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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-696

No. COA22-199

Filed 18 October 2022

Wake County, No. 21 CVS 000308

CRYSTAL GAIL MANGUM, Plaintiff,

v.

WRAL-5 NEWS and JAMES F. GOODMON, Defendants.

Appeal by plaintiff from order entered 1 November 2021 by Judge Mark A. Sternlicht in Wake County Superior Court. Heard in the Court of Appeals 7 September 2022.

Crystal G. Mangum, Pro se, for Plaintiff-Appellant.

Stevens Martin Vaughn & Tadych, PLLC, by C. Amanda Martin, for Defendants-Appellees.

CARPENTER, Judge.

¶ 1

Crystal Gail Mangum (“Plaintiff”) appeals *pro se* from an order (the “Order”) dismissing her complaint with prejudice and granting WRAL-5 News and James F. Goodmon’s¹ (collectively “Defendants”) motion to dismiss pursuant to Rule 12(b)(6) of

¹ Plaintiff’s complaint incorrectly alleges WRAL-5 News is “a subsidiary of Capitol Broadcasting Company.” We note WRAL-5 News is not a subsidiary or a separate entity; rather, it is a news broadcast

the North Carolina Rules of Civil Procedure. On appeal, Plaintiff argues the trial court committed reversible error by treating the hearing on the parties' motions as "an *ex parte* one in which she was denied her fundamental procedural due process right to present her case and call her witness." After careful review of the record and the parties' briefs, we dismiss the appeal due to Plaintiff's substantial violations of the North Carolina Rules of Appellate Procedure (the "Rules"), which impede our ability to conduct a meaningful review.

I. Factual & Procedural Background

¶ 2 This appeal concerns libel and defamation actions brought by Plaintiff against Defendants relating to news articles reporting on Plaintiff's criminal conviction and subsequent appeal.

¶ 3 The facts pertinent to this appeal are as follows: On 3 April 2011, Plaintiff stabbed her boyfriend, Reginald Daye ("Daye"), in his left side with a steak knife. "As a result of [the] stab wound to the left side of his chest, approximately two to three inches deep, Daye sustained extensive injuries requiring emergency surgery. Daye died a few days later due to complications from the stab wound." *State v. Mangum*, 242 N.C. App. 202, 205, 773 S.E.2d 555, 558 (2015), *disc. rev. denied*, 373 N.C. 258, 835 S.E.2d 445 (2019). Plaintiff was indicted on the charge of first degree murder of

Daye. *Id.* at 204, 773 S.E.2d at 558.

¶ 4

In Plaintiff's murder case, the trial court considered, *inter alia*, whether the State and Plaintiff's defense counsel should obtain the complete state personnel record of Dr. Clay Nichols ("Dr. Nichols"), the state medical examiner who performed Daye's autopsy and a prospective witness for the State. After the trial court reviewed the record in its entirety, the trial court found one eighteen-page document to be relevant to the criminal case. The court ordered that the eighteen-page document from Dr. Nichols' personnel file be provided to only counsel for Plaintiff and counsel for the State.

¶ 5

On 22 November 2013, Plaintiff was convicted of second-degree murder of Daye. *Id.* at 206, 773 S.E.2d at 559. Plaintiff appealed from the trial court's judgment, and this Court found no reversible error after reviewing Plaintiff's arguments. *Id.* at 202, 215, 773 S.E.2d at 557, 565. Plaintiff remains incarcerated in the custody of the North Carolina Correctional Institution for Women as of the date of the filing of this appeal.

¶ 6

Also on 22 November 2013, WRAL.com published an online news article with the headline, "Mangum found guilty in boyfriend's stabbing death." On 31 December 2014, WRAL.com published another article, following Plaintiff's appeal from the conviction, with the headline, "Mangum appeals murder conviction in boyfriend's stabbing death." Both articles referenced Plaintiff stabbing Daye, and Daye dying

“10 days later of complications”

¶ 7

On 6 January 2021, Plaintiff filed a libel and defamation action against Defendants. The complaint alleged the two online articles published on 22 November 2013 and 31 December 2014, respectively, made libelous and defamatory statements for which Defendants are liable. Plaintiff, relying on an autopsy report completed by Dr. Cyril H. Wecht (“Dr. Wecht”)—a pathologist she hired—alleges Daye’s death was accidental and caused by “complications of delirium tremens, including aspiration, due to alcohol withdrawal”

¶ 8

In her complaint, Plaintiff requested the trial court compel Defendants to: (1) edit the two articles to remove references to “stabbing” and Daye dying from “complications” relating to the stab wound; (2) amend the articles to include Dr. Wecht’s determination that Daye’s death was an accident; (3) publish a current article and broadcast concerning Dr. Wecht’s report; and (4) pay Plaintiff financial compensation including punitive damages.

