

# North Carolina Court of Appeals

## Docket Sheet

Kirby, v NC Dep't of Transp.

**Case Number:** 14-184

**As of:** 05/01/2024

**Case Closed:** Yes      **Close Date:** 03-09-2015      **Case Type:** Civil (Civil\_othr)      **Mediation:** No

EVERETTE E. KIRBY and Wife, MARTHA KIRBY; HARRIS TRIAD HOMES, INC.; MICHAEL HENDRIX, as Executor of the Estate of Frances Hendrix; DARREN ENGELKEMIER; IAN HUTAGALUNG' SYLVIA MAENDL' STEVEN DAVID STEPT; JAMES W. NELSON and wife, PHYLLIS H. NELSON; AND REPUBLIC PROPERTIES, LLC, a North Carolina company (Group 1 Plaintiffs)  
Plaintiffs,

v

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,  
Defendant.

<b>Docket Date:</b>	02-12-2014	<b>File Date:</b>	02-12-2014	<b>File Time:</b>	09:30	<b>Acquired Date:</b>	02-12-2014		
<b>Bond Collected:</b>	Yes	<b>Docket Fee:</b>	Yes	<b>Pauper:</b>	No	<b>Print Deposit:</b>	No	<b>State Appeals:</b>	No

### History

**Venue:** Forsyth (31)      **Heard In:** Superior Court

**To SC:**      **From SC:**

### Lower Court Number(s)

**Location:** Forsyth (31)

**Judge:** John O. Craig III

**Case #:** 11CVS7119 11CVS7120 11CVS8170 11CVS8171 11CVS8172 11CVS8173 11CVS8174 11CVS8338 12CVS2898

### Tracking/Argue

**Argue Date:** 08-12-2014 #

### Opinion

**Opinion Date:** 02-17-2015      **Cert Date:** 03-09-2015

**Author:** Honorable Linda M. McGee

**Decision:** Reversed and Remanded

**Opinion Notes:**

**Opinion Pages:** 47      **Opinion Cost:** \$ 9.40

**Cite:**

Slip Opinion: <https://appellate.nccourts.org/opinions/?c=2&pdf=31797>

<b>Documents</b>
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Document	Date Recvd	Cert of Service	Rec/Brf Due	Resp. Due	Resp. Recvd	Mailed Out	Ruling	Ruling Date
(1) RECORD	02-12-2014	02-11-2014				02-12-2014		
(2) M-GEN	02-20-2014	02-20-2014					Allowed	02-24-2014
(3) M-GEN	02-27-2014	02-27-2014					Allowed	03-03-2014
(4) M-EXT-BR	03-10-2014	03-10-2014					Allowed	03-12-2014
(5) M-GEN	03-12-2014	03-11-2014					Allowed	03-12-2014
(6) APPELLANT BRIEF	04-01-2014	03-28-2014				04-01-2014		
(7) APPELLANT BRIEF	04-14-2014	04-14-2014				04-15-2014		
(8) M-GEN	04-15-2014	04-15-2014					Allowed	04-16-2014
(9) AMENDED	04-15-2014	04-15-2014				04-17-2014		
(10) M-GEN	04-23-2014	04-23-2014					Allowed	04-24-2014
(11) M-EXT-RS	05-06-2014	05-06-2014					Allowed	05-07-2014
(12) APPELLEE BRIEF	05-30-2014					06-02-2014		
(13) APPELLEE BRIEF	06-09-2014	06-05-2014				06-09-2014		
(14) M-EXT-RS	06-09-2014	06-09-2014					Allowed	06-11-2014
(15) REPLY	06-12-2014					06-13-2014		
(16) REPLY	06-17-2014	06-12-2014				06-17-2014		
(17) REPLY	06-20-2014					06-23-2014		
(18) ADD-AUTH	07-21-2014	07-21-2014						
(19) ADD-AUTH	07-23-2014	07-23-2014						
(20) ADD-AUTH	07-31-2014	07-28-2014						

**1 - RECORD**

Filed: 02-12-2014 @ 09:30:00

FOR: Appellant Kirby, Eugene, et al

BY : Mr. Matthew H. Bryant

HENDRICK BRYANT NERHOOD &amp; OTIS, LLP

**2 - MOTION APPELLANTS' MOTION TO EXTEND BRIEFING PAGE LIMITS - (RULE 28 (J) OF THE NORTH CAROLINA RULES OF APPELLATE PROCEDURE) (Allowed) - 02-24-2014**

Filed: 02-20-2014 @ 11:11:14

FOR: Appellant Kirby, Eugene, et al

BY : Mr. Matthew H. Bryant

HENDRICK BRYANT NERHOOD &amp; OTIS, LLP

The following order was entered:

The motion filed in this cause on the 20th of February 2014 and designated 'Appellants' Motion to Extend Briefing Page Limits - (Rule 28 (j) of the North Carolina Rules of Appellate Procedure)' is allowed as follows: Plaintiff-appellants may file a brief not exceeding fifty pages (nonproportional type) in length.

By order of the Court this the 24th of February 2014.

