

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-808

Filed: 7 April 2020

Buncombe County, Nos. 16E1030, 18SP758

IN THE MATTER OF THE ESTATE OF: Johnnie Edward Harper, Deceased.

Appeal by respondent from order entered 3 May 2019 by Judge Carla N. Archie in Buncombe County Superior Court. Heard in the Court of Appeals 4 February 2020.

*Kim L. Harper, pro se, respondent-appellant.*

*Stone & Christy, P.A., by James M. Ellis, for petitioner-appellee.*

BRYANT, Judge.

Respondent Kim L. Harper appeals from a superior court's 3 May 2019 gatekeeper order which prohibited respondent from filing pleadings for an "improper purpose" that "unnecessarily increased the costs of litigation and wasted the assets of the [E]state [of Johnnie Edward Harper.]" For the reasons stated below, we dismiss this appeal.

*Background*

The full background of this case is set forth by this Court in *Matter of Estate of Harper (Harper I)*, Nos. COA19-326 and 19-327, 2020 WL 64483, at \*1 (N.C. Ct. App. Jan. 7, 2020).<sup>1</sup> The facts and procedural history relevant to this appeal are as follows:

Johnnie Edward Harper (“the Decedent”) died intestate on 1 June 2015. He was survived by four children: [respondent], Beth, Sonya, and Rochelle. [Respondent] qualified as administratrix of her father’s estate on 28 June 2016 [“Estate”].

On 7 August 2018, the assistant clerk of superior court issued an order directing [respondent] to file an account for the [E]state, and on 15 August 2018, a deputy sheriff personally served [respondent] with a copy of the clerk’s order. The order provided, *inter alia*, that [respondent] could be removed as fiduciary for failure to comply with the terms of the order. [Respondent] failed to file the account. As a result, on 5 September 2018, the assistant clerk of superior court *sua sponte* issued and personally served [respondent] with an “Order to Appear and Show Cause for Failure to File Inventory/Account,” due to her failure to file an accounting of estate assets during the two years following her qualification as administratrix. The Order to Appear and Show Cause noted that [respondent] could be held in contempt or removed as fiduciary, and provided a hearing date of 27 September 2018.

At the hearing of this matter, [respondent] produced an account for filing, but did not file a proper account: the account did not balance, and she provided no supporting documentation of the listed disbursements or the balance held. On the date of the hearing, the [E]state had \$139.30, no saleable personal property, and numerous debts. [Respondent] had also moved into the decedent’s house, and admitted that she had spent money belonging to the [E]state on her personal expenses.

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<sup>1</sup> In respondent’s prior appeal, COA19-326 and 19-327 were consolidated for hearing.

On 4 October 2018, the clerk removed [respondent] as administratrix of the [E]state, and appointed James Ellis, the public administrator of Buncombe County, to serve as successor administrator of the [E]state. [Respondent] timely appealed this order to superior court, and on 4 December 2018, this matter came on for hearing before the Honorable Marvin P. Pope, Jr. *After reviewing the case file and hearing arguments from both parties*, Judge Pope entered an order dismissing the appeal. [Respondent] timely appealed to this Court, and [that] appeal was designated as COA19-326.

On 19 November 2018, the public administrator petitioned the clerk of superior court to sell the real property owned by the Decedent at the time of his death. The public administrator asserted that it was necessary to sell the real property in order to make assets to pay debts of the [E]state, and thus it would be in the best interest of the [E]state to sell the real property. On 6 December 2018, the clerk entered an order granting the public administrator (1) possession, custody, and control of the Decedent's real property; (2) the authority to remove [respondent] from the Decedent's house; and (3) the authority to sell the real property.

[Respondent] appealed the clerk's order to the superior court, and on 18 December 2018, this matter came on for hearing before Judge Pope. After hearing arguments and examining the court file, Judge Pope entered an order dismissing the appeal. [Respondent] timely appealed to this Court, and [that] appeal was designated as COA19-327.

*Id.* at \*1–\*2 (emphasis added).

While this Court in *Harper I* disagreed with defendant's contention that the trial court erred in failing to conduct a hearing on the appeal of the clerk's order, the decision left undisturbed the clerk's order removing respondent as the administrator

of the Estate. The matter was remanded for the trial court to correct its disposition and affirm the clerk's order. *See id.* at \*3. This Court also required the superior court on remand to conduct a *de novo* hearing on respondent's appeal from the clerk's order allowing the public administrator to sell the Decedent's real property to pay debts of the Estate. Accordingly, this Court vacated and remanded the case back to the superior court for further proceedings as outlined in the opinion.

After appealing the orders to the *Harper I* Court but before the opinion was issued, respondent filed at least three pleadings with this Court: two petitions for writ of supersedeas and one motion for a temporary stay with this Court. All three pleadings were denied. Respondent then filed an emergency motion to stay and a petition for a writ of certiorari with the North Carolina Supreme Court. The motion and petition were denied.

On 4 February 2019, respondent filed a *lis pendens* notice to block the sale on the Decedent's house and a motion for relief from order of eviction and a petition for a writ of possession. Respondent also filed a petition to remove the appointed administrator for failure to abide by his oath of administration. The appointed administrator filed a notice of hearing to bring respondent's petition before the superior court. The petition was later withdrawn. Respondent filed a 276-page proposed record on appeal with the superior court, but the court could not determine to which proceeding the record applied.

On 3 May 2019, the superior court entered a gatekeeper order prohibiting respondent from filing further pleadings in the matter without prior approval by the court, or alternatively, without being represented by counsel. Respondent appealed to this Court on 3 May 2019.