¶ 9

On 13 May 2021, Defendants filed an “Answer and Motion to Dismiss” alleging Plaintiff’s complaint fails to state a claim against either Defendant on which relief can be granted and sought dismissal pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. Defendants also alleged nine defenses, including the claims are time-barred under the statute of limitations for libel and defamation actions, and the publications are privileged because they constitute a fair report regarding public

judicial pleadings and proceedings.

¶ 10 On 4 June 2021, Plaintiff filed a *pro se* reply to Defendants’ motion to dismiss. Without citing legal authority, Plaintiff argued *inter alia*, “a reset [of the statute of limitations] is required in this situation because” Dr. Wecht’s autopsy report is a “truthful-determinant document” that “was issued more than four years after the 2013 and 2014 libelous articles were published”

¶ 11 On 12 July 2021, Plaintiff filed a motion for summary judgment. Plaintiff subsequently filed a motion to compel Durham County to unseal and produce the eighteen-page document the trial court obtained from Dr. Nichols’ personnel records in Plaintiff’s criminal case.

¶ 12 On 26 October 2021, a hearing was conducted in Wake County Superior Court before the Honorable Mark A. Sternlicht to rule on Plaintiff’s pending motions as well as Defendants’ motion to dismiss. The trial court first considered the motion to dismiss, explaining its ruling on that motion could be dispositive of the entire case. At the conclusion of the hearing, the trial court orally announced it would grant Defendants’ motion to dismiss Plaintiff’s complaint.

¶ 13 On 1 November 2021, the trial court entered its written Order granting Defendants’ motion to dismiss and dismissing Plaintiff’s complaint with prejudice. The trial court found Plaintiff’s libel and defamation claims were time-barred by N.C. Gen. Stat. § 1-54(3), and the publications that were the subjects of Plaintiff’s

complaint were accounts of an official record and court proceedings “protected by the fair report privilege[.]” Plaintiff gave timely written notice of appeal.

II. Issues

¶ 14 On appeal, Plaintiff argues the trial court deprived her of due process by granting Defendants’ motion to dismiss before considering her motion for summary judgment and motion to compel. Plaintiff further argues the trial court’s hearing on the parties’ motions was essentially an *ex parte* hearing, and the trial court made false statements to Plaintiff to justify conducting the hearing as such.

III. Jurisdiction

¶ 15 As an initial matter, we consider whether this Court has jurisdiction to address Plaintiff’s appeal. In the statement of grounds for appellate review included in her brief, Plaintiff fails to “include citation of the statute or statutes permitting appellate review” of her appeal, as required by Rule 28(b)(4) of the Rules. *See* N.C. R. App. P. 28(b)(4); *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 198, 657 S.E.2d 361, 365 (2008) (explaining default under Rule 28(b) constitutes a non-jurisdictional violation of the appellate rules); *see also Hill v. West*, 177 N.C. App. 132, 136, 627 S.E.2d 662, 664 (2006) (dismissing the appeal in part due to the plaintiffs’ failure to include a statement of the grounds for appellate review). We note Plaintiff appealed from a final order so this Court would have jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1) (2021); however, in addition to Rule 28(b)(4), Plaintiff has

violated numerous other non-jurisdictional appellate Rules. We next examine these defaults and determine whether violation of these Rules warrants dismissal of Plaintiff's appeal in this case.

IV. Violation of Non-Jurisdictional Rules

¶ 16 We recognize “rules of procedure are necessary . . . in order to enable the courts properly to discharge their dut[y] of resolving disputes.” *Dogwood Dev. & Mgmt. Co., LLC*, 362 N.C. at 193, 657 S.E.2d at 362 (citation and quotation marks omitted). Although this Court has been cognizant of the difficulties *pro se* litigants experience, it has “emphasize[d] that even *pro se* appellants must adhere strictly to the Rules . . . 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)). A party’s failure “to comply with the rules and failure of the appellate courts to demand compliance therewith, may impede the administration of justice.” *Dogwood Dev. & Mgmt. Co., LLC*, 362 N.C. at 193, 657 S.E.2d at 362.

¶ 17 North Carolina appellate courts have consistently held the Rules “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) (citations omitted). Nevertheless, “every violation of the [R]ules does not require dismissal of the appeal or the issue” *State v. Hart*, 361 N.C. 309, 311, 644 S.E.2d 201, 202 (2007); see N.C. R. App. P. 25(b), 34(b).

