

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-347
NORTH CAROLINA COURT OF APPEALS

Filed: 2 October 2012

MAXINE LEMAY HARDY, ELLA MARABLE
BRYANT, BESSIE BULLOCK, HILDA
JOYNER DELBRIDGE, CLARA M. FOSTER,
BARRY N. HORTON, JOHN L. PECORA
JR., ROBERT CHARLES WEST, M.
FRANCHESKIA WILLIAMS, Citizens and
Residents of Durham, Granville,
Vance, and Warren Counties, N.C.,
Plaintiffs,

v.

Vance County
No. 10 CVS 1037

VANCE COUNTY BOARD OF EDUCATION, A
Public Body and its Members, in
their official capacities, DR.
NORMAN SHEARIN, JR.,
SUPERINTENDENT, VANCE COUNTY
SCHOOLS, In His Official and
Individual Capacities, NORTH
CAROLINA DEPARTMENT OF PUBLIC
INSTRUCTION, NORTH CAROLINA STATE
BOARD OF EDUCATION, A Public Body
and Its Members, in their official
capacities,
Defendants.

Appeal by plaintiffs from order entered 7 October 2011 by
Judge A. Robinson Hassell in Vance County Superior Court. Heard
in the Court of Appeals 29 August 2012.

Sandra J. Polin for plaintiff-appellants.

Tharrington Smith, L.L.P. by Neal A. Ramee for defendant-appellees Vance County Board of Education and Dr. Norman Shearin, Jr.

Attorney General Roy Cooper by Assistant Attorney General Laura E. Crumpler for defendant-appellees North Carolina Department of Public Instruction and North Carolina State Board of Education.

STEELMAN, Judge.

I. Factual and Procedural History

On 30 September 2010, plaintiffs filed a complaint against Vance County Board of Education, Dr. Norman Shearin, Jr., North Carolina Department of Public Instruction (Department of Public Instruction), and North Carolina State Board of Education (State Board of Education) for breach of contract, misrepresentation, and breach of implied covenant of good faith and fair dealing arising out of the non-renewal of their teaching contracts with the Vance County Schools.

On 7 December 2010, defendants Vance County Board of Education and Dr. Shearin answered and moved to dismiss plaintiffs' complaint. On 26 January 2011, defendants State Board of Education and Department of Public Instruction moved to dismiss plaintiffs' complaint. On 27 April 2011, Judge R. Allen Baddour dismissed plaintiffs' complaint with prejudice. On 9 May

2011, plaintiffs moved for reconsideration of the order. On 14 June 2011, Judge Baddour denied that motion.

On 12 July 2011, plaintiff, Maxine Hardy, filed a *pro se* notice of appeal. This Court heard her appeal and affirmed the trial court's denial of her motion to reconsider in *Hardy v. Vance County Bd. of Educ.*, ___ N.C. App. ___, ___ S.E.2d ___ (June 19, 2012).

On 25 July 2011, defendants moved to dismiss the appeal as to all plaintiffs, except Maxine Hardy. On 1 August 2011, plaintiffs filed an amended notice of appeal, which all plaintiffs, *pro se*, executed. On 4 September 2011, defendants filed an amended motion to dismiss plaintiffs' appeal as untimely. On 7 October 2011, Judge Hassell entered an order dismissing with prejudice the appeal of all plaintiffs, except Maxine Hardy.

Plaintiffs appeal.

II. Notice of Appeal

In their first argument, plaintiffs contend that the trial court erred in dismissing their appeal. We disagree.

Judge Hassell held that plaintiffs' appeal of the 27 April 2011 order was untimely; that with the exception of plaintiff Maxine Hardy, plaintiffs' appeal of the denial of their motion

for reconsideration was untimely; that Maxine Hardy, acting *pro se* had no authority to file a notice of appeal on behalf of the other plaintiffs; and that her purported notice of appeal on behalf of the other plaintiffs was a legal nullity. This order further held that the motion for reconsideration of the dismissal order of 27 April 2011 did not toll the time for filing notice of appeal.

A notice of appeal must be filed within thirty days after entry of judgment. N.C.R. App. P. 3(c). The notice "shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record." N.C.R. App. P. 3(d).

The provisions of N.C.R. App. P. 3 are jurisdictional. *Dogwood Dev. and Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197-98, 657 S.E.2d 361, 365 (2008). A jurisdictional default requires dismissal. *Dogwood*, 362 N.C. at 197, 657 S.E.2d at 365.

Plaintiffs argue that the amended notice of appeal cured the failure of plaintiffs other than Maxine Hardy to sign the notice of appeal, citing *Livesay v. Livesay*, ___ N.C. App. ___, ___ S.E.2d ___ (February 21, 2012). In *Livesay*, the attorney filed a lawsuit, "signed the General Civil Action Cover Sheet

but failed to sign, date, or verify the complaint." *Livesay*, ___ N.C. App. at ___, ___ S.E.2d at ___. We held that the trial court erred in dismissing the complaint. Prior to any responsive pleading or motion, plaintiff's counsel recognized his error, and filed an amended complaint that was signed. We held that this was permitted under the portion of Rule 11 that provided that: "if a pleading, motion, or other paper is not signed, it shall be stricken *unless it is signed promptly after the omission is called to the attention of the pleader or movant.*" *Livesay*, ___ N.C. App. at ___, ___ S.E.2d at ___. *Livesay* is not dispositive of the instant case.

There was no question in *Livesay* concerning the authority of the attorney to sign the complaint on behalf of his client. In the instant case, the notice of appeal filed on 12 July 2011 was signed only by Maxine Hardy as *pro se* appellant. It bears no blank signature lines indicating an inadvertent omission of the other plaintiffs to execute the notice of appeal. Maxine Hardy was not an attorney, and had no authority to file a notice of appeal on behalf of the other plaintiffs. N.C. Gen. Stat. § 84-4 (2011). The amended notice of appeal, signed by all of the plaintiffs, was filed on 1 August 2011, and was not timely. Further, this case is controlled by the provisions of N.C.R.

App. P. 3 and not by N.C.R. Civ. P. 11. The trial court did not err in dismissing this appeal.

This argument is without merit.

III. Due Process Argument

In their second argument, plaintiffs contend that the trial court deprived plaintiffs of due process and the right to a fair and impartial hearing under the North Carolina and United States Constitutions. We disagree.

Plaintiffs cite no authority for the proposition that an appellant's failure to comply with the North Carolina Rules of Appellate Procedure affords the appellant greater due process protections than those protections afforded other appellants. Our research reveals no case so holding.

This argument is without merit.

IV. Conclusion

Because we hold that the trial court did not err in dismissing plaintiffs' appeal, we do not address plaintiffs' remaining arguments.

AFFIRMED.

Judges HUNTER, Robert C. and BRYANT concur.

Report per Rule 30(e).