

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2021-NCCOA-230

No. COA20-770

Filed 18 May 2021

Vance County, No. 19 CVD 1147

ZHUYING ZHANG, Plaintiff,

v.

RICKY PEARCE, PEARCE’S BACKHOE SERVICE, Defendant.

Appeal by plaintiff from judgment entered 12 February 2020 by Judge Amanda E. Stevenson in Vance County District Court. Heard in the Court of Appeals 27 April 2021.

Zhuying Zhang pro se.

No brief for defendant-appellee.

TYSON, Judge.

¶ 1 Zhuying Zhang (“Plaintiff”) appeals from a judgment entered upon a jury’s verdict finding and concluding: (1) a contract was created between Plaintiff and Ricky Pearce (“Defendant”); (2) Defendant did not breach the contract by non-performance; and, (3) Plaintiff was not owed damages from any breach.

¶ 2 Plaintiff’s substantial violations of the North Carolina Rules of Appellate Procedure impede this Court’s ability to understand and decide the issues. Plaintiff’s

appeal is dismissed.

I. Appellate Rules Violations

A. *Dogwood*

¶ 3 Plaintiff appears *pro se* in this appeal. “[E]ven *pro se* appellants must adhere strictly to the Rules of Appellate Procedure (the Rules) or risk sanctions.” *Strauss v. Hunt*, 140 N.C. App. 345, 348-49, 536 S.E.2d 636, 639 (2000).

¶ 4 When confronted with appellate rules violations, this Court has followed the guidance and precedents of the Supreme Court of North Carolina’s decision in *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 200, 657 S.E.2d 361, 366-67 (2008). In *Dogwood*, the Court identified three types of rules violations: (1) waiver occurring at trial; (2) defects in appellate jurisdiction; and (3) nonjurisdictional defects. *Id.* at 194, 657 S.E.2d at 363. A jurisdictional defect “precludes the appellate court from acting in any manner other than to dismiss the appeal.” *Id.* at 197, 657 S.E.2d at 365. Where Rule violations are “gross or substantial,” the Court may impose sanctions under Rule 34, including dismissal of the appeal. *Id.* at 199, 657 S.E.2d at 366.

In determining whether a party’s noncompliance with the appellate rules rises to the level of a substantial failure or gross violation, the court may consider, among other factors, whether and to what extent the noncompliance impairs the court’s task of review and whether and to what extent review on the merits would frustrate the adversarial process.

Id. at 200, 657 S.E.2d 366-67.

B. North Carolina Rule of Appellate Procedure 28

¶ 5

Pursuant to Rule 28 of the North Carolina Rules of Appellate Procedure a party's brief shall contain:

A full and complete statement of the facts. This should be a non-argumentative summary of all material facts underlying the matter in controversy which are necessary to understand all issues presented for review, supported by references to pages in the transcript of proceedings, the record on appeal, or exhibits, as the case may be.

N.C. R. App. P. 28(b)(5). Plaintiff provides a detailed explanation of the facts which led from his complaint to the verdict in the jury trial.

¶ 6

However, Plaintiff fails to provide evidence in the record on appeal or other basis to support his arguments. The Rules of Appellate Procedure require the brief to contain:

An argument, to 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.

The argument shall contain a concise statement of the applicable standard(s) of review for each issue, which shall appear either at the beginning of the discussion of each issue or under a separate heading placed before the beginning of the discussion of all the issues.

The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies. Evidence or other proceedings material to the issue may be narrated or

quoted in the body of the argument, with appropriate reference to the record on appeal, the transcript of proceedings, or exhibits.

N.C. R. App. P. 28(6).

¶ 7 Rule 28(b)(6) expressly places appellants upon notice that “[i]ssues . . . in support of which no reason or argument is stated, will be taken as abandoned.” *Id.* An appellant avoids abandonment when he complies with the rule’s mandate that “[t]he body of the argument . . . shall contain citations of the authorities upon which the appellant relies.” *Id.*

¶ 8 North Carolina’s appellate courts have routinely held an argument to be abandoned where an appellant presents argument without such supporting authority and in contravention of the rule. *See, e.g., Fairfield v. WakeMed*, 261 N.C. App. 569, 575, 821 S.E.2d 277, 281 (2018) (holding a plaintiff has abandoned an issue where the “[p]laintiffs do not cite any legal authority in support of this argument as required by the North Carolina Rules of Appellate Procedure); *GRE Props. Thomasville LLC v. Libertywood Nursing Ctr., Inc.*, 235 N.C. App. 266, 276, 761 S.E.2d 676, 682 (2014) (holding a defendant has abandoned his argument when the defendant cites only one case “for the proposition that issues of relevance are reviewed *de novo* and fails to cite any further legal authority in support of its argument”).