¶ 18

Our Supreme Court has recognized three principal categories of default under the Rules: “(1) waiver occurring in the trial court; (2) defects in appellate jurisdiction; and (3) violation of nonjurisdictional requirements.” *Dogwood Dev. & Mgmt. Co., LLC*, 362 N.C. at 194, 657 S.E.2d at 363. Non-compliance with jurisdictional Rules generally requires the appellate court to dismiss the appeal, while violation of non-jurisdictional Rules does not usually warrant dismissal. *Id.* at 197–98, 657 S.E.2d at 365. However, when a party’s violation of non-jurisdictional requirements of the Rules “rise[s] to the level of a ‘substantial failure’ or ‘gross violation,’” the appellate court may impose a sanction, which “reflect[s] the gravity of the violation.” *Id.* at 199–00, 657 S.E.2d at 365–66. (“[O]nly in the most egregious instances of nonjurisdictional default will dismissal of the appeal be appropriate.”); see N.C. R. App. P. 25(b), 34(b) (governing the appellate courts’ imposition of sanctions against a party or attorney).

A. Violation of Rules 3 and 26

¶ 19

Rule 3 requires, *inter alia*, that “a party . . . file and serve a notice of appeal,” within the timeframe outlined by the rule. N.C. R. App. P. 3(c). “Failure to include the certificate of service for a notice of appeal in the record is a violation of Rule 3 and Rule 26 of the [Rules].” *Ribble v. Ribble*, 180 N.C. App. 341, 342, 637 S.E.2d 239, 240 (2006); see N.C. R. App. P. 3(c), (e), 26(b). Rule 3 is usually considered to be a jurisdictional rule, and a party’s violation of the rule generally warrants dismissal.

See Dogwood Dev. & Mgmt. Co., LLC, 362 N.C. at 197–98, 657 S.E.2d at 365. Nonetheless, our Court has held a party’s failure to include a certificate of service of the notice of appeal is a non-jurisdictional default that does not rise to the level of “substantial or gross violation of the appellate rules. *MNC Holdings, LLC v. Town of Matthews*, 223 N.C. App. 442, 447, 735 S.E.2d 364, 367 (2012) (categorizing a party’s failure to include a certificate of service of the notice of appeal as a non-jurisdictional violation).

¶ 20 Here, the record on appeal contains a file-stamped notice of appeal, but there is no corresponding certificate of service. Defendants do not contend that Plaintiff did not serve the notice of appeal; rather, they allege the certificate of service was “omitted from the settled record.” Thus, Defendants had actual notice of the appeal as evidenced by their participation in the appeal, and their brief and motions indicate they did not waive Plaintiff’s failure to include proof of service of her notice of appeal. *See Ribble*, 180 N.C. App. at 343, 637 S.E.2d at 240. Therefore, we conclude this default standing alone does not warrant dismissal. *See Dogwood Dev. & Mgmt. Co., LLC*, 362 N.C. at 198, 657 S.E.2d at 365.

B. Violation of Rule 9

¶ 21 Rule 9 governs the function of the record on appeal and is thus a non-jurisdictional rule. *See Dogwood Dev. & Mgmt. Co., LLC*, 362 N.C. at 198, 657 S.E.2d at 365. Included in the requirements of this rule is that “[e]very pleading, motion,

affidavit, or other paper included in the record on appeal” must have “the date on which it was filed” as well as the name and signature of the person signing the document. N.C. R. App. P. 9(b)(3).

¶ 22 Here, Plaintiff included in the record on appeal *pro se* motions and petitions she prepared that provide neither a date of filing nor her signature. Thus, these documents in the record on appeal do not comply with Rule 9(b)(3). *See id.*

C. Violations of Rule 28

¶ 23 Rule 28 is a non-jurisdictional rule, which governs the function and content of the parties’ appellate briefs. *See Dogwood Dev. & Mgmt. Co., LLC*, 362 N.C. at 198, 657 S.E.2d at 365. The function of the parties’ briefs “is to define clearly the issues presented to the reviewing court and to present the arguments and authorities upon which the parties rely in support of their respective positions thereon.” N.C. R. App. P. 28(a). When “[i]ssues [are] not presented in a party’s brief, or in support of which no reason or argument is stated,” they are considered abandoned. N.C. R. App. P. 28(b)(6); *see Fairfield v. WakeMed*, 261 N.C. App. 569, 575, 821 S.E.2d 277, 281 (2018) (deeming the plaintiffs’ constitutional argument abandoned for failure to cite any supporting legal authority).

