

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-629
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

DENNIS LEEUWENBURG,
Plaintiff

v.

Onslow County
No. 11 CVD 3869

JENNIFER L. HARMON,
Defendant.

Appeal by plaintiff from order entered 8 February 2012 by Judge Carol Jones-Wilson in Onslow County Superior Court. Heard in the Court of Appeals 23 October 2012.

Dennis Leeuwenburg, pro se.

J. Hegg Law, PLLC, by Jason D. Hegg, for defendant-appellee.

BRYANT, Judge.

Where plaintiff's brief contained substantial and egregious violations of the North Carolina Rules of Appellate Procedure, impairing our ability to execute a meaningful review of his appeal, we dismiss plaintiff's appeal.

Facts and Procedural History

On 22 August 2011, a Domestic Violence Order of Protection was entered which stated that plaintiff Dennis Leeuwenburg and defendant Jennifer L. Harmon currently or formerly had a dating relationship. The 22 August 2011 order found that plaintiff had placed defendant in fear of imminent serious bodily injury and continued harassment that rises to such a level as to inflict substantial emotional distress by sending over 1,500 emails and 300 phone calls harassing defendant. Accordingly, plaintiff was ordered to not "commit any further acts of abuse or make any threats of abuse" and to cease contact with defendant until 22 August 2012.

Thereafter, on 5 October 2011, plaintiff filed a complaint for declaratory judgment against defendant stating the following:

Plaintiff respectfully requests that this Court either issue an injunction requiring [defendant] to stop testifying or making sworn statements unto court officials of false regard of statements I make in communications unto third persons, or in the alternative, issue a declaratory judgment which declares that relief can be granted of monetary compensation per instances of harassment of this kind, as well as, punitive damages for intentional instances.

On 20 December 2011, defendant filed a motion to dismiss plaintiff's complaint pursuant to Rules 6(b), 11, and 12(b)(6)

of the North Carolina Rules of Civil Procedure. On 8 February 2012, the trial court entered an order granting defendant's 12(b)(6) motion to dismiss with prejudice, sanctioning plaintiff to pay \$1,000.00 for reasonable attorney fees pursuant to Rule 11, and ordering plaintiff to pay \$1,000 to defendant's attorney for reasonable attorney fees. From this order, plaintiff appeals.

Although plaintiff advances several issues on appeal, we decline to reach the merits of the case as plaintiff has failed to comply with the North Carolina Rules of Appellate Procedure.

"It is well settled that the Rules of Appellate Procedure are mandatory and not directory. Thus, compliance with the Rules is required." *Capps v. NW Sign Indus. of N.C., Inc.*, 186 N.C. App. 616, 618, 652 S.E.2d 372, 375 (2007) (citation omitted). Failure to comply with these rules will subject an appeal to dismissal. *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999).

In making this determination and because plaintiff's violations are non-jurisdictional, we must:

first determine whether the noncompliance is substantial or gross under Rules 25 and 34. If [we] so [conclude], [we] should then determine which, if any, sanction under Rule

34(b) should be imposed. Finally, if [we] [conclude] that dismissal is the appropriate sanction, [we] may then consider whether the circumstances of the case justify invoking Rule 2 to reach the merits of the appeal. In evaluating whether appellate rules violations are "substantial" or "gross" we may consider "whether and to what extent the noncompliance impairs [our] task of review and whether and to what extent review on the merits would frustrate the adversarial process."

Tabor v. Kaufman, 196 N.C. App. 745, 747, 675 S.E.2d 701, 702-03 (2009) (quoting *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 200-201, 657 S.E.2d 361, 366-67 (2008)).

In the case before us, we are unable to undertake a meaningful review of plaintiff's appeal because plaintiff's noncompliance with the Rules of Appellate Procedure include the following: (1) failure to define clearly the issues presented and failure to present the arguments and authorities upon which the plaintiff relies in support of his position, in violation of N.C. R. App. Pr. 28(a); (2) failure to include citation of the statute or statutes permitting appellate review, in violation of Rule 28(b)(4); and (3) failure to state any reason or argument in support of each issue presented, failure to contain a concise statement of the applicable standards of review for each issue, and failure to contain citations of the authorities upon which

plaintiff relies in the body of the argument and the statement of applicable standards of review, in violation of N.C. R. App. 28(b)(6). See *Selwyn Vill. Homeowners Ass'n v. Cline & Co., Inc.*, 186 N.C. App. 645, 651 S.E.2d 909 (2007) (defendant's appeal is dismissed for numerous violations of the North Carolina Rules of Appellate Procedure, including N.C. R. App. P. 28(b)(6) and 26(g), and for failure to amend or correct its admitted violations) and *Capps*, 186 N.C. App. 616, 652 S.E.2d 372 (defendant's appeal is dismissed because defendant's brief failed to follow N.C. R. App. P. 10(c)(1) and 28(b)(6)).

Based on the foregoing, we hold that plaintiff's substantial violations impair our task of review and frustrate the adversarial process. See *Tabor*, 196 N.C. App. at 747, 675 S.E.2d at 703. Plaintiff's appellate rules violations are sufficiently egregious to warrant dismissal. Plaintiff's appeal is dismissed.

Dismissed.

Judges MCGEE and THIGPEN concur.

Report per Rule 30(e).