An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-803

No. COA22-553

Filed 6 December 2022

Moore County, No. 20 CVS 1087

DGH MANAGEMENT, LLC, a North Carolina limited liability company, Petitioner/Plaintiff,

v.

VILLAGE OF PINEHURST, a municipal corporation, Respondent/Defendant.

Appeal by defendant from order entered 17 March 2022 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 15 November 2022.

Wilson, Reives, Silverman & Doran, PLLC, by Jonathan Silverman, for plaintiff-appellant.

Van Camp, Meacham & Newman, PLLC, by Michael J. Newman, for defendant-appellee.

ARROWOOD, Judge.

¶ 1 DGH Management, LLC ("plaintiff") appeals from the trial court's order dismissing plaintiff's appeal. Plaintiff contends the trial court erred in dismissing the appeal because it utilized the incorrect standard in applying the "good cause

shown" standard and abused its discretion by dismissing the appeal absent a substantive or gross violation of Rule 11(b). For the following reasons, we hold that this Court has no jurisdiction over plaintiff's appeal, and it is hereby dismissed.

I. Background

¶ 2 On 5 October 2020, plaintiff filed a petition for *writ of certiorari* and judicial review and complaint for declaratory judgment against the Village of Pinehurst ("defendant") arising from plaintiff's application to develop "Floyd Way into an 11 lot single-family residential subdivision consistent with the existing" zoning requirements. Once such requirement mandated plaintiff's final plat contain "designated sight triangles[,]" and plaintiff sought judicial review of this requirement.

¶ 3 On 23 July 2021, defendant filed a motion to dismiss plaintiff's petition as moot because plaintiff "sought, obtained, and accepted from [defendant's] [e]ngineer full . . . relief from" the "controlling engineering standards" which had been the issue in plaintiff's initial complaint. In support of this contention, defendant included an email from defendant's engineer, informing plaintiff that "sight triangles will not be necessary for [the] final plat on this project." Therefore, defendant claimed this relief rendered plaintiff's petition moot and requested the action be dismissed.

¶ 4 On 12 August 2021, Judge Webb granted defendant's motion to dismiss plaintiff's petition as moot. Judge Webb concluded the "issuance of the deviation by

the [defendant's] [e]ngineer provided [p]laintiff with the relief originally sought[.]" Defendant filed a notice of appeal seeking relief from Judge Webb's order on 19 August 2021.

¶ 5 On 5 January 2022, defendant filed a motion to dismiss plaintiff's appeal, arguing that pursuant to N.C.R. App. P. 11(b), plaintiff was required to serve the proposed record of appeal no later than 10 December 2021, and because plaintiff failed to timely submit these materials, its appeal should be dismissed. On 19 January 2022, plaintiff filed a response and a motion for extension of time to serve the record of appeal.

¶ 6 In its response, plaintiff acknowledged that as of the date of the motion, it had "not been able to serve a copy of the proposed record on appeal to [defendant][,]" but argued its noncompliance did not require dismissal. The matter came on for a hearing on defendant's motion to dismiss plaintiff's appeal on 17 February 2022 in Moore County Superior Court, Judge Webb presiding.

¶ 7 On 17 March 2022, Judge Webb filed an order granting defendant's motion and dismissing plaintiff's appeal. Specifically, the trial court found that because plaintiff "failed to serve [the] proposed [r]ecord on [a]ppeal" in a timely manner, and "[n]o good cause exist[ed] to excuse" such failure, plaintiff's appeal must be dismissed. Plaintiff filed a notice of appeal on 14 April 2022.

II. Discussion

¶ 8 On appeal, plaintiff contends that the trial court erred by applying the wrong standard of review and by abusing its discretion in dismissing plaintiff's appeal. Because no appeal lies from the trial court's order, we dismiss appellant's appeal.

¶ 9 This Court has held that "[n]o appeal lies from an order of the trial court dismissing an appeal for failure to perfect it within apt time[.]" *State v. Evans*, 46 N.C. App. 327, 327, 264 S.E.2d 766, 767 (1980) (citations omitted). Therefore, "the proper remedy to obtain review in such case [is a] petition for writ of certiorari." *Id.*

¶ 10 For example, in *E. Brooks Wilkins Family Medicine, P.A. v. WakeMed*, the trial court dismissed the plaintiff's appeal "on the grounds that [p]laintiff failed to timely file and serve notice of appeal[.]" *E. Brooks Wilkins Fam. Med., P.A. v. WakeMed*, 244 N.C. App. 567, 571, 784 S.E.2d 178, 181 (2016). Still, the "[p]laintiff petition[ed] this Court, if it f[ound] it necessary, to issue a writ of certiorari to review the appeal dismissal order." *Id.* at 577, 784 S.E.2d at 185. However, this Court declined to do so and dismissed the plaintiff's appeal for lack of jurisdiction. *Id.*

¶ 11 Here, plaintiff is attempting to appeal from the appeal dismissal order entered by the trial court on 17 March 2022. Our precedent holds plaintiff has no right to such an appeal, and therefore this Court lacks jurisdiction over the matter. *See Evans*, 46 N.C. App. at 327, 264 S.E.2d at 767. Furthermore, our precedent has held that the only way to confer jurisdiction on this Court is by a *writ of certiorari*, which the record reflects plaintiff has failed to submit. *See id.* Accordingly, we hold this

Court is without jurisdiction and plaintiff's appeal must be dismissed.

III. Conclusion

¶ 12 For the foregoing reasons, we dismiss plaintiff's appeal.

APPEAL DISMISSED.

Judges INMAN and CARPENTER concur.

Report per Rule 30(e).