

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-376
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

ANTONIA FORD, in her individual
capacity and on behalf of the
Heirs of Lizzie Ward,
Plaintiff-Appellant,

v.

Wilson County
No. 12 CVS 1214

CITY OF WILSON; CITY COUNCIL OF
THE CITY OF WILSON; GRANT GOINGS,
City Manager of the City of
Wilson, in his official capacity;
C. BRUCE ROSE, Mayor of the City
of Wilson in his official
capacity; NOBLE G. BLACKMAN, IV;
GWEN C. BURTON; AVANT P. COLEMAN;
DONALD I. EVANS; JAMES M. JOHNSON,
III; WILLIE J. PITT, City Council
Members in their official
capacities; CHARLES E. TAYLOR,
Senior Code Enforcement Officer,
in his official capacity,
Defendants-Appellees.

Appeal by Plaintiff from order entered 10 December 2012 by
Judge Marvin K. Blount, III, in Superior Court, Wilson County.
Heard in the Court of Appeals 10 September 2013.

Perry & Associates, by Cedric R. Perry, for Plaintiff-Appellant.

Cauley Pridgen, PA, by Geneva L. Yourse and J. Brian Pridgen, for Defendants-Appellees.

McGEE, Judge.

There is limited information in the record indicating the underlying facts that led to the initiation of this action, and Plaintiff's brief also contains limited information. According to Plaintiff, the relevant facts are as follows:

The City Counsel [sic] of the City of Wilson at its 21 June 2012 meeting affirmed a decision of the City's Senior Code Enforcement Officer to demolish the dwelling located at 1321 Atlantic Street, Wilson, North Carolina. On 20 July 2013 [sic 2012], Plaintiff/Appellants petitioned to stay the decision of the City Counsel [sic] of Wilson and filed Notice of Appeal to the Wilson County Superior Court.

On 13 September 2012, Defendants/Appellees filed a motion to dismiss under Rules 12(b)(4), (5) and (6). At the hearing of Defendants/Appellees' Motion, the Defendants/Appellees served a memorandum of law on Plaintiff/Appellants' [sic] attorney and filed same with the court. The trial judge granted Defendants/Appellees' motion to dismiss under Rule 12(b)(6) on 5 December 2012.

Plaintiff appeals.

Motion to Dismiss Appeal

Defendants filed a motion to dismiss Plaintiff's appeal on 23 July 2013. In their motion, Defendants discussed numerous violations of the North Carolina Rules of Appellate Procedure contained in Plaintiff's brief, and they requested that this

Court dismiss Plaintiff's appeal. Pursuant to Rules 27 and 37 of the North Carolina Rules of Appellate Procedure, Plaintiff, on 5 August 2013, filed a motion for extension of time to respond to Defendants' motion to dismiss. 5 August 2013 was the last day such a motion could be filed. Rule 27 allows this Court to grant an extension of time to file a response "for good cause shown[.]" N.C.R. App. P. 27(c). Although Plaintiff's motion for an extension of time merely stated "additional time is needed for preparation of a response[,]" which does not constitute "good cause shown," this Court allowed Plaintiff's motion and granted Plaintiff additional time in which to file a response to Defendants' motion to dismiss. The following is Plaintiff's entire response:

1. Defendants have filed a brief and has [sic] not mentioned that Defendants are confused as to the issue(s) on appeal;
2. There are no violations (and certainly no gross violations) of the requirement of the Plaintiff that she clearly present her issue(s) on appeal;
3. The appeal is well grounded in fact and is warranted by existing law.

Plaintiff failed to respond to the actual allegations in Defendants' motion to dismiss, and merely made general statements that are in no manner helpful to this Court. Unfortunately, this level of legal representation, which can

fairly be labeled as disinterested, is apparent throughout the entire record submitted by Plaintiff in this appeal.

The record "begins" with a notice of appeal filed 20 July 2012, in which Plaintiff purports to give notice of appeal from "the decision of the City Council of the City of Wilson at its meeting on June 21, 2012 affirming the decision of the Senior Code Enforcement Officer to demolish the dwelling located at 1321 Atlantic Street, Wilson, North Carolina 27893." Plaintiff, however, fails to include the decision of the City Council or the decision of the Senior Code Enforcement Officer. Plaintiff fails to include any documentation relating to the initiation of the action before us. Rule 9 of the North Carolina Rules of Appellate Procedure requires:

c. a copy of the summons, notice of hearing, or other papers showing jurisdiction of the board or agency over the persons or property sought to be bound in the proceeding, or a statement showing same;

d. copies of all petitions and other pleadings filed in the superior court;

e. copies of all items properly before the superior court as are necessary for an understanding of all issues presented on appeal[.]

