An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-767

Filed: 7 April 2015

Mecklenburg County, No. 11 CVS 5323

ELIZABETH TOWNES HOMEOWNERS ASSOCIATION, INC., AND THE ELIZABETH TOWNES BOARD OF DIRECTORS, Plaintiffs,

v.

JANE BRAWLEY JORDAN, Defendant.

Appeal by defendant from order entered 19 February 2014 by Judge Linwood O. Foust in Mecklenburg County Superior Court. Heard in the Court of Appeals 20 November 2014.

Hedrick Gardner Kincheloe & Garofalo, LLP, by Harmony W. Taylor and Lindsey L. Smith, for plaintiffs-appellees.

Jane Brawley Jordan, pro se, defendant-appellant.

GEER, Judge.

Defendant Jane Brawley Jordan appeals from an order denying her motion to set aside a default judgment entered against her based on an order striking her answer as a sanction for contempt. However, defendant's brief on appeal either argues matters not properly before this Court or fails to cite any relevant authority in support of defendant's arguments. Defendant has, therefore, failed to demonstrate that the trial court erred in denying her motion, and we affirm.

Facts

On 14 March 2011, plaintiffs Elizabeth Townes Homeowners Association, Inc. ("ETHOA") and the Elizabeth Townes Board of Directors filed a Complaint and Request for Permanent Injunction against defendant and her parents (Betty M. Brawley and Bobby P. Brawley), asserting claims for malicious prosecution, abuse of process, and defamation. Plaintiffs alleged damages exceeding $10,000.00.

The complaint asserted that defendant "engaged in a pattern of activity which has constituted a nuisance and harassment to the ETHOA and Board of Directors." The complaint described this activity as a series of "insulting and disturbing" emails and letters "to Board members, public officials, and others" that included threats to seek retribution and institute legal action over perceived slights, alleged financial irregularities, and other issues, all related to defendant's or her parents' membership in the ETHOA. Defendant sent copies of many of these communications to public officials, including the President of the United States and North Carolina Senators.

On numerous occasions, defendant called Solid Rock Properties, ETHOA's property management company, and "left so many messages that Solid Rock's answering service was not able to accept any further voice messages from its clients." Defendant also filed a complaint with the North Carolina Real Estate Commission alleging that Solid Rock was engaged in various improprieties. This complaint caused an unwarranted, but extensive, investigation into Solid Rock's business.

On 15 November 2011, plaintiffs requested and ultimately obtained a gatekeeper order to prevent defendant from filing further documents with the trial court without the trial court's approval. They also filed an Amended Complaint and Request for Permanent Injunction on 15 December 2011. Judge Lane Williamson signed an order granting plaintiffs' requests on 21 December 2011, filed on 11 January 2012. That order provided:

> 1. Jordan is hereby enjoined and restrained, pending the trial of this matter on March 26, 2012, or as soon as this case is called for trial, from engaging in any direct communications with Plaintiffs or Plaintiffs' management company, vendors or contractors. Jordan may only communicate with Plaintiffs, Plaintiffs' management company, vendors or contractors through counsel of record Harmony W. Taylor, via U.S. Mail. Jordan is not to email or telephone Ms. Taylor, or to appear at her office for any purpose.
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> 2. A deadline of December 13, 2011, is imposed upon Jordan for any further filings of any type with this Court related to the present litigation. All motions were to have been scheduled during the week ending December 9, 2011, as ordered by this Court on December 6, 2011.

The case was supposed to be tried on 26 March 2012, but Judge Jesse Caldwell continued the trial to allow for competency evaluations of defendant and her parents. Judge Caldwell entered an order on 29 March 2012 that continued and expanded Judge Williamson's 21 December 2011 order. Judge Caldwell specifically found that defendant had violated the 21 December 2011 order by telephoning plaintiffs'

property manager. Subsequently, Judge Caldwell conducted a contempt hearing and entered an order on 7 June 2012 further continuing the injunction against defendant.

On 14 November 2012, plaintiffs filed a motion to have defendant found in criminal and civil contempt for various violations of the injunction. On 21 November 2012, defendant filed a petition for writ of mandamus with this Court in connection with Judge Williamson's injunction. On 26 November 2012, defendant also filed a petition for writ of supersedeas with this Court relating to Judge Williamson's injunctions. In addition, on 26 November 2012, defendant sought to stay the proceedings on plaintiffs' motion by filing a petition for writ of supersedeas with this Court.

Judge Williamson held a hearing on plaintiffs' motion on 3 December 2012 and entered an order on 6 December 2012 finding defendant in contempt, ordering that defendant's answer to plaintiffs' complaint be stricken as a sanction for the contempt, entering default against defendant, and maintaining the injunction. On 13 December 2012, defendant filed a notice of appeal from the 6 December 2012 order.

On 27 December 2012, plaintiffs filed a motion for default judgment, and on 3 January 2013, defendant filed petitions for writ of mandamus and writ of supersedeas with the North Carolina Supreme Court challenging Judge Williamson's injunction. The petitions were denied.

Following a hearing on 7 January 2013 on plaintiffs' motion for default judgment, Judge Williamson entered a default judgment against defendant on 6 February 2013. The judgment awarded plaintiffs $34,929.59 for increased insurance premiums, increased property management fees, legal costs, and other compensation for the Association's damages. The judgment also awarded plaintiffs $50,000.00 in punitive damages. On 8 March 2013, defendant filed a notice of appeal from the 6 February 2013 default judgment.

