

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-1257

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

PATRICIA LANE BARNES,  
Plaintiff,

v.

Northampton County  
No. 99 CVD 506

STANLEY H. BARNES,  
Defendant.

Appeal by defendant from order entered 26 February 2009 by Judge W. Rob Lewis, II, in Northampton County District Court. Heard in the Court of Appeals 21 June 2010.

*No brief for plaintiff-appellee.*

*Perry W. Martin, for defendant-appellant.*

ERVIN, Judge.

Plaintiff Patricia Lane Barnes and defendant Stanley H. Barnes were married on 10 October 1965 and divorced on 8 August 2000. On 19 July 2002, an order was entered in Northampton County District Court requiring defendant to pay permanent alimony to plaintiff and to maintain health and medical coverage for plaintiff. On or about 9 April 2008, defendant filed a motion to modify the court's prior judgment by terminating his alimony obligation and by terminating or modifying his obligation to provide health and medical coverage for plaintiff. Based upon the information in the record on appeal, it appears that the trial court granted plaintiff's motion for

involuntary dismissal pursuant to N.C. Gen. Stat. § 1A-1, Rule 41, at the conclusion of defendant's evidence. Defendant appeals from the trial court's order.

On appeal, defendant argues that the trial court erred by dismissing his motion. More particularly, defendant contends that (1) his obligation to pay alimony to plaintiff should have terminated automatically because plaintiff had engaged in "cohabitation" as defined in N.C. Gen. Stat. § 50-16.9 and (2) a substantial increase in the monthly premium for the major medical insurance policy that defendant provided for plaintiff coupled with a substantial decrease in defendant's income justified modification or termination of the defendant's obligation to provide plaintiff with such coverage. After careful consideration of the record in light of the applicable law, however, we decline to review defendant's appeal on the merits due to substantial violations of the North Carolina Rules of Appellate Procedure.

According to N.C. R. App. P. 9(a)(1)h, the record on appeal in a civil case "shall contain" "a copy of the judgment, order, or other determination from which appeal is taken." In addition, N.C.R. App. P. 9(b)(3) provides that "[e]very judgment, order, or other determination shall show the date on which it was entered" and that "[t]he typed or printed name of the person signing a paper shall be entered immediately below the signature." The record on appeal in this case does not contain a complete copy of the written

order from which plaintiff has attempted to appeal.<sup>1</sup> As best we can ascertain from an examination of the filed record on appeal, several pages appear to be missing from the trial court's order, including certain of the trial court's conclusions of law, the decretal portion of the order, the page containing the trial judge's signature, and the page or pages indicating the date of entry. Thus, it is clear that defendant has violated the provisions of the North Carolina Rules of Appellate Procedure in a number of respects.

"It is the appellant's duty and responsibility to see that the record is in proper form and complete." *State v. Brown*, 142 N.C. App. 491, 492-93, 543 S.E.2d 192, 193 (2001) (citations omitted). A failure to include a copy of the judgment from which the appellant seeks to appeal deprives this Court of jurisdiction to hear the appellant's appeal. *State v. McMillian*, 101 N.C. App. 425, 427, 399 S.E.2d 410, 411 (1991). "A jurisdictional default . . . precludes the appellate court from acting in any manner other than to dismiss the appeal." *Dogwood Development & Management Co. v. White Oak Transport Co., Inc.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008). Even if defendant's failure to include a complete copy of the order from which he seeks to appeal does not rise to

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<sup>1</sup> Based on the record on appeal as filed, it is not entirely clear that a written order was ever entered. Although the first page of what may be the trial court's written order appears in the filed record on appeal, that page does not bear a file stamp or any other indication of entry. However, defendant does not state that no written order was ever entered, and we are unwilling to assume that the trial court did not make findings of fact and conclusions of law when the record suggests, but does not clearly establish, that it did, in fact, do so.

the level of a jurisdictional default, it still represents a serious violation of the North Carolina Rules of Appellate Procedure. Although "a party's failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal," *Id.* at 198, 657 S.E.2d at 198, defendant's "noncompliance impairs [our] task of review" and "frustrate[s] the adversarial process," *Id.* at 200, 657 S.E.2d at 366, by precluding us from examining the trial court's order in its entirety. Simply put, given our inability to fully examine the trial court's conclusions of law and to study the trial court's ordering paragraphs, we are unable to fairly evaluate the extent, if any, to which the trial court properly dismissed defendant's motion. Under that set of circumstances, we conclude that, even if defendant's rule violations are not jurisdictional in nature, the only appropriate sanction for defendant's substantial violations of N.C.R. App. P. 9 is the dismissal of defendant's appeal.

Appeal dismissed.

Judges STEPHENS and BEASLEY concur.

Report per Rule 30(e).