

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-17

Filed 06 June 2023

Union County, No. 21E1428

IN THE MATTER OF THE ESTATE OF PATRICK LEE SMITH, Deceased.

Appeal by respondent from order entered 20 September 2022 by Judge Jonathan W. Perry in Union County Superior Court. Heard in the Court of Appeals 10 May 2023.

*Burns & Gray, PA, by John T. Burns, for respondent-appellant.*

*The Law Office of James J. Harrington, by James J. Harrington, for petitioners-appellees.*

GORE, Judge.

Respondent Jamie Pate Smith appeals from the trial court's order, which affirmed the decision of the clerk barring the rights of spouse. However, "our ability to conduct meaningful appellate review has been impaired due to [respondent's] gross and substantial noncompliance with the North Carolina Rules of Appellate Procedure." *Ramsey v. Ramsey*, 264 N.C. App. 431, 431, 826 S.E.2d 459, 460-61 (2019). Therefore, we dismiss her appeal.

I.

“Included among the North Carolina Rules of Appellate Procedure is a litany of nonjurisdictional requirements that are ‘designed primarily to keep the appellate process flowing in an orderly manner.’” *Id.* at 431, 826 S.E.2d at 461 (quoting *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 198, 657 S.E.2d 361, 365 (2008)). “Though not jurisdictional, compliance with these rules is mandatory.” *Id.* (citing *Dogwood*, 362 N.C. at 194, 657 S.E.2d at 362).

One such “nonjurisdictional but mandatory requirement is Rule 28(b), which governs the content of an appellant’s brief.” *Id.* at 432, 826 S.E.2d at 461 (citing N.C.R. App. P. 28(b)). “The function of Rule 28 is to ensure that the parties’ briefs ‘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.’” *Id.* (quoting N.C.R. App. P. 28(a)).

Rule 28(b) contains a list of ten rules designed to promote that function. For example, before setting forth his substantive argument, the appellant’s brief must first contain a separate statement of the issues presented for review; a statement of the procedural history of the case; and a statement of the grounds for appellate review, including citation to the statute permitting appellate review. N.C.R. App. P. 28(b)(2)-(4). An appellant’s brief must also include a section containing “[a] full and complete statement of the facts”—that is, a “summary of all material facts underlying the matter in controversy which are necessary to understand all issues presented for review.” N.C.R. App. P. 28(b)(5).

*Id.*

“A ‘failure of the parties to comply with the[se] rules, and failure of the

appellate courts to demand compliance therewith, may impede the administration of justice.” *Id.* (alteration in original) (quoting *Dogwood*, 362 N.C. at 193, 657 S.E.2d at 362). Under Rule 25, this Court may “sanction a party for noncompliance . . . where the party’s noncompliance ‘rise[s] to the level of a “substantial failure” or “gross violation.”’” *Id.* (first citing N.C.R. App. P. 25(b); and then quoting *Dogwood*, 362 N.C. at 199, 657 S.E.2d at 366).

## II.

Respondent’s “appeal in the instant case violates at least [five] mandatory rules of the North Carolina Rules of Appellate Procedure: Rules 28(b)(2), . . . 28(b)(4), 28(b)(5), 28(b)(6), . . . and 28(j)(2).” *Id.* at 433, 826 S.E.2d at 462. “Particularly concerning is that [respondent’s] brief contains no Statement of the Facts, as required by Rule 28(b)(5).” *Id.*

Furthermore, wholly absent from [respondent’s] brief is a Statement of the Grounds for Appellate Review, with accompanying citation of the supporting statutory authority, as required by Rule 28(b)(4). [Respondent’s] brief also violates Rule 28(b)(6), which requires that his “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.” N.C.R. App. P. 28(b)(6).

*Id.* at 433-34, 826 S.E.2d at 462. Respondent fails to make “appropriate reference to the record on appeal” in her summary of the procedural history in this case. N.C.R. App. P. 28(b)(6). “[Respondent’s] brief does not contain a statement of the issues

presented for review, in violation of Rule 28(b)(2).” *Ramsey*, 264 N.C. App. at 434, 826 S.E.2d at 462. Respondent also failed to include a Certificate of Compliance as required by Rule 28(j)(2).

Quite frankly, this Court was left dumbfounded as to the pertinent facts and issues of the instant case even after a complete and thorough reading of [respondent’s] brief. [Respondent] has completely failed to provide meaningful procedural and factual background information, leaving this Court to make its own “voyage of discovery through the record” in order to glean for ourselves the relevant circumstances underlying h[er] appeal. This we will not do. Nor will we accept the additional delegation of [respondent’s] responsibility to research h[er] grounds for appellate review and, assuming that such grounds exist, the standards of review that apply. Of particular implicit concern in the appellate rules is a regard for the already exhaustive catalog of responsibilities that this Court must necessarily undertake. And where not flagrant by virtue of their substance, [respondent’s] remaining violations of the appellate rules supplant the overall egregiousness by virtue of their quantity. We have considered sanctions permitted under Rule 34(b) other than dismissal. However, in a case such as this, and in order to ensure better compliance with the appellate rules, we conclude that dismissal is appropriate and justified.

*Id.* at 436-37, 826 S.E.2d at 464 (internal citation omitted).

DISMISSED.

Judges MURPHY and FLOOD concur.

Report per Rule 30(e).