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Petitioner James M. Ellis, in his capacity as the administrator of the Estate, filed a motion to dismiss respondent’s appeal in the instant case. In addition to arguing that the appeal is interlocutory, petitioner also argued the appeal did not comply with North Carolina Rules of Appellate Procedure. Upon review of the record, we agree that dismissal is warranted based on multiple rule violations.

The Rules of Appellate Procedure delineate procedures for an appellant to follow to commence a proper appeal—such procedures enable this Court to exercise jurisdiction and adequately consider appellate arguments. *See Duke Univ. v. Bishop*, 131 N.C. App. 545, 546, 507 S.E.2d 904, 905 (1998) (“To obtain review of lower court decisions, appellants must adhere to certain mandatory procedural requirements.”). “The appellate courts of this state have long and consistently held that the rules of appellate practice, now designated the Rules of Appellate Procedure, are *mandatory* and that failure to follow these rules will subject an appeal to dismissal.” *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999) (emphasis added). “[E]ven *pro se* appellants must adhere strictly to the Rules of Appellate Procedure [] or risk

sanctions.” *Strauss v. Hunt*, 140 N.C. App. 345, 348–49, 536 S.E.2d 636, 639 (2000) (citing N.C.R. App. P. 25(b)). Here, *pro se* appellant’s substantial violations of the rules affects our ability to adequately consider her arguments on appeal.

Rule 9 specifically provides guidelines for the composition of an appellate record, which must include the following:

c. a copy of the summons with return, or of other papers showing jurisdiction of the trial court over persons or property, or a statement showing same;

d. copies of the pleadings, and of any pretrial order on which the case or any part thereof was tried;

e. so much of the litigation, set out in the form provided in Rule 9(c)(1), as is necessary for an understanding of all issues presented on appeal, or a statement specifying that the verbatim transcript of proceedings is being filed with the record pursuant to Rule 9(c)(2), or designating portions of the transcript to be so filed;

....

j. copies of all other papers filed and statements of all other proceedings had in the trial court which are necessary to an understanding of all issues presented on appeal unless they appear in the verbatim transcript of proceedings which is being filed with the record pursuant to Rule 9(c)(2).

N.C.R. App. P. 9(a)(1) c–e, j. Rule 11 provides that “the record on appeal shall consist of each item that is either among those items required by Rule 9(a) to be in the record on appeal or that is requested by any party to the appeal and agreed upon for inclusion by all other parties to the appeal.” N.C.R. App. P. 11(c). If either party

objects to the inclusion of a particular document in the proposed record, and the parties cannot agree on its inclusion, then the disputed document should be filed as a separately indexed and paginated record captioned “Rule 11(c) Supplement to the Printed Record.” *See id.*

In the instant case, respondent filed a record on appeal with this Court containing material deficiencies in violation of Rules 9 and 11.

Respondent failed to comply with Rule 9 by omitting the following items from the record on appeal: 1) a copy of the summons with return or statement indicating the trial court’s jurisdiction over the matter as required by Rule 9(a)(1)c; 2) copies of necessary pleadings, such as the complaint and answer, as required by Rule 9(a)(1)d; and 3) a statement specifying that the verbatim transcript is being filed separately with the record as required by Rule 9(a)(1)e.

Notwithstanding respondent’s noncompliance with Rule 9, respondent also failed to properly settle the record on appeal under Rule 11. *See Day v. Day*, 180 N.C. App. 685, 688, 637 S.E.2d 906, 908 (2006) (“Our Court has repeatedly held that the failure to serve a proposed record on appeal in accordance with Rule 11 is a substantial violation of the rules requiring dismissal of the appeal.” (citing *Higgins v. Town of China Grove*, 102 N.C. App. 570, 571–72, 402 S.E.2d 885, 886 (1991))).

Here, respondent served a proposed record to petitioner. Petitioner filed objections and attached 48 pages of pleadings to be included in the record.

Respondent acknowledges in her response to petitioner’s motion that petitioner sought to include documents in the record on appeal and that she “did fail to include one, or two documents provided to [her] by [petitioner] in his [n]otice of [o]jections.” Respondent’s failure to properly submit an accurate record is a substantial violation of Rule 11 as “[o]ur rules require appellants to present complete records, which are in final and proper form.” *Duke Univ.*, 131 N.C. App. at 546, 507 S.E.2d at 905. “Whether the omission [is] intentional or inadvertent, it is appellant[’s] responsibility to ensure that the record is in its complete and proper form.” *Id.*

Respondent’s failure to comply with the appellate rules frustrates the appellate process and substantially impairs this Court’s ability to provide a meaningful review as to the merits of respondent’s appeal—the nature and entry of the gatekeeper order. The primary purpose of the Rules is to ensure that the parties comply in an orderly manner while seeking appellate review. “[B]ecause [o]ur rules are mandatory, and in fairness to all who come before this Court, they must be enforced uniformly.” *Id.* at 548, 507 S.E.2d at 906 (alternations in original) (citation omitted). Therefore, respondent’s appeal should be dismissed.

As “[respondent has] violated many of the appellate rules, [her] appeal must be dismissed, notwithstanding [her] *pro se* status.” *Bledsoe v. Cty. of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999).<sup>2</sup>

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<sup>2</sup> Having found that respondent’s appeal should be dismissed for rule violations, we do not address petitioner’s argument that respondent’s appeal should be dismissed as interlocutory.

IN RE: HARPER

*Opinion of the Court*

Accordingly, for the reasons stated above, respondent's appeal is  
DISMISSED.

Judges DILLON and INMAN concur.

Report per Rule 30(e).