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NO. COA13-647  
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

THE NORTH CAROLINA STATE BAR,  
Plaintiff-Appellee,

v.

Disciplinary Hearing  
Commission Of The  
North Carolina State Bar  
No. 11 DHC 3

ROBERT J. BURFORD, Attorney,  
Defendant-Appellant.

Appeal by Defendant from order entered 10 October 2012 by the Disciplinary Hearing Commission of the North Carolina State Bar. Heard in the Court of Appeals 5 November 2013.

*The North Carolina State Bar, by Counsel Katherine Jean and Deputy Counsel David R. Johnson, for Plaintiff-Appellee.*

*Robert J. Burford, Defendant-Appellant, pro se.*

McGEE, Judge.

The North Carolina State Bar ("State Bar") filed a disciplinary complaint against Robert Burford ("Defendant") on 12 January 2011, alleging various violations of the Rules of Professional Conduct pursuant to N.C. Gen. Stat. § 84-28(b)(2). The matter was heard by a hearing panel of the Disciplinary

Hearing Commission ("DHC") of the State Bar on 13-14 October 2011. The DHC concluded that Defendant had violated Rules of Professional Conduct, and filed an order of discipline on 5 January 2012. The DHC suspended Defendant's license to practice law for two years, but stayed that sentence for five years conditioned upon Defendant's compliance with certain conditions. The State Bar, in a motion filed 25 June 2012, alleged that Defendant had violated certain of the conditions set out in the 5 January 2012 order, and notified the DHC. In response to this 25 June 2012 motion, the DHC filed an order to appear and show cause on 3 August 2012, ordering Defendant to appear and show cause as to "why an order should not be entered, activating the suspension of [Defendant's] license to practice law in North Carolina."

The DHC conducted a hearing on 20 September 2012, and entered an order on 10 October 2012, lifting its stay and activating suspension of Defendant's license to practice law. The DHC concluded that: "By engaging in the misconduct underlying the [5 January 2012] Order of Discipline in this case, [Defendant] elevated his own interests above the interests of his clients. [Defendant's] conduct since the entry of the [5 January 2012] Order demonstrates that he continues to prioritize his own interests over his clients' interests." Based upon the

findings of fact and conclusions of law in the 10 October 2012 order, the DHC lifted the stay on Defendant's two-year suspension, thereby putting into effect the two-year suspension of Defendant's license to practice law in North Carolina. Defendant was served with the 10 October 2012 order on 23 October 2012. Defendant's purported notice of appeal was filed 27 November 2012.

The dispositive issue in the present case is whether this Court has jurisdiction to consider Defendant's purported appeal. Because we hold in the negative, we must dismiss Defendant's appeal.

The order of the DHC was filed 10 October 2012. Proof of service on Defendant is included in the record. The proof of service document states that the 10 October 2012 order was served 23 October 2012.<sup>1</sup> Defendant's notice of appeal is dated 21 November 2012, and Defendant attests on the notice of appeal that he served the notice of appeal on opposing counsel both by hand delivery and by depositing a copy in the mail, on that same

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<sup>1</sup> We note that there are two date stamps on the proof of service document, both with the date 17 October 2012. We are uncertain what these dates signify. The proof of service document states that service on Defendant was achieved on 23 October 2012, and this proof of service document was signed by a deputy from the sheriff's department on that same date. Defendant states that 23 October 2012 is the date of service. Because it cannot change the outcome, we assume, *arguendo*, that the 23 October 2012 date is the correct date of service.

date. However, the notice of appeal in the record shows a file stamp date for 27 November 2012. Even assuming the 10 October 2012 order was served on Defendant on 23 October 2012, Defendant failed to file his notice of appeal within thirty days as required by Rule 18 of the North Carolina Rules of Appellate Procedure.

Rule 18 of the North Carolina Rules of Appellate Procedure controls appeals of right from administrative agencies, boards, or commissions. N.C.R. App. P. 18(a) (2013). Appeals "from administrative agencies, boards, or commissions . . . shall be in accordance with the procedures provided in these rules for appeals of right from the courts of the trial divisions, except as provided in this Article." N.C.R. App. P. 18(a). Rule 18 states in relevant part: "Any party to the proceeding may appeal from a final agency determination to the appropriate court of the appellate division for alleged errors of law by *filing and serving* a notice of appeal within thirty days after receipt of a copy of the final order of the agency." N.C.R. App. P. 18(b)(2) (emphasis added).

Deficiency in service of a notice of appeal may be waived by the injured party in some instances; however, failure to file a notice of appeal in accordance with the Rules of Appellate Procedure cannot be waived. *Lee v. Winget Rd., LLC*, 204 N.C.

App. 96, 100, 693 S.E.2d 684, 688 (2010) ("*filing* of the notice of appeal is jurisdictional, but where a notice of appeal is filed, *service* of the notice of appeal upon all parties may be waived"); *see also In re Reinstatement of McGee*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 719 S.E.2d 222, 224 (2011), *disc. review denied*, \_\_\_ N.C. \_\_\_, 722 S.E.2d 596 (2012); *Fisher v. E. I. Du Pont De Nemours*, 54 N.C. App. 176, 282 S.E.2d 543 (1981). The time period between service of the 10 October 2012 order on Defendant, 23 October 2012, and the filing of Defendant's notice of appeal, 27 November 2012, is in excess of thirty days. Failure to timely file notice of appeal is jurisdictional, and results in dismissal of Defendant's appeal. *Lee*, 204 N.C. App. at 100, 693 S.E.2d at 688. This Court is charged with addressing issues of jurisdiction on appeal when they become apparent, even *sua sponte*. *Id.* at 98, 693 S.E.2d at 687.

It is an appellant's duty to insure we have a complete and accurate record before us. *Fortis Corp. v. Northeast Forest Products*, 68 N.C. App. 752, 754, 315 S.E.2d 537, 538-39 (1984). The record before us shows that Defendant did not file his notice of appeal within the time period set by our appellate rules. Because the record shows this Court lacks jurisdiction over Defendant's appeal, Defendant's appeal is dismissed.

Dismissed.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).