N.C.R. App. P. 9(a)(2) (2013).

Although Plaintiff does not provide any record confirmation of the following assumption, it appears this matter originated

from an action by the City of Wilson seeking to demolish a house owned by Plaintiff (or the heirs of a "Lizzie Ward") pursuant to N.C. Gen. Stat. § 160A-441 *et seq.* A designated public officer may serve a complaint on the owner of a dwelling alleging that the dwelling is unfit for human habitation, and stating the time and place for a hearing to consider the matter. N.C. Gen. Stat. § 160A-443(1) and (2) (2011). That designated public officer may issue an order providing for demolition of an unsafe dwelling in certain circumstances. N.C. Gen. Stat. § 160A-443(5) (2011). Following the service of such an order for demolition, an aggrieved party may file a notice of appeal to the housing appeals board within ten days, "which shall specify the grounds upon which the appeal is based." N.C. Gen. Stat. § 160A-446(c) (2011). There is nothing in the record demonstrating that any complaint was served by an appropriate public official, presumably the Senior Code Enforcement Officer, in this case. Plaintiff has not included any order or decision from that officer, nor any notice of appeal from such a decision or order. The record is devoid of any indication that the Senior Code Enforcement Officer properly initiated the action, or that the City Council had jurisdiction over the persons or subject matter at issue in this case.

The superior court's jurisdiction on appeal from these decisions was derivative and, therefore, dependent on the jurisdiction of the Senior Code Enforcement Officer and the City Council. See *Wiggins v. Insurance Co.*, 3 N.C. App. 476, 478, 165 S.E.2d 54, 56 (1969). "[R]eview is solely upon the record on appeal, the verbatim transcript of proceedings, . . . and any other items filed pursuant to this Rule 9." N.C.R. App. P. 9(a). There are notice, pleading, and hearing requirements that must be followed in order to condemn a building for demolition. N.C.G.S. § 160A-443. Without record evidence of jurisdiction in the lower tribunals, we have no record evidence of jurisdiction in the superior court from which this appeal is taken. "On appeal the record should show that the judgment was entered in a court with jurisdiction to hear and decide and at a time authorized by law." *Staton v. Blanton*, 259 N.C. 383, 384, 130 S.E.2d 686, 687 (1963) (citation omitted). "When the record is silent and the appellate court is unable to determine whether the court below had jurisdiction, the appeal should be dismissed." *State v. Felmet*, 302 N.C. 173, 176, 273 S.E.2d 708, 711 (1981) (citations omitted).

Furthermore, Plaintiff's appeal from the decision of the City Council was, apparently, pursuant to N.C.G.S. § 160A-446(e): "Every decision of the board shall be subject to review

by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise." There is nothing in the record indicating Plaintiff filed for review pursuant to N.C.G.S. § 160A-446(e), nor anything from which we could determine if the filing time requirements were met even if Plaintiff did file for review. Because the record fails to demonstrate that the trial court had jurisdiction to issue the order, we dismiss Plaintiff's appeal.

Assuming, *arguendo*, this Court had jurisdiction, we would dismiss Plaintiff's appeal for its numerous appellate rules violations. Primarily, but certainly not exclusively, Plaintiff's "argument" consists of less than one page, and includes no standard of review. Plaintiff's actual argument is contained in one sentence:

By virtue of the service of the memorandum of law on counsel of Plaintiff . . . and presentation of the same to the [trial] court, the presiding judge should have continued the hearing under Rule 56 of the North Carolina Rules of Civil Procedure so as to allow [Plaintiff's counsel] reasonable time to prepare a response to [Defendants'] memorandum of law.

In support of this contention, Plaintiff includes her sole citation to authority: "*Horne v. Town of Blowing Rock*, No. COA 12-196 (October 2, 2012)," which is not a proper citation, and fails to direct us to the relevant portion of the opinion

improperly cited. Plaintiff fails to make an argument or direct this Court to any authority in support of any contention that there was any error based upon the particular facts of this case. “[I]t is not the role of the appellate courts . . . to create an appeal for an appellant.” *Barker v. Barker*, __ N.C. App. __, __, 745 S.E.2d 910, 915 (2013) (citation omitted). Defendants’ motion to dismiss Plaintiff’s appeal is allowed and this appeal is dismissed.

Dismissed.

Judges McCULLOUGH and DILLON concur.

Report per Rule 30(e).