On 1 October 2013, this Court affirmed Judge Williamson's 6 December 2012 order in *Elizabeth Townes Homeowners Ass'n v. Jordan*, ___ N.C. App. ___, 752 S.E.2d 256, 2013 N.C. App. LEXIS 1003, 2013 WL 5477486 (2013) (per curiam) (unpublished), *disc. review denied*, 367 N.C. 321, 755 S.E.2d 626 (2014). Defendant did not pursue her appeal from the default judgment.

Instead, on 23 December 2013, defendant filed a motion to set aside the default judgment pursuant to Rule 60 of the Rules of Civil Procedure. In an order entered 19 February 2014, Judge Foust denied defendant's motion to set aside her default judgment. Defendant filed a timely notice of appeal from Judge Foust's order.

Discussion

We review the denial of a Rule 60 motion for abuse of discretion. *Barnes v. Wells*, 165 N.C. App. 575, 580, 599 S.E.2d 585, 589 (2004). "Abuse of discretion exists

when the challenged actions are manifestly unsupported by reason." *Id.* (internal quotation marks omitted).

We note first that defendant, who ignores the applicable standard of review, lists two "questions for review" in her brief: (1) whether "the trial court issue [sic] prejudicial error and an unjust denial of" her motion to set aside the default judgment, and (2) whether "the trial courts show prejudicial error to violate Appellant's equal protection under the laws according to the 14th amendment due process to deny her the right to file any type of pleading, such as her Motion for Summary Judgment and/or a motion for a jury trial for such hearing on January 7, 2013[.]"

Defendant appears in the second question to be attempting to appeal orders other than Judge Foust's order denying her Rule 60 motion. Indeed, the "argument" portion of defendant's brief includes at least 22 different contentions, most of which appear to be attacking the merits of plaintiffs' original complaint, this Court's prior opinion affirming Judge Williamson's order finding defendant in contempt and striking defendant's answer, or other orders apart from the order denying defendant's Rule 60 motion. It is difficult to determine from defendant's brief which of these propositions are intended to relate to which issue. However, only the first question for review -- challenging Judge Foust's 19 February 2014 order denying defendant's Rule 60 motion -- is properly before this Court.

Regardless, defendant has failed to cite authority in support of her position for all but a handful of her contentions, in violation of N.C.R. App. P. 28(b)(6) ("The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies."). With respect to those contentions for which authority of some type is cited, most are irrelevant to whether Judge Foust abused his discretion in denying defendant's Rule 60 motion, the sole issue properly before the Court.

With respect to Judge Foust's order, the only authority cited by defendant for reversal are two orders by superior court judges dismissing without prejudice separate lawsuits brought by plaintiffs and a memorandum of law (included in the record on appeal) filed by an attorney for defendant's parents citing a single case. Even assuming, without deciding, that the superior court orders could constitute authority properly cited to this Court, neither the orders nor the single case cited in the memorandum of law are relevant to the question whether Judge Foust was required to set aside the default judgment entered against defendant when (1) this Court had previously affirmed the contempt order striking defendant's answer and entering default, and (2) defendant did not pursue an appeal from the order entering default judgment.

While defendant contends in this appeal that this Court's prior order affirming Judge Williamson's 6 December 2012 order was in error, we are bound by that

decision under the law of the case doctrine. *See Creech v. Melnik*, 147 N.C. App. 471, 473-74, 556 S.E.2d 587, 589 (2001) ("Under the law of the case doctrine, an appellate court ruling on a question governs the resolution of that question both in subsequent proceedings in the trial court and on a subsequent appeal[.]").

None of defendant's "authority" provides any support allowing a trial judge to set aside a default judgment when the Court of Appeals has affirmed the entry of default, which was based on the defendant's answer being stricken as a sanction for contempt. Without the citation of any authority suggesting that Judge Foust could, consistent with the Court of Appeals ruling, set aside the default judgment or other authority addressing Rule 60 motions to set aside default judgments, defendant has failed to present any argument showing that Judge Foust erred.

We note, further, that in various places in her "argument" section, defendant interjects with a number of rhetorical questions followed by statements -- often in capital letters and followed by exclamation marks -- such as "this is not true," "we all know," "they all know," "My God," and "[t]he writing is on the wall for all to see." Her statements frequently stray far outside the record and issues of this appeal and even when focused on this particular action, seek to aggressively relitigate factual issues already decided against her that are not properly before this Court. Further, any actual references in defendant's brief to the facts of this case are far overshadowed by defendant's incessant attempts to paint herself as the victim of an overarching

conspiracy engaged in by plaintiffs and others, including the judges who have entered orders adverse to her. Even apart from the lack of citation of legal authority to support her position, this argument of the "facts" has in fact hindered our ability to review her appeal.

Additionally, we note that plaintiffs have filed a motion to dismiss defendant's appeal based on violations of the Appellate Rules. We choose to deny this motion because, based on the record (although our review was hampered by defendant's brief), we cannot say that defendant's appeal was wholly frivolous and the rules violations cited by plaintiffs do not rise to the level required for dismissal. *See Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 198, 657 S.E.2d 361, 365 (2008) ("[A] party's failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal."). However, we note that if defendant chooses to make further filings with this Court of comparable nature, she will risk being sanctioned under N.C.R. App. P. 34(a)(1), (3). *See, e.g., State v. Castaneda*, 196 N.C. App. 109, 114, 674 S.E.2d 707, 711 (2009) (dismissing appeal when appellant presented "two different bases for error, neither of which fully comply with the [Rules], making it unclear to the Court which error is Defendant's intended argument").

AFFIRMED.

Judges STEELMAN and STEPHENS concur.

Report per Rule 30(e).