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3 - MOTION APPELLEE/CROSS-APPELLANT'S MOTION TO EXTEND BRIEFING PAGE LIMITS (N.C.R. APP. P. 28(J)) (Allowed) - 03-03-2014  
Filed: 02-27-2014 @ 14:15:43  
FOR: Defendant-Appellant North Carolina Department Of Transportation  
BY : Mr. John F. Oates, Jr.  
N.C. DEPARTMENT OF JUSTICE

The following order was entered:

The motion filed in this cause on the 27th of February 2014 and designated 'Appellee/Cross-Appellant's Motion to Extend Briefing Page Limits (N.C.R. App. P. 28(j))' is allowed as follows: Defendant-appellant may file a brief not exceeding fifty page (nonproportional type) in length.

By order of the Court this the 3rd of March 2014.

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4 - M-EXT-BR (Allowed) - 03-12-2014  
Filed: 03-10-2014 @ 15:54:09  
FOR: Appellant Kirby, Eugene, et al  
BY : Mr. Matthew H. Bryant  
HENDRICK BRYANT NERHOOD & OTIS, LLP

The following order was entered:

The motion filed in this cause on the 10th of March 2014 and designated 'Appellants' Motion to Extend Time to File Brief' is allowed. Plaintiff-appellants' brief shall be filed on or before 14 April 2014.

By order of the Court this the 12th of March 2014.

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5 - MOTION MOTION FOR EXTENSION OF TIME TO FILE APPELLEE/CROSS-APPELLANT'S BRIEF (Allowed) - 03-12-2014  
Filed: 03-12-2014 @ 08:05:13  
FOR: Defendant-Appellant North Carolina Department Of Transportation  
BY : Mr. Dahr Joseph Tanoury  
N.C. DEPARTMENT OF JUSTICE

The following order was entered:

The motion filed in this cause on the 12th of March 2014 and designated 'Motion for Extension of Time to File Appellee/Cross-Appellant's Brief' is allowed. Defendant-appellant's brief shall be filed on or before 14 April 2014.

By order of the Court this the 12th of March 2014.

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6 - APPELLANT BRIEF  
Filed: 04-01-2014 @ 07:54:00  
FOR: Appellant Kirby, Eugene, et al  
BY : Mr. Matthew H. Bryant  
HENDRICK BRYANT NERHOOD & OTIS, LLP

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7 - APPELLANT BRIEF  
Filed: 04-14-2014 @ 04:50:00  
FOR: Defendant-Appellant North Carolina Department Of Transportation  
BY : Mr. Dahr Joseph Tanoury  
N.C. DEPARTMENT OF JUSTICE

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8 - MOTION MOTION TO FILE AN AMENDED DEFENDANT-CROSS APPELLANT'S BRIEF (Allowed) - 04-16-2014  
Filed: 04-15-2014 @ 14:43:08  
FOR: Defendant-Appellant North Carolina Department Of Transportation  
BY : Mr. Dahr Joseph Tanoury  
N.C. DEPARTMENT OF JUSTICE

The following order was entered:

The motion filed in this cause on the 15th of April 2014 and designated 'Motion to File An Amended Defendant-Cross Appellant's Brief' is allowed. Defendant-appellant's brief is stricken, and the attached amended brief shall be substituted and printed.

By order of the Court this the 16th of April 2014.

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9 - APPELLANT BRIEF AMENDED  
Filed: 04-15-2014 @ 01:03:00  
FOR: Defendant-Appellant North Carolina Department Of Transportation  
BY : Mr. Dahr Joseph Tanoury  
N.C. DEPARTMENT OF JUSTICE

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10 - MOTION MOTION FOR EXTENSION OF TIME TO FILE APPELLEE'S BRIEF (Allowed) - 04-24-2014

Filed: 04-23-2014 @ 16:03:57

FOR: Defendant-Appellant North Carolina Department Of Transportation

BY : Mr. Dahr Joseph Tanoury  
N.C. DEPARTMENT OF JUSTICE

The following order was entered:

The motion filed in this cause on the 23rd of April 2014 and designated 'Motion for Extension of Time to File Appellee's Brief' is allowed. Defendant-appellee's brief shall be filed on or before 30 May 2014.

By order of the Court this the 24th of April 2014.

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11 - M-EXT-RS (Allowed) - 05-07-2014

Filed: 05-06-2014 @ 15:33:00

FOR: Appellant Kirby, Eugene, et al

BY : Mr. Matthew H. Bryant  
HENDRICK BRYANT NERHOOD & OTIS, LLP

The following order was entered:

The motion filed in this cause on the 6th of May 2014 and designated 'Cross-Appellees' Motion to Extend Time to File Brief' is allowed in part. Plaintiff-appellees' brief shall be filed on or before 9 June 2014.

By order of the Court this the 7th of May 2014.

