

ATCHLEY GRADING COMPANY, Plaintiff-appellant v. WEST CABARRUS
CHURCH, Defendant-appellee
No. COA01-198

(Filed 28 December 2001)

**Appeal and Error--preservation of issues--failure to present
argument or authority**

A plaintiff's appeal from the trial court's grant of summary judgment on 26 April 2000 in favor of defendant in a claim of lien and breach of contract action is dismissed because: (1) plaintiff only gave notice of appeal from the 20 October 2000 order denying plaintiff's N.C.G.S. § 1A-1, Rules 59(a)(7) and 60(b)(6) motion; and (2) plaintiff has not presented any arguments or authority pertaining to the denial of its N.C.G.S. § 1A-1, Rules 59(a)(7) and 60(b)(6) motion as required by N.C. R. App. P. 28.

Appeal by plaintiff from order entered 20 October 2000 by Judge Richard D. Boner in Cabarrus County Superior Court. Heard in the Court of Appeals 6 December 2001.

Carl S. Conroy for plaintiff-appellant.

*Hartsell, Hartsell & White, P.A., by J. Merritt White, III,
for defendant-appellee.*

BRYANT, Judge.

On 17 May 1999, plaintiff Atchley Grading Company filed a claim of lien for the amount of \$80,811.50 against real property owned by defendant West Cabarrus Church for services plaintiff provided for defendant. Plaintiff instituted this action on 30 August 1999 to enforce the lien and present a claim for breach of contract. Defendant filed an answer and counterclaim on 28 October 1999. Plaintiff filed a reply on 15 December 1999.

On 27 March 2000, defendant filed a motion for summary judgment, and plaintiff filed a motion to amend its complaint to include a claim of unfair and deceptive trade practices on the same

date. A hearing on the motions was held on 17 April 2000 with the Honorable Richard D. Boner presiding. By order entered 26 April 2000, defendant's motion for summary judgment was granted pursuant to N.C. R. Civ. Pro. 56.

On 8 May 2000, plaintiff filed a motion for a new trial and relief from the 26 April 2000 order pursuant to N.C. R. Civ. Pro. 59(a)(7) and 60(b)(6), respectively. A hearing for plaintiff's motion was held on 5 June 2000 with Judge Boner presiding. By order entered 20 October 2000, plaintiff's N.C. R. Civ. Pro. 59(a)(7) and 60(b)(6) motion was denied. On 17 November 2000, plaintiff filed notice of appeal from the 20 October 2000 order.

On appeal, plaintiff presents three arguments all relating to the 26 April 2000 order by which defendant's motion for summary judgment was granted. We note that plaintiff only gave notice of appeal from the 20 October 2000 order denying plaintiff's N.C. R. Civ. Pro. 59(a)(7) and 60(b)(6) motion. Any arguments pertaining to the underlying 26 April 2000 order are not properly before this Court. See N.C. R. App. P. 3; see also *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990) ("Proper notice of appeal requires that a party shall designate the judgment or order from which appeal is taken . . . [.] Without proper notice of appeal, this Court acquires no jurisdiction.") (citations and internal quotations omitted).

In violation of the rules of appellate procedure, plaintiff has neither presented any arguments nor authority pertaining to the denial of its N.C. R. Civ. Pro. 59(a)(7) and 60(b)(6) motion. See N.C. R. App. P. 28. Based on the abovementioned violations,

plaintiff's appeal is deemed abandoned. Plaintiff's appeal is therefore dismissed.

Dismissed.

Judges McGEE and HUNTER concur.