

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA15-1362

Filed: 20 September 2016

Wake County, No. 13 CVD 3788

LATAUSHA RENEE PINKNEY, Plaintiff,

v.

JOEY PINKNEY, Defendant.

Appeal by Plaintiff from an order entered 9 July 2015 by Judge Lori G. Christian in Wake County District Court. Heard in the Court of Appeals 25 August 2016.

Latausha Renee Pinkney, Plaintiff-Appellant, pro se.

Joey Pinkney, Defendant-Appellee, pro se.

HUNTER, JR., Robert N., Judge.

Latausha Renee Pinkney (“Plaintiff”) appeals following an order dismissing her breach of contract claim against Joey Pinkney (“Defendant”). This case results from the parties’ separation and their disagreement over the amount of support and manner of property distribution.

I. Jurisdiction

On 5 August 2015, Plaintiff filed her notice of appeal. The record does not disclose whether Plaintiff served her notice of appeal upon Defendant. Defendant

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contends he “was not given a chance or adequate time to . . . answer to this appeal.”

After careful review, we dismiss Plaintiff’s appeal.

“The North Carolina Rules of Appellate Procedure are mandatory and a failure to follow these rules will subject an appeal to dismissal.” *Viar v. N.C. DOT*, 358 N.C. 400, 401, 610 S.E.2d 360, 360 (2005) (quoting *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999)). Our Supreme Court held:

It is not the role of the appellate courts . . . to create an appeal for an appellant. As this case illustrates, the Rules of Appellate Procedure must be consistently applied; otherwise, the Rules become meaningless, and an appellee is left without notice of the basis upon which an appellate court might rule.

Id. at 402, 610 S.E.2d at 361.

Rule 3 of the North Carolina Rules of Appellate Procedure governs how and when appeals are taken in civil cases. N.C. R. App. P. 3(a), “Filing the Notice of Appeal,” states the following:

Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court *and serving copies thereof upon all other parties* within the time prescribed by subsection (c) of this rule.

Appellate Rule 3(c), “Time for Taking Appeal, requires a party to serve a notice of appeal “within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three day period prescribed by Rule 58 of the Rules of Civil Procedure.” N.C. R. App. P. 3(c). When settling the appellate record, if a

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party fails to include certificate of service for its notice of appeal, the party violates Rules 3 and 26 of the Appellate Rules of Procedure. *Krantz v. Owens*, 168 N.C. App. 384, 607 S.E.2d 337 (2005). Appellate Rule 3 is jurisdictional, and “failure to follow the requirements thereof requires dismissal of an appeal.” *Lee v. Winget Rd., LLC*, 204 N.C. App. 96, 98, 693 S.E.2d 684, 687 (2010) (quoting *Stephenson v. Bartlett*, 177 N.C. App. 239, 241 628 S.E.2d 442 (443), *disc. review denied*, 360 N.C. 544, 635 S.E.2d 58 (2006)).

Here, Plaintiff filed her notice of appeal and included it in the record but she did not include a certificate of service indicating she served her notice of appeal upon Defendant. This omission is jurisdictional and requires dismissal.

For the foregoing reasons we dismiss the appeal.

DISMISSED.

Judges McCULLOUGH and DIETZ concur.

Report per Rule 30(e).