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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-491

Filed: 18 February 2020

Orange County, No. 15 CVS 808

SHAHLA REZVANI, individually and PARSI CORPORATION, a North Carolina Corporation, Plaintiffs,

v.

ELIZABETH CARNES, and TIMOTHY CARNES, Defendants.

Appeal by defendants from order entered 4 December 2018 by Judge Michael J. O’Foghludha in Orange County Superior Court. Heard in the Court of Appeals 22 January 2020.

Maitland & English, PLLC, by Robert N. Maitland, for plaintiffs.

Bryant & Lewis, P.A., by David O. Lewis, for defendants.

ARROWOOD, Judge.

Timothy and Elizabeth Carnes (“defendants”) appeal from order denying their Motion to Set Aside Default Judgment, Motion to Set Aside Entry of Default, Motion to Enlarge Time to Respond to Plaintiffs’ Amended Complaint, and Motion to Modify Exemptions. Plaintiffs filed their brief on 21 January 2020, over three months late.

Defendants moved to strike said brief, which we allowed per separate order. Nonetheless, because the record on appeal is fatally deficient in several respects, we dismiss defendants' appeal.

I. Discussion

We must dismiss this appeal because defendants have failed to properly invoke our jurisdiction under N.C.R. App. P. 3 (2020). Defendants' Notice of Appeal fails to indicate whether it was properly filed with the Orange County Clerk of Superior Court. N.C.R. App. P. 9(b)(3) (2020) ("Every pleading, motion, affidavit, or other paper included in the record on appeal shall show the date on which it was filed . . ."). Thus, we are unable to determine if it complies with Rule 3. *See* N.C.R. App. P. 3(a), (c) (stating that appeal is taken "by *filing* notice of appeal with the clerk of superior court" and mandating that "a party must *file* and serve a notice of appeal" before the applicable deadline) (emphasis added). "The provisions of Rule 3 are jurisdictional, and failure to follow the rule's prerequisites mandates dismissal of an appeal." *Bailey v. State*, 353 N.C. 142, 156, 540 S.E.2d 313, 322 (2000) (citation omitted). Where one of our Rules is jurisdictional in nature, a violation thereof "precludes [us] from acting in any manner other than to dismiss the appeal." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008) (citations omitted). Because the deficiency in defendants' Notice of Appeal prevents us from

determining if this Court's jurisdiction has been properly invoked, we must dismiss the appeal.

Additionally, the record contains several other violations of the North Carolina Rules of Appellate Procedure that make our review of the case needlessly laborious and uncertain. The record does not contain the entry of default or default judgment upon which defendants' motions and the trial court's order were based. N.C.R. App. P. 9(a)(1)(d) (requiring "copies . . . of any pretrial order on which the case or any part thereof was tried"); N.C.R. App. P. 9(a)(1)(j) (requiring "copies of all other papers filed . . . in the trial court which are necessary to an understanding of all issues presented on appeal unless they appear in the verbatim transcript of proceedings").

Additionally, defendants have failed to include "a statement identifying the judge from whose judgment or order appeal is taken[.]" N.C.R. App. P. 9(a)(1)(b). Several documents in the record are not signed and dated, such as the "Stipulations of the Parties," the certificate of service for the appellate record, and the "Consent to Record on Appeal." N.C.R. App. P. 9(b)(3) ("Every pleading, motion, affidavit, or other paper included in the record on appeal shall show the date on which it was filed The typed or printed name of the person signing a paper shall be entered immediately below the signature."); N.C.R. App. P. 26(d) (2020) ("Papers presented for filing shall contain . . . proof of service in the form of a statement of the date and manner of service . . . certified by the person who made service."). There are numerous other

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deficiencies in the record which we need not address. These violations of our Rules are non-jurisdictional. Nonetheless, but for our dismissal of the case for jurisdictional defects, we believe they would warrant sanctions under N.C.R. App. P. 25(b), 34 (2020), up to and including dismissal per *Dogwood* and its progeny.

II. Conclusion

Therefore, we dismiss defendant's appeal for failure to comply with the requirements of Rule 3.

DISMISSED.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).