

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-585
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

MICHAEL A. BROOKSHIRE,
Petitioner-Appellant,

v.

Transylvania County
No. 10 CVS 364

COUNTY OF BUNCOMBE
and
EMPLOYMENT SECURITY COMMISSION OF
NORTH CAROLINA,
Respondents-Appellees.

Appeal by Petitioner from judgment entered 24 January 2011
by Judge Mark E. Powell in Superior Court, Transylvania County.
Heard in the Court of Appeals 1 November 2011.

*Hunter & Carpenter, PLLC, by Robert C. Carpenter, for
Petitioner-Appellant.*

*Fred R. Gamin, Senior Trial Attorney, Legal Services
Division, Employment Security Commission of North Carolina,
for Respondent-Appellee Employment Security Commission of
North Carolina.*

No brief filed for Respondent-Appellee County of Buncombe.

McGEE, Judge.

Petitioner appeals from a judgment entered 24 January 2011
by Judge Mark E. Powell affirming the decision of the Employment

Security Commission (the Commission) holding that Petitioner was disqualified for unemployment benefits. Because Petitioner failed to timely file his notice of appeal to this Court, we must dismiss his appeal.

Petitioner worked for Buncombe County's Erosion Control Office (the County) until 21 September 2009, when he resigned "under extreme duress." Petitioner filed for unemployment benefits and, by decision dated 15 December 2009, the initial adjudicator of Petitioner's claims found that Petitioner was not disqualified for benefits. The County appealed the adjudicator's determination, which was heard by Hearing Officer Jodie Miller, who reversed the adjudicator's determination and found Petitioner disqualified for unemployment benefits by order dated 5 February 2010. Petitioner appealed to the Commission, which affirmed the decision holding Petitioner was disqualified for unemployment benefits by order dated 30 June 2010. Petitioner petitioned the Superior Court for judicial review, which affirmed the Commission's decision by judgment entered 24 January 2011. Petitioner filed notice of appeal from the trial court's judgment on 7 March 2011.

Because Petitioner's notice of appeal was not timely filed, this Court lacks jurisdiction to consider Petitioner's arguments

and must dismiss his appeal. The North Carolina Rules of Appellate Procedure provide that, in civil actions, a party must file and serve a notice of appeal:

(1) within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three day period prescribed by Rule 58 of the Rules of Civil Procedure; or

(2) within thirty days after service upon the party of a copy of the judgment if service was not made within that three day period[.]

N.C.R. App. P. 3(c). "It is well established that '[f]ailure to give timely notice of appeal . . . is jurisdictional, and an untimely attempt to appeal must be dismissed.'" *In re I.T.P-L.*, 194 N.C. App. 453, 459, 670 S.E.2d 282, 285 (2008) (quoting *In re A.L.*, 166 N.C. App. 276, 277, 601 S.E.2d 538, 538 (2004)), *disc. review denied*, 363 N.C. 581, 681 S.E.2d 783 (2009).

In this case, the judgment from which Petitioner appeals was entered on 24 January 2011. The certificate of service attached to the judgment states that the Commission served a copy of the judgment on Petitioner by first class mail that same day. Thus, Petitioner had until 23 February 2011 to file his notice of appeal. Petitioner's notice of appeal was filed 7 March 2011, twelve days beyond the thirty day limit provided by Rule 3(c). N.C.R. App. P. 3(c). Accordingly, this Court lacks

jurisdiction to consider Petitioner's arguments, and we must dismiss Petitioner's appeal.

Dismissed.

Judges ELMORE and McCULLOUGH concur.

Report per Rule 30(e).