¶ 24 The contents of the appellant’s brief must contain, *inter alia*, a: (1) “cover page, followed by a subject index and table of authorities”; (2) “statement of the issues presented for review”; (3) “concise statement of the procedural history of the case”; (4)

“statement of the grounds for appellate review”; (5) “full and complete statement of the facts”; (6) section presenting the arguments, including “a concise statement of the applicable standard(s) of review for each issue” and “citations of the authorities upon which the appellant relies”; (7) “short conclusion stating the precise relief sought”; (8) identification of counsel, if the party is represented; (9) proof of service; and (10) required or allowed appendix. N.C. R. App. P. 28(b). Rule 28 also requires that every principal brief filed in this Court “contain no more than 8,750 words,” and that the brief be submitted with a certificate of compliance, in which counsel or the party filing *pro se*, affirms conformity with the word-count mandate. N.C. R. App. P. 28(j).

¶ 25 In this case, Plaintiff failed to include in her brief a concise statement of the case’s procedural history and a “non-argumentative summary of all material facts” *See* N.C. R. App. P. 28(b)(3), (5). Instead, she integrates a multitude of irrelevant and immaterial facts as well as argument in her procedural and factual sections, in violation of the Rules. *See* N.C. R. App. P. 28(b)(3), (5). Neither the material facts and relevant procedure, nor the extraneous information included in these sections are “supported by references to pages in the transcript of proceedings[or] the record on appeal.” *See* N.C. R. App. P. 28(b)(5). Additionally, Plaintiff does not include in her brief a certificate of compliance, as mandated by Rule 28. *See* N.C. R. App. P. 28(j).

¶ 26 Regarding the argument section, Plaintiff fails to provide the applicable

standard of review for any of her arguments. *See* N.C. R. App. P. 28(b)(6). Moreover, Plaintiff does not provide “citations of the authorities upon which [she] relies” in the body of the argument. *See* N.C. R. App. P. 28(b)(6). Instead, Plaintiff provides only case names—the majority of which are extra-jurisdictional and non-binding on this Court.

¶ 27 In her first argument, Plaintiff provides three cases names apparently referencing cases decided by courts in the State of Florida. She fails to provide “citations of the authorities upon which [she] relies” to argue her procedural due process rights were violated in the trial court’s hearing on the motions. *See* N.C. R. App. P. 28(b)(6). Furthermore, we note Plaintiff does not demonstrate her preservation of this constitutional argument. Therefore, we deem this argument abandoned. *See id.*

¶ 28 In her second argument, Plaintiff references—without citation—a civil case, initiated by Plaintiff *pro se* and decided by this Court, to assert the trial court made false statements to warrant holding an *ex parte* hearing in the instant case. *See Mangum v. Bond*, 266 N.C. App, 617, 830 S.E.2d 705 (2019) (unpublished) (affirming the trial court’s decision to dismiss Plaintiff’s malicious prosecution action on the basis it was time-barred under the applicable statute of limitations). Plaintiff contends this Court failed to address her arguments on appeal in that case, and “a reasonable person would assume” the ruling “is not truthful.” Similarly, Plaintiff

contends the trial court in this case made “controversial statements,” which “are likely to be questioned by a reasonable person.” Again, Plaintiff fails provide any legal support or basis for her contentions that the trial court conducted an *ex parte* hearing, that the trial court made false statements, or that the trial court erred by determining the motion to dismiss before Plaintiff’s motions. *See* N.C. R. App. P. 28(b)(6); *see also K2HN Constr. NC, LLC v. Five D Contractors, Inc.*, 267 N.C. App. 207, 215, 832 S.E.2d 559, 565 (2019) (“[I]t is not the role of this Court to create an appeal for an appellant or to supplement an appellant’s brief with legal authority or arguments not contained therein.”). Accordingly, we deem this argument abandoned. *See* N.C. R. App. P. 28(b)(6).

¶ 29 To uniformly enforce the Rules and follow our case precedent, we must dismiss Plaintiff’s appeal for substantial failure to comply with non-jurisdictional Rules. *See Dogwood Dev. Mgmt. Co., LLC*, 362 N.C. at 199–00, 657 S.E.2d at 366. This “failure both impairs th[is C]ourt’s task of review and . . . frustrate[s] the adversarial process[,] as any review on the merits would require this Court to construct and decide arguments that Plaintiff has not adequately presented and to which Defendants have not had an opportunity to respond.” *See K2HN Constr. NC, LLC*, 267 N.C. App. at 215, 832 S.E.2d at 565 (citations and quotation marks omitted).

V. Conclusion

¶ 30 For the reasons discussed above, we dismiss Plaintiff’s appeal for substantial

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Opinion of the Court

violations of non-jurisdictional Rules.

DISMISSED.

Judges DIETZ and COLLINS concur.

Report per Rule 30(e).