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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-614

Filed 16 January 2024

Beaufort County, No. 22CVD123

CHAUNCEY PEELE, Plaintiff,

v.

MELBA HODGES PEELE, Defendant.

Appeal by defendant from order purportedly entered by Judge Regina R. Parker in District Court, Beaufort County. Heard in the Court of Appeals 20 November 2023.

*Melba Hodges Peele, pro-se, defendant-appellant.*

*No brief filed for plaintiff-appellee.*

PER CURIAM.

Defendant purports to appeal from an order granting plaintiff permanent custody of their minor children. As Defendant's notice of appeal is defective, we dismiss.

**I. Background**

PEELE V. PEELE

*Opinion of the Court*

On 22 February 2022, plaintiff-father filed a complaint for child custody and absolute divorce. On 25 February 2022, an *ex parte* custody order was entered determining Father to be a fit and proper parent and defendant-mother to not be a fit and proper parent; the order granted “care, custody, and control of the minor children” to Father. On 31 May 2022, a temporary custody order was entered, which also granted Father “the care, custody, and control of the minor children[.]” and granted Mother visitation rights.

Based upon a letter from Father’s counsel to Mother, it appears the trial court held a hearing regarding permanent custody on 1 November 2022.<sup>1</sup> On 2 November 2022, Mother filed a document entitled “Notice of Appeal of Custody Rights.” The purported notice of appeal does not identify any order or action by the trial court but includes about two single-spaced pages of statements regarding the “right of appeal under N.C.G.S 7B-1001(5),” various provisions of the North Carolina Constitution, and a Domestic Violence Protective Order issued in another case file number involving Mother and Father.

On or about 8 December 2022, Father’s counsel sent Mother a letter enclosing a “draft of the permanent custody order to be submitted . . . in the coming days. This order details the findings from the hearing on November 1<sup>st</sup>, 2022[.]” The letter

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<sup>1</sup> Mother did not provide a transcript of the hearing and our record does not identify the date of the permanent custody hearing. According to the letter, the trial court held the hearing on 1 November and announced findings of fact and a decree at the hearing.

enclosed a draft permanent custody order. The only document identified by Mother as a permanent custody order is this draft, but it was not signed by any judicial official nor file stamped by any court. In fact, on or about 29 December 2022, Father’s counsel sent a letter addressed to the trial judge, which was also mailed to Mother, requesting the draft permanent custody order be signed by the judge and stating “[Father’s counsel] drafted a permanent custody order for [Mother’s] review and [the trial judge’s] signature. The draft order was mailed to [Mother] on December 8<sup>th</sup>, 2022. Since that time, [Father’s counsel has] not received any statements or contact from [Mother.]” Our record does not include any response or action taken after this letter.

## **II. Jurisdiction**

Under Rule 3(d) of the North Carolina Rules of Appellate Procedure, the notice of appeal must “designate the judgment or order from which appeal is taken[.]” N.C. R. App. P. 3(d). Our Supreme Court has explained Rule 3 and its requirements, stating,

[i]n order to confer jurisdiction on the state’s appellate courts, appellants of lower court orders must comply with the requirements of Rule 3 of the North Carolina Rules of Appellate Procedure. 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) (citations omitted).

This Court has also discussed the effect of a defective notice of appeal under Rule 3:

Here, defendant's purported notice of appeal lacked any information other than a heading that would designate it as an attempted appeal. The first page of the document contained a caption with the words "Notice of Appeal" with the remainder of the page blank. The second page consisted of two paragraphs that argues why plaintiff had not been damaged and contained the *pro se* defendant's signature. It did not comply with any of the requirements of Rule 3 other than containing a signature. It is apparent from a cursory review of the paper writing that it was not a proper Notice of Appeal and was not sufficient to deprive the trial court of jurisdiction or to convey jurisdiction to this Court. *Brooks v. Gooden*, 69 N.C. App. 701, 707, 318 S.E.2d 348, 352 (1984) ("Without proper notice of appeal, this Court acquires no jurisdiction.") (citation omitted); *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 364 (2008) ("[A] default precluding appellate review on the merits necessarily arises when the appealing party fails to complete all of the steps necessary to vest jurisdiction in the appellate court.") (citation omitted); *State v. Kirkman*, 251 N.C. App. 274, 283, 795 S.E.2d 379, 385 (2016) (finding that because the defendant's "notice of appeal was defective, . . . jurisdiction was not with this Court, but rather still with the trial court[,] but still assessing the merits of the claim since the defendant acknowledged this error and filed a petition for *writ of certiorari*) (citing *State v. Miller*, 205 N.C. App. 724, 696 S.E.2d 542 (2010)), *disc. review denied*, 369 N.C. 523, 797 S.E.2d 299 (Mem) (2017).

*Venters v. Lanier*, 288 N.C. App. 483, 486-87, 886 S.E.2d 188, 190-91 (2023).

Here, Mother's purported notice of appeal does not identify any order or action by the trial court but instead makes various statements regarding her factual and legal claims, many of which are unrelated to child custody under Chapter 50 of the North Carolina General Statutes. Mother's purported notice of appeal was filed on 2 November 2022, over a month before Father's counsel sent a draft of the permanent

custody order to Mother on 8 December 2022, and nearly two months before Father's counsel sent a letter to the trial judge on 29 December 2022 explaining that Mother never replied to the 8 December 2022 draft.

Considering the timing of the purported notice of appeal, it was not an appeal from the permanent custody order, as there was not even a draft of the proposed order on 2 November 2022. The purported notice of appeal also refers to a domestic violence proceeding involving the parties and cites to North Carolina General Statute Section 7B-1001(5), which deals with appeals from abuse, neglect, and dependency cases under Chapter 7B of the North Carolina General Statutes. *See* N.C. Gen. Stat. § 7B-1001(5) (2021). The record does not include any information regarding any proceeding under Chapter 7B.

In addition to the defective notice of appeal, the record on appeal and Mother's brief are both rife with violations of the North Carolina Rules of Appellate Procedure which rise to the level that we are unable to discern any cognizable legal argument regarding child custody. *See* N.C. R. App. P. 3(d) ("Content of Notice of Appeal. The notice of appeal required to be filed and served by subsection (a) of this rule shall specify the party or parties taking the appeal; *shall designate the judgment or order from which appeal is taken and the court to which appeal is taken*; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record." (emphasis added)). Thus, we must dismiss this purported appeal as we do not have jurisdiction to hear it.

**III. Conclusion**

Since Mother's purported notice of appeal did not identify any specific order or action of the trial court, this Court does not have jurisdiction over this appeal, and we therefore dismiss the appeal.

DISMISSED.

Before a Panel Consisting of:

Judges STROUD, STADING, and THOMPSON.

Report per Rule 30(e).