¶ 9 In his argument section, Plaintiff asserts the jury was not properly instructed. Plaintiff states: “From Plaintiff’s perspective as a graduate student, the jury

instructions on what constitute[s] a breach of contract performance is not sufficient and understandable.” Plaintiff failed to identify or include the instructions given nor provided either a transcript or narrative summary of the jury instructions the court provided. Plaintiff asserts he entered into a contact with a transcriptionist, but later canceled his contract without seeking an extension to file the transcript. Nothing in the record provides a basis for this Court to review any purported error in the jury’s instruction.

¶ 10 Plaintiff also asserts the trial court erred in adopting Defendant’s “self-made” contract as evidence on which there was not any party’s signature. No copy or summary of the purported contract is provided in the record. Plaintiff argues no formal contract was created, but “Defendant submitted a self-made unsigned contract, on which ‘levelling (sic) the field’ was deleted.” Plaintiff provided cellular telephone screen shots of the text messages between himself and Defendant. N.C. R. App. P. 28(6).

¶ 11 Plaintiff further asserts “several jurors admitted knowing [D]efendant, it is highly questionable if the jury could make an impartial verdict.” Our Supreme Court has instructed, “we must defer to the trial court’s judgment as to whether the prospective juror could impartially follow the law.” *State v. Jones*, 355 N.C. 117, 123, 558 S.E.2d 97, 101 (2002) (citation omitted).

¶ 12 Plaintiff argues some of the jurors were replaced, but others remained.

Plaintiff fails to show any abuse of discretion in the trial court's judgment or decisions during the selection or retention of jurors, or whether the parties exercised preemptory or challenges for cause to excuse any prospective jurors.

¶ 13 Plaintiff argues "[a]fter the trial was end (sic), Plaintiff noticed that Defendant did not leave and talked with the presiding judge and court staffs (sic)." Plaintiff asserted "[a]bout half jurors admitted knowing Defendant in the court." Plaintiff's assertions and speculations are not supported by evidence or case law. It is not the role or responsibility of this Court to guess at, form the substance of, or to create an appeal for Plaintiff. See N.C. R. App. P. 28(6); *State v. Maready*, 205 N.C. App. 1, 15, 695 S.E.2d 771, 781, *writ denied, review denied*, 364 N.C. 329, 701 S.E.2d 247 (2010) (argument is abandoned when the defendant does not make a prejudice argument, but rather a conclusory statement, for which the defendant offers no factual or legal support).

¶ 14 Finally, Plaintiff asserts the judgment of the trial court entered on the jury's verdict is contrary to the evidence and facts presented. Plaintiff argues he provided sufficient evidence to support his argument a breach of contract occurred. No transcript or narrative summary is provided for this Court to review Plaintiff's arguments or evidence. The credibility and weight of the evidence were properly questions for the jury to reconcile.

¶ 15 The record contains no post-trial motions questioning the verdict or requesting

relief. N.C. Gen. Stat. § 1A-1, Rules 59 and 60 (2019). Finally, Plaintiff argues the trial court did not inform him of the court date. Plaintiff provides nothing to support his claim “the clerk had falsely mailed Plaintiff’s notice to Defendant’s address. The clerk even refused to correct the mistake.” Any alleged errors in notice would be waived by Plaintiff’s appearance and participation at trial and failure to request a continuance or to show prejudice. *See* N.C. Gen. Stat. § 1A-1, Rule 12(h) (2019).

II. Conclusion

¶ 16 While Plaintiff is appearing *pro se* in this appeal, his unrepresented status does not permit substantial and gross violations of the appellate rules to deny this Court any transcript, record, or basis to review the issues he asserts. “[E]ven *pro se* appellants must adhere strictly to the Rules of Appellate Procedure . . . or risk sanctions.” *Strauss*, 140 N.C. App. at 348-49, 536 S.E.2d at 639.

¶ 17 Plaintiff quotes random cases with slight application to the issues he purports to argue before this Court. Most portions of Plaintiff’s arguments are disagreements on the weight and credibility of the evidence and unsupported by law or evidence in the record.

¶ 18 The record is either devoid or incomplete on materials and authorities required to review his issues. It is outside the scope of this Court’s review, rules and procedures to attempt to speculate or to fill in those gaps. *See* N.C. R. App. P. 28(6).

¶ 19 The Appellate Rules violations are both “gross and substantial,” abandon the

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issues, and impede review by this Court. These omissions permit and compel this Court to impose sanctions under Rule 34 and to dismiss Plaintiff's appeal. *Dogwood*, 362 N.C. at 199, 657 S.E.2d at 366. *It is so ordered.*

DISMISSED.

Chief Judge Stroud and Judge Zachary concur.

Report per Rule 30(e).