

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-1407

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

KIZZY L. HUNTER,
Employee,
Plaintiff,

v.

North Carolina
Industrial Commission
I.C. No. 787369

CITIBANK CARDS,
Employer,

TRAVELERS INSURANCE COMPANY,
Carrier,
Defendants.

Plaintiff presented a notice of appeal. Heard in this Court
25 March 2010.

Kizzy L. Hunter, pro se.

*Orbock Ruark & Dillard, PC, by Barbara E. Ruark and Jason P.
Burton, for defendant-appellees.*

STROUD, Judge.

Plaintiff is seeking review regarding her worker's
compensation claim. Our record on appeal includes a document which
purports to be a notice of appeal which reads in pertinent part,

KIZZY L HUNTER hereby gives notice of
appeal to the Court of Appeals of North
Carolina from the final judgment Deputy
Bradley Houser, Superior Court Judge, entered
on December 15, 2008 in Superior Court of
Guilford County, which denied dismissed the
plaintiff's action.

The heading on plaintiff's "notice of appeal" refers to the Superior Court Division of Guilford County; however, plaintiff's case is a worker's compensation claim, heard by the Industrial Commission. As this is a workers' compensation claim, a notice of appeal would properly be filed with the Industrial Commission, not with the Superior Court. See N.C. Gen. Stat. § 97-86 (2005). The record does not include any document indicating that plaintiff has taken any action in the Superior Court Division of Guilford County and plaintiff's "notice of appeal" does not have a file stamp or a court file number; therefore, it is unclear whether or when plaintiff actually filed a "notice of appeal" with the Industrial Commission.¹ The record also does not contain a "final judgment" as described by plaintiff's "notice of appeal." The only "judgment" in the record by Deputy Commissioner Bradley Houser is an Opinion and Award filed on 1 April 2009, which has already been reviewed by the Full Commission. The Full Commission filed its Opinion and Award on 17 August 2009. Furthermore, the record does not contain any "judgment" or other document entered on 15 December 2008 or in Superior Court.

Based upon the egregious and numerous jurisdictional violations of the Rules of Appellate Procedure, we dismiss this appeal. See N.C.R. App. P. 3(d) ("The notice of appeal required to

¹ There is an order extending time for filing the record in the record on appeal from the Industrial Commission which states that "[o]n August 26, 2009, plaintiff appealed to the North Carolina Court of Appeals from the Full Commission Opinion and Award[.]" However, we have no evidence of this "appeal" in the record before us.

be filed and served by subsection (a) of this rule . . . shall designate the judgment or order from which appeal is taken[.]"), 9(a)(1)(h) ("The record on appeal in civil actions and special proceedings shall contain . . . a copy of the judgment, order or other determination from which appeal is taken[.]"); *Abels v. Renfro Corp.*, 126 N.C. App. 800, 804, 486 S.E.2d 735, 738 ("[T]his Court will dismiss an appeal if the judgment or order does not appear in the record on appeal." (citations omitted)), *disc. review denied*, 347 N.C. 263, 493 S.E.2d 450 (1997); *Fearrington v. Univ. of North Carolina*, 126 N.C. App. 774, 777-78, 487 S.E.2d 169, 172 (1997) ("N.C.R. App. P. 3(d) (1995) requires that the notice of appeal designate the judgment or order from which appeal is taken. Because the notice of appeal completely omits any reference to the Wake County order, we are without jurisdiction to review it. The jurisdictional requirements of N.C.R. App. P. 3(d) may not be waived by this Court, even under the discretion granted by N.C.R. App. P. 2." (citations, quotation marks, and ellipses omitted)); *Bromhal v. Stott*, 116 N.C. App. 250, 253, 447 S.E.2d 481, 483 (1994) ("Without proper notice of appeal, the appellate court acquires no jurisdiction and neither the court nor the parties may waive the jurisdictional requirements even for good cause shown under Rule 2.") *disc. review denied*, 339 N.C. 609, 454 S.E.2d 246, *aff'd*, 341 N.C. 702, 462 S.E.2d 219 (1995); *see also Dogwood Dev. & Mgmt., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008) ("A jurisdictional default, therefore, precludes the appellate court from acting in any manner other than to dismiss the appeal.").

DISMISSED.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).