An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-411

Filed: 5 June 2018

Currituck County, No. 12 CVS 334

SWAN BEACH COROLLA, L.L.C., OCEAN ASSOCIATES, LP, LITTLE NECK TOWERS, L.L.C., GERALD FRIEDMAN, NANCY FRIEDMAN, CHARLES S. FRIEDMAN, 'TIL MORNING, LLC, and SECOND STAR, LLC, Plaintiffs,

v.

COUNTY OF CURRITUCK; THE CURRITUCK COUNTY BOARD OF COMMISSIONERS; and JOHN D. RORER, MARION GILBERT, O. VANCE AYDLETT, JR., H.M. PETREY, J. OWEN ETHERIDGE, PAUL MARTIN, and S. PAUL O'NEAL as members of the CURRITUCK COUNTY BOARD OF COMMISSIONERS, Defendants.

Appeal by Defendants from an Order entered 7 December 2016 by Judge Milton F. Fitch, Jr., in Currituck County Superior Court. Heard in the Court of Appeals 19 September 2017.

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., J. Mitchell Armbruster and Lacy H. Reaves, for Plaintiffs-Appellees.*

*The Brough Law Firm, PLLC, by G. Nicholas Herman and Donald I. McRee, Jr., for Defendants-Appellants.*

*Conner Gwyn Schenck PLLC, by James S. Schenck, IV, and General Counsel for North Carolina Association of County Commissioners, by Amy Bason, for Amicus Curiae, the North Carolina Association of County Commissioners.*

*Simonsen Law Firm, P.C., by Lars P. Simonsen, for Amicus Curiae, Northern Currituck Outer Banks Association.*

*Roger W. Knight, P.A., by Roger W. Knight, for Amicus Curiae, Fruitville Beach Civic Association.*

INMAN, Judge.

The County of Currituck, the Currituck County Board of Commissioners, and members of that Board (collectively, "Defendants") appeal from the trial court's denial of their motion for relief pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure, following the entry of a default judgment in favor of Swan Beach Corolla, L.L.C., Ocean Associates, LP, Little Neck Towers, L.L.C., Gerald Friedman, Nancy Friedman, Charles S. Friedman, 'til Morning, LLC, and Second Star, LLC (collectively, "Plaintiffs"). We dismiss Defendants' appeal as moot.

Prior to appealing the trial court's denial of Defendants' Rule 60(b) motion, Defendants filed an appeal from the trial court's orders denying their motion to set aside the entry of default and entering default judgment in favor of Plaintiffs. *See Swan Beach Corolla, L.L.C. v. Cty. of Currituck*, __ N.C. App. __, 805 S.E.2d 743, 2017 WL 4364383 (N.C. Ct. App. Oct. 3, 2017) (*Swan Beach III*). This Court stayed Defendants' appeal from the denial of the motion to set aside the entry of default and the default judgment pending the outcome of the trial court's determination of the Rule 60(b) motion. *Id.* at __, 805 S.E.2d at 746, 2017 WL 4364383 at *3.

Following the trial court's denial of Defendants' Rule 60(b) motion, this Court proceeded to consider the appeal raised in *Swan Beach III* and reversed the trial

court's order denying Defendants' motion to set aside the entry of default and remanded the matter for further proceedings. *Id.* at __, __ S.E.2d at __, 2017 WL 4364383 at *6. The North Carolina Supreme Court recently affirmed our decision *per curiam*. *Swan Beach Corolla, L.L.C. v. Cty. of Currituck*, __ N.C. __, __ S.E.2d __ (2018). As a result of the Supreme Court decision, the trial court's entry of default judgment and the trial court's order denying Defendants' Rule 60(b) motion—the order from which this appeal arises—are void. Accordingly, we dismiss Defendants' appeal.

DISMISSED.

Judges BRYANT and DAVIS concur.

Report per Rule 30(e).