

MARK BLEVINS d/b/a RAINBOW RECYCLING, Petitioner v. TOWN OF WEST JEFFERSON and TOWN OF WEST JEFFERSON BOARD OF ADJUSTMENT, Respondents

No. 210A07

FILED: 12 OCTOBER 2007

Appeal and Error-notice of appeal-filing notice with clerk of court-waiver of service of notice

A decision by the Court of Appeals that it did not have jurisdiction to hear respondent board of adjustment's purported appeal from a superior court order is reversed for the reasons stated in the dissenting opinion that respondent's notice of appeal was sufficient to show that the appeal was from the superior court order rather than from its own order, a statement in the record was sufficient to show that the notice of appeal was filed with the clerk of superior court where petitioner stipulated to the record on appeal and thus stipulated to this statement, and petitioner waived respondent's failure to serve the notice of appeal on it by stipulating to the record on appeal, failing to raise any issue as to service, and filing a brief in the Court of Appeals addressing the merits of the appeal.

Slip Opinion

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 182 N.C. App. ___, 643 S.E.2d 465 (2007), dismissing respondents' appeal from an order entered 26 April 2006 by Judge Michael E. Helms in Superior Court, Ashe County. Heard in the Supreme Court 13 September 2007.

Kilby & Hurley Attorneys at Law, by John T. Kilby, for petitioner-appellee.

Vannoy & Reeves, PLLC, by Jimmy D. Reeves and John Benjamin "Jak" Reeves, for respondent-appellants.

PER CURIAM.

For the reasons stated in the dissenting opinion, the decision of the Court of Appeals is reversed and this case is remanded to that court to address the merits of the appeal.

REVERSED AND REMANDED.

