An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-978

Filed: 2 January 2018

Mecklenburg County, No. 16 CVS 1692

MARY KEELS, Plaintiff,

v.

DARALICK LAJON FRAZIER, individually and as an employee of the Mecklenburg County Sheriff's Department, SHERIFF IRWIN CARMICHAEL, individually and in his official capacity, OHIO CASUALTY INSURANCE COMPANY, and MECKLENBURG COUNTY SHERIFF'S DEPARTMENT, Defendants.

Appeal by Plaintiff from order entered 21 June 2016 by Judge Jesse B. Caldwell III in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 March 2017.

Ramsay Law Firm, by Brian C. Hunt, for Plaintiff.

Womble, Carlyle, Sandridge & Rice, LLP, by Sean F. Perrin, for Defendants.

INMAN, Judge.

Mary Keels ("Plaintiff") appeals from an order dismissing her complaint with prejudice for lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process as to Daralick Lajon Frazier ("Deputy Frazier") in

his individual and official capacities, and in his individual capacity under the public official immunity doctrine. After careful review, we affirm.

I. Factual and Procedural History

The allegations in the complaint and record below disclose the following:

On 27 March 2013, Plaintiff was driving eastbound on Hickory Grove Road in Mecklenburg County, North Carolina.[1] Deputy Frazier was providing an escort for a funeral procession in the same direction. As Plaintiff was turning left across Hickory Grove Road, Deputy Frazier's vehicle crossed into the westbound lane and struck Plaintiff's vehicle.

Plaintiff filed a complaint for damages arising out of the accident on 27 May 2015. On 23 November 2015, she voluntarily dismissed her complaint without prejudice under Rule 41 of the North Carolina Rules of Civil Procedure. Plaintiff refiled her claim on 9 February 2016 with negligence as the sole cause of action. A summons directed to Deputy Frazier was returned as served by a Mecklenburg County Sheriff's deputy on 19 February 2016. The return of service notwithstanding, Plaintiff sued out a series of alias and pluries summonses for service on Deputy Frazier on 8 March 2016, 4 May 2016, and 20 July 2016. None of these alias and pluries summonses, as contained in the record, indicates service on Deputy Frazier.

[1] Contrary to the filed complaint's allegations, Plaintiff's brief states that the parties were actually travelling on W.T. Harris Boulevard. We recite the facts as alleged in Plaintiff's pleadings before the trial court, rather than as alleged in her appellate brief.

As Plaintiff was suing out alias and pluries summonses, Deputy Frazier and the other defendants in the action filed a motion to dismiss all claims against all defendants pursuant to Rules 12(b)(2), (4), (5), and (6) of the North Carolina Rules of Civil Procedure on 14 April 2016. Among the several stated bases for dismissal, Deputy Frazier contended that Plaintiff's attempted service by a sheriff's deputy on 19 February 2016 constituted insufficient process and insufficient service of process for failure to comply with N.C. Gen. Stat. § 162-16. Deputy Frazier further contended that he was immune to suit in his individual capacity based upon the public official immunity doctrine.

On 21 June 2016, the trial court granted the motion to dismiss with prejudice as to all claims against all defendants. The trial court ordered the dismissal as to Deputy Frazier in his individual and official capacities for lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process, despite Plaintiff's sued out (if unserved) alias and pluries summonses. The trial court further ordered that dismissal was proper as to Deputy Frazier in his individual capacity based on the public official immunity doctrine. Plaintiff timely filed notice of appeal.

II. Analysis

Plaintiff's sole arguments on appeal concern the dismissal of her claim against Deputy Frazier. Her only contentions for review by this Court are that the trial court erred in dismissing her complaint as to Deputy Frazier: (1) in his individual and

official capacities for insufficiency of process and insufficiency of service of process; and (2) in his individual capacity based upon the doctrine of public official immunity.

At the outset of our review, we note Plaintiff's multiple and myriad violations of our Rules of Appellate Procedure. These include violations of: (1) Rule 28(b)(2)'s requirement to "include citation of the statute or statutes permitting appellate review" in the statement of grounds for appellate review; (2) Rule 28(b)(6)'s requirement to include "a concise statement of the applicable standard(s) of review for each issue[;]" (3) Rule 9(b)(4)'s requirement to consecutively number the pages of the printed record on appeal and include identification of counsel at the end of said record; and (4) the requirements of Rules 9(a)(1)(k) and 10(b) to include her proposed issues on appeal in the record. Though we do not dismiss the appeal for these violations, we remind counsel that "[t]he North Carolina Rules of Appellate Procedure are mandatory and 'failure to follow these rules will subject an appeal to dismissal.' " *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 401, 610 S.E.2d 360, 360 (2005) (quoting *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999)).

