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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1068

Filed: 3 November 2020

Robeson County, No. 17 CVS 02156

JOSEPH C. SUN, Plaintiff,

v.

DERRICK HOWARD MCDONALD, Defendant.

Appeal by plaintiff from orders entered 21 May 2019 and 16 August 2019 by Judge James Gregory Bell in Robeson County Superior Court. Heard in the Court of Appeals 22 September 2020.

*Joseph C. Sun, pro se, for plaintiff-appellant.*

*Anderson, Johnson, Lawrence & Butler, L.L.P., by Lee B. Johnson, Jr., for defendant-appellee.*

DIETZ, Judge.

Plaintiff Joseph Sun appeals the trial court's orders entering summary judgment against him and striking his motion to reconsider. As explained below, Sun failed to establish that this appeal is timely. We therefore dismiss the appeal for lack of appellate jurisdiction.

### **Facts and Procedural History**

On 17 August 2017, Plaintiff Joseph Sun filed a complaint against Defendant Derrick McDonald seeking damages related to a motor vehicle accident. Both parties later moved for summary judgment.

On 21 May 2019, the trial court entered an order denying Sun’s motion for summary judgment, granting McDonald’s motion for summary judgment, and dismissing Sun’s complaint. A week later, Sun moved to reconsider that summary judgment ruling, citing “Rule 59(a) and (e).” McDonald moved to strike the motion to reconsider on the ground that it was not a proper Rule 59 motion because it merely re-argued issues presented at summary judgment.

On 16 August 2019, the trial court entered an order granting McDonald’s motion to strike. Sun later appealed both the summary judgment order and the order striking his motion to reconsider.

### **Analysis**

We first address our jurisdiction to hear this appeal. When an appeal is taken to this Court, the burden is on the appellant “to produce a record establishing the jurisdiction of the court.” *Bradley v. Cumberland Cty.*, 262 N.C. App. 376, 382, 822 S.E.2d 416, 421 (2018). Among the documents in the record necessary to confer appellate jurisdiction is a “timely notice of appeal.” *Raymond v. Raymond*, 257 N.C. App. 700, 703, 811 S.E.2d 168, 170 (2018). If the record does not demonstrate the

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timely filing of the notice of appeal, this Court must dismiss the appeal for lack of appellate jurisdiction. *Id.*

Here, there is no notice of appeal where one would expect to find it in the record on appeal, typically toward the end of the printed record. *See* N.C. R. App. P. 9. Much earlier in the record, mixed in with other, unrelated documents, there is a document entitled “Notice of Appeal” that is dated 29 August 2019. That document is not file-stamped, and there is no indication of when or if it was filed in the trial court.

McDonald pointed out this jurisdictional defect in his appellee’s brief, asserting that Sun “failed to include a file-stamped copy of the Notice of Appeal in the Record on Appeal” and that this was “a jurisdictional error” requiring dismissal of the appeal. Sun never responded to this argument, never moved to amend the record to show that he timely filed the notice of appeal, and never petitioned for a writ of certiorari to permit this Court to reach the merits on appeal despite the jurisdictional defect.

This Court repeatedly has dismissed appeals where the record on appeal does not indicate when the notice of appeal was filed, typically because it is missing a file-stamp or other notation from the trial court. *See, e.g., Bradley*, 262 N.C. App. at 382, 822 S.E.2d at 420; *State v. Guarascio*, \_\_ N.C. App. \_\_, 838 S.E.2d 204 (2020) (unpublished); *Sander v. Sander*, 212 N.C. App. 420, 713 S.E.2d 791 (2011) (unpublished). This case is no different from those in this long line of dismissed appeals. We therefore dismiss this appeal for lack of appellate jurisdiction.

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DISMISSED.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).