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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-490

Filed: 7 November 2017

Durham County, No. 15 CVS 2678

JOSEPH MICHAEL GRIFFITH, Plaintiff,

v.

NORTH CAROLINA PRISONER LEGAL SERVICES, INC., MARY S. POLLARD, NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES, THOMAS K. MAHER, individually and in his official capacity as executive director of the Office of Indigent Defense Services, and THE STATE OF NORTH CAROLINA, Defendants.

Appeal by plaintiff from orders entered 11 July 2016 and 12 January 2017 by Judge Orlando F. Hudson, Jr., in Durham County Superior Court. Heard in the Court of Appeals 17 October 2017.

*Joseph Michael Griffith, pro se-appellant.*

*Sigmon Law, PLLC, by Mark R. Sigmon, for North Carolina Prisoner Legal Services and Mary S. Pollard.*

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Grady L. Balentine, Jr., for North Carolina Office of Indigent Defense Services, Thomas K. Maher, and the State of North Carolina.*

ARROWOOD, Judge.

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Joseph Michael Griffith (“plaintiff”) appeals from orders granting North Carolina Prisoner Legal Services, Inc. (“PLS”), Mary S. Pollard (“Pollard”), North Carolina Office of Indigent Defense Services (“IDS”), Thomas K. Maher (“Maher”), individually and in his official capacity as executive director of IDS, and the State of North Carolina’s (“State”) (collectively “defendants”) motions to dismiss. For the reasons stated herein, we dismiss plaintiff’s appeal *ex mero motu*.

I. Background

On 16 April 2015, plaintiff, an inmate in a North Carolina prison, filed a complaint against defendants. Plaintiff alleged that a contract between IDS and PLS did not fulfill the State’s constitutional obligation to ensure that plaintiff and others similarly situated have meaningful access to the courts pursuant to Article I, Section 18 of the North Carolina Constitution. Plaintiff enumerated four claims for relief: (1) a claim under the United States and North Carolina Constitutions regarding his right to have meaningful access to the courts; (2) a contract claim based on the allegation that plaintiff and all similarly situated inmates are third-party beneficiaries of the contract; (3) a claim that PLS failed to provide legal assistance to plaintiff in regards to his claim that the North Carolina Department of Public Safety improperly banned certain literature; (4) a claim that PLS failed to provide legal assistance to plaintiff in regards to his claim that the North Carolina Department of Public Safety improperly seized his property. Plaintiff also filed a “Petition to

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Sue/Appeal/File Motions as an Indigent[.]” On 21 April 2015, plaintiff’s petition to sue as an indigent was denied and his complaint was dismissed as frivolous.

Plaintiff filed a notice of appeal, along with a petition to appeal as an indigent, and a motion requesting that he be allowed to appeal without paying costs. Plaintiff’s petition to appeal as an indigent was denied. On 18 June 2015, the trial court entered an order stating that plaintiff had no right to appeal.

On 10 August 2015, plaintiff filed a petition for *writ of certiorari* to this Court. On 28 August 2015, our Court granted the petition, allowing plaintiff to appeal the 21 April 2015 order dismissing plaintiff’s complaint and denying his petition to sue as an indigent inmate. The Durham County Superior Court was ordered to hold a hearing to determine whether plaintiff was entitled to proceed on appeal as an indigent inmate.

On 9 October 2015, the trial court entered an order setting aside its denial of the first petition to sue as an indigent and dismissal. A hearing to determine whether plaintiff was entitled to proceed on appeal as an indigent was set. Following the hearing, on 11 December 2015, the trial court entered an order holding that plaintiff was an indigent inmate, that his complaint was not frivolous, and that he was authorized to bring suit, to appeal, or to file motions in this action as an indigent.

On 1 April 2016, PLS and Pollard filed a motion to dismiss plaintiff’s complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil

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Procedure. On 15 April 2016, IDS, Maher, and the State also filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure.