Plaintiff's first argument inartfully collapses three distinct legal concepts—process, service of process, and personal jurisdiction—into a single argument that her timely issuance of alias and pluries summonses kept her action alive such that dismissal was improper. These concepts, though undoubtedly interrelated, are distinct. Our courts "exercise personal jurisdiction over a defendant by service of

process in accordance with the provisions of Rule 4(j) or Rule 4(j1) of the Rules of Civil Procedure." N.C. Gen. Stat. § 1-75.6 (2015). "Generally, without valid service, the court cannot exercise jurisdiction over a person." *Ryals v. Hall-Lane Moving and Storage Co., Inc.*, 122 N.C. App. 242, 247, 468 S.E.2d 600, 604 (1996) (citation omitted). There are two potential points of failure in the service of process that may preclude a court from assuming jurisdiction: (1) defects in the summons, *i.e.,* insufficient process; and (2) defects in the manner of service, *i.e.,* insufficient service of said process. *See, e.g., Storey v. Hailey*, 114 N.C. App. 173, 177-180, 441 S.E.2d 602, 605-06 (1994) (analyzing sufficiency of process by looking to the summons itself and insufficiency of service of process by looking to the manner in which the summons was served before holding personal jurisdiction should have been exercised by the trial court).

Plaintiff contends that the trial court erred in dismissing her complaint for lack of jurisdiction over the person, insufficiency of service, and insufficiency of service of process on the basis that her continued issuance of alias and pluries summonses under Rule 4(d) of the North Carolina Rules of Civil Procedure maintained the action until proper service could be accomplished. However, alias and pluries summonses may be used to cure insufficient service of process, *not insufficient process itself*. *See, e.g., Franklin v. Winn Dixie Raleigh, Inc.*, 117 N.C. App. 28, 35-36, 450 S.E.2d 24, 28-29 (1994) (recognizing that Rule 4(d)'s alias and

pluries summonses can cure defects in service of process but not defects in the process itself). In short, Plaintiff's argument relates only to insufficient service of process, not insufficient process, and she presents no argument rebutting the trial court's dismissal on the latter ground. Further, our review is stifled by Plaintiff's failure to include in the record a verbatim transcript of the trial court hearing consistent with Rules 7 and 9 of the North Carolina Rules of Appellate Procedure.[2] *See, e.g., Sen Li v. Zhou*, ___ N.C. App. ___, ___, 797 S.E.2d 520, 524 (2017) (dismissing an issue where the failure to include a transcript, though not a jurisdictional failure under the Rules of Appellate Procedure, prevented adequate review on appeal). Because she raises no argument for reversing the dismissal of her claims against Deputy Frazier for insufficient process, we deem any appealable issues relating thereto abandoned. N.C. R. App. P. 28(b)(6) (2016) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned."). Any purported appeal from the trial court's order dismissing Plaintiff's claims against the other

[2] For example, the alias and pluries summons issued on 4 May 2016 appears to be defective, in that it states the wrong date of issuance of the preceding alias and pluries summons. This Court has held that a defect in the dates listed in an alias and pluries summons constitutes a break in the chain of summonses in certain instances. S*ee, e.g., Robertson v. Price*, 187 N.C. App. 180, 184-85, 652 S.E.2d 352, 355 (2007). Such a break "has the double effect of initiating a new action and discontinuing the original one." *Integon Gen. Ins. Co. v. Martin*, 127 N.C. App. 440, 441, 490 S.E.2d 242, 244 (1997) (citation omitted). Here, Plaintiff had already voluntarily dismissed her complaint pursuant to Rule 41(a)(1) once, and was therefore permitted to commence one "new action based on the same claim . . . within one year[.]" N.C. Gen. Stat. § 1A-1, Rule 41(a)(1) (2015). Assuming *arguendo* that Plaintiff's incorrect date in her alias and pluries summons broke the chain of summonses, her issuance of such defective summons discontinued her single allowable refiled action under Rule 41(a)(1) such that the trial court's dismissal for insufficiency of process was proper. We decline to resolve these questions, however, as Plaintiff failed to properly include a transcript of the hearing below for our review and the parties have not addressed the issue on appeal.

named defendants is likewise abandoned because Plaintiff's brief includes no argument whatsoever directed at the dismissals of her claims against Sheriff Irwin Carmichael, Ohio Casualty Insurance Co., or the Mecklenburg County Sheriff's Department.

III. Conclusion

The trial court dismissed Plaintiff's action for insufficiency of process, insufficiency of service of process, and lack of personal jurisdiction. Because Plaintiff's appeal presents argument only as to insufficiency of service of process and leaves undisturbed other appropriate grounds for dismissal, we affirm the ruling of the trial court without reaching her additional argument concerning public official immunity.

AFFIRMED.

Judges BRYANT and ZACHARY concur.

Report per Rule 30(e).