

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-486

Filed: 3 March 2020

Durham County, No. 18 CRS 1925

STATE OF NORTH CAROLINA¹

v.

JOSEPH MICHAEL GUARASCIO

Appeal by plaintiff from orders entered 7 December 2018 by Judge Orlando F. Hudson, Jr. in Durham County Superior Court. Heard in the Court of Appeals 5 February 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Tamera S. Hill, for the State.

Joseph Michael Guarascio, pro se.

ARROWOOD, Judge.

Joseph Michael Guarascio (“plaintiff”) purports to appeal from orders entered 7 December 2018 denying his Motion to Produce Copy of Criminal Records from the North Carolina State Bureau of Investigation (“SBI”) and his Motion for

¹ Joseph Michael Guarascio brought this action under N.C. Gen. Stat. § 132-1.4 (2019), a civil statute which provides that records of criminal investigations may be requested and released by court order. Though this is a civil case, in which Mr. Guarascio is the plaintiff, we retain the caption used in the court below for purposes of uniformity.

Reconsideration. However, this Court lacks jurisdiction to hear plaintiff's claim. We first note that plaintiff's notice of appeal contained in the record on appeal is defective because it has not been file-stamped. "[T]his Court has held the appellant's failure to include a file-stamped copy of the notice of appeal in the record on appeal is a jurisdictional defect, because this Court cannot determine if the notice of appeal was timely filed." *Erickson v. N.C. Dep't of Safety*, __ N.C. App. __, __, 826 S.E.2d 821, 824 (2019) (citations omitted). We are thus unable to reach the merits of plaintiff's claim.

Moreover, in addition to the notice itself being defective, plaintiff also failed to timely serve a copy of his notice of appeal on the SBI. Rule 3 of the North Carolina Rules of Appellate Procedure provides that:

Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subsection (c) of this rule.

N.C.R. App. P. 3(a) (2020). Subsection (c) in turn provides that a party generally must file and serve a notice of appeal within thirty days after entry of judgment or thirty days after service of a copy of the judgment if such service was not made within three days of entry of judgment. N.C.R. App. P. 3(c).

Here, judgment was entered on 7 December 2018 and plaintiff filed a notice of appeal on 14 December 2018, well within the thirty-day time limit. However, the

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record on appeal does not contain a certificate of service showing that plaintiff timely served a copy of the notice of appeal on the SBI. The only proof the SBI may have received a copy of the notice of appeal is a certificate of service showing plaintiff served the SBI with the proposed record on appeal, which contained a copy of the notice of appeal. Even if that would have been a sufficient manner of service of the notice of appeal, plaintiff did not serve the proposed record on appeal until 16 April 2019. This was well past the thirty-day time limit for giving service of notice, and is therefore a violation of Rule 3. Because both the filing and service of the notice of appeal were defective, we therefore dismiss the appeal.

Appeal dismissed.

DISMISSED.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).