On 11 July 2016, the trial court entered an order granting PLS and Pollard's motion to dismiss plaintiff's complaint. On 12 January 2017, the trial court entered an order granting IDS, Maher, and the State's motion to dismiss plaintiff's complaint. Plaintiff's complaint was dismissed with prejudice.

On 9 August 2016, plaintiff entered notice of appeal from the 11 July 2016 order. On 9 February 2017, plaintiff entered notice of appeal from the 12 January 2017 order.

II. Appellate Jurisdiction

When the record clearly shows that subject matter jurisdiction is lacking, the Court will take notice and dismiss the action *ex mero motu*. Every court necessarily has the inherent judicial power to inquire into, hear and determine questions of its own jurisdiction, whether of law or fact, the decision of which is necessary to determine the questions of its jurisdiction.

*Lemmerman v. A.T. Williams Oil Co.*, 318 N.C. 577, 580, 350 S.E.2d 83, 86 (1986) (internal citations omitted).

“In 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.” *Phelps Staffing, LLC v. S.C. Phelps, Inc.*, 217 N.C.

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App. 403, 410, 720 S.E.2d 785, 790-91 (2011) (citation omitted). Rule 3(d) governs the contents of the notice of appeal and provides that the notice of appeal “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 . . .*” N.C. R. App. P. 3(d) (2017) (emphasis added). “Without proper notice of appeal, this Court acquires no jurisdiction.” *Dixon v. Hill*, 174 N.C. App. 252, 257, 620 S.E.2d 715, 718 (2005) (citation omitted). “A jurisdictional default . . . precludes the appellate court from acting in any manner other than to dismiss the appeal.” *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008) (citation omitted).

Here, plaintiff gave notice of appeal from the 11 July 2016 order granting PLS and Pollard’s motion to dismiss as follows:

Now comes Plaintiff Joseph Michael Griffith, pro-se, pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure and hereby Give Notice of Appeal to the honorable Superior Court Judge Orlando Hudson order granting motion to dismiss for defendants North Carolina Prisoner Legal Services, Inc. and Mary S. Pollard on July 11, 2016.

Plaintiff also gave notice of appeal from the 12 January 2016 order granting IDS, Maher, and the State’s motion to dismiss as follows:

Now comes plaintiff Joseph Michael Griffith, pro-se, and plaintiff’s all similarly situated Inmates pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure And hereby Give Notice of Appeal from the final Judgment

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“Order” entered on January 11, 2017 in the Superior Court of Durham County by the honorable Superior Court Judge Orlando Hudson Granting defendants North Carolina Office of Indigent Defense Services, Thomas K. Maher, and the State of North Carolina’s motion to dismiss.

Neither of plaintiff’s notices of appeal designated this Court as the court to which plaintiff directed his appeal. Clearly, plaintiff has failed to comply with the content requirement of Rule 3(d). Because this Court does not possess jurisdiction to address plaintiff’s appeal, plaintiff’s appeal must be dismissed.

We note that although plaintiff’s brief is entitled “Appellants Brief In the Alternative Appellants Petition for Writ of Certiorari[,]” there are no substantive arguments in his brief to support the issuance of a *writ of certiorari*. See *House of Raeford Farms, Inc. v. Raeford*, 104 N.C. App. 280, 284, 408 S.E.2d 885, 888 (1991) (citations omitted) (“To meet the pleading requirements for a petition for a writ of certiorari, a party must demonstrate: (1) no appeal is provided at law; (2) a *prima facie* case of error below; and (3) merit to its petition.”). Nevertheless, we have carefully reviewed the record and find no merit to plaintiff’s purported appeal. Accordingly, plaintiff’s petition for *writ of certiorari* is denied.

For the foregoing reasons, we dismiss the appeal *ex mero motu*.

DISMISSED.

Judges BRYANT and MURPHY concur.

Report per Rule 30(e).