the case because of a lack of standing and (II) granting a directed verdict in favor of Parks Chevrolet, Inc. at the close of Evan Smith’s evidence. Summarily, we find no error.

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for failure to settle and serve the Record on Appeal).

Likewise, Plaintiffs’ brief does not comply with Rule 28. For example, Plaintiffs list assignments of error in their brief instead of the Record on Appeal in violation of Rule 28(b)(6) (“Immediately following each question shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal.”). The assignments of error fail to “state plainly, concisely, and without argumentation the legal basis upon which error is assigned.” N.C. R. App. P. 10(c)(1). Furthermore, the bulk of the argument consists of bare assertions unsupported by citations. See N.C. R. App. P. 28(b)(6).

(I)

Regarding Bernadine Smith, a party asserting standing must show three elements:

(1) "injury in fact"-an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

*Neuse River Found., Inc. v. Smithfield Foods, Inc.*, 155 N.C. App. 110, 114, 574 S.E.2d 48, 52 (2002), *disc. review denied*, 356 N.C. 675, 577 S.E.2d 628-29 (2003).

At trial, Bernadine Smith failed to produce proof of any ownership interest in the car, alleging only that she purchased the car for Evan Smith. Indeed, the only proof of ownership was the purchase agreement showing Evan Smith's name. Accordingly, Bernadine Smith demonstrated no "legally protected interest" in the car in accordance with the first element of standing, and we find no error in the trial court's ruling. See *Beachcomber Props., L.L.C. v. Station One, Inc.*, 169 N.C. App. 820, 823-24, 611 S.E.2d 191, 193-94 (2005) (holding that plaintiff failed to show "injury in fact" sufficient to confer standing where it was not a party to a contract to purchase or the owner of the property in question).

(II)

Regarding the second issue, whether the trial court erred by granting a directed verdict for Parks Chevrolet, Inc., it is apparent that Evan Smith failed to provide sufficient proof of damages. "On appeal, the standard of review on a motion for

directed verdict is whether, upon examination of all the evidence in the light most favorable to the nonmoving party, and that party being given the benefit of every reasonable inference drawn therefrom, the evidence is sufficient to be submitted to the jury." *Brookshire v. N.C. Dept. of Transp., Div. of Motor Vehicles*, 180 N.C. App. 670, 672, 637 S.E.2d 902, 904 (2006) (citation and quotation marks omitted).

In granting the directed verdict, the trial judge explained to Evan Smith that he needed to show proof of "the difference between the value of the car after it was repaired, and what the value of the car should have been if it had been repaired correctly." *Accord Troitino v. Goodman*, 225 N.C. 406, 413, 35 S.E.2d 277, 282 (1945) (proper measure of damages for breach of contract to deliver used tractors in condition for immediate use was "the difference between the value of the [tractors] as delivered and what the value would have been if they had been put in first class condition for immediate use as promised . . . ."); *McBride v. Apache Camping Center, Inc.*, 36 N.C. App. 370, 373, 243 S.E.2d 913, 915 (1978) (submission to jury of "diminution in market value" as element of damages for breach of contract to repair motor home was proper). The evidence in the transcript and the record provides no basis to calculate that measure of damages.

Accordingly, we affirm the trial court's grant of directed verdict for Parks Chevrolet, Inc.

Affirmed.

Chief Judge MARTIN and Judge ERVIN concur.

Report per Rule 30(e).