An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-874

Filed: 7 August 2018

Gaston County, No. 16-CVS-3443

IN THE MATTER OF THE FORECLOSURE OF A DEED OF TRUST EXECUTED BY JASON LINDSEY SMITH AND SHANNON FRIDAY SMITH DATED APRIL 27, 2007 AND RECORDED IN BOOK 4315 AT PAGE 2450 IN THE GASTON COUNTY PUBLIC REGISTRY, NORTH CAROLINA.

JASON LINDSEY SMITH AND SHANNON FRIDAY SMITH, Plaintiffs,

v.

US BANK NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2013 SC# TITLE TRUST; RUSHMORE LOAN MANAGEMENT SERVICES, LLC; BANK OF AMERICA, N.A.; BAC HOME LOAN SERVICING, LP; AND CORNISH LAW, PLLC AS SUBSTITUTE TRUSTEE, Defendants.

Appeal by Plaintiffs from orders entered 23 January 2017 by Judge Yvonne Mims Evans in Gaston County Superior Court. Heard in the Court of Appeals 9 January 2018.

*The Offices of James Surane, LLC, by James W. Surane, for plaintiffs-appellants Jason Lindsey Smith and Shannon Friday Smith.*

*The Law Office of John T. Benjamin, Jr., P.A., by John T. Benjamin, Jr., for defendants-appellees US Bank National Association and Rushmore Loan Management Services, LLC.*

*Shapiro & Ingle, LLP, by Jason K. Purser, for defendant-appellee Cornish Law, PLLC.*

*McGuireWoods LLP, by Nathan J. Taylor, for defendant-appellee Bank of America, N.A. in its own capacity and as successor by de jure merger to BAC Home Loan Servicing, LP.*

MURPHY, Judge.

This case arises from a separate foreclosure action where Jason Lindsey Smith and Shannon Friday Smith ("Plaintiffs") defaulted under the terms of a Deed of Trust.[1] Plaintiffs brought the present action to prevent the sale of their home and alleged a number of claims against US Bank National Association as Trustee; Rushmore Loan Management Services, LLC; Bank of America, N.A.; BAC Home Loan Servicing, LP; and, Cornish Law, PLLC, as Substitute Trustee ("Defendants").

However, we conclude that Plaintiffs failed to follow the Rules of Appellate Procedure. Specifically, Plaintiffs failed to present a fleshed out legal argument related to the trial court's grant of Defendants' *Motions to Dismiss*. It is well settled that it is not this Court's role to "create an appeal" for a party, and we conclude that Plaintiffs have abandoned this argument. *Robertson v. Steris Corp.,* 237 N.C. App. 263, 273, 765 S.E.2d 825, 833 (2014) (citation omitted); N.C. R. App. P. 28(b)(6). The remainder of Plaintiffs' appeal is moot as a result.

## BACKGROUND

[1] *In re Smith*, ___ N.C. App. ___, 809 S.E.2d 374, 2018 WL 710042 (2018) (unpublished) (Gaston County, No. 14-SP-50).

Plaintiffs' home was subject to a foreclosure action under the power of sale contained in the Deed of Trust based on Plaintiffs' default of the loan. In the foreclosure action, a Clerk of Gaston County Superior Court found that Plaintiffs defaulted under the Deed of Trust. Plaintiffs brought this instant action against Defendants to enjoin the sale of their property. Plaintiffs' complaint alleged breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, unfair and deceptive trade practices, violation of the Debt Collection Act, negligence, negligent misrepresentation, equitable estoppel, and injunctive relief. Plaintiffs asked the trial court to enter a "temporary, preliminary, and permanent injunction against Defendants." The trial court entered a temporary restraining order which barred Defendants from pursuing foreclosure until the preliminary injunction hearing was conducted. Defendants filed separate *Motions to Dismiss* Plaintiffs' claims. A joint hearing was scheduled on Defendants' *Motions to Dismiss* and on Plaintiffs' *Motion for a Preliminary Injunction*. After the hearing, the trial court denied Plaintiffs' *Motion for a Preliminary Injunction*, dissolved the temporary restraining order, and granted all of the Defendants' *Motions to Dismiss*. Plaintiffs timely appealed.

## ANALYSIS

A 12(b)(6) motion to dismiss "tests the legal sufficiency of the complaint. In ruling on the motion the allegations of the complaint must be viewed as admitted,

and on that basis the court must determine as a matter of law whether the allegations state a claim for which relief may be granted." *Stanback v. Stanback*, 297 N.C. 181, 185, 254 S.E.2d 611, 615 (1979) (citations omitted). "Dismissal is proper 'when one of the following three conditions is satisfied: (1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim.'" *Bissette v. Harrod*, 226 N.C. App. 1, 7, 738 S.E.2d 792, 797 (2013) (citation omitted). "This Court must conduct a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court's ruling on the motion to dismiss was correct." *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4, *aff'd*, 357 N.C. 567, 597 S.E.2d 673 (2003). Plaintiffs argue that their complaint was sufficient to survive a motion to dismiss, and their brief states in relevant part:

> The Plaintiff-Appellant's complaint demonstrates that Plaintiff has complied with the liberal principle of notice pleading as to the elements of all of their claims. Plaintiff-Appellants has [sic] pled all of the relevant facts relating to the causes of action stated in the complaint, a detailed description of the wrongdoing by the Appellee-Defendants, and the facts concerning the consequences of the Appellee-Defendants conduct in this case. This description of the subject matters involved in this case meets the requirement of a short, plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions that are the subject of the claim.

However, Plaintiffs' minimal argument fails to relate their complaint to the claims they pursued and is entirely lacking in analysis. In addition, Defendants noted this issue in their briefs, and Plaintiffs failed to provide any additional arguments in their reply brief. As a result, we find that Plaintiffs' argument does not "contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned." N.C. R. App. P. 28(b)(6). "It is not the role of the appellate courts . . . to create an appeal for an appellant." *Robertson*, 237 N.C. App. at 273, 765 S.E.2d at 833 (citation omitted). Accordingly, we deem this argument abandoned. Affirming the grant of Defandants' *Motions to Dismiss* concludes the litigation and the remainder of Plaintiffs' appeal is rendered moot. *Wilson v. SunTrust Bank*, ___ N.C. App. ___, ___, 809 S.E.2d 286, 295 (2017) ("We have upheld the trial court's dismissal of plaintiff's complaint and, as a result, a determination of whether the trial court should have granted interim relief prior to dismissing the complaint would have no effect on the outcome of the case.").

## CONCLUSION

Plaintiffs failed to properly present a fleshed out legal argument related to the trial court's grant of Defendants' *Motions to Dismiss* in either their primary brief or their reply brief. Because it is not this Court's job to create an appeal for a party, we

hold that Plaintiffs have abandoned this argument. As a result, the remainder of their appeal is rendered moot.

DISMISSED.

Judges BRYANT and BERGER concur in result only.

Report per Rule 30(e).