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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-251

No. COA20-123

Filed 1 June 2021

New Hanover County, No. 13 CVS 1073

VIRGINIA RADCLIFFE, Plaintiff,

v.

AVENEL HOMEOWNERS ASSOCIATION, INC. CARMELO (TONY) BUCCAFURRI, STEPHEN MURRAY, THOMAS DINERO, DAVID HULL, RICHARD PROGELHOF, and RONALD ZANZARELLA, Defendants.

Appeal by plaintiff from order entered 7 December 2018 by Judge R. Kent Harrell in New Hanover County Superior Court. Heard in the Court of Appeals 12 May 2021.

*Virginia Radcliffe pro se.*

*Ennis, Baynard, Morton Medlin & Brown, P.A., by Donald W. Ennis, for defendants Buccafurri and Murray.*

*Crossley, McIntosh, Collier, Hanley & Edes, PLLC, by Clay Allen Collier, for defendant-Dinero.*

*Hedrick Gardner Kincheloe & Garafalo, LLP, by John S. Byrd, II, and Brown Crump Vanore & Tierney, LLP, by Derek M. Crump, for defendant-Hull.*

*Anderson, Johnson, Lawrence & Butler, L.L.P., by Steven C. Lawrence, for defendant-Progelhof.*

*Hedrick Gardner Kincheloe & Garafalo LLP, by M. Duane Jones and Jeffrey H. Blackwell, for defendant-Zanzarella.*

TYSON, Judge.

¶ 1 Appeal by Virginia Radcliffe (“Plaintiff”) from order entered 10 December 2018 granting summary judgment to Carmelo Buccafurri, Thomas Dinero, David Hull, Richard Progelhof, and Ronald Zanzarella for all claims and granting summary judgment to Stephen Murray (“collectively Defendants”) for tortious interference with prospective economic advantage.

### **I. Jurisdiction**

¶ 2 The trial court denied Murray’s claims for summary judgment for intentional infliction of emotional distress, assault, battery and malicious prosecution on 10 December 2018. On 5 July and 10 July 2019, Plaintiff entered a voluntary dismissal pursuant to North Carolina Rule of Civil Procedure 41 for all remaining claims against Murray. N.C. Gen. Stat. § 1A-1, Rule 41 (2019). Plaintiff filed her notice of appeal on 2 August 2019.

¶ 3 Rule 3(c)(1) of our Rules of Appellate Procedure require a party file their notice of appeal within 30 days after entry of judgment. The trial court filed its amended judgment on 10 December 2018. The 7 December 2018 order was interlocutory because Plaintiff’s claims against Murray for intentional infliction of emotional distress, assault, battery, and malicious prosecution were not dismissed in the order. Once Plaintiff voluntarily dismissed these claims, on 5 and 10 July 2019, against

Murray, the 7 December 2018 order became an appealable final order. *See Combs & Assocs. v. Kennedy*, 147 N.C. App. 362, 367-68, 555 S.E.2d 634, 638-39 (2001) (holding that plaintiff's voluntary dismissal of its only remaining claim after the trial court granted summary judgment to defendant on plaintiff's other claims had the effect of making the court's partial summary judgment order an appealable final order); *see also DeHart v. N.C. DOT*, 195 N.C. App. 417, 419, 672 S.E.2d 721, 722 (2009).

¶ 4 Plaintiff timely filed her notice of appeal on 2 August 2019, within 30 days after the date the trial court's summary judgment order became final. Plaintiff's appeal is properly before this Court.

## II. Appellate Rule Violations

¶ 5 Plaintiff's appeal is the second appeal filed with similar issues before this Court. Plaintiff's brief does not comport with the standards for content, organization, and presentation set forth in our appellate rules. Defendants collectively filed a motion to dismiss Plaintiff's appeal.

¶ 6 Plaintiff's brief does not contain either a table of authorities or a subject index in violation of both N.C. R. App. P. 26(g) and 28(b)(1). Plaintiff's brief cites documents and exhibits, which are not contained within the record on appeal. *See* N.C. R. App. P. 28(b)(5). Plaintiff refers to two depositions, which are also not contained in the record on appeal nor included as exhibits in violation of N.C. R. App. P. 28(d)(1).

¶ 7 Plaintiff's brief does not contain a required certificate of compliance with word

count requirements under our rules. N.C. R. App. P. 28(j)(2). Plaintiff's brief is approximately 16,500 words, nearly twice the maximum limit of 8,750 words. N.C. R. App. P. 28(j). She did not file a motion or assert any basis to exceed the limit.

¶ 8 “[T]he Rules of Appellate Procedure[] are mandatory and that failure to follow these rules will subject an appeal to dismissal.” *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999) (citations omitted). These rules apply to all parties, regardless of whether the party is acting *pro se* or represented by counsel. *See Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999).

¶ 9 Plaintiff's brief is approximately 16,500 words. Plaintiff's statement of the case, statement of the grounds for appellate review, and statement of the facts taken together are approximately 10,400 words. “[N]oncompliance with the appellate rules does not, *ipso facto*, mandate dismissal of an appeal.” *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 194, 657 S.E.2d 361, 363 (2008).

¶ 10 A “principal category of default involves a party's failure to comply with one or more of the nonjurisdictional requisites prescribed by the appellate rules. . . . Noncompliance with rules of this nature . . . does not ordinarily give rise to the harms associated with review of unpreserved issues or lack of jurisdiction.” *Id.* at 198, 657 S.E.2d at 365.

¶ 11 Our Supreme Court set forth the analysis for nonjurisdictional appellate rule violations:

the court should first determine whether the noncompliance is substantial or gross under Rules 25 and 34. If it so concludes, it should then determine which, if any, sanction under Rule 34(b) should be imposed. Finally, if the court concludes that dismissal is the appropriate sanction, it may then consider whether the circumstances of the case justify invoking Rule 2 to reach the merits of the appeal.

*Id.* at 201, 657 S.E.2d at 367.

¶ 12 Plaintiff's noncompliance with Appellate Rules 26 and 28 are both "substantial" and "gross." *Id.* This Court may impose sanctions when a party "substantially failed to comply with these rules, including failure to pay any filing or printing fees or costs when due. The court may impose sanctions of the type and in the manner prescribed by Rule 34 for frivolous appeals." N.C. R. App. P. 25(b).

### III. Conclusion

¶ 13 We deny Defendants' motion to dismiss. As a sanction for failure to follow Rule 28(j), and pursuant to N.C. R. App. P. 34(b)(3), we limit our review and decline to consider Plaintiff's arguments, which are not raised until well past the maximum word limit allowed in N.C. R. App. P. 28(j). *See D'Aquisto v. Mission St. Joseph's Health Sys.*, 171 N.C. App. 216, 225 n.3, 614 S.E.2d 583, 589 n.3 (2005), *rev'd in part on other grounds*, 360 N.C. 567, 633 S.E.2d 89 (2006); *Malone v. Hutchison-Malone*, 258 N.C. App. 369, 810 S.E.2d 416, 2018 WL 1162811 (2018) (unpublished). Plaintiff has not raised any issue for our review within the applicable word count or within a

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reasonable extension beyond the word limit. Plaintiff's substantial rules violations impair our ability to review the merits. We cannot discern any potentially meritorious argument justifying any additional relief. Plaintiff has failed to carry her burden on appeal to show prejudicial error in the trial court's order.

¶ 14

The trial court's order is affirmed. *It is so ordered.*

AFFIRMED.

Judges HAMPSON and WOOD concur.

Report per Rule 30(e).