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12 - APPELLEE BRIEF

Filed: 05-30-2014 @ 12:03:42

FOR: Defendant-Appellant North Carolina Department Of Transportation

BY : Mr. Dahr Joseph Tanoury  
N.C. DEPARTMENT OF JUSTICE

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13 - APPELLEE BRIEF

Filed: 06-09-2014 @ 07:32:00

FOR: Appellant Kirby, Eugene, et al

BY : Mr. Matthew H. Bryant  
HENDRICK BRYANT NERHOOD & OTIS, LLP

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14 - M-EXT-RS (Allowed) - 06-11-2014

Filed: 06-09-2014 @ 16:07:33

FOR: Appellant Kirby, Eugene, et al

BY : Mr. Matthew H. Bryant  
HENDRICK BRYANT NERHOOD & OTIS, LLP

The following order was entered:

The motion filed in this cause on the 9th of June 2014 and designated 'Appellants' Motion to Extend Time to File Brief' is allowed in part. Plaintiff-appellants' reply brief shall be filed on or before 23 June 2014. See N.C.R. App. P. 28(h) (motions to extend the time are disfavored).

By order of the Court this the 11th of June 2014.

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15 - APPELLANT BRIEF REPLY

Filed: 06-12-2014 @ 16:05:43

FOR: Appellant Kirby, Eugene, et al

BY : Mr. Matthew H. Bryant  
HENDRICK BRYANT NERHOOD & OTIS, LLP

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16 - APPELLANT BRIEF REPLY

Filed: 06-17-2014 @ 07:22:00

FOR: Appellant Kirby, Eugene, et al

BY : Mr. Matthew H. Bryant  
HENDRICK BRYANT NERHOOD & OTIS, LLP

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17 - APPELLANT BRIEF REPLY

Filed: 06-20-2014 @ 11:41:03

FOR: Defendant-Appellant North Carolina Department Of Transportation

BY : Mr. Dahr Joseph Tanoury  
N.C. DEPARTMENT OF JUSTICE

18 - MEMOS ADD-AUTH  
 Filed: 07-21-2014 @ 17:48:10  
 FOR: Appellant Kirby, Eugene, et al  
 BY : Mr. Matthew H. Bryant  
 HENDRICK BRYANT NERHOOD & OTIS, LLP

19 - MEMOS ADD-AUTH  
 Filed: 07-23-2014 @ 10:35:07  
 FOR: Appellant Kirby, Eugene, et al  
 BY : Mr. Matthew H. Bryant  
 HENDRICK BRYANT NERHOOD & OTIS, LLP

20 - MEMOS ADD-AUTH  
 Filed: 07-31-2014 @ 13:44:48  
 FOR: Appellant Kirby, Eugene, et al  
 BY : Mr. Matthew H. Bryant  
 HENDRICK BRYANT NERHOOD & OTIS, LLP

### Financial Information

#### Receipts

Date Charged	Charge Type	Amount Charged	Amount Paid	Document	Pages	Receipt #	Date Paid
02-12-2014	Docket Fee	10.00	10.00			R032009714	03-11-2014
05-06-2014	Printing	196.00	196.00	APPELLANT BRIEF	112	R052042914	05-23-2014
05-06-2014	Printing	197.75	197.75	APPELLANT BRIEF	113	R052043714	05-23-2014
07-01-2014	Printing	155.75	155.75	APPELLEE BRIEF	89	R072050514	07-25-2014
07-01-2014	Printing	47.25	47.25	APPELLANT BRIEF	27	R072054914	07-25-2014
03-04-2015	Assess	1270.25	1270.25			R042009615	04-10-2015
04-14-2015	Cert Fee	10.00	10.00			R042044115	04-29-2015
02-12-2014	Docket Fee	10.00	10.00			R022014914	02-12-2014
02-12-2014	Bond	250.00	250.00			R022014914	02-12-2014
02-12-2014	Printing	890.75	890.75	RECORD	509	R032019314	03-21-2014
04-01-2014	Printing	154.00	154.00	APPELLANT BRIEF	88	R052007614	05-08-2014
06-09-2014	Printing	73.50	73.50	APPELLEE BRIEF	42	R062011214	06-16-2014
06-13-2014	Printing	66.50	66.50	APPELLANT BRIEF	38	R062018614	06-26-2014
06-17-2014	Printing	66.50	66.50	APPELLANT BRIEF	38	R062018714	06-26-2014
09-01-2014	CD/DVD	10.00	10.00			R092000114	09-01-2014

#### Payments

Payment Date	Payment Type	Amount	Check Number
05-11-2015	Disburse	1511.25	40073

#### Exhibits

#### Transcript(s) Electronically Filed

trans.kirby-et-al.v.dot-feb.21-22-2013.pdf

#### Parties

Party Name	Role
Kirby, Eugene	Plaintiff-Appellant
Kirby, Martha	Plaintiff-Appellant
Harris Triad Homes, Inc.	Plaintiff-Appellant
Hendrix, Michael	Plaintiff-Appellant
Engelkemier, Darren	Plaintiff-Appellant
Hutagalung, Ian	Plaintiff-Appellant
Maendl, Sylvia	Plaintiff-Appellant
Stept, Stephen	Plaintiff-Appellant
Nelson, James	Plaintiff-Appellant
Nelson, Phyliss	Plaintiff-Appellant
Republic Properties, LLC	Plaintiff-Appellant
North Carolina Department Of Transportation	Defendant-Appellant

### Attorneys

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