An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-564

No. COA21-680

Filed 16 August 2022

Moore County, No. 21 CVD 209

BROOKSIDE PARK AFFORDABLE, LLC, Plaintiff,

v.

DAYONNA HART, Defendant.

Appeal by Defendant from order entered 4 May 2021 by Judge Regina M. Joe in Moore County District Court. Heard in the Court of Appeals 27 April 2022.

Foyles Law Firm, PLLC, by Jody S. Foyles, for the Plaintiff-Appellee.

Legal Aid of North Carolina, Inc., by Celia Pistolis, Katherine Barkley, Shameka Jamison and Isaac W. Sturgill for the Defendant-Appellant.

DILLON, Judge.

¶ 1 This appeal concerns whether Defendant properly perfected service of process of her notice of appeal to district court from an adverse small claims court decision.

I. Background

¶ 2 Defendant was a resident of Plaintiff's apartment complex. On 2 February 2021, Plaintiff was awarded possession of the apartment through a summary ejectment action in small claims court. Nine days later, on 11 February 2021,

Defendant timely filed a notice of appeal for the matter to be heard in district court.

¶ 3 Defendant, however, failed to sign and date the "Certificate of Service" attached to the back of the notice of appeal form. Plaintiff filed a motion to dismiss on 9 March 2021, highlighting the omitted information.

¶ 4 After a hearing on the matter, the trial court issued an order concluding that it lacked subject matter jurisdiction because Defendant failed to perfect her appeal.

¶ 5 Plaintiff timely appealed the matter to our Court.

II. Analysis

¶ 6 On appeal, Plaintiff argues that the district court erred by dismissing her appeal. We agree.

¶ 7 Our General Statutes provide that an appeal from small claims court to district court – both of which, we note, is within the District Court Division – must be perfected by "serving a copy of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5" among other requirements. N.C. Gen. Stat. § 7A-228 (2021).

¶ 8 It is true that the certificate of service form attached to the back of Defendant's filed notice of appeal, lacks any indication of service of the notice on Plaintiff. However, the record does contain an affidavit which was filed and was before the district court in which Defendant's mother averred she personally served a copy of Defendant's notice of appeal on the law firm representing Plaintiff, "on or around 2 March 2021." There is also evidence in the record that Plaintiff had actual notice of

the appeal. Such evidence includes, for example, the fact that Plaintiff's counsel filed a motion to dismiss the appeal. These facts are sufficient to establish a rebuttable presumption that the notice of appeal was served in a timely manner.

¶ 9 Compliance with the service requirements of Rule 5 is necessary to confer in a court the authority to act on any matter for which Rule 5 service is required. It may be that the affidavit of Defendant's mother indicating that the notice of appeal was served on Plaintiff's counsel did not strictly comply with Rule 5. Notwithstanding, we hold that there was substantial compliance with Rule 5 in this case sufficient to confer authority upon the district court to act on Defendant's appeal: The affidavit indicates the notice was served on Plaintiff's attorney, and Plaintiff's attorney had actual notice of the appeal. *See Macon v. Edinger*, 303 N.C. 274, 280, 278 S.E.2d 256, 259-60 (1981) (holding that "substantial compliance" with Rule 5 is sufficient).

¶ 10 Accordingly, we reverse the Order Allowing Plaintiff's Motion to Dismiss Defendant's Appeal entered 4 May 2021 and remand for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Judges ZACHARY and CARPENTER concur.

Report per